

Act? I have doubts if it does. But as all of my learned brethren, for whose opinions I have great respect, are of the view that this allotment does fall within the purview of "common purpose", I do not propose, as at present advised, to press my doubts to the point of recording a dissent and would therefore concur with them. The result is that I agree with the order proposed by Dulat and Tek Chand JJ.

Munsha Singh
and others
v.
The State of
Punjab
and others

Dua, J.

BHANDARI C. J.—I have had the advantage of reading the judgments, which are proposed to be delivered and have no hesitation in endorsing the views taken by my brothers Dulat J., and Tek Chand J.

B.R.T.

APPELLATE CIVIL

Before Shamsheer Bahadur, J.

RANGA SINGH,—Appellant.

versus

GURBUX SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No: 880 of 1959:

1959

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 36—Bar of the Civil Courts to try suits—Extent of—Managing officer cancelling allotment without notice to the allottee—Suit by allottee for injunction restraining defendants from taking possession of the land originally allotted to him—Whether competent—Section 19—Managing officer—Whether can cancel allotment without notice.

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Held, that section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 excludes the jurisdiction of the civil Courts but where the principles of justice and fairplay have been contravened, civil Courts

would not be slow to intervene. It is not obligatory on the plaintiff to seek his remedy of an appeal to the appellate tribunal under the said Act before invoking the jurisdiction of the civil Courts where the order passed contravenes the principles of natural justice and is in clear violation of the statutory provisions.

Held, that under section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 the managing officers are given the authority to cancel any allotment made before or after commencement of the Act after a person has been given a reasonable opportunity of showing cause against such action. Notice is clearly essential before such a proceeding is taken. The proviso to Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, dealing with the cancellation of allotments and leases, lays down that "no action shall be taken under this rule unless the allottee or the lessee, as the case may be, has been given a reasonable opportunity of being heard". Thus, the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and the statutory rules made thereunder themselves made it imperative for an opportunity to be provided to the person whose allotment is proposed to be cancelled. The issuance of a notice being an essential prerequisite of an order of cancellation, the civil Courts have not only the jurisdiction but a duty to entertain the suit. The plaintiff is clearly entitled to an injunction restraining the defendants from taking possession of the suit land in pursuance of the orders which have been made by the Settlement authorities behind his back.

Second Appeal from the decree of the Court of Shri G. K. Bhatnagar, Senior Sub-Judge, with enhanced Appellate Powers Hissar, dated the 26th day of May, 1959, affirming with costs that of Shri Dev Bhushan, Sub-Judge IV Class, Sirsa, dated the 14th October, 1958, dismissing the plaintiffs' suit with costs.

H. S. WASU,—for Appellant.

N. N. GOSWAMY, for Respondent.

JUDGMENT

Shamsher Bahadur, J. SHAMSHER BAHADUR, J.—This appeal has been preferred by the plaintiff Ranga Singh whose suit has been

dismissed by the trial Judge and also by the Senior Subordinate Judge, Hissar, in exercise of his appellate powers.

Ranga Singh
v.
Gurbux Singh
and another

Shamsher
Bahadur, J.

The pertinent facts of this litigation may be briefly narrated. Lal Singh, father of Gurbux Singh and Chogath Singh, defendants-respondents, had mortgaged with possession land measuring 35 *bighas* situated in Village Attari of district Lahore, now in Pakistan, in the year 1943, for a sum of Rs. 10,000 in favour of Ranga Singh. After partition, the suit land measuring 20 *bighas* and 2 *biswas* was allotted to Ranga Singh in lieu of the land which had been mortgaged with him by Lal Singh. Ranga Singh actually took possession of this land in the year 1953. Subsequently, Gurbux Singh and Chogath Singh obtained a decree for possession by redemption of this land from the Subordinate Judge, 1st Class, Sirsa, on 18th of December, 1957, on the allegation that some land of Lal Singh had been mortgaged in Pakistan with Raj Kumar, Balwant Rai and Kundan Singh (son of Ranga Singh), for a sum of Rs. 8,000. According to the plaintiff, the mortgage in respect of which a redemption decree was obtained by Gurbux Singh and Chogath Singh was different from the mortgage of 1943, in lieu of which the suit land had been allotted to the plaintiff. Both the trial Judge and the first appellate Court have found that the plaintiff had not established his mortgagee rights in respect of the land which is now in his possession and have accordingly dismissed his suit. I may mention that in the decree of 18th of December, 1957, in which Ranga Singh was a party, the Court had made a direction that he should file a separate action to establish his mortgagee rights, and in consequence the present suit has been brought for an injunctive remedy to restrain the defendants from taking possession of 20 *bighas* and 2 *biswas* of land now in the plaintiff's occupation, in village Khairpur, tehsil Sirsa.

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Both the Courts below have held that the civil Courts cannot entertain the present suit the matter having been decided by a competent authority under the Displaced Persons (Compensation and Rehabilitation), Act, 1954, section 36 of which lays down that "no civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It has been contended by Mr. Wasu that there is clear and unimpeachable evidence to establish the title of the plaintiff to this land regarding which an order of dispossession has been made without any notice of him. He has urged that the order of the departmental authorities being *ultra vires* the Act, the civil Courts have jurisdiction to try the suit.

