Inder Singh & Anr vs The Financial Commissioner, Punjab & ... on 10 October, 1996

Equivalent citations: AIRONLINE 1996 SC 861

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
INDER SINGH & ANR.

Vs.

RESPONDENT:
THE FINANCIAL COMMISSIONER, PUNJAB & ORS.

DATE OF JUDGMENT: 10/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

THE 10TH DAY OF OCTOBER, 1996 Present:

Hon'ble Mr. Justice K.Ramaswamy Hon'ble Mr. Justice G.B.Pattanaik Ujagar Singh, Sr.Adv., Davender Verma, Girish Sharma, Naresh Bakshi, Advs. with him for the appellants.

A.B.Rohtagi, Sr.Adv. and Uma Datta, Adv. with him for the Respondents.

O R D E R The following Order of the Court was delivered:

This appeal by special leave arises from the judgment of the Punjab and Haryana High Court dated March 5, 1980 made in Civil Writ Petition No.1592 of 1967.

> The admitted facts are that the appellants/tenants were in possession of the land bearing specified Khasra number mentioned in the appellate order [the details of which are not in dispute], admeasuring 190 kanals, 6 marlas in Village Kotrani in Kapurthala District of Punjab. His application made under Section 22 of the Pepsu Tenancy Agricultural Lands Act, 1955 [for short, the `Act'] was rejected by order dated April 25, 1960 on the ground that they did not have possession for 12 years which was confirmed by all the authorities including the High Court in the Writ Petition on September 7, 1964. Subsequently, they made second application on March 26, 1965 for conferment of ownership rights based on tenancy from the respondents. Similarly, the landlord filed an application for reservation of the land for personal cultivation. The authorities have dismissed the application of the landlord for reservation of the land by all others and the High Court which order became final,. The application of the appellants was allowed on December 15, 1965. On appeal, it was confirmed on June 22, 1966. In revision, the Financial Commissioner by order dated June 15, 1967 confirmed the same. In the writ petition, by the impugned judgment the Division Bench set aside the order of the authorities on the sole ground that the orders passed on the earlier occasion culminated as res judicata and, therefore the second application under Section 22 is not maintainable.
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> Shri Ujagar Singh, learned senior counsel for the appellants contended that the view taken by the High Court is not correct in law. Since the proceedings before the authorities is of summary nature, the doctrine of res judicata has no application. The act does not prescribe any principle of res judicata as such. The proceedings before the authorities are of summary nature. It would not be correct to apply the principle of res judicata. We find force in the contention. It is not in dispute that the order passed by the authorities is without any elaborate trial like in a suit but in a summary manner. It is well settled law that the doctrine of res judicata envisaged in Section 11 of C.P.C. has no application to summary proceedings unless the statute expressly applies to such orders. The authorities are not civil court nor the petition a plaint.

No issues are framed nor tried as a civil suit. Under these circumstances, the Division Bench of the High Court was clearly in error to conclude that the earlier proceedings operate as res judicata.

It is then contended by Shri Sehgal, learned Senior counsel for the respondents that unless the appellants satisfy the requirements of Section 7A(2) read with Section 22, they are not entitled to claim proprietary rights to the land or the interest held from the landlord. Therefore, the application is not maintainable. Though this contention was not raised before any of the fora, since it trenches upon jurisdiction, we permitted the learned counsel to argue the case on this aspect of the matter. In this behalf, he sought to place reliance on the Division Bench judgment of the High Court in Jaisi Ram v. Financial Commissioner, Revenue, Punjab & Ors, [AIR 1972 Punjab and Haryana 72]. The question is: whether the appellants are entitled to avail of the benefit of Section 22, or ordered by the authorities under the Act? Section 2 (k) defines "tenant" to mean a tenant defined in the Punjab Tenancy Act, 1887. The exclusionary clause is not relevant for the purpose of this case; hence omitted. The "President's Act" has been defined under Section 2(1) to mean Patiala Punjab State

Union Tenancy and Agricultural Lands Act, 1953, President Act 8 of 1953, Section 7A deals with the right to additional grounds for termination of tenancy in certain cases which are in addition to grounds specified in Section 7. It is brought by way of Amendment Act 15 of 1956 which envisages as under:

"7A. Additional grounds for termination of tenancy in certain cases. - (1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 may be terminated on the following grounds in additional to the grounds specified in section 7, namely:-

(a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II;

(b) That the landowner owns thirty standard acres or less of land and the land falls within his permissible limit:

Provided that no tenant (other than a tenant of a landowner who is member of the Armed forces of the Union) shall be ejected under this sub-section.

