

Before Bindu Kumar Roy, C.J., H.S. Bedi & N. K. Sud, JJ.

SHIV CHARAN,—Petitioner

versus

STATE HARYANA AND OTHERS,—Respondents

C.W.P. No. 66 OF 1999 & OTHER CONNECTED CASES

29th May, 2004

*Punjab Tenancy Act, 1887—S. 77(3)(d)—Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953—Ss. 2(a), 2(f) & 3—Claim for status of a occupancy tenant—Whether the Revenue Court or Civil Court has jurisdiction to determine the dispute of occupancy rights—S. 77(d) of the 1887 Act provides that suits by a tenant to establish a claim to right of occupancy shall be heard & determined by Revenue Courts only—After promulgation of the 1953 Act, there was a simultaneous extinguishment of rights of Occupancy and conversion of the same into ownership—Jurisdiction to declare title only by the Civil Court—Jurisdiction of the revenue court to determine the dispute envisaged in S. 77(3) (d) is barred.*

*(Omkar Singh and others Versus Nirmal and others, 2000(2) P.L.J. 1073.) and Jiwan v. Ram Sarup 1998(1) P.L.J. 38 (S.B.), overruled)*

*Held*, that expression "Occupancy tenant" included two types of occupancy tenants, namely (i) those who were recorded as such in the revenue record immediately before the commencement of the Act and (ii) those, whose rights as occupancy tenants could be established by other evidence. After coming into force of the Vesting Act, what was required was in fact a declaration of title based on the fact as to whether a person claiming a right of occupancy had in fact become the owner though for arriving at this conclusion, it would often be necessary for the Court to examine the conditions prescribed by the Vesting Act, and to determine as to whether they had been fulfilled. After the coming into force of the Vesting Act, there was a simultaneous extinguishment of the rights of occupancy and conversion of the same into ownership and as a declaration of title could be given only by the Civil Court. Therefore after the coming into force of the Vesting Act, the Civil Court alone would have the jurisdiction to determine the dispute envisaged in Section 77(3)(d) of the 1887 Act and the jurisdiction of the revenue Court would be barred.

(Para 8 & 9)

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R. K. Jain, Advocate.

Amrit Lal Jain, Advocate.

Gopi Chand Bhardwaj, Advocate, for petitioners.

Randhir Singh, DAG, Haryana, for the respondents.

### JUDGMENT

H. S. Bedi, J (F.B.)

This reference to the Full Bench has been necessitated on account of an order made by N. K. Sud, J. on 10th September, 2001.

(2) The matter arises out of the following facts :—

The petitioner, Shiv Charan, filed a suit under Section 77(3)(d) of the Punjab Tenancy Act, 1887 (hereinafter called the 'Act') against respondent No. 5, Sham Lal in the Court of the Assistant Collector, Ballabgarh claiming the status of an occupancy tenant under Section 5 and 8 thereof. The Assistant Collector dismissed the suit,—*Vide* his order dated 27th October, 1989 (Annexure P-1 to the petition). The appeal filed by the petitioner before the Collector, Faridabad was, however, allowed by order dated 19th November, 1991 (Annexure P-2) and it was held that he was an occupancy tenant on the land in question. Respondent No. 5 thereupon filed an appeal against the order (Annexure P-2) before the Commissioner, Gurgaon Circle, which was dismissed on 20th November, 1992,—*vide* order Annexure P-3. He thereafter filed a revision petition before the Financial Commissioner, pleading for the first time that a suit for declaration of occupancy rights lay in a Civil and not in Revenue Court after the promulgation of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (hereinafter called the Vesting Act) as held by this Court in **Puran Lal Aggarwal and others versus The Financial Commissioner, Haryana and others, (1)**. The Financial Commissioner accordingly allowed the revision,—*vide* order dated 2nd December, 1998 (Annexure P-4 to the petition) ignoring

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(1) 1992 P.L.J. 574

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the judgment of another Single Bench in **Jiwan versus Ram Sarup** ; (2) cited before it by stating that the judgement in **Puran Lal Aggarwal's case (Supra)** had not been brought to notice in the latter case. It is against the order (Annexure P-4) that the present writ petition was filed by the tenant.