I may first deal with the question of jurisdiction. On basis of verification made by Lal Singh, an order was made by the Naib Tehsildar of Fatehabad on 23rd of September, 1948 (Exhibit P. 5), declaring Ranga Singh to be a mortgagee of the land for Rs. 10,000. Subsequently, the *sanads*, Exhibit P. 3 and P. 4, dated 8th of July, 1949, were delivered to Ranga Singh as a mortgagee of the land. From a perusal of Exhibit P. 5 it appears that Lal Singh himself admitted before the Naib Tehsildar in the presence of the other respectables of the village that his property was mortgaged with Ranga Singh, plaintiff for a sum of Rs. 10,000. Possession of the suit land was taken by Ranga Singh in pursuance of the right bestowed on him by the *sanads*. Reliance has been placed by the Courts below on a copy of the order passed by Mr. Gurbakhsh Singh, Assistant Settlement Commissioner, on 26th October, 1955. This order (Exhibit D. 5), was passed on a

note which was submitted by Mr. Gurcharan Singh Bajwa, on 20th of October, 1955. It was stated in the note that there was a joint mortgage by Lal Singh in favour of Kundan Singh, Balwant Rai and Raj Kumar and the original order of allotment in favour of Ranga Singh had been wrongly made. The Settlement Officer (Mr. Gurcharan Singh Bajwa), solicited orders of the Assistant Settlement Commissioner for correction of the *Jamabandis*. The order of Mr. Gurbakhsh Singh, Assistant Settlement Commissioner contains the words "as proposed". It is clear from the order, Exhibit D. 5, that it had been made without any notice to Ranga Singh. As I have indicated, there are supporting documents for the claim preferred by Ranga Singh. It behoved the authorities concerned to summon Ranga Singh before passing any order cancelling the *sanads* which had been issued earlier. Fundamental fairness required that Ranga Singh should have been apprised of the order which had been proposed by the authorities. It is true that section 36 excludes the jurisdiction of the civil Courts but it has to be borne in mind that where the principles of justice and fair play have been contravened, civil Courts would not be slow to intervene. As observed by their Lordships of the Privy Council in *Secretary of State v. Mask and Co.* (1), "the exclusion of the jurisdiction of the civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the Statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

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It is urged by Mr. Goswamy, the learned counsel for the respondents, that the plaintiff could have pursued his remedy by way of an appeal to the appellate

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tribunal under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. In my opinion, it was not obligatory on the plaintiff to seek his remedy before invoking the jurisdiction of the civil Court. The order of the Settlement authorities, Exhibit D. 5, besides contravening the principles of natural justice, is in clear violation of the statutory provisions, and the plaintiff is entitled to seek his redress in the civil Court in the circumstances of this case. Under section 19 of the Act, the managing officers are given the authority to cancel any allotment made before or after the commencement of the Act after a person has been given a reasonable opportunity of showing cause against such action. Notice is clearly essential before such a proceeding is taken. The proviso to Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, dealing with the cancellation of allotments and leases, lays down that "no action shall be taken under this rule unless the allottee or the lessee, as the case may be, has been given a reasonable opportunity of being heard." Thus, the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and the statutory rules made thereunder themselves make it imperative for an opportunity to be provided to the person whose allotment is proposed to be cancelled. The issuance of a notice being an essential prerequisite of an order of cancellation made in pursuance of the directions given in Exhibit D. 5, the civil Courts, in my opinion, have not only jurisdiction but a duty to entertain the suit.

The question whether Ranga Singh is a mortgagee or not has to be determined by the authorities which are competent to deal with the matter under the Displaced Persons (Compensation and Rehabilitation) Act. There is *prima facie* evidence of documents to lend support to the plaintiff's claim. The Courts below have made some attempt to justify the order of

cancellation which has been made by the Assistant Settlement Commissioner. This, in my view, is not a correct judicial angle of vision to deal with the problem before us. All that has to be seen is whether the plaintiff is entitled to an injunction restraining the defendants from taking possession of the suit land in pursuance of the orders which have been made by the Settlement authorities behind the back of the plaintiff. To that question the answer could only be in the affirmative. The managing officers under the Act can cancel an allotment any time provided the requirements of the section are fulfilled and after an opportunity has been afforded to the person against whom the orders are proposed. There is no question of any limitation. If the authorities are so minded they can proceed *de novo* against the plaintiff in accordance with law and pass such orders as they are advised.

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The present appeal must succeed and the suit of the plaintiff decreed. In the peculiar circumstances of the case, I would make no order as to costs.

B. R. T.

REVISIONAL CRIMINAL.

Before Mehar Singh and I. D. Dua, J.

MAKHAN LAL,—*Petitioner*

versus

THE STATE,—*Respondent.*

Criminal Revision No: 208 of 1959.

Punjab Trade Employees Act (X of 1940)—Section 2 (d) and (p)—Premises used as an office and as a godown for stocking tea—Tea not sold in the premises but taken from the premises to the retail dealers—Premises—Whether covered by the terms “Commercial Establishment” or “Shop”—Objects of the Act—Interpretation of Statutes—Statutes in pari materia—How to be construed.

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