

Surja vs Hardeva And Ors on 17 October, 1968

Equivalent citations: 1970 AIR 1193, 1969 SCR (2) 448, AIR 1970 SUPREME COURT 1193

Author: S.M. Sikri

Bench: S.M. Sikri, R.S. Bachawat

PETITIONER:

SURJA

Vs.

RESPONDENT:

HARDEVA AND ORS.

DATE OF JUDGMENT:

17/10/1968

BENCH:

SIKRI, S.M.

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SIKRI, S.M.

BACHAWAT, R.S.

CITATION:

1970 AIR 1193

1969 SCR (2) 448

ACT:

Punjab Security of Land Tenures Act (Punj. 10 of 1953) ss.1 and 24--Land sought to be purchased by tenant--Land reserved of selected--Whether a question of jurisdiction--Revisional powers of Financial Commissioner.

HEADNOTE:

The appellant a tenant of. the respondent l(a big, land-owner). applied. for purchase of the land cultivated by him under s. 18 of the Punjab Security of Land Tenures Act, 1953 alleging that he had been in possession of the land for more than. six years and the land was outside the reserved area of the land-owner. The respondent alleged. that th land was reserved. The Assistant Collector .held that the appellant was entitled. to purchase the land'. The respondent filed an appeal t the Collector. The Collector dismissed the appeal. The responder then filed a revision to the Commissioner. While the revision was pending the Financial

Commissioner gave a decision in another matter that a selection by land-owner under s2 5B(1) for permissible area under the Act had the same force as 'reservation under s. 5, of the Act. There respondent thereupon filed an-application stating that the entire land dispute was included in the permissible area selected by him under s. 5-B and as this disentitled the tenant from purchasing the land prayed that he may be allowed to raise this plea which involved a question of jurisdiction. The Commissioner satisfied himself that the selection document was filed within time and felt that the land could not purchased and submitted the case to the Financial Commissioner with the recommendation that the revision be accepted. The Financial Commissioner however dismissed the revision holding that as the respondent had not put the plea of selection before Assistant Collector or Collect he could not be allowed to do so at that stage. The respondent filed a petition in the High Court and the High Court allowed the petitioning that the Financial Commissioner should have accepted the recommendation made by the Commissioner.

In appeal this Court,

HELD: The Financial Commissioner should have gone into question whether Commissioner's report was acceptable or not on merits

The question whether the land sought to be purchased by the appellant was part of the reserved or selected area was a jurisdictional f Under s. 18 of the Act a tenant is only entitled to purchase land is not included in the reserved or selected area of the land-ow Under s. 18(2) the Assistant Collector is only authorized to determine the value of the land after making such enquiries as he thinks fit. is not authorized expressly to go into the question whether the sought to be purchased is included in the reserved or selected are the land-owner or not. But he should go into these questions be embarking or determining the price and by wrongly deciding. that.

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tion he cannot finally confer on himself jurisdiction to deal with the matter. The revisional power of the Financial Commissioner under s. 24 of the Act read with s. 84 of the Tenancy Act being the same as that of the High Court in exercise of that power the Financial Commissioner had jurisdiction to go into the question whether the Assistant Collector or the Collector had rightly assumed jurisdiction. [453 E--G]

As the question whether the selection by the land-owner was made in time and whether it was genuine and valid had to be decided the matter must be remanded to the Financial Commissioner for decision on these points.

Chaube Jagdish Prasad v. Chaturvedi, [1959] Supp. 1 S.C.R. 733, 746 and Jagannath Ramchandra Datar v. Dattaraya Balwant Hingmire, C.A. No. 585 of 1964 dated 9-9-1966, followed.

Rai Brij Raj Krishna v.S.K. Shaw [1951] S.C.R. 145,
Queen v. Commissioners for Special Purposes of Income tax,
21 Q.B.D. 313 and Colonial Bank of Australia v. Willan L.R.
5 P.C. 417, held inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 778 of 1966.

Appeal by special leave from the order, dated May 25, 1965 of the Punjab High Court in Letters Patent Appeal No. 146 of 1965.

S.V. Gupte and Naunit Lal, for the appellant. A.K. Sen, S.C. Mohatta and A.D. Mathur, for respondent No 1.

