

In view of the above, therefore, I accept this appeal, set aside the orders of the Courts below and dismiss the suit of the plaintiff. In view, however, of the fact that the point was not free from difficulty, the parties are left to bear their own costs throughout.

Municipal Com-  
mittee Rurar  
v.  
Chaman Lal  
Harbans Singh  
J.

K.S.K.

APPELLATE CIVIL

Before Gurdev Singh, J.

NATHU AND OTHERS,—Appellants.

versus

UMRA AND ANOTHER,—Respondents.

Regular Second Appeal No. 407 of 1961.

*Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (VIII of 1953)—Section 3—Vesting of rights, title and interest of the landlord in the tenant—When takes place—Whether on “the appointed day” or on payment of compensation—Some of the tenants not paying compensation—Effect of.*

1961

August, 24th

Held, that in view of the provisions of sections 3,4,5 and 6 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, the vesting of the rights, title and interest of the landlord in the tenants takes place not as a result of payment of compensation or on the day on which such payment is made but by operation of law contained in clause (a) of section 3 of the Act on the appointed day, as defined in section 2 of the Act. If the entire compensation is paid by some of the tenants only, they alone do not acquire the rights, title and interest of the landlord but all the tenants as on the appointed day acquire these rights and the tenants who have paid the compensation have merely the right to realize the proportionate share of the compensation from the other tenants who have not paid the same.

Second Appeal, from the decree of the Court of Shri Raj Indar Singh, District Judge, Barnala, dated the 15th

day of February, 1961, reversing that of Shri Surendra Nath Mahendru, Sub-Judge, 1st Class, Malerkotla, dated the 3rd October, 1960 and granting the plaintiffs a decree, for a declaration that they were the owners of the land sued for and also for joint possession thereof, and leaving the parties to bear their own costs throughout.

ATMA RAM, ADVOCATE, for the Appellants.

B. R. AGGARWAL, ADVOCATE, for the Respondents.

#### JUDGMENT

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GURDEV SINGH, J.—The parties to this appeal are the five sons of the late Rura Kamboh. The dispute between them relates to agricultural land situate in Malerkotla, which was originally in possession of their father as occupancy tenant. On the death of Rura, all his five sons succeeded to his occupancy holding. On 29th March, 1953, the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act of 1953 came into force, by virtue of which all rights, title and interest of a landlord in the land held by an occupancy tenant were extinguished, and such rights, title and interest vested in the occupancy tenants. In accordance with the provisions of that Act, the occupancy holding of Rura, to which his five sons had succeeded, was mutated in the name of all his five sons as owners in equal share,—*vide* mutation Exhibit P. 1.

On 26th September, 1959, Umra and Ibrahim, two of the five sons of Rura, brought the suit out of which this appeal has arisen, complaining that their three brothers, Nathu, Fattu and Kalu defendants, who were in possession of the entire property had been denying their right in this land. They prayed for a declaration that they were owners of two-third share in the land in dispute and also sought joint possession of the same.

The defendants in resisting the suit denied that the plaintiffs were entitled to any share, and pleaded that they had abandoned their rights of

ownership in the land as well as in the house left by their father. They asserted that since their father was heavily under debt at the time of his death and the cultivation of land had ceased to be profitable, the plaintiffs who did want to share the burden of the debts of their father gave up their rights in their father's property, and the three defendants alone thereupon continued to cultivate the land and dealing with the landlord when it was still an occupancy holding. They further pleaded that they alone had redeemed the mortgage which was created on this property by their father, and after coming into force of the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act of 1953, they had become full owners of the entire land in suit. The plea of limitation was also taken. The only issues on which the parties went to trial were :—

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- (1) Whether the plaintiffs had abandoned their rights of occupancy in the land in dispute?
- (2) Whether the suit was beyond limitation?

The trial Court decided both the issues in favour of the defendants and dismissed the plaintiff's suit. In appeal, the learned District Judge reversed the findings on both the issues and decreed the plaintiffs' claim, holding that no relinquishment or abandonment of the rights by the plaintiffs had been proved. It is against this decree that the defendants have come up in second appeal.

