

the document had actually admitted the same, the Registering authority had no power to deny registration.

(7) The writ petition also contains a challenge to some action initiated on the basis of a criminal complaint given against the petitioners. The validity of the imputation made in the complaint cannot be a matter of adjudication before this Court and the petitioners will have an effective and alternative remedy under the provisions of Criminal Procedure Code themselves to correct the same. I make no decision with regard to the challenge contained in the writ petition for the registration of the criminal complaint.

(8) The writ petition is allowed only for the prayer for quashing of the orders of cancellation of the registered instrument.

(9) The writ petition is disposed of in terms of the above.

A. Agg.

Before Alok Singh, J.

SURJAN,—Petitioner

versus

**FINANCIAL COMMISSIONER, REVENUE, HARYANA
AND OTHERS,—Respondents**

CWP No. 13296 of 2011

27th July, 2011

Constitution of India - Art.226/227 - Punjab Security of Land Tenures Act, 1953 - Ss. 2(2), 2(9) & 9 - Small land owner sought eviction of tenant - Financial Commissioner ordered eviction, reversing orders of authorities below - Plea of tenant that small land owner must prove that he needs land for self cultivation - Section 9(1)(i) of the Act no where contemplates self cultivation - Moreover, as per S.2(9) self cultivation, inter alia, means cultivation under supervision - Writ Petition dismissed.

Held, That from the perusal of Section 9(1) (i) of the Act, a tenant of a small land-owner can be evicted by the small land-owner. Section 9 nowhere contemplates that before eviction of the tenant, small land-owner is to prove that he needs the land for self cultivation. Not only is this word "small land-owner" defined under Section 2(2).

(Para 3)

Further held, that from the combined reading of Section 2(2) and Section 2(9) of the Act, it can safely be said that landowner whose entire land in the State does not exceed the permissible area shall be small land-owner. Self cultivation means cultivation by a land-owner either personally or through his wife or children or through his relative or under his supervision. If land-owner intends to cultivate the land under his supervision by his employees then of course, it would amount to self cultivation. Merely because small land-owner is not residing in the village and for his livelihood has started living in the city, does not lose the character of the small land-owner. As discussed above, Section 9 of the Act contemplates that landowner should be a small landowner to evict the petitioner. As per Section 9 of the Act, there is no need to prove that he himself intends to cultivate. If small landowner intends to get the land cultivated under his supervision, then also it would amount to self-cultivation.

(Para 4)

Kul Bhushan Sharma, Advocate, *for the petitioner*.

ALOK SINGH, J.

(1) Private respondents herein filed a petition under Section 9 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act) on Form K-1 for ejection of the petitioner from the land in dispute, inter-alia, on the ground that the private respondents are small landowner and need the land for self cultivation. Their petition was dismissed by the Assistant Collector First Grade, on 19.01.2004 holding that private respondents (petitioners therein) are residing at Delhi and it is not possible for them to cultivate the suit land. Order of the learned Assistant Collector was confirmed by the District Collector and Commissioner, Gurgaon, however, learned Financial Commissioner vide impugned order dated 04.03.2011 has directed the ejection of the petitioner from the suit land. Learned Financial

Commissioner in the order impugned has observed that private respondents herein are the small landowners; Ejectment cannot be refused on the ground that small landowners are residing at Delhi to earn their livelihood.

(2) Learned counsel for the petitioner has vehemently argued that under Section 9 of the Act, small landowner, who intends to cultivate the land himself, can only eject the tenant and landowner who is not doing cultivation himself cannot evict the tenant.

Section 9 of the Act reads as under:-

9. Liability of tenant to be ejected – (1) *Notwithstanding anything contained in any other law for the time being in force, no land-owner other than a land-owner who is a member of the Armed Forces of the Union or a Non-Resident Indian shall be competent to eject a tenant except when such tenant –*

- (i) *is a tenant on the area reserved under this Act or is a tenant of a small land-owner; (or)*
- (ii) *fails to pay rent regularly without sufficient cause; (or)*
- (iii) *is in arrears of rent at the commencement of this Act; (or)*
- (iv) *has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in the manner or to the extent customary in the locality in which the land is situate; (or)*
- (v) *has used, or uses, the land comprised in his tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it; (or)*
- (vi) *has sublet the tenancy or a part thereof; provided that where only a part of the tenancy has been sublet, the tenant shall be liable to be ejected only from such part; (or)*

(vii) *refuses to execute a Qabuliyat or a Patta, in the form prescribed, in respect of his tenancy on being called upon to do so by an Assistant Collector on an application*

Explanation – For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent.

(2) *Notwithstanding anything contained herein before a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area:*

Provided that the portion of the tenancy from which such tenant can be ejected shall be determined at his option only if the area of his tenancy under the land-owner concerned is in excess of the area from which he can be ejected by the said land-owner.

Provided further that if the tenant holds land of several land-owners and more than one land-owner seeks his ejectment, the right to ejectment shall be exercised in the order in which the applications have been made or suits have been filed by the land-owners concerned, and in case of simultaneous applications or suits the priority for ejectment shall commence serially from the smallest land-owner.

Explanation – where a tenant holds land jointly with other tenants, only his share in the joint tenancy shall be taken into account in computing the area held by him.”

(3) From the perusal of Section 9(1)(i) of the Act, a tenant of a small land-owner can be evicted by the small land-owner. Section 9 nowhere contemplates that before eviction of the tenant, small land-owner is to prove that he needs the land for self cultivation. Not only this, word “small land-owner” is defined under Section 2(2) and “selfcultivation” is defined under Section 2(9) of the Act as under :-

“2(2) “Small land-owner” means a land-owner whose entire land in the State of Punjab does not exceed the “permissible area”.

2(9) “Self-cultivation” means cultivation by a land-owner either personally or through his wife or children, or through such of his relations as may be prescribed, or under his supervision.”

(4) From the combined reading of Section 2(2) and Section 2(9) of the Act, it can safely be said that landowner whose entire land in the State does not exceed the permissible area shall be small land-owner. Self-cultivation means cultivation by a land-owner either personally or through his wife or children or through his relative or under his supervision. If land-owner intends to cultivate the land under his supervision by his employees then of course, it would amount to self cultivation. Merely because small land-owner is not residing in the village and for his livelihood has started living in the city, does not loose the character of the small land-owner. As discussed above, Section 9 of the Act contemplates that land-owner should be a small landowner to evict the petitioner. As per Section 9 of the Act, there is no need to prove that he himself intends to cultivate. If small landowner intends to get the land cultivated under his supervision, then also it would amount to self-cultivation. I find no illegality in the impugned order passed by the learned Financial Commissioner.

Dismissed.

P.S. Bajwa