2.1 The matter came up for hearing before N. K. Sud, J., who noticed that there was a conflict of opinion with regard to the issue involved between two Single Bench judgements of this Court, i.e. **Puran Lal Aggarwal's case (supra)**, which had relied on a Division Bench of this Court in **Amin Lal versus Financial Commissioner, (Revenue), Haryana and Others, (3)**, in which it had been held that it was the Civil Court alone and not the Revenue Court which had the jurisdiction to determine the dispute in such matters and the judgement in **Omkar Singh and Others versus Nirmal and Others, (4)**, whereby the learned Single Judge had opined to the contrary after noticing (though not opining on) the judgment in Amin Lal's case (supra) and as such this matter needed to be considered by a Larger Bench. It is in this situation that the present matter has come before the Full Bench.

3. In addition to the present writ petition, three other matters have also come before us, i.e., R.S.A. No. 1729 of 1984 (State of Haryana versus Ghansham Dass & Others) S.A.O. No. 47 of 1999 (Vijay Singh and another versus Raghbir and others) and S.A.O. No. 10 of 1993 (Gram Panchayat, Yakubpur versus Nanak). Mr. Amrit Lal Jain, who is appellant's counsel in R.S.A. No. 4298 of 2001 has also appeared before us as an Intervener with the permission of the Court.

4. We have accordingly heard the learned counsel for the parties in extenso.

4.1 Mr. R. K. Jain, the learned counsel for the petitioner in Civil Writ Petition No. 5266 of 1999 has raised two arguments before us : firstly that the civil court's jurisdiction was limited to giving a declaration of ownership only where the tenants were recorded as

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(2) 1998 (1) P.L.J. 38 (S.B.)

(3) 1971 P.L.J. 619

(4) 2000 (2) P.L.J. 107

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occupancy tenants in the revenue record and in no other case and in the alternative that both Civil as also the Revenue Courts had a co-ordinate jurisdiction in such matters and the finding of the learned Financial Commissioner that it was the exclusive domain of the Civil Court, was erroneous. He has in this context placed reliance on a large number of judgements of this Court and in particular to Omkar Singh's and Jiwan's cases (*supra*).

(4.2) Mr. Amrit Lal Jain, the intervener has supported Mr. R. K. Jain's argument and has relied primarily on a judgment of the Hon'ble Supreme in **Raja Durga Singh versus Tholu and Others**, (5).

(4.3) Mr. Gopi Chand, the learned counsel appearing for the State in the Civil Writ Petition has, however, supported the view of the Division Bench in **Amin Lal's** case (*supra*) as followed by the Single Bench in **Puran Lal Aggarwal's** case.

(5) We have gone through the record.

(6) It is clear that the decision of the case would depend on the interpretation of the statutory provisions. Section 77(3) (d) of the Act and Sections 2(a), 2(f) and 3 of the Vesting Act are being reproduced hereunder :—

“S. 77(3) The following suits shall be instituted in, and heard and determined by, Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :—

XX            XX            XX            XX

(d) Suits by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right.”

Sections 2 (a), (f) and 3 of the Vesting Act.

2. Definitions.—In this Act, unless the context otherwise requires—

(a) “Appointed day” means—

(i) in relation to any tenant, who immediately before the commencement of this Act, is recorded as an occupancy tenant of any land in the revenue records, the 15th day of June, 1952;

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- (ii) in relation to any tenant who obtains right of occupancy in any land after the commencement of this Act, the date on which he obtains such right of occupancy ;

XX                      XX                      XX                      XX

- (f) "Occupancy tenant" means a tenant, who immediately before the commencement of this Act, is recorded as an occupancy tenant, in the revenue records and includes a tenant, who after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors-in-interest of an occupancy tenant."
- (3) Notwithstanding anything to the contrary contained in any law, custom or usage for time being in force on and from the appointed day—
- (a) all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force and including the share in the Shamlat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord :

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamlat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later ;

- (b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;
- (c) XX                      XX                      XX                      XX

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(d) XX                      XX                      XX                      XX”

(7) Mr. R. K. Jain relying on the definition of the ‘Occupancy Tenant’ given in the Vesting Act has highlighted that the inquiry by the Civil Court could be confined only to such occupancy tenants, who were recorded as such in the revenue record before the commencement of the Act and the jurisdiction with regard to the second category i.e. of those occupancy tenants, who had attained rights of occupancy subsequently or whose rights as such could be proved by other evidence lay with the Revenue Court.

(8) We are, however, of the opinion that this very issue had been raised before and repelled by the Division Bench in **Amin Lal’s** case. The Bench noticed that expression “Occupancy tenant” included two types of occupancy tenants, namely, (i) those who were recorded as such in the revenue record immediately before the commencement of the Act and (ii) those, whose rights as occupancy tenants could be established by other evidence. The Court observed that after the coming into force of the Vesting Act, what was required was in fact a declaration of title based on the fact as to whether a person claiming a right of occupancy had in fact become the owner, though for arriving at this conclusion, it would often be necessary for the court to examine the conditions prescribed by the Vesting Act, and to determine as to whether they had been fulfilled. The Court further observed that after the coming into force of the Vesting Act, there was a simultaneous extinguishment of the rights of Occupancy and conversion of the same into ownership and as such a declaration of title could be given only by the Civil Court. It was accordingly concluded as under :—

“A Civil Court has jurisdiction to try all suits of a civil nature unless its jurisdiction with regard to a particular type of a suit is expressly or impliedly barred. A suit in which the right to property is to be decided is beyond doubt a suit within the cognizance of a Civil Court. A provision of law which takes away such a jurisdiction has to be strictly construed. Section 77(3)(d) of the Tenancy Act takes out of the jurisdiction of a Civil Court only that suit which is instituted to establish a claim to a right of occupancy and not where title to property is to be decided on the determination of occupancy rights which determination was only to substantiate the plea of ownership. After the

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coming into force of the Vesting of Proprietary Rights Act, occupancy rights had ceased to exist and all of them were automatically converted into statutory ownership.”

(9) We are also of the opinion that the reliance of the learned counsel on Omkar Singh's and Jiwan's cases (*supra*) is misplaced. As already mentioned above, the learned Single Judge in Omkar's case merely noticed the judgment of this Court in Amin Lal's case and did not even remotely discuss the issues involved therein. In Jiwan's case, no reference was made to Amin Lal's case by the learned Single Judge though primary reliance was placed on **Raghubir Singh versus Beli Ram, (6)** to hold that a revenue Court alone could go into the dispute. We, however, find from a perusal of the judgment in Amin Lal's case that the Division Bench had differed with the ratio of the judgment in Raghubir Singh's case (*supra*) by observing that “We, with all respect, to the learned Judge did not find ourselves in agreement with him.” We are, therefore, of the opinion that the judgment of the Single Bench in Puran Lal Aggarwal's case (*supra*) relying on the decision of Amin Lal's case (*supra*) lays down the correct law. It has accordingly to be held that after the coming into force of the Vesting Act, the Civil Court alone would have the jurisdiction to determine the dispute envisaged in Section 77(3)(d) of the Act and the jurisdiction of the revenue Court would be barred. The judgments of the Single Bench in **Omkar Singh and Jiwan's** cases (*supra*) and any other case holding likewise are over-ruled.

(10) To our mind, therefore, a civil suit would lie with respect to both the categories of occupancy tenants envisaged in Section 2(f) of the Vesting Act.

(11) Mr. Amrit Lal Jain has placed reliance on a judgment of the Hon'ble Supreme Court in Raja Durga Singh's case (*supra*). To our mind, this judgment does not apply for the simple reason that the provisions of the Vesting Act were not under consideration in that matter.

(12) Let the matter now go back to the concerned Single Benches.

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**R.N.R.**