

facts of the case are, however, distinguishable because there was a dispute in that case as to whether the person claiming to be in possession of the land was a tenant or not and the trial Magistrate found that there was no lease of the land in favour of the person claiming to be the tenant but only a right to take away grass.

Mata Din Singh  
The State  
Khanna, J.

For the reasons, stated above, the revision petition fails and is dismissed.

B. R. T.

APPELLATE CIVIL

Before P. D. Sharma, J.

SUNDER,—Appellant.

versus

SURJAN SINGH,—Respondent.

Regular Second Appeal No. 1213 of 1961.

Code by Civil Procedure (Act V of 1908)—S. 144—  
Powers under—Whether can be exercised by Revenue  
Officers; under the Punjab Tenancy Act (XVI of 1887). 1963  
May, 9th.

Held that the right of a party to obtain restitution is intimately connected with the question of execution and as laid down in rule 10 framed under section 85 of the Punjab Tenancy Act, the proceedings before the Revenue Officer would be governed by the Code of Civil Procedure and he would have ample power to make an order for restoring possession to the tenant who has been ejected in execution of an order which has been set aside on appeal.

Regular Second Appeal from the decree of the Court of Shri Om Parkash Sharma, Senior Sub-Judge, with enhanced appellate powers, Karnal, dated the 13th day of May, 1961, reversing that of Shri Shamsher Singh Kanwar, Extra Sub-Judge, III Class, Karnal, dated the 17th January, 1961 and granting the plaintiff a decree for injunction restraining the defendant from interfering with the possession of the plaintiff, now appellant, over the land in suit, except in due course of law under a valid order

*passed by competent Court or authority and leaving the parties to bear their own costs throughout.*

C. L. LAKHANPAL, ADVOCATE with D. S. TIWATIA, ADVOCATE; for the Appellant.

S. C. SIBAL and RAMUSH SETIA, ADVOCATE, for H. L. SIBAL; ADVOCATE, for the Respondent.

### JUDGMENT

Sharma, J.

SHARMA, J.—The following facts are pertinent for disposal of this second appeal from the judgment and decree of the learned Senior Subordinate Judge with enhanced appellate powers, Karnal:—

Shrimati Anokhi and her minor son Ram Saran owned 40 *kanals* of land situate in the revenue estate of Mohri, district Karnal. They filed an application on 2nd August, 1957, before the learned Assistant Collector First Grade for ejection of their tenant Sunder defendant from the above land. The dispute was compromised in that Court by the father-in-law of Shrimati Anokhi's daughter. Shrimati Anokhi and her minor son were not satisfied with the compromise and so went in appeal against the above to the learned Collector, where the said compromise was declared as null and void and the case was remanded to the learned Assistant Collector First Grade for decision on merits. The learned Assistant Collector dismissed the application on 13th February, 1958. Their appeal was accepted by the learned Collector on 18th May, 1958, and Sunder defendant was ordered to be ejected from the aforesaid land. Sunder went in appeal against the order of the learned Collector to the learned Commissioner which was dismissed on a preliminary point. He filed a revision petition before the learned Financial Commissioner against the order of the learned Commissioner rejecting his appeal. The revision was accepted and the case was

remanded to the learned Commissioner for disposal on merits. In the meantime, Shrimati Anokhi and her son in execution of their decree had succeeded in ejecting Sunder defendant from the land. The learned Commissioner accepted the appeal of Sunder on 22nd June, 1959, vacated the order of the learned Collector and further directed that Sunder should be given back possession of the land which had been taken away from him in execution of the order of the learned Collector that stood vacated.

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The defendant in due course applied for restoration of possession of the land to him. The learned Assistant Collector dismissed his application on 31st July, 1959. Thereafter he filed a regular suit under section 50 of the Punjab Tenancy Act and section 144 of the Code of Civil Procedure against his two landlords for possession of the land from which he had been ejected by order of the learned Collector, Karnal. The suit was dismissed on 11th January, 1960.

