

MISCELLANEOUS CIVIL.

Before D. K. Mahajan and Gopal Singh, JJ.

ABHE RAM.—Petitioner.

versus.

THE FINANCIAL COMMISSIONER, HARYANA, ETC.—Respondents.

C. W. No. 3119 of 1968.

February 16, 1971.

Punjab Security of Land Tenures Act (X of 1953)—Sections 14-A and 18—Tenant making application for purchase of land under his tenancy—Order of eviction from the land passed subsequently against such tenant—Application of the tenant—Whether can be defeated on this score—Material date for determining relationship of landlord and tenant—Whether the date on which the purchase application is made.

Held, that if on the date of the purchase application made by the tenant under section 18 of the Punjab Security of Land Tenures Act, 1953, there is no order of eviction, the application cannot be defeated on the ground that subsequently order for eviction of the tenant has been passed. The relevant date to determine whether there is relationship of landlord and tenant is the date when the section 18 application is made. If on that date that relationship subsists, the tenant is entitled to purchase the land no matter that the order of eviction is passed against him on a later date. It is the date on which the application under section 18 of the Act is made on which it has to be seen whether there is relationship of landlord and tenant. If on that date relationship has come to an end, the tenant cannot purchase the land, but if that relationship subsists on that date any subsequent event that puts that relationship to an end will have no effect.

(Para 4).

Petition under Article 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the impugned orders passed by (i) Assistant Collector, Ist Grade, Rohtak, (ii) Collector, Rohtak, (iii) Commissioner, Ambala Division, Ambala and (iv) Financial Commissioner, Haryana, dated 30th November, 1966, 25th April, 1967, 24th October, 1961 and 30th May, 1968 respectively.

J. V. GUPTA, ADVOCATE WITH SHRI G. C. GARG, ADVOCATE.—for the petitioner.

M. S. JAIN, ADVOCATE FOR RESPONDENT No. 2.—for the respondents.

JUDGMENT

The Judgment of this Court was delivered by :—

MAHAJAN, J.—This order will dispose of Civil Writ Nos. 3119, 3408, 3409 and 3454 of 1968. The point involved in all of them is the same.

(2) The tenants in all these petitions made applications under section 18 of the Punjab Security of Land Tenures Act, 1953, for purchase of the land under their tenancies. In two petitions Nos. 3408 and 3453 of 1968, the landlords had applied earlier for the eviction of the tenants and the tenants' petitions to purchase the land were made a few months thereafter, whereas in the other two petitions Nos. 3119 and 3409 of 1968, the purchase applications were made earlier to the applications by the landlords for eviction of the tenants. All these applications under section 18 were allowed by the Assistant Collector and so also the applications for eviction. The matter ultimately came up before the Financial Commissioner and the Financial Commissioner passed the following order which is the subject-matter of dispute in all the petitions :—

“The petitioner was ejected from the land in suit for default in payment of rent. Strangely enough his application under section 18 of the Punjab Security of Land Tenures Act for the purchase of the land was also accepted. Both these orders are said to have been passed by the same officer, Mr. Hargolal. It is not clear whether the ejection was ordered first or the purchase. It is apparent that if the petitioner was ordered to be evicted earlier, then his application under section 18 cannot succeed. If the contrary is the case, then the order of ejection was untenable. The case is accordingly sent to the Collector, Rohtak, for determining which of these decisions was earlier. If the eviction was prior, then the present revision must be deemed to have been rejected. It is stated that the appeal of the landowner in the case under section 18 is pending with the Collector. That may be decided on its own merits. The parties have been directed to appear before the Collector, Rohtak, on 29th June, 1968.”

(3) It appears to us that the learned Financial Commissioner has really not done justice to the case. It was his duty to properly ascertain the facts leading to both types of petitions, and then determine the effect of one on the other. However, the matter is now set at rest by the decision of the Supreme Court in *Bhajan Lal v. State of Punjab* (1). This decision was not noticed by the Financial Commissioner and rightly so because when he decided the cases, the decision was not in the field. The proper course would, therefore,

(1) 1970 P.L.J. 812.