(i) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres, until he is allotted by the State Government alternative land of equivalent value in standard acres.

(2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of twelve years or more under the same landowner or his predecessor in title, shall be ejected on the grounds specified in sub-section (1) -

(a) from any area of land, if the area under the personal cultivation of the tenant does not exceed fifteen standard acres, or

(b) from an area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres:

Provided that nothing in this sub-

section shall apply to the tenant of a landowner who, both, at the commencement of the tenancy and the commencement of the President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity, Explanation - In computing the period of twelve years, the period during which any land has been held under same landowner or his predecessor in title by the father, brother or son of the tenant shall be included.

(3) For the purpose of computing under sub-sections (1) and (2) the area of land under the personal cultivation of a tenant, any area of land owned by the tenant and under his personal cultivation shall be included."

Section 20 was brought by the same Amendment Act; it reads as under:

"20. Definition of tenant. - In this Chapter, the expression "tenant" means a tenant as defined in clause (k) of section 2, who is not liable to be ejected -

(a) under clause (a) and (b) of sub-section (1) of Section 7-A; or

(b) under clauses (a) and (b) of sub-section (2) of Section 7-A:

Provided that this definition shall not apply to a tenant who is to be allotted by the State Government land under the proviso to sub-

section (1) of Section 7-A."

Section 20 defines "tenant". For the purpose of Chapter IV, the expression "tenant" means a tenant as defined in Clause (k) of Section 2. In other words, he must be a tenant defined under the Punjab Tenancy Act, 1887. The exclusionary clause contained in Section 2(k) has no application to the facts in this case. Such a tenant is not liable to be ejected (a) either under clauses (a) and (b) of sub-section (1) of Section 7-A or (b) under clauses (a) and (b) of sub- section (2) of Section 7-A. Section 20 again excludes from the definition of tenant, for the purpose of Section 20, a tenant who is to be allotted by the State Government land under the proviso to sub-section (1) of Section 7-A. Such a tenant, by operation of Section 22 acquires right to purchase preparatory rights of the landlord, Sub- section (1) thereof postulates that subject to the other provisions contained in the Act, a tenant defined under Section 20, shall be entitled to acquire from his landowner, the proprietary rights in respect of the land held by him as a tenant in the manner and subject to the conditions hereinafter provided. The manner and the conditions have been enumerated in sub-section (2) thereof. Such a tenant shall make an application in writing to the prescribed authority in the prescribed manner containing the particulars mentioned in clauses (a) to (c) of sub-section (2) of Section 22. Under clause (a), the tenant must specify the area and location of the land in respect of which the application was made; under clause (b), the name of the landowner from whom proprietary rights are to be acquired; under clause (c), he is required to specify other particulars prescribed in the rules, Sub-section (3) deals with and confers similar right to a sub-tenant to whom tenant had leased the land. By operation of sub-section (3) in respect of the land held by the subtenant, the right of the tenant to acquire proprietary rights stood extended. Sub-tenant also became entitled to purchase the proprietary right of the landowner as if he is a tenant under the landlord. This is the necessary corrollary of sub-section (3) of Section 22.

Since Section 20 and Section 22 envisage that a tenant is not liable to ejectment and the right to purchase proprietary rights of a land holder by such a tenant is subject to the other provisions of the Act, as a necessary corollary, we have to took as to what are the disabling provisions to which a

tenant would be subjected to before acquiring proprietary rights, i.e. right, title or interest in the land of the landowner from whom he holds the land as a tenant. The material provisions in that behalf are Section 7 and Section 7A. Section 7 speaks of the grounds on which the landlord is entitled to terminate the tenancy of a tenant. Sub-section (1) thereof, with negative language, emphasise that no tenancy should be terminated except in accordance with the provisions of the Act or except on any of the grounds specified therein.