Surjan Singh plaintiff after the dismissal of the said suit of Sunder defendant purchased the land from Shrimati Anokhi and her son on 14th March, 1960, for Rs. 7,500 by a registered deed. Sunder did not rest there. He again applied to the learned Revenue Assistant, Karnal on 1st June, 1960, for restoration of possession of the land on the basis of the order of the learned Commissioner who had accepted his appeal and had also directed that the land should be restored to him. The learned Assistant Collector on this application ordered that Sunder defendant should be put back in possession of the land. Thereupon Surjan Singh instituted the present suit in the Court of the learned Subordinate Judge, Karnal, for a perpetual injunction restraining Sunder defendant permanently from dispossessing him from the land. He maintained that the learned Assistant Collector's order dated 13th June, 1960, was illegal, invalid and without jurisdiction and was thus not maintainable in law since he

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could not have ordered his dispossession from the land either under section 144 of the Code of Civil Procedure or in execution of the learned Commissioner's order dated 22nd June, 1959. It was further alleged that he was a *bona fide* purchaser for consideration and was also at the time of sale in cultivating possession of the land as a tenant under the previous owners, his vendors, and was not a party to the case in which the impugned order of the learned Assistant Collector First Grade dated 13th June, 1960, was passed and so was not liable to be dispossessed from the land in pursuance thereof.

Sunder defendant resisted the suit, on the grounds that the civil Court had no jurisdiction in the matter and that the order of the learned Assistant Collector dated 13th June, 1960, was legal and within his competence. He denied the plaintiff's title in the land.

The trial Judge framed the following issues:—

- (1) Whether the plaintiff is the owner of the suit land?
- (2) Whether the order dated 13th June, 1960, of Revenue Assistant, Karnal, restoring the possession of the suit land to the defendant, is illegal and without jurisdiction, if so, what is its effect?
- (3) Whether this civil Court has jurisdiction to try this suit?
- (4) Relief.

Issues Nos. 1 and 3 were decided in favour of the plaintiff and issue No. 2 against him. The suit, consequently, was dismissed. The learned Senior Subordinate Judge on appeal reversed the finding of the trial Judge on issue No. 2 and allowed the plaintiff

the decree prayed for but the parties were left to bear their own costs throughout.

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The only point for determination is whether order of the Assistant Collector First Grade dated 13th June, 1960, directing that Sunder defendant should be put back in possession of the land was within his competence and otherwise also valid in law. The learned Senior Subordinate Judge relying on the cases *Basti v. Jaipal Singh and others* (1), *Karnail Singh and another v. Gulwant Singh* (2), both decided by the learned Financial Commissioner concluded that the learned Assistant Collector or the learned Commissioner were not competent to exercise jurisdiction under section 144 or 151 of the Code of Civil Procedure and as such, the learned Assistant Collector could not give effect to the order of the learned Commissioner whereby he had also directed that the tenant should be put back in possession of the land. According to him the learned Financial Commissioner alone under section 84 of the Punjab Tenancy Act could have passed such an order. It may be mentioned here that the landlords did file a revision petition against the above order of the learned Commissioner before the learned Financial Commissioner which was dismissed as withdrawn and so the same can be said to have been confirmed by him. This should have met the landlords' objection that the learned Financial Commissioner could have ordered restoration of possession of the land to the tenant. Be that as it may, the point under consideration stands concluded by a decision of this Court in the case of *Bachan Singh v. Sucha Singh and others*. (Civil Miscellaneous No. 3823 of 1961) decided on 29th March, 1962, where it was succinctly laid down. "The right of a party to obtain restitution is intimately connected with the question of execution, and if that is so, then, as laid

(1) (1958) XXXVII-L.L.T. 83.

(2) (1959) XXVIII-L.L.T. 55.

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down in Rule 10 framed under section 85 of the Punjab Tenancy Act, the proceedings before the Revenue Officer would be governed by the Code of Civil Procedure, and he would have ample power to make an order for restoring possession." In view of this, the order of the learned Senior Subordinate Judge cannot be allowed to prevail as the learned Assistant Collector and so also the learned Commissioner in the exercise of their powers under section 144 of the Code of Civil Procedure were competent to pass the order to which the plaintiff had taken objection in this suit.

For the aforesaid reasons, the appeal is accepted and the judgment and decree of the first appellate Court are set aside and those of the trial Court restored. The plaintiff's suit stands dismissed with costs throughout.

*B.R.T.*

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J.*

BUDHI AND OTHERS,—*Petitioners.*

*versus*

THE STATE OF PUNJAB AND OTHERS;—*Respondents.*

Civil Writ No. 1936 of 1962.

1963  
May 13th.

*Land Acquisition Act (I of 1894)—Ss. 4, 17 and 48—Appropriate Government—Whether competent to alter the object of acquisition from one public purpose to the other.*

*Held*, that the appropriate Government is competent to divert the purpose of acquisition from one public purpose to another so long as it remains in the nature of a "public purpose". No limitation has been placed on the power of the appropriate Government to acquire land for a public purpose and there is nothing in the provisions of the Land Acquisition Act prohibiting such diversion. The argument that in case of diversion of land from one public purpose to another, the compensation should be allowed to the