

The Indian Law Reports

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

NATHU RAM,—*Petitioner*

versus

FINANCIAL COMMISSIONER, PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2182 of 1963

May 18, 1967

Punjab Security of Land Tenures (X of 1953)—S. 14-A—Distinction between clauses (i) and (ii) pointed out—Compensation claimed by tenants sought to be ejected under S. 14-A—When can be granted—Constitution of India (1950)—Art. 226—Objection regarding lack of inherent jurisdiction not raised before tribunal—Whether can be raised in writ proceedings.

Held, that there is a patent distinction between the proceedings envisaged by clause (i) on the one hand and clause (ii) of section 14-A of the Punjab Security of Land Tenures Act on the other, namely,

- (1) that application of clause (i) has to be for ejection on any of the grounds mentioned in section 9(1) of the Act, while on the other hand, the application of clause (ii) has to be for recovery of arrears of rent; and eviction in that case ensues as a statutory penalty for non-payment of the rent found and ordered to be paid to the landlord;
- (2) an application for ejection under clause (i) has to be made to the Assistant Collector First Grade. On the other hand, an application for arrears of rent under clause (ii) lies to the Assistant Collector Second Grade; and
- (3) in cases covered by clause (i) the provision of the Punjab Tenancy Act, 1887, have been made applicable, whereas the application of the provisions of the Punjab Tenancy Act have been specifically excluded in cases falling under clause (ii). The application of the Punjab Tenancy Act in cases covered by clause (ii) has not been revived as in clause (i).

Held, that compensation can be awarded to the tenants only under sections 62 to 74 of the Punjab Tenancy Act and in so far as the said Act has no application, the question of allowing any compensation to the tenants cannot arise. The provisions of sections 62 to 74 of the Punjab Tenancy Act have no application to cases of eviction under clause (ii) of section 14-A of the Punjab Security of Land Tenures Act, 1953, and therefore, no compensation can be allowed to the tenants who are directed to be evicted under clause (ii) as distinguished from clause (i) of Section 14-A of the Act.

Held, that even if the question of lack of inherent jurisdiction of a tribunal is not raised before the tribunal, that does not stand in the way of the petitioner raising that point for the first time in a writ petition filed in the High Court as no amount of consent or waiver can vest inherent jurisdiction in a tribunal lacking the same.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the orders of respondent Nos. 1 to 4 with costs and further praying that during the pendency of this writ petition, the execution proceedings pending before the Assistant Collector 1st Grade, Ferozepore, be stayed.

M. M. PUNCHHI, ADVOCATE, for the Petitioner.

J. S. MAV., ADVOCATE, for Respondents 5 and 6.

ORDER

NARULA, J.—The only question which calls for decision in this case is whether in case of eviction resulting from non-compliance with an order for payment of rent made in an application under section 14-A(ii) of the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Act), compensation under the Punjab Tenancy Act, for improvement, disturbance, etc., can or cannot be allowed.

Gurdit Singh and Sohan Singh, respondents Nos. 5 and 6 were tenants of Nathu Ram and Atma Ram petitioners on the land in question. Since they defaulted in payment of rent for three years from Kharif, 1954 to Rabi, 1957, the petitioners made an application under section 14-A (ii) of the Act on November 21, 1957, for the recovery of the amount due from them. The claim of the petitioners was allowed by the Assistant Collector, Second Grade, on August 21, 1958, and the tenants were directed to pay Rs. 253.12 within a period of one month. In default of payment, they were liable to be ejected. The appeal of the tenants was dismissed by the Collector, Ferozepore, on January 30, 1959. In pursuance of the said orders, the petitioners

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dispossessed the tenants on May 15, 1959. The revision petition of the tenants was also dismissed by the Commissioner, Jullundur Division. Against the order of the Commissioner, the tenants went up to the Financial Commissioner, Punjab, Chandigarh, and in that forum for the first time they claimed compensation for their eviction. The Financial Commissioner, by his order, dated August 19, 1960 (Annexure 'A'), remanded the case to the Assistant Collector, First Grade, for determination of compensation under section 14(A)(i) of the Act. In pursuance of the order of remand, the Assistant Collector, 1st Grade, by his order, dated August 8, 1962, allowed a sum of Rs. 3,144.54 as compensation to the tenants under the various heads, including items for reclamation and levelling and for cost of trees, etc. A copy of the order of the Assistant Collector is Annexure 'B' to the writ petition. The appeal of the petitioners against the above said award of compensation was dismissed by the order of the Collector, dated December 4, 1962 (Annexure 'C'). The revision petition filed by the petitioners before the Additional Commissioner, Jullundur, met the same fate on March 21, 1963 (Annexure 'D'). The petitioners then went up to the Financial Commissioner, Punjab. The final authority not only did not accept the contention of the petitioners as to the question of jurisdiction of the authorities to award compensation to the tenants, but further directed that if the amount in question was not paid to the tenants within 15 days from the date of the order, they would be entitled to recover interest at 12 per cent per annum. It was in the above circumstances that the present writ petition was filed on November 26, 1963, for quashing of the above said orders (Annexures A to E) whereby the compensation has been directed to be paid to respondents Nos. 5 and 6 for their ejection. None of the respondents has filed any return to the rule issued in this case. Counsel has appeared for respondents Nos. 5 and 6. In this situation the statement of facts made in the writ petition has to be assumed to be correct and the case has to be decided on that basis.

