

Sodhan Devi, etc. v. Deputy Chief Settlement Commissioner, etc.
(Shamsher Bahadur, J.)

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

SODHAN DEVI AND OTHERS,—*Petitioners*

versus

DEPUTY CHIEF SETTLEMENT COMMISSIONER AND OTHERS,—
Respondents

Civil Writ No. 2408 of 1963

December 1, 1967.

Punjab Tenancy Act (XVI of 1887)—S. 53—Administration of Evacuee Property Act (XXXI of 1950)—Ss. 4 and 18—Occupancy rights vesting in the custodian—Preferential right of purchase of such rights by the owner—Whether taken away—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 12—Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (VIII of 1953 as amended by Punjab Act XXXI of 1958)—Ss. 3 and 9—Occupancy rights in land allotted by Central Government—Allottee—Whether can claim proprietary rights in the land.

Held, that when occupancy vest in the custodian under section 18 of The Administration of Evacuee Property Act, 1950 nothing said in sub-section (1) of section 4 of the Act can possibly take away the preferential right of purchase which vests in the owner of the land under section 53 of the Punjab Tenancy Act.

Held, that The Displaced Persons (Compensation and Rehabilitation) Act, 1954, gives power to acquire evacuee property for rehabilitation of displaced persons to the Central Government and under sub-section (2) of section 12, when a notification is published for this purpose “the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances”. A notification having been published, the Custodian, who is the representative of the Central Government, becomes an absolute owner of the occupancy rights in the land which had vested in the Muslim evacuees. That such property vests in him free from all encumbrances means that the Custodian is not controlled by any unrestricted right of transfer which may have vested in the occupancy tenant. Section 3 of the Punjab Occupancy Tenants

(Vesting of Proprietary Rights) Act, 1952, is controlled by section 9 of the Act, as amended by Punjab Act 31 of 1958. The provisions of clause (a) of sub-section (2) of section 9 are independent of what is stated in sub-section (1) and the effect of this amended provision is that a person who has been allotted land by the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act shall have a right to claim property under the Vesting Act with effect from the date of transfer. It does look inartistic that both sub-section (1) and sub-section (2) of section 9 should be couched in an untrammelled form but the objects and reasons given for the amendment introduced by Punjab Act 31 of 1958 make clear the reasons which induced the Legislature to give preference to the allottees. The object clause certainly entitles the Court to look at the historical reasons for introduction of the amending provision and read with clause (i) of sub-section (3), there can be no manner of doubt that the allottees have been given statutory right to claim proprietary rights in the land.

Petition under Article 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order dated 17th December, 1963, passed by Shri Parshotam Sarup, Deputy Chief Settlement Commissioner, Delhi, confirming the order dated 17th July, 1963, passed by Settlement Commissioner, Jullundur, and whereby Plot No. 339/1, situated in Jullundur Town was ordered to be transferred to respondent No. 3.

B. S. WASU, ADVOCATE, for the Petitioner.

GOPAL SINGH, ADVOCATE-GENERAL (PUNJAB) WITH G. R. MAJITHIA AND K. L. KAPOOR, ADVOCATES for the Respondents.

ORDER

SHAMSHER BAHADUR, J.—The dispute raised in this petition for issuance of a writ of *certiorari* raises question of some importance on which there is no reported decision of this Court.

Sodhan Devi and her son, Hari Nath, petitioners, who are now dead and are represented in this Court by their legal representatives, have been owners of urban agricultural land measuring 20 Kanals and 9 Marlas in Jullundur City. Muslim evacuees were occupancy tenants of this land before partition. These occupancy rights admittedly vested in the Custodian, Evacuee Property, after the occupancy tenants had migrated to Pakistan.

In 1956, the occupancy rights in the land were transferred to the petitioners who were owners as well of it. Both the petitioners

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were unable to cultivate the land themselves; Sodhan Devi, the first petitioner, being a widow, and her son Hari Nath, the second petitioner, being blind. Bhag Singh, respondent No. 3, was, therefore, inducted in the land by the petitioners as a sub-lessee. It is not in dispute that the third respondent had been in cultivating possession of 12 Kanals and 16 Marlas of the land from 1956 till Rabi, 1962, when eventually it was transferred in his favour on 11th of December, 1962, under rule 34.C of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which says :—

“34C. Where any land to which this Chapter applies has been leased to a displaced person and such land consists of one or more Khasras and is valued at Rs. 10,000 or less, the land shall be allotted to the lessee.”

By an amendment the amount of value has been raised from 10,000 to Rs. 15,000. The third respondent, who has been described as a displaced person in Annexure R. 1 of 11th December, 1962, was transferred 12 Kanals and 16 Marlas of this land for Rs. 3,840, which was the assessed value of the land.

The petitioners made a complaint against the allotment of the third respondent, but the application was rejected by the Settlement Officer, Jullundur, on 4th of April, 1963 (Annexure B). An appeal preferred by Sodhan Devi was unsuccessful, this having been dismissed by the Settlement Officer delegated with powers of Settlement Commissioner (Annexure C). A further revision petition to the Deputy Chief Settlement Commissioner, with delegated powers of Chief Settlement Commissioner, was dismissed by Mr. Parshotam Sarup on 17th December, 1962 (Annexure D).

The point raised by the petitioners before these authorities related to their preferential right of purchase under section 53 of the Punjab Tenancy Act which says that :—

“53. (1) A tenant having a right of occupancy under section 5 may transfer that right by sale, gift or mortgage, subject to the conditions mentioned in this section.

(2) If he intends to transfer the right by sale, gift, mortgage by conditional sale or usufructuary mortgage, he shall

cause notice of his intention to be served on his landlord through a Revenue Officer, and shall defer proceeding with the transfer for a period of one month from the date on which the notice is served."