V. C. Mahajan and R.N. Sachthey, for respondent Nos. 2, 3 and 4.

The Judgment of the 'Court was delivered by Sikri, J. This appeal by special leave is directed against the judgment and order of the High Court of Punjab in Letters. Patent Appeal No. 146 of 1965 whereby the High Court dismissed in limine the Letters Patent Appeal filed by the appellant Surja against the judgment of the learned Single Judge allowing the writ petition filed by the respondent, Hardeva. .

The relevant facts for determining the points raised before us are as follows; Hardeva, respondent before us, is a big landlord of village Panniwala Mota in Sirsa Tahsil of Hissar District. Surja, the appellant, was an old tenant of Hardeva and had been cultivating the land in dispute since about 1949. Section 18 of the Punjab Security of Land Tenures Act, 1953 (Punj..Act X of 1953)-hereinafter referred to as the Act--entitles a tenant of a land-owner other than a small land-owner to purchase from the land-owner .the land held by him, but not included in the reserved area of the land-owner if he satisfies the conditions laid down in that section. Section 18(1) & (2) may be set out.

"18(1) Notwithstanding anything to the contrary 'contained in any law, usage or contract, a tenant of a land-owner other than a small land-owner-

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

(ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amounts to six years or more, or

(iii) who was ejected from his tenancy after the 14th day of August 1947, and before the commencement of this Act, and who was in continuous occupation of the land

comprised in his tenancy for a period of six years or ,more immediately before his ejection, shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within clause (i) or clause (ii) at any time, and in the case of a tenant falling within clause

(iii)' within a period of one year from the date of commencement of this Act;

Provided that no tenant referred to in this subsection shall be entitled to exercise any such right in respect of the land or any portion thereof if he had sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation, unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried;

Provided further that if the land. intended to be purchased is held by another tenant who is entitled to preempt the sale under the next preceding section, and who is not 'accepted by the purchasing tenant, the tenant in actual occupation shall have the right to pre-empt the sale.

(2) A tenant desirous of purchasing land under sub- section (1) shall make an application in writing w an Assistant Collector of the First Grade having jurisdiction over the land concerned, and the-Assistant Collector, after giving notice to the land-over and to all other persons interested in the land and after making such inquiry as he thinks fit, shall. determine the value of the land which shall be the average of the prices obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made." Surja accordingly applied on August 5, 1957, to the Collect or,Hissar District, stating that he intended to purchase the land in dispute and that the land is outside the reserved area of the landowner. He further alleged that he had been in possession of the land for the last eight years. Hardeva in his written statement, inter alia, stated that Surja was in possession of the land only for three or four years. He alleged that Surja had already 150 bighas of cultivable land. He further stated that the land is reserved and for that reason Surja was not entitled to purchase it. In his evidence before the Assistant Collector given on March 25, 1958, Hardeva deposed:

"The land is reserved. I do not know whether the land in dispute is reserved or not.", By his order, dated March 31, 1959, the Assistant Collector, Sirsa, held that Surja was entitled to purchase the land in dispute, and, accordingly, fixed the price. Regarding reservation he observed:

"It is admitted by the respondent that they are big land-owners and got this land reserved, but later on during his very cross- examination, he denied any knowledge about the reservation. The respondent produced no evidence with regard to having this land got reserved though they are big land-owners."

Hardeva thereupon filed an appeal before the Collector, and one of the grounds taken was that the Assistant Collector erred in holding that the land in dispute was not reserved land. The Collector, by

his order, dated July 20, 1960, dismissed the appeal. It was common ground before him that Hardeva was a big landowner and that Surja had been in continuous possession of the land in dispute for more than six years, and the only point he determined was whether with the addition of the 28 bighas and 12 biswas of land which Surja had been permitted to purchase his total area would exceed the permissible area or not. On this point he held in favour of Surja and accordingly dismissed the appeal, . Hardeva then filed a revision before the Commissioner. In the grounds of revision dated October 27, 1960, various grounds were taken but there was no ground regarding reservation of land or selection of land under s. 5-B of the Act. On February 1, 1961. Hardeva filed an application in the Court of the Commissioner. In this application he stated that the entire land in dis-

pute was included in the permissible area selected bY him under s. 5-B of the Act by submitting form "E". He further stated that the Financial Commissioner had in *Karan Singh v. Angraz Singh* (1). held that selection under s. 5

-B(1) had the same force as. reservation under s. 5 of the Act, and this disentitled. Surja from purchasing the land in dispute. He prayed that he may be allowed to raise the plea of selection under s. 5-B (1). He stated, that tiffs plea involved a question of jurisdiction and in the interest of justice he may be permitted to raise this plea as an additional ground of revision.