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be to set aside the order of the Financial Commissioner and direct him to dispose of the matters in the light of the decision of the Supreme Court in *Bhajan Lal's case* (1).

(4) Before parting with the judgment, we may set at rest one contention of the learned counsel for the respondents. His contention is that it is immaterial when the application under section 18 is made by the tenant to purchase the land. If there is an order of eviction, that application has to be rejected. This does not follow from the decision of the Supreme Court. It is curious that the learned counsel insisted that this result follows from the decision of the Supreme Court, whereas the decision of the Supreme Court is clearly an authority for the view that if on the date of section 18 application, there is no order of eviction, section-18 application cannot be defeated on the ground that subsequently an order for the eviction of the tenant has been passed. The relevant date to determine whether there is relationship of landlord and tenant is the date when the section-18 application is made. If on that date that relationship subsists, the tenant is entitled to purchase the land no matter that the order of eviction is passed against him on a later date. This is how we understand the Supreme Court decision and this would be clear if my judgment in *Har Sarup v. The Financial Commissioner* (2), is read in conjunction with the Division Bench judgment reported as *Giani v. Financial Commissioner, Punjab* (3), wherein the Division Bench, while dealing with my judgment, observed as follows :—

“For reasons aforesaid, I am unable to persuade myself to conform to the view taken on the point in *Har Sarup's case* (2), *ibid.*, and *Malik Labhu Masih's case ibid.*, and by the learned Single Judge in the instant case. I would prefer to adopt the view taken in *Amin Lal's case*, which, if I may say so with respect, lays down the law on the subject, correctly.”

The Supreme Court in *Bhajan Lal's case* (1), accepted my view and the net result, therefore, is that it is the date on which the application under section 18 is made on which it has to be seen whether there is relationship of landlord and tenant. If on that date that relationship has come to an end, the tenant cannot purchase the

(2) 1965 P.L.J. 178.

(3) 1969 P.L.J. 226—I.L.R. 1970(2) Pb. & Hr. 700.

land, but if that relationship subsists on that date any subsequent event that puts that relationship to an end will have no effect.

(5) For the reasons recorded above, we allow these petitions, quash the order of the learned Financial Commissioner and remit the cases to him with a direction that he should dispose them of himself, or direct the subordinate authorities to dispose of the cases under section 18 as well as under section 14-A in accordance with the observations made above. There will be no order as to costs.

N.K.S.

APPELLATE CIVIL

Before D. K. Mahajan and Gopal Singh, JJ.

KISHAN SINGH.—Appellant.

versus.

MOHINDER SINGH ETC.—Respondent.

R. F. A. No. 177 of 1962.

February 23, 1971.

Transfer of Property Act (IV of 1882)—Section 52—Specific Relief Act (XLVII of 1963) Section 19(b)—Principle of lis pendens—Nature of—Stated—Plea of bona fide purchaser for consideration without notice—Whether must give way in favour of prohibition for transfers pendente lite.

Held, that according to the principle of *lis pendens* as incorporated in section 52 of the Transfer of Property Act 1882, no party can during the pendency of a suit transfer or otherwise deal with any immovable property, which is the subject matter of the suit so as to affect the rights of any other party thereto under any decree, which may be passed except under the authority of the Court and on such terms as it may impose. This prohibition against transfer by a party to litigation of immoveable property which is the subject matter of a pending suit to a stranger to the litigation is founded upon wholesome principle of public policy to avoid multiplicity of suits and not to render nugatory the decision, which may eventually be given between the contesting parties. The nature of prohibition incorporated in that Section is imperative in its scope and character. It is not open to a transferee of such property sought to be transferred to him in course of pendency of a suit to contend that he was a *bona fide* purchaser for consideration and without notice about the earlier transaction of transfer of the property which is the subject matter of the suit. The plea of a person being a *bona fide* transferee must yield in favour of the sweeping injunction