Section 14-A(i) and (ii) are in the following terms :—

“14-A. Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of section 9-A,—

- (i) a landowner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First

Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-section (2) of section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application, provided that the tenants' rights to compensation, and acquisition of occupancy rights, if any, under the Punjab Tenancy Act, 1887 (XVI of 1887), shall not be affected;

- (ii) a landowner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice, in the form prescribed, to the tenant either to deposit the rent or value thereof, if payable in kind, or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent, or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in sub-section (2) of section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily and put the landowner in possession of the land concerned."

It is clear from a plain reading of the above said provision that there is a patent distinction between the proceedings envisaged by clause (i) on the one hand and clause (ii) of section 14-A of the Act on the other, namely,

- (i) that application of clause (i) has to be for ejectment on any of the grounds mentioned in section 9(1) of the Act, while on the other hand, the application of clause (ii) has to be for recovery of arrears of rent; and eviction in that case ensues as a statutory penalty for non-payment of the rent found and ordered to be paid to the landlord;
- (2) an application for ejectment under clause (i) has to be made to the Assistant Collector, First Grade. On the other hand, an application for arrears of rent under clause (ii) lies to the Assistant Collector, Second Grade; and

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- (3) in cases covered by clause (i), the provisions of the Punjab Tenancy Act, 1887, have been made applicable, whereas the application of the provisions of the Punjab Tenancy Act have been specifically excluded in cases falling under clause (ii). The application of the Punjab Tenancy Act in cases covered by clause (ii) has not been revived as in clause (i).

It is not disputed that compensation can be awarded to the tenants only under sections 62 to 74 of the Punjab Tenancy Act, and in so far as the said Act has no application, the question of allowing any compensation to the tenants in the instant case could not arise. The impugned orders (Annexures A to E) allowing compensation to respondents 5 to 6, cannot be upheld, as the same are wholly without jurisdiction and are liable to be set aside on this short ground.

Mr. J. S. Mavi, learned counsel for the contesting respondents, has firstly submitted by way of preliminary objection that this writ petition should be dismissed because the solitary question which is now sought to be pressed in the forefront was not raised by the petitioners before respondents Nos. 1 to 4 in the first round of litigation which culminated in the order of the Financial Commissioner (Annexure 'A'). It is contended by the learned counsel that even in the subsequent proceedings the question of jurisdiction does not appear to have been pressed at each stage. For the purposes of this objection I will assume that the petitioners did not question the inherent jurisdiction of respondents 1 to 4 to award compensation in this case, which was otherwise clearly covered by clause (ii) and not by clause (i) of section 14-A of the Act. This does not, in my opinion, stand in the way of the petitioners raising that point here for the first time as no amount of consent or waiver can vest inherent jurisdiction in a tribunal lacking the same. I am fortified in this view by a Full Bench judgment of this Court in *Davinder Singh and another v. The Deputy Secretary-cum-Settlement Commissioner, Rural, Rehabilitation Department, Jullundur and others* (1). In that case it was held that where there is inherent lack of jurisdiction in an inferior Tribunal and the matter is patent on the record, the failure of the party to raise objection on the point of jurisdiction would not by itself debar it from getting relief on that score in a

(1) I.L.R. (1964) 1 Punj. 905=1964 P.L.R. 555.

writ petition. In view of the above-said Full Bench decision, there is no merit in the preliminary objection raised by the counsel for the contesting respondents.

It was next contended by the learned counsel that provisions of sections 62 to 74 of the Punjab Tenancy Act did apply to all cases of eviction irrespective of the ejection of the tenant having been claimed under clause (i) of section 14-A or as a result of non-payment of arrears of rent directed to be paid on application under section 14-A (ii) of the Act. I regret, I am unable to agree with this contention. The distinction between the two clauses has also been noticed by their Lordships of the Supreme Court in *Kapur Chand v. B. S. Grewal, Financial Commissioner, Punjab, Chandigarh* (2). In that case it was held that clause (ii) of section 14-A (of the Punjab Security of Land Tenures Act) deals with eviction as punishment for non-compliance with the orders of the Court. Clause (i) deals with eviction for any of the reasons given in section 9(1). One such reason is that the tenant has failed to pay rent regularly without sufficient cause. It was further held that eviction under the second clause is not for non-payment of rent, but is for failure to carry out the orders to deposit arrears of rent within the time fixed for payment. The distinction brought out by the Supreme Court in *Kapur Chand's case* is not only apt, but in my opinion seals the fate of this case. After a careful consideration of the matter I hold that the provisions of sections 62 to 74 of the Punjab Tenancy Act have no application to cases of eviction under clause (ii) of section 14-A of the Punjab Security of Land Tenures Act, 1953, and, therefore, no compensation can be allowed to the tenants who are directed to be evicted under clause (ii) as distinguished from clause (i) of the Act.

Mr. Mavi states that he has other legal independent rights to recover the compensation. This judgment will not prejudice any such rights, if they exist independent of the provisions of the Punjab Tenancy Act, which are expressly excluded by the opening words of Section 14-A.

For the aforesaid reasons, this writ petition is allowed and the impugned orders allowing compensation to respondents 5 to 6 are set aside. In the circumstances of the case, there is no order as to costs.

R. N. M.

(2) A.I.R. 1965 S.C. 1491.