CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

DHAN RAJ,—*Petitioner*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

Civil Writ No. 3947 of 1971.

February 20, 1972.

Punjab Security of Land Tenures Rules (1956)—*Rules* 14, 15, 16, 17 *and* 20—*Area of a landowner declared surplus—Resettlement of the tenants on the area—Notice to the landowner before such resettlement—Whether essential.*

Held, that the reading of rule 17 along with rule 20-C of the Punjab Security of Land Tenures Rules, 1956, makes it clear that the issuance of a notice to a landowner on whose surplus land a tenant is to be resettled is necessary. Rule 17 deals with resettlement of tenants ejected or liable to ejectment. It clearly envisages making of an enquiry and giving of an hearing to the parties concerned. The parties concerned are landowners and tenants. The rule is not only confined to the cases where ejectment proceedings are pending between a landowner and tenant, but it applies to those cases also where ejectment orders have been passed and the proceedings for the resettlement of the tenants are started. Rule 20-C of the Rules gives a clear indication of the intention of the Legislature that before resettlement of a tenant, a notice to that landowner on whose surplus area he is to be settled is essential. Under condition (c) of the Rule, the resettled tenant cannot get possession of the land till he executes a Qabuliyat in the name of the landowner and Qabuliyat cannot be executed in favour of the landowner if he is not present and has not been heard. Moreover, if no hearing is given to the landowner, he would not know as to who is his tenant on the land which has been declared surplus and on which the tenants have been resettled.

Petition under Articles 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 respondent No.* 3 *on* 24*th May,* 1971, 4*th June,* 1971, *and* 5*th June,* 1971 *and further praying that dispossession of the petitioner be stayed till the decision of the Writ Petition.*

A. S. Nehra, Advocate, *for the petitioner.*

C. D. Dewan, Additional Advocate-General (Haryana), *for the respondents.*

JUDGMENT

JAIN, J.—This order of mine will dispose of Civil Writs Nos. 3947, 3948 and 3949 of 1971 as common questions of law and fact arise in all these petitions. In order to decide the controversy that was raised before me, certain facts may be noticed, which I am narrating from Civil Writ No. 3947 of 1971.

(2) The petitioner is a resident of village Nathusari Kalan, Tehsil Sirsa, District Hissar. His land was assessed under sub-rule (6) of Rule 6 of the Punjab Security of Land Tenures Rules, 1956 (hereinafter referred to as the 'Rules') and 106.50 ordinary acres equivalent to 21.24 standard acres were declared surplus by the Collector, Surplus Area, Sirsa, district Hissar, respondent No. 2, *vide* his order dated August 9, 1963 (copy Annexure 'A' to the petition). The land of the petitioner was declared surplus in village Naranwali in old khasra numbers as at the time of the declaration of the surplus area, the consolidation proceedings had not finalized. The only other fact that needs mention is that the area which was declared surplus in the hands of the petitioner was utilized for the resettlement of the ejected tenants, *vide* orders dated May 24, 1971, June 4, 1971 and June 5, 1971, contained in Annexures 'B', 'C' and 'D', true translations of which have been attached with the petitions as Annexures B-1, C-1 and D-1 respectively. It is the legality and propriety of these orders which have been challenged by way of this petition on various grounds.

(3) Written statement in the shape of an affidavit has been filed by Shri I. D. Swami, H.C.S., Sub-Divisional Officer (Civil)-cum-Collector, Surplus Area, Sirsa, in which the material allegations made in the petition have been controverted. Two preliminary objections have also been taken but it is not necessary to make reference to those objections as the same were not pressed at the time of arguments. The private respondents have not put in appearance and, as such, they have been proceeded against *ex parte*.

