

Jaimal & Anr vs Financial Commissioner, Punjab & Ors on 25 September, 1968

Equivalent citations: 1969 AIR 392, 1969 SCR (2) 210, AIR 1969 SUPREME COURT 392

Author: S.M. Sikri

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

PETITIONER:

JAIMAL & ANR.

Vs.

RESPONDENT:

FINANCIAL COMMISSIONER, PUNJAB & ORS.

DATE OF JUDGMENT:

25/09/1968

BENCH:

SIKRI, S.M.

BENCH:

SIKRI, S.M.

BACHAWAT, R.S.

CITATION:

1969 AIR 392

1969 SCR (2) 210

ACT:

Punjab Security of Land Tenures Act (Punj. 10 of 1953), s. 18--Sub-tenant whether entitled to purchase land from landowner.

HEADNOTE:

The appellants, who had been in occupation of certain agricultural lands for more than 30 years as sub-tenants., applied under s. 18 of the Punjab Security of Land Tenures Act, 1953 to purchase the lands. The final authority under the Act, held that the 'appellants were not entitled to purchase the land. The appellants filed a writ petition in the High Court. The High Court held that the appellants being sub-tenants were not entitled to apply under s. 18 of the Act. Dismissing the appeal, this Court,

HELD: The Legislature did not intend to confer any

rights under s. 18 on the sub-tenant.

The word 'landowner' is defined in s. 2(1) of the Act to mean a person defined as such in the Punjab Land Revenue Act, 1887. Under the latter Act, a landowner does not include a tenant. The definitions of the words 'tenant' and 'land-owner', make it clear that 'a tenant of a tenant cannot be a tenant of the land-owner, Further, [213 G; 214 E]

(a) The first proviso to sub-s. (1) of s. 18 makes it clear that a tenant who has sublet the land or a portion, as the case may be. to any other person during the period of his continuous occupation is disabled from applying under s. 18 unless during the period of his continuous occupation the tenant was suffering from legal disability or physical infirmity or if a woman was a widow or was unmarried; [214 E-F]

(b) If it was intended that a sub-tenant should be entitled to purchase under s. 18, some provision in the Act would have been there to solve the difficulties which would arise if there was competition between the tenant and the sub-tenant; [215 A-B]

(c) If the contention of the appellant was correct, the sub-tenant would become the owner of the land under s. 18(4)(b) on the purchase price being deposited. No satisfactory answer was given 'as to what will then happen to the rights of the tenant; and [215 C]

(d) Section 18(5) refers to mortgage of the land but it does not refer to the mortgage of the rights of a tenant. [215 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No.. 2354 of 1966.

Appeal from the judgment and order dated July 1963 of the Punjab High Court in Civil Writ No. 1559 of 1962. M.C. Chagla and Janardan Sharma, for the appellants. B.C. Misra, S.K. Mehta and K.L. Mehta, for respondent No. 3.

The Judgment of the Court was delivered by Sikri, J. This appeal by certificate granted to the appellants by the High Court of Punjab under Art. 133(1)(c) of the Constitution raises one point, namely, whether a sub-tenant is entitled to purchase the land from the land-owner under s. 18 of the Punjab Security of Land Tenures Act (Punj. Act X of 1953)-hereinafter referred to as the Act. It would be sufficient to give few facts. The appellants, Jaimal and Ram Singh, applied under s. 18 of the Act to the Assistant Collector, 1st Grade, Hissar, to purchase 280 kanals 4 marlas of land situate in village Mehnda, Tehsil Hansi, District Hissar. The land was originally owned by respondents. Nos. 4 to 10, who had given this land on lease to Sheo Parshad, respondent No. 3. It is not in dispute that the appellants and their fathers had been in occupation of the land in dispute for the last 30 years, as sub-tenants under Sheo Parshad, respondent No. 3. During the pendency of the

application, respondents Nos. 4 to. 10 sold the land in dispute, on October 25, 1957, to. Sheo Parshad, and also in favour of his two. sons. The Assistant Collector, by his order dated November 30, 1959, accepted the application of the appellants and allowed them to purchase 274 kanals of land for Rs. 6,730/-. On appeal, the Collector varied the order but the variation is not material for the purpose of this appeal. The. appellants then preferred an appeal to the Commissioner and Sheo Parshad filed Revision Petition to him against the order of the. Collector. The Commissioner upheld the claim of the appellants to purchase the land under s. 18 of the Act at the price assessed by the Assistant Collector, but he modified the order in respect of 85 kanals 8 marlas which had been sold to the sons of Sheo Parshad. The final order in the proceedings was passed by the Financial Commissioner who, by his order dated August 27, 1962, held that the appellants. were not entitled to purchase the land under s. 18 of the Act. Thereupon the appellants filed a petition under Art. 226 of the Constitution, seeking to quash the order of the Financial Commissioner. The High Court was also of the opinion that the appellants being sub- tenants were not entitled to apply under s. 18 of the Act. The answer to the question whether the appellants are entitled to apply under s. 18 of the Act depends upon the interpretation. of s. 18, which reads as follows:

"18. Right of certain tenants to purchase land. (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 amount 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 who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment, 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 to an Assistant Collector of the First Grade, having jurisdiction over the land concerned, and the Assistant Collector, after giving notice to the landlord 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 price obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made.