The decision on the question of limitation depends upon that of issue No. 1 relating to abandonment. Mr. Atma Ram, counsel for the appellants, has vehemently contended that the finding of the trial Court on issue No. 1 on the question of abandonment was wrong, and, in any case, even if the abandonment was not proved, the plaintiffs were not entitled to claim any interest in the property, as by virtue of the Pepsu Occupancy Tenants (Vesting of Proprietary

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Rights) Act, 1953, the ownership of the property vested in the three defendants, Fattu, Nathu and Kalu alone, because they were the persons who had paid the compensation to the landlords under the provisions of the said Act.

The question whether rights have been lost by abandonment is one of fact, as held in *Hans Gir v. Raghbir Singh and others* (1), and the finding of the first appellate Court on this point cannot be reopened in second appeal especially when it proceeds on the relevant material on record, however, erroneous the finding may be.

In support of the contention that the ownership rights had vested in the appellants alone under section 3 of the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, since they had paid the compensation and not the respondent, reliance has been placed upon *Mst. Karmi and others v. Bachna and others* (2). In that case there was a dispute between the collaterals and the daughters of the last male holder Hari Singh. After Hari Singh's death, his widow, Shrimati Gango, succeeded to Hari Singh's estate, including the occupancy rights in the land in dispute when the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, came into force, and availing of the provisions contained therein, Shrimati Gango paid compensation to the landlord and became full owner of the land of which her husband was an occupancy tenant. After the widow's death, a dispute arose between the daughters and the collaterals of Hari Singh, and one of the pleas taken by the daughters was that on payment of compensation under section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, their mother had become full owner of the property and thus the land in dispute could not be considered ancestral of their father Hari Singh. The collaterals, on the other hand, contended that the vesting of the full ownership rights in the land of which Hari Singh was a tenant was an accretion to the estate of Hari Singh which, as occupancy holding, was ancestral. Mehar Singh, J.,

(1) A.I.R. 1934 Lahore 163 (2).

(2) 61 P.L.R. 313.

rejected the collaterals' contention on examining the provisions of section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, and observed as follows:—

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It is clear from clause (d) of this section that acquisition of ownership rights by the occupancy tenant is on payment of compensation as may be determined under the Act. Other provisions in the Act such as sections 4, 5 and 6 deal with the determination of the compensation and its payment to the landlord. So that Gango, as the widow of Hari Singh, acquired rights of ownership in the land on payment of compensation to be determined under the Act. On her death, inheritance is to be traced not from her but from her deceased husband, for she was only a life-holder of the estate. Upon her death succession, which had been deferred on account of her presence after the death of her husband Hari Singh, became unobstructed, and then it was the estate of Hari Singh which was available for inheritance to his heirs, and the nature of the estate then was the rights of ownership as vested in Hari Singh deceased by operation of section 3 of the Act on payment of the compensation determined under the Act. Thus, the estate of Hari Singh acquired the rights of ownership in the land by payment and not by mere operation of law."

It is upon the concluding portion of the above paragraph that the appellants' learned counsel has placed good deal of reliance. The decision in that case does not rest on the interpretation of section 3 of the Act, but on the following further observations:—

"Even proceeding upon the consideration, which prevailed with the first appellate

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Court, the accretion is obviously to the estate of the deceased husband of Gango, but then the property becomes the self-acquired property of her deceased husband, and when the question of succession arises to him, it is the nature of the property under custom that determines it. It is clear that under custom daughters preclude collaterals in regard to non-ancestral property. On the death of Gango, it was the non-ancestral property of Hari Singh deceased that was available for succession. It had ceased to be ancestral property by acquisition of the rights of ownership in it on payment of compensation. So that, on the death of Gango, the land in dispute was the self-acquired property of Hari Singh deceased and to him, in regard to such property, his daughters, the plaintiffs, succeed in preference to his collaterals."