The Commissioner allowed the ground to be taken but as Surja's counsel suspected the bona fides of the selection, the Commissioner sent for the original file and he satisfied himself, after examining the original form "E" and the affidavit in relation to form ' "E", that. Hardeva had duly submitted the selection document to the Collector within time on June 19, 1958. It appears that the Financial Commissioner had held in *Dhanpat Raf v. State Punjab*(2) that the period of six months allowed by s..5-B for making selection would start from March 22, .1958, the date when the Punjab Government Notification proscribing the form was issued. The Commissioner felt that the selected land could not be purchased under s. 18 by the tenant. lie accordingly submitted the case to the Financial Commissioner with the recommendation. that the revision petition be accepted and that the orders of the Assistant Collector and the Collector be set aside.

The Financial Commissioner dismissed ,the revision. He held that as Hardeva had not put forward the plea of selection before the Assistant Collector or the Collector he could not be allowed to do so at that stage. lie observed:

"In other words the consideration that reservation of area under section 5 and selection of area under section 5-B are identical in their effect has no relevance in the present. cases for the reasons that it was never claimed (except in revision) that the .area .had .been selected under section 5-B. If such a claim had been made and substantiated, the position would have been .different, but since this.' was not done, the 'decision against the petitioner cannot be challenged. it is also clear that there is no question in these eases of authorities concerned having acted without jurisdiction or having exercised. it with illegality 'or material .irregularity which alone could justify interference 'in revision."

Hardeva then filed a petition under Arts. 226 and 227. of the Constitution. The Court held that the Financial Commis (1) (1960) 39 Lahore Law Times, 57, (2) (1961) Lahore Law sioner should have accepted. the recommendation made by. the Commissioner and accordingly allowed the petition and declared that Surja was not entitled to purchase the land in dispute selected by the land-owner under the provisions of 's. 5-B of the Act. The learned Single Judge was of the view that the disputed question related. to junsdiction and .went to the root of the whole matter.

It appears that there was some dispute before the learned Single Judge about the date of the selection, because the learned Judge observed:

"There is a slight dispute on the question whether the intimation of selection was given on 19th or' 20th of June, 1958".

He, however. preferred to accept the finding of the learned Commissioner on the point and gave the land.owner the benefit of it. He further observed that the question could not have been raised before the Assistant Collector and the Collector because "the prevailing view up till 1960 appears to have been that the selected area had. not been equated with the reserved area" and it was because of this that Hardeva had not placed it before the Assistant Collector and the Collector although he had placed the point that the area was part of the reserved area.

It seems to us that the High Court was right in holding that the, question whether the land sought to be purchased by Surja was part of the reserved or selected area was a jurisdictional fact. Under s. 18 of the Act a tenant is only entitled to purchase land which as not included in the reserved or selected area of the landowner. Under S. 18(2) the Assistant Collector is only authorized to determine the value of the land after making such enquiries as he thinks fit. He is not authorized expressly to go into the question whether the land sought to be purchased is included in the reserved or selected area of the land-owner or not. But, obviously it must be the intention that he should go into these questions before embarking on determining the price. But by wrongly deciding that question he cannot finally confer on himself jurisdiction to deal with the matter. In exercise of the powers under s. 24 of the Act, read with s. 84 of the Tenancy Act, the Financial Commissioner had jurisdiction to go into the question whether the Assistant Collector or the Collector had rightly assumed jurisdiction. It was urged before us that the orders of the Assistant Collector and the Collector were final and could not be assailed on the ground that they had wrongly assumed jurisdiction. Reliance was placed on authorities. like Rai Brij Raj Krishna v. S..K. Shaw(1) where (1) [1951] S.C.R. 145.