Clause (a) of sub-section (1) was omitted by Act 15 of 1956. Therefore, it is not necessary to refer to the same. Clauses (b) to (f) deal with the grounds on which the tenancy of a tenant may be terminated by the landlord with which we are not concerned and hence it is not necessary to elaborate the same in this judgment. Section 7A is relevant for the purpose of this case and it is already reproduced above. It provides additional grounds for termination of tenancy in certain cases. The operation of sub-section (1) of Section 7A is subject to the operation of sub-sections (2) and (3). By operation of sub-section (1), the tenancy must be subsisting at the commencement of the Pepsu Tenancy and Agricultural Land (Second Amendment) Act, 1956. Such a subsisting tenancy may be terminated on the grounds mentioned in clauses (a) & (b) of sub-section (1) of Section 7A. Those are the grounds for determination of the tenancy, in addition to the grounds specified in Section 7. Clause

(a) of sub-section (1) of Section 7A provides the ground for termination of the tenancy, namely, that the land comprising the tenancy, if has been reserved by the landlord for his personal cultivation, in accordance with the provisions contained in Chapter II, the tenant is liable to be ejected on this ground. Therefore, it is a condition precedent that the landlord, in accordance with Chapter II of the Act, should reserve the land held by the tenant, for his personal cultivation. It is seen that the respondent-landlord had already attempted though unsuccessfully, to have the land held by the appellants as tenants reserved for landlord's personal cultivation but his application was rejected and became final and conclusive between the appellant and the respondent-landlord. Therefore, clause (a) of sub-section (1) of Section 7A stood excluded as against the appellant. Thereby, they are not liable to ejectment by termination of tenancy held by the appellants by the respondent-landlord under Section 7A(1)(a). The disabling provision thereby stands excluded, In other words, the appellants acquired right to purchase the proprietary rights of the respondent- landlord in respect of the lands held by the appellants as tenants, Clause (b) of sub-section (1) of Section 7a is another ground on which the landlord may be entitled to seek ejectment of the tenant by terminating the tenancy under section 7A. It envisages that if the landlord owns 30 standard acres or less of land and the land falls within his permissible limits, the landlord is entitled to the extent of or to make up the permissible limits, to terminate the tenancy of the tenant as an additional ground under section 7A(1)(b). In this case, the finding recorded by the tribunal and not disputed in the High Court or before us was that the respondent was in excess of 30 standard acres of land, i.e., 68 standard acres and that, therefore, the appellants are not liable to ejectment from the lands held by them as tenants under clause (b) of sub-section (1) of Section 7A. The proviso to sub-section (1) of Section 7A gives protection to a tenant even if clauses (a) and (b) stand attracted, namely, "provided that no tenant other than a tenant by a landowner who is a member of the armed forces of the Union etc, shall be ejected under sub-section (1) from any area of the land if the area under the personal cultivation of the tenant does not exceed 5 standard acres. In other words, even if the landlord has reserved the

land for personal cultivation in accordance with the provisions of Chapter II and even if he holds 30 standard acres or less and the land falls within the permissible limits, nonetheless the tenant shall not be ejected under sub- section (1) provided (i) that the tenant has under his personal cultivation the land not exceeds 5 standard acres or (ii) if the area under personal cultivation of the tenant exceeding 5 standard acres until he is allotted by the State Government alternative land of equivalent value in standard acres. In other words, even if he is in possession of an area of 5 standard acres and if the landlord fulfills the conditions enumerated in clauses (a) and (b) and is sought to be ejected on those grounds, still the tenant is entitled to resist termination of tenancy of his 5 standard acres of land until the State Government allots to him and puts him in possession of the alternative land of equivalent value in standard acres. Thus, allotment of and putting in possession of the alternative land of equivalent value in standard acres which is sought to be taken possession of by the landlord from the tenant for ejectment on the additional grounds mentioned in sub-section (1) of Section 7A is a condition precedent before eviction of a tenant.

Similarly, no tenant by operation of sub-section (2) of Section 7A shall be ejected on additional grounds who immediately preceding the commencement of the President's Act had held any land continuously for a period of 12 years or more under the same landlord or its predecessor in title. he shall not be ejected on the grounds specified in sub- section (1) from any area of land if the area under the personal cultivation of the tenant does not exceed 15 standard acres.