(4) Although various grounds have been taken in the petition, but the only contention that was raised before me by Mr. Atamjit Singh Nehra, learned counsel for petitioner, was that the land which was declared surplus in the hands of the petitioner could not be utilized for resettlement of tenants without issuing notice to the petitioner (landowner). According to the learned counsel before the

tenants could be resettled on the surplus land, it was incumbent on the Circle Revenue Officer to issue notice to the petitioners and hear them. The specific plea taken in the petition reads as under:—

> 6(1) "That the impugned orders have been passed behind the back of the petitioner. No notice as required by the rules was issued to the petitioner. Therefore, impugned order is illegal and without jurisdiction. No order adversely affecting the rights of the petitioner can be passed behind his back.".

(5) On the other hand, it was contended by Mr. Chetan Dass Dewan, learned Additional Advocate General, that in the proceedings relating to the resettlement of tenants on the surplus area of a particular landowner, it was not at all necessary to issue any notice to the landowner. The reply on behalf of the State to the aforesaid plea reads as under :—

> 6(1) "That the contents of this para are denied. Respondent No. 3 has not committed any irregularity. Copies of allotment order in form K-6 and notice under section 19-C will be delivered to the petitioner before the delivery of possession."

(6) In order to judge the correctness of the contention raised by the learned counsel for the petitioners, it would be appropriate to set out the following provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the Act') and the rules made thereunder to which reference was made by the learned counsel at the time of arguments:—

> "*Section* 10-*A of the Act.*—(a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of section 9.
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> *Section* 19-C *of the Act.*—(1) The Collector may from time to time by order in writing direct the landowner or the tenant to deliver possession of the land in his surplus area to the person resettled on such land by the State Government or any officer empowered by it within ten days of the service of the order on him.

(2) If the landowner or the tenant refuses or fails without reasonable cause to comply with an order made under sub-section (1), the Collector may cause the possession of the land in the surplus area to be delivered to the person re-settled on it and may for that purpose use such force as may be necessary.

Rule 13 *of the Rules*.—Procedure for dispossession of tenants liable to ejectment under section 9(1)(i).

(1) An application for the dispossession of a tenant liable to ejectment under clause (i) of sub-section (1) of section 9 of the Act shall be made to the Assistant Collector, I Grade having jurisdiction, by a small landowner in Form K-1, and by a landowner who is not a small landowner in Form K-2.

(2) On receipt of the application, the Assistant Collector shall summon the tenant and after hearing the parties and making such summary inquiry as he may deem necessary record a finding on the following points :—

(a) Whether the tenant is liable to ejectment under clause (i) of sub-section (1) of section 9 of the Act;

(b) the area from which he is to be ejected; and

(c) the amount of compensation; if any; due to the tenant for standing crops;

and shall, where necessary, forward the case to the Circle Revenue Officer for resettlement or where resettlement is not necessary, dispossess the tenant.

Note.—Proceedings before the Assistant Collector shall be conducted in the manner provided in section 14-A(i) read with sub-section (2) of section 10 of the Act.

(3) The Circle Revenue Officer shall, on receipt of the case under sub-rule (2) proceed to record his finding with respect to the matters specified in clauses (c) and (d) of rule. 17.

Rule 14 *of the Rules*.—Application by landowner for resettlement of tenant.

The landowner of a tenant who is liable to ejectment under clause (i) of sub-section (1) of section 9 of the Act may make an application to the Circle Revenue Officer for resettlement of his

tenant on the surplus area. Such an application shall be made by small landowner in form K-3 and by a landowner who is not a small landowner in Form K-4 within two months of the date of publication of the notification No. 4766-ARI (II)-60/2580, dated 19th August, 1960, in the Official Gazette or within such extended period as may, for reasons to be recorded in writing, be allowed by the Circle Revenue Officer.

Rule 15 *of the Rules.*—Application for resettlement by tenants.

A tenant who is liable to ejectment under clause (1) of subsection 9 of the Act or against whom an order of ejectment has been passed but his dispossession has been stayed till his resettlement, may make an application to the Circle Revenue Officer in Form K-5 for his resettlement on the land out of the surplus area. Such an application shall be made within two months of the date of publication of the notification No. 4766-ARI (II)-60/2580, dated 19th August, 1960, or within such extended period as may, for reasons to be recorded in writing, be allowed by the Circle Revenue Officer.