It is evident that the decision in that case proceeded on the finding that the acquisition of ownership rights was an accretion to the estate of the deceased and thus is non-ancestral property. The observations regarding the interpretation of section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, are in the nature of *obiter dicta*, and if they were meant to lay down that the vesting of proprietary rights took place only on payment of compensation, with all respect to my learned brother, I find myself unable to concur in that view.

Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, runs as follows:—

"3. Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day—

(a) all rights, title and interest (including the contingent interest, if any,

recognized by any law, custom or usage for the time being in force and including the share in the Shamilat 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:

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Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat 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) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land;
- (d) the occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act."

Clause (a) lays down that all rights, title and interest of the landlord shall stand extinguished and the same shall be deemed to vest in the tenant "on and from the appointed day". The expression "appointed day" is defined in section 2 clause (a), so far as the occupancy tenants who were recorded as such prior to the commencement of the Act are concerned, as 15th June, 1952. It is

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nowhere provided in section 3 that the vesting would take place only on the payment of compensation. Clause (d) of section 3 merely lays down that the landlord would be entitled to receive compensation as determined under the Act. This provision is intended to ensure that there is no acquisition without payment of compensation, but it is not equivalent to saying that the vesting shall take place only on the day the compensation is paid. Under clause (a) of section 3, vesting takes place immediately on the appointed day, irrespective of the date of the payment of compensation.

Sections 4, 5 and 6 of the Act lay down the procedure for determining compensation and for its payment to the landlord. If under clause (a) of section 3 the rights, title and interest of the landlord ceased to exist on the appointed day, which in the present case was 15th June, 1952, the compensation had to be determined later in accordance with the procedure laid down by the Act. The Act itself came into force on 15th April, 1953, and thus, the compensation had to be determined subsequent to that date. If the rights of the landlord had been extinguished on 15th June, 1952, the vesting of these rights could not be deferred till the date of the payment of compensation. These rights could not be held in abeyance, and there is no provision in the Act for keeping them suspended till the compensation is paid.

The intention of the legislature further becomes clear from section 6 of the Act, which lays down that the compensation awarded under the Act shall either be paid in cash or be deposited with the Collector by the occupancy tenant, and such payment can be made, with the permission of the Collector, in six-monthly instalments which may be spread over a period of six years. It is further provided in sub-section (2) of section 6 that if the occupancy tenant makes default in payment of compensation, the same may be recovered in the manner in which the arrears of land revenue are realized. If the payment of compensation can be

made in instalments, then it means that there will be no vesting till the final instalment is made, but there is no such provision in the Act. Again, if the vesting has to take place on the payment of compensation, and the compensation is not paid voluntarily by the tenant and has to be realized as arrears of land revenue, the question will arise whether the vesting takes place when the entire arrears of land revenue are paid off or on realization of any portion of the compensation.

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Again, what happens to the cases in which nothing can be recovered from the occupancy tenant as compensation. When under clause (a) of section 3 the landlord has been divested of all his rights and interest in the land, they cannot remain suspended in air to await the payment of compensation. Does the law intend that if ultimately compensation is not realized, the property will revert back to the landlord and will be re-invested with all his rights, resulting in the revival of the occupancy tenancy which was intended to be abolished by the Act?

For all these reasons, I am of the opinion that the vesting takes place not as a result of payment of compensation or on the day on which such payment is made but by operation of law contained in clause (a) of section 3 of the Act on the appointed day, as defined in section 2 of the same Act.

In this view of the matter, the plea of the appellants that they had become owners of the land in dispute as they alone had made payment of compensation cannot be sustained. By virtue of clause (a) of section 3, the rights, title and interest of the landlord had vested in all the occupancy tenants, including the respondent, and if he did not pay any part of the compensation, that merely gave a right to the appellants to realize the respondent's share of compensation from him. I thus find no force in this appeal and dismiss the same with costs.

*B.R.T.*