The remaining sub-sections deal with the mechanics of the rights which have been bestowed on an owner of occupancy tenancy and what is contended by Mr. Wasu is that the provisions of sub-sections (1) and (2) of section 53 of the Punjab Tenancy Act should not have been overlooked by the authorities which transferred the proprietary rights of a portion of the land belonging to them in favour of Bhag Singh who was no better than an occupancy tenant in cultivation. In the order of revision passed by the Deputy Chief Settlement Commissioner on 17th of December, 1963, it was said that the rights conferred by section 53 of the Punjab Tenancy Act stood abrogated by section 4 of the Administration of Evacuee Property Act, 1950, according to which :

"4 (1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law."

Mr. Wasu submits, and in my opinion rightly, that the preferential right given to the petitioners is not in any way inconsistent with the provisions of the Administration of Evacuee Property Act and consequently nothing said in sub-section (1) of section 4 can possibly take away a right which vests in the owner. It has also been brought to my notice that in sub-section (1) of section 18 of the Administration of Evacuee Property Act it is provided that :—

"Where the rights of an evacuee in any land.....consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force..... shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act.....".

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This section, in my opinion, clearly says that the occupancy rights will also vest in the Custodian and it is submitted by Mr. Kapur, appearing for the third respondent, that in consequence of the provisions of sub-section (1) of section 18 of the Administration of Evacuee Property Act, the occupancy rights had vested in the Custodian.

Under a later statute, namely, the Displaced Persons (Compensation and Rehabilitation) Act, 1954, power to acquire evacuee property for rehabilitation of displaced persons has been given to the Central Government and under sub-section (2) of section 12, when a notification is published for this purpose "the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances". A notification having been published the Custodian, who is the representative of the Central Government, has now become an absolute owner in the occupancy rights in the land which had vested in the Muslim evacuees. That such property vests in him free from all encumbrances means that the Custodian is not controlled by any unrestricted right of transfer which may have vested in the occupancy tenant.

Mr. Wasu has submitted that section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter called the Vesting Act) conferred full proprietary rights on the petitioners who had been given occupancy rights as well of their Muslim tenants who had become evacuee. Under clause (a) of section 3 :—

"All rights, title and interest (including the contingent interest, if any, recognised by any law.....) 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:"

Now, this section of the Vesting Act is controlled by section 9, which as amended by Punjab Act 31 of 1958 read as under :—

"9(1) Nothing in this Act shall apply to evacuee property as defined in the Administration of Evacuee Property Act, 1950 (XXXI of 1950).

(2) Notwithstanding anything contained in sub-section (1), the provision of this Act shall, subject to the provisions of sub-section (3), apply to—

(a) a person who, after the commencement of this Act, obtains a right of occupancy from the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954); and

(b) * * * * *

(3) For the purposes of section 3 and sub-section (1) of section 4, the appointed date, in relation to a person referred to in sub-section (2), shall notwithstanding anything to the contrary contained in this Act or in any judgment, decree or order of any Court be :—

(i) in the case of a person who obtains a right of occupancy from the Central Government after the commencement of the Punjab Occupancy Tenant (Vesting of Proprietary Rights) (Amendment) Ordinance, 1958, the date on which such right is obtained; and

(ii) * * * * *

It is manifest that the provisions of clause (a) of sub-section (2) of section 9 are independent of what is stated in sub-section (1) and the effect of this amended provision is that a person who has been allotted land by the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act, shall have a right to claim property under the Vesting Act with effect from the date of transfer which is 11th of December, 1962. It does look inartistic that both sub-section (1) and sub-section (2) of section 9 should be couched in an untrammelled form but the objects and reasons given for the amendment introduced by Punjab Act 31 of 1958 make clear the reasons which induced the Legislature to give preference to the allottees like the third respondent. The object clause certainly entitles the Court to look at the historical reason for introduction of the amending provision and read with clause (I) of sub-section (3), there can be no manner of doubt that the third respondent has been given a statutory right to claim the allotment which has been made in his favour by the Settlement Officer on 11th of December, 1962.

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In my opinion, there is no force in this petition which fails and is dismissed. As the matter involved, however, is *res integra* and has been decided on first principles, I would make no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

SHANKAR SINGH,—Petitioner

versus

CHANAN SINGH,—Respondent

Civil Revision No. 34 of 1967

December 15, 1967

Punjab Pre-emption Act (I of 1913)—S. 15—Code of Civil Procedure (Act V of 1908)—S. 115 and Order 6 Rule 17—Suit for pre-emption of agricultural land—Plaint asserting collateral relationship with vendor—Amendment of the plaint introducing defined relationship sought after period of limitation for the suit—Whether to be allowed—Discretion exercised by trial Court in allowing the amendment—Whether can be interfered with in revision.

Held, that the basis for filing a suit for pre-emption is that specific ground on which preferential right of pre-emption is sought must be pleaded in the suit within the period of limitation. The plaintiff's assertion that vendor is his collateral is not enough because under section 15 of the Punjab Pre-emption Act, 1913, collateral relationship by itself does not give a right of pre-emption in respect of sale of agricultural lands. A particular defined relationship does give a right of pre-emption and if on the ground of relationship such a right is claimed, then obviously the particular relationship referred to as a ground in section 15 of the Act has to be stated in the plaint within the period of limitation. If after the period of limitation such an attempt is made by amending the plaint, it cannot be permitted to defeat a right that has accrued to the vendee to defeat the pre-emptor's claim as not coming within the statutory provision upon which reliance is placed.