Rule 16 *of the Rules*—Suo motu proceeding for resettlement by Circle Revenue Officer.

Notwithstanding anything contained in rules 13, 14, and 15, proceedings for resettlement on surplus area of any tenant who is liable to be ejected under sub-clause (i) of section 9, may be initiated *suo motu* by the Circle Revenue Officer.

Rule 17 *of the Rules.*—Procedure to be observed by Circle Revenue Officer.

When an application is made under rule 14 or rule 15 or when the Circle Revenue Officer *suo motu* starts proceedings under rule 16, he shall after hearing the parties concerned and after making such enquiries as he may think necessary, record a finding on the following points :—

(a) whether the landowner is desirous of ejecting his tenant;

(b) whether the tenancy is liable to be terminated under clause (i) of section 9 of the Act;

(c) the extent of area required for resettlement under rule 18;

(d) the estate or estates for which the tenant indicates his preference for resettlement in case no surplus area is available for resettlement in the estate from which the landowner seeks his ejectment.

Rule 18 *of the Rules.*—Procedure for allotment.

(1) After the procedure prescribed in sub-rule (3) of rule 13 or rule 17, as the case may be, has been followed the Circle Revenue Officer shall prepare a list of tenants in which the names of tenants of an estate shall be arranged in the same order as the extent of area required for their resettlement with the smallest claimant coming on the top. Where more than one tenants have equal claim, their names shall be arranged in alphabetical order in the English language.

(2) The Circle Revenue Officer shall also prepare a list of the surplus area available in an estate mentioning therein the field numbers of the surplus area in numerical order such as 1, 5, 10, 30, 60.

(3) After the lists under the preceding sub-rule have been prepared for an estate, the Circle Revenue Officer shall proceed to allot the surplus area to the tenants in the order of priority shown in the list prepared under sub-rule (1) and in accordance with the scale given in schedule 'C' annexed to these rules.

Rule 20-C *of the Rules.*—Conditions of resettlement.

The tenant who is resettled under this Part—

(a) shall be the tenant of the landowner in whose name the land in question stands in the records ;

(b) shall be liable to pay the same amount of that as is customary in that estate for such lands subject to the maximum fixed under section 12 of the Act ; and

(c) shall in respect of the land upon which he is resettled execute a Qabuliyat or a Patta as given in Annexure 'C' appended to the Punjab Security of Land Tenures Rules, 1953, in favour of the landowner before he is put in possession of the land."

(7) After giving my thoughtful consideration to the entire matter in the light of the statutory provisions, I am of the view that there is considerable force in the contention of the learned counsel for the petitioner. Under section 10-A, the State Government or any Officer empowered by it in this behalf, is competent to utilize any surplus area for the resettlement of tenants ejected or to be ejected under clause (i) of sub-section (1) of section 9. Under clause (i) of sub-section (1) of section 9, a tenant is liable to be ejected if he happens to be a tenant on the area reserved under the Act or is a tenant of a small landowner. Therefore, the surplus area is liable to be utilized for the resettlement of those tenants who are ejected or to be ejected under clause (i) of sub-section (1) of section 9. But the question that requires determination is whether issuance of a notice to a landowner on whose surplus land a tenant is to be resettled is necessary or not. In my view, the answer has to be in the affirmative and is furnished by the reading of rule 17 along with rule 20-C. Under Rule 17, procedure is prescribed which a Circle Revenue Officer is required to observe in the cases which fall under rules 14 or 15 or where the proceedings are initiated *suo motu* under rule 16. This rule provides that the Circle Revenue Officer shall after hearing the parties concerned and after making such enquiries as he may think necessary record a finding—

(a) whether the landowner is desirous of ejecting his tenant ;

(b whether the tenancy is liable to be terminated under clause (i) of section 9 of the Act ;

(c) the extent of area required for resettlement under rule 18; and

(d) the estate or estates for which the tenant indicates his preference for resettlement in case no surplus area is available for resettlement in the estate from which the landowner seeks his ejectment.