In other words, the tenant in possession of the land immediately preceding the commencement of the President's Act remained in possession of a period of 12 years or more under the same landowner or his predecessor in title or both put together; if he is in possession of an area of land under his personal cultivation to exceeding 15 standard acres, he shall not be ejected on the additional grounds mentioned in Section 7A. It is not the case of the respondents that the appellants were in possession of any area of land under their personal cultivation exceeding 15 standard acres. Therefore, clause (a) of sub-section (2) of Section 7A does not apply to the facts of this case. Clause

(b) equally does not apply since it is not the case of the respondents that the appellants are in personal cultivation of the land exceeding 15 standard acres belonging to the respondent-landlord. Under the provision to sub-section (2), it further envisages that nothing in this sub-section shall apply to the tenant of a landlord who both, at the commencement of the tenancy and the commencing of the President's Act was a widow, a minor, an unmarried woman, a member of the armed forces of the Union or a person incapable of cultivating the land by region....., physical or mental infirmity. The proviso gives benefit to a disabled tenant with which we are not concerned on the facts in this case. The explanation to sub-section (ii) provides that in computing the period of 12 years, the period during which any land has been held under the same landowner or his predecessor in title by the father, brother or son of a tenant shall be included. This would further indicate the beneficial intendment of conferment of title to the tiller of the land to tag on the 12 years' period for the benefit of acquiring proprietary interest of a landowner. The period during which the father, brother or son of a tenant had held the land under the same landowner or predecessor in title should also be included. Sub-section (3) further envisages that for the purpose of computing under sub-section (i) and

(ii), the area of land under personal cultivation of the tenant, any area of land owned by the tenant and under his personal cultivation, shall be included. In other words, it would indicate that a tenant also shall not be in excess of the permissible standard acres. The land owned by the tenant and land personally cultivated by the tenant either under the same landlord or some other landlord shall all be included in computing the permissible limit so that the tenant also shall not be in excess of the permissible limit so that the tenant also shall not be in excess of the permissible limit while tagging to his ownership the lands held under tenancy with one or more than one land owners by exercising the right to purchase the proprietary rights under Section 22 of the Act.

The contention raised is that a tenant who had remained in continuous possession of 12 years prior to the President's Act 8 of 1953 had come into force, namely, December 3, 1953, alone is entitled to avail the remedy of Section 22; otherwise he is liable to ejectment by the landlord under sub-section (2) of Section 7A. Therefore, the benefit to purchase the proprietary right give under Section 22 is not available to the respondent. We find no force in the contention. The object appears to be that a tenant immediately preceding the commencement of the President Act 8 of 1953 shall continue to remain for a period of 12 years either under one landlord or his predecessor so as to tag on the continuous 12 years' period. It does not appear to be that he should have remained in possession continuously for 12 years preceding the commencement of President Act 8 of 1953. What is required to be satisfied is that the tenant must be a "tenant" defined under Punjab Tenancy Act, 1887 be in possession of the land in his character as a tenant prior to the President's Act 8 of 1953 had come into force. Such a tenant is not liable to be ejected under clause (a) and (b) of sub-section (1) of Section 7A. He must have continuous possession for 12 years either under one landlord or predecessor in title or intended in the land leased out to the tenant to exercise the right under section 22. No doubt it is true that learned Judges of the Division Bench of the High Court had interpreted the section in the manner in which the learned counsel has placed construction on sub-section (2) of section 7-A, i.e., 12 years prior to President Act 8 of 1953 had come into force. But with due respect, we find that such interpretation would defeat the very object of conferment of proprietary right on the tenant in occupation of the land which was in his possession. The object of the Act is to confer proprietary title on the tenant in occupation of the agricultural land so that the tiller of the soil should get proprietary right over the land in his possession as tenant, despite the fact that he came into possession as a tenant at that the commencement of Act 8 of 1953. Three conditions to be satisfied, as stated already are - (1) he must be a tenant defined under the Punjab Tenancy Act; (2) he was in possession of the land as on December 3, 1953; and (3) he was a tenant under the landowner or processor in title. He must have continuous 12 years before exercising the right to purchase proprietory right. The interpretation put up by the learned Judges, with due respect, would defeat the object of the provision of the Act. Thus considered we hold that the appellants have satisfied the requirements mentioned in Section 22. They are not liable to ejectment either under sub-section (1) or sub- section (2) of Section 7A, as the case may be.

They were in possession for 12 years. The are tenants under the Punjab Tenancy Act. They were in possession prior to December 3, 1953. They, thereby, acquired the right to purchase the proprietary interest of the land held by them as a tenant. The appellants had satisfied all the requirements. We are informed that the compensation determined by the authorities has already been deposited.

Under these circumstances, we allow the appeal, set aside the judgment of the High Court and restore that of the authorities under the Act. The writ petition stands dismissed but, in the circumstances, there is no order as to costs.