(3) The purchase price shall be three-fourth of the value of land as so determined.

(4) (a) The tenant shall be competent to pay the purchase price either in a lump sum or in six monthly instalments not exceeding ten in the manner prescribed.

(b) On the purchase price or the first instalment thereof, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall, where the tenant is not already in possession, and subject to the provisions of the Punjab Tenancy Act (XVI of 1887), put him in possession thereof.

(c) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall on application by the person entitled to receive it, be recoverable as arrears of land revenue.

(5) If the land is subject to a mortgage at the time the purchase, the land shall pass to the tenant unencumbered by the mortgage but the mortgage debt shall be a charge on the purchase money.

(6) If there is no such charge as aforesaid the Assistant Collector shall, subject to any direction which he may receive from any court, pay the purchase money to the landowner.

(7) If there is such a charge, the Assistant Collector shall, subject as aforesaid, apply in the discharge of the mortgage debt so much of the purchase money as is required for that purpose and pay the balance, if any, to the landowner, or retain the purchase money pending the decision of a civil Court as to the person or persons entitled thereto."

"Land-owner" is defined in s. 2(1) of the Act to mean person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887) and shall include an "allottee" and "lessee". as defined in clauses (b) and (c) respectively, of section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949), hereinafter referred to as the "Resettlement Act". The explanation to s.

2 (1) reads:

"In respect of land mortgaged with possession, the mortgagee shall be deemed to be the land-owner."

The word "tenant" is defined in s. 2 (6) as follows:

"Tenant" has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1887) and includes a sub-tenant and self-cultivating lessee, but shall not include a present holder, as defined in section 2 of the Resettlement Act."

In the Land Revenue Act, 1887, "land-owner" has been defined as follows, in s.3 (2) "land-owner" does not include a tenant or an assignee of land-revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate."

It will be noticed that before a person can apply under s. 18 of the Act he must be a tenant of a land-owner other than a small land-owner. There is no dispute that the land-owner in this case is not a small land-owner. The only question is whether the appellants, who were sub-tenants, can be said to be tenants of the land-owner within the meaning of s. 18. If we look at the definitions of the words "tenant" and "land-owner", it seems clear that a tenant of a tenant cannot be a tenant of the land-owner, because the definition expressly says that a land-owner does not include a tenant. Apart from this, the first proviso to sub-s. (1) of s. 18 makes it clear that a tenant who has sublet the land or a portion, as the case may be, to any other person during the period of his continuous occupation is disabled from applying under s. 18 unless during the period of his continuous occupation the tenant was suffering from legal disability or physical infirmity or if a woman was a widow or was unmarried. In other words, for example, a tenant who is a widow would be entitled to apply under s. 18 even though she had sublet the land which she desired to purchase. No satisfactory answer was given by the learned counsel for the appellants as to what would happen if both the sub-tenant and the widow applied to purchase. Both sides have relied on the scheme of the Act, but it seems to us that the scheme of the Act and the objects underlying the Act do not assist us in determining this question. It is well-known that the main objects of the Act were to provide security to the tenants, settle tenants on land declared surplus and fix a ceiling on the total holding of land-owners and tenants. It is also well-known that it was a measure of agrarian reform. But these matters do not answer the question. The answer must depend upon the language of s. 18, fairly construed. If it was intended that a sub-tenant should be entitled to purchase under s. 18, we would have expected some provision in the Act to solve the difficulties which would arise if there was competition between the tenant and the sub-tenant.

There was some debate before us whether a tenant who has sublet would be treated to be in continuous occupation of the land during the period of sub-tenancy within s. 18 (1)

(i), but we think that the proviso to s. 18 (1) proceeds on the basis that the tenant is in continuous occupation even though he has sublet the land.

It will again be noticed that under sub-s. (4)(b) of s. 18 on the purchase price being deposited, the tenant becomes owner of the land. If the contention of the appellant was correct, the subtenant

would become the owner under sub-s. (4)(b); but what will happen to the rights of the tenant ? No satisfactory answer was given to this question. Again it will further be noticed that sub-s. (5) of s. 18 talks of the mortgage of the land but it does not speak of the mortgage the rights of a tenant.

It seems to us that the High Court was right in holding that the legislature did not intend to confer any rights under s. 18 on the sub-tenant. The fact that by sub-letting the tenant is also not able to apply under s. 18 by virtue of the first proviso to sub-s. (1) cannot confer rights on the sub-tenant because he must himself be a tenant of land- owner within s. 18 of the Act.

Mr. Chagla says that it is a very hard case for the appellants have been in possession for over 30 years, but if it is a hard case it is for the legislature to intervene and provide for such hard cases.

In the result the appeal fails and is dismissed. There will be no order as to costs.

Y.P.

Appeal dismissed.