(8) This rule falls in Chapter IV which deals with resettlement of tenants ejected or liable to ejectment. It clearly envisages making of an enquiry and giving hearing to the parties concerned. The parties concerned are landowner and tenant. I do not agree with Mr. Chetan Dass, learned Additional Advocate General (Haryana), that under rule 17, hearing of parties is to be given only in those cases where ejectment proceedings are pending between a landowner and a tenant and that the rule did not apply to those cases where already ejectment orders had been passed and the proceedings

for the resettlement of the tenants were started by the Circle Revenue Officer. If this interpretation is accepted, then procedure of rule 17 would not apply to cases falling under rule 16 because rule 16 envisages *suo motu* action on the part of the Circle Revenue Officer for the resettlement of a tenant presumably without there being any proceeding for ejectment pending between a landowner and a tenant. But the Legislature specifically provides the application of the procedure prescribed under rule 17 to cases falling under rule 16 also.

(9) Further rule 20-C gives still more clear indication of the intention of the Legislature that before the resettlement of a tenant, a notice to the landowner on whose surplus area he is to be settled is essential. Rule 20-C gives conditions of resettlement, that is,—

(a) that the resettled tenant shall be the tenant of the landowner in whose name the land in question stands in the record ;

(b) that he shall be liable to pay the same amount of rent as is customary in that estate for such lands subject to the maximum fixed under section 12 of the Act ; and that

(c) the resettled tenant shall in respect of the land upon which he is resettled executes a Qabuliyat or a Patta in favour of the landowner before he is put in possession of the land.

Unlike the law under the Pepsu Tenancy Act where the land after being declared surplus vests in the Government, under the Punjab Security of Land Tenures Act, the ownership of the surplus land still remains in the landowner. The only effect of the declaration or the determination of the surplus area is that the Government is given right to resettle the tenants, but for all other intents and purposes the resettled tenant becomes the tenant of the landowner. Under condition (c) of rule 20-C, the resettled tenant cannot get possession of the land till he executes a Qabuliyat in the name of the landowner. I fail to understand how a Qabuliyat can be executed in favour of the landowner when he is not present and has not been heard and, as earlier observed, execution of Qabuliyat in the name of the landowner is a condition precedent for getting possession. Moreover, how would the landowner know as to who is his tenant on the land which has been declared surplus ? In this view of the matter, I have no hesitation in holding that before the

resettlement of tenants on the surplus land of a landowner, the Circle Revenue Officer is required to issue notice and hear the landowner. Admittedly, in the instant case, such a course was not adopted with the result that the impugned action of resettling the tenant on the surplus land of the petitioner cannot legally be sustained.

(10) No other point was urged.

(11) For the reasons recorded above, I allow these petitions and quash the impugned orders dated May 24, 1971, June 4, 1971 and June 5, 1971 (copies Annexures 'B', 'C', and 'D' to the petition) respectively. However, it may be observed that the authorities under the Act shall be at liberty to utilize the surplus area of the petitioner and resettle the tenants in the light of the observations made by me above. In the circumstances of the case, I make no order as to costs.

B. S. G.

APPELLATE CIVIL

Before R. S. Narula and R. N. Mittal, JJ.

KARTAR SINGH,—*Appellant*

versus

LAL SINGH, ETC.—*Respondents.*

Letters Patent Appeal No. 157 of 1970.

March 7, 1972.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Sections 23(2) and 24(1)—Punjab Land Revenue Act (XVII of 1887)—Section 122, requiring application for possession being made within a specified period of limitation—Whether applies to proceedings under section 23(2) or 24(1) of the Consolidation Act.

Held, that there is no express provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 or in the rules framed thereunder prescribing any period of limitation for moving the Consolidation Officer for delivering possession of the land allotted to any landowner under the consolidation scheme either under section 23(2) or under