this Court referred to Queen v. Commissioners for Special Purposes of Income Tax (1) and Colonial Bank of Australia v. Willan,(2) That was a case of a suit whereby the order of the Commissioner under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (s. 11) was sought to be declared illegal, ultra vires and without jurisdiction, but we are concerned with the revisional power.of the Financial Commissioner which is the same as that of the High Court. As observed by Kapur, J., speaking for the Court, in Chaube Jagdish Prasad v. Chaturvedi,.(3) these cases have no application to the exercise of revisional power. He observed:

"The appellant also relied on *Rai Brij Rai Krishna v. S.K. Shaw and Bros.*(4) where this Court quoted with approval the observations of Lord Esher in *Queen v. Commissioner for special Purposes of the Income Tax*(1) and *Colonial Bank of Australia v. Willan*(a), where Sir James Colville said:

"Accordingly the authorities...establish that an adjudication by a Judge having jurisdiction over the subject matter is, if no defect appears on the face of it, to be taken as conclusive of the facts stated therein and that the Court of Queen's Bench will not on certiorari quash such an adjudication on the ground that any such fact, however, essential, has been erroneously found."

But these observations can have no application to the judgment of the Additional Civil Judge whose jurisdiction in the present case is to be determined by the provisions of s. 5 (4) of the Act. And the power of the High Court to correct questions of jurisdiction is to be found within the four corners of s. 115. If there is an error which falls within this section the High Court will have the power to interfere, not otherwise. The only question to be decided in the instant case is as to whether the High Court had correctly interfered under s. 115 of the Code of Civil Procedure with the order of the Civil Judge. As we have held above, at the instance of the landlord the suit was only maintainable if it was based on the inadequacy of the reasonable annual rent and for that purpose the necessary jurisdictional fact to be found was the date of the construction of the accommodation and if the court wrongly decided (1) 21 Q.B.D. 417. (2) L.R. 5 P.C. 417.

(3) [1959] Supp. 1 S.C.R. 733, 746. (4) [1951] S.C.R. 145.

that fact and thereby conferred jurisdiction upon itself which it did not possess, it exercised jurisdiction not vested in it and the matter fell within the rule laid down by the Privy Council in *Joy Chandlal Babu v.*

Kamalksha Chaudhury(1). 'The High Court had the power to interfere and once it had the power it could determine whether the question of the date of construction was rightly, or wrongly decided. The High Court held that the Civil Judge had wrongly decided that the construction was of a date after June 30, 1946, and therefore fell within s. 3-A."

Similarly, in *Jagannath Ramchandra Datar v. Dattaraya Balwant Hingmire*(2) this Court observed:

"Therefore if it can be shown that the subordinate court without any evidence whatsoever held that the transaction in question was not a sale but a mortgage and that the relationship between the parties was that of a debtor and a creditor and on that footing proceeded to exercise its power under section 3 and 10 A of the *Dekhan Agriculturists Relief Act* the High Court would be entitled to interfere with such a decision under both the parts of s. 115. It would then be possible to say that the subordinate court had clutched at jurisdiction which it had not under the said section and it would also be possible to say that court had exercised its jurisdiction illegally or with material irregularity."

It seems to us that the Financial Commissioner did not appreciate the content of his powers of revision under s. 24, read with s. 84 of the Tenancy Act. It was obvious from the report of the Commissioner that if the finding arrived at by the Commissioner was accepted the Assistant Collector and the Collector had no jurisdiction in the matter. In our opinion the Financial Commissioner should have gone into the question whether the Commissioner's report was acceptable or not on merits.

It is urged by the learned counsel for Surja that the High Court did not decide the question whether the selection had been properly made within time, but it merely, accepted the report of the Commissioner. He, therefore, still disputes the fact that the selection was made within time. He also says that it is not a genuine and valid selection. These points should be gone into by the Financial Commissioner. Under these circumstances we allow the appeal, set aside the orders passed by the High Court (1) 1949 L.R. 76 I.A. 131.

(2) Civil Appeal No. 585 of 1964--judgment delivered on September 9, 1966.

and the Financial Commissioner and remit the case to the Financial. Commissioner to dispose of the revision filed before him in accordance with law.

There will be no order as to Costs in this appeal.' Y.P. Appeal allowed.