Supreme Court of India
Tara Singh (Since Deceased) ... vs Kehar Singh And Ors. on 31 March, 1989
Equivalent citations: AIR 1989 SC 1426, 1989 (1) SCALE 895, 1989 Supp (1) SCC 316, 1989 (1) UJ 566 SC
Author: Natarajan
Bench: G Oza, S Natarajan
JUDGMENT Natarajan J.

1. This appeal by special leave by the defendants is directed against a judgment of the High Court affirming the decree for possession passed by the Trial Court and the first appellate court in favour of the respondents/plaintiffs.

2. An extent of 88 Bigas and 14 Biswas of land in village Eathan Kalan belonged to one Smt. Bhagwani widow of Sunder Singh. Besides the said land she owned another item of land also which was allotted to her in substitution of her land bearing Khasra No. 1086. Smt. Bhagwani created a mortgage with possession over the first item of land in favour of Messrs Chuhar Singh, Mita Singh and Lachman Singh for a sum of Rs. 2,000/- on January 1, 1914. The said mortgagees sold their rights under the mortgage to one Waryam Singh under Sale deed dated July 3,1919 for a consideration of Rs. 2,239/. The present appellants (defendants 1 to 4 in the suit) are the heirs of Waryam Singh, and they became entitled to the rights of Waryam Singh after his death. The second item of land which Smt. Bagwani owned was likewise mortgaged with possession to one Sallaura Singh, who figured as defendant No. 5 in the suit.

3. Smt. Bhagwani died in the year 1960 without leaving any heirs consquently, her properties went by escheat to the State of Punjab and they were duly mutated in the Revenue Registers. After the lands had reverted to it, the State allotted the two items of lands to the respondents/plaintiffs under the Nazool Lands Transfer Rules 1956 (hereinafter referred to as the Rules). The allotment was made by the Collector on behalf of the State by means of an order dated May 21, 1968.

4. As per directions given in the order of allotment, the respondents deposited two sums of money viz. Rs. 2,230/- towards redemption of the mortgage in favour of defendant Nos. 1 to 4 and Rs. 748/- towards redemption of the mortgage in favour of defendant No. 5. On the said sums of money being deposited, the Collector issued warrants of possession and served notices on the two sets of mortgagees informing them that the respective mortgages in their favour stood redeemed and that they should surrender possession of the mortgaged items of land to the respondents. It would appear that warrants of possession were also issued by the Collector and the respondents took possession of the two items of land and had deposited at that time a sum of Rs. 607. 50 towards compensation for the standing crops on the lands. After the respondents had taken possession, defendants 1 to 4 filed a suit for injunction and obtained an order of temporary injunction in the garb of protecting their possession, they had wrested the possession of the land from the respondents. On account of that the respondents filed a suit for possession of the mortgaged lands from the defendants.

5. While defendant No. 5 did not contest the suit, defendants Nos. 1 to 4 contended that (a) Smt. Bhagwani had infact left behind certain heirs and hence her properties had not reverted to the State by escheat;

(b) that the suit was barred by limitation; and

(c) that their rights as mortgagees were not affected by the allotment order made in favour of the respondents by the Collector.

6. All the contention were rejected by the Trial Court out however, the Trial Court held that a deposit of the mortgage amount in the State Treasury would not amount to a valid tender for redemption of the mortgage and, therefore, the respondents should re-deposit the amount in Court so that the mortgage can be redeemed through Court. It is common ground that the respondents complied with this direction and deposited the amount in Court and were thereupon granted a decree for possession. The Appellate Court concurred with the possession.

7. Against the concurrent findings of the two Courts, the appellants preferred a second appeal to the High Court and contended therein that the allotment order made under the Rules was invalid since the village Eathan Kalan, in which the suit lands are situate, had been transferred to the State of Punjab under the Provinces and the States (Absorption of Enclaves) Order, 1950 from the erstwhile Patiala and East Punjab State Union (Pepsu) in 1950 and consequently the Rules framed by the Government of Pepsu in 1956 would not apply to the mortgage lands. It was further urged that even if the State of Punjab had become the owner of the lands by escheat, the respondents can derive title to the lands only if the State Government had conveyed the lands to them by a registered deed of conveyance. The High Court saw merit in the first contention but even so the High Court declined to interfere with the decree for eviction passed by the Courts below on the ground that since the respondents, acting under the order of allotment made in their favour had deposited a sum of Rs. 2,230/- towards the sale price-cum-redemption charges of the mortgage land but were not given possession, they became entitled to a charge over the mortgage lands under Section 55(6)(b) of the transfer of Property Act and as holders of a charge, they are entitled to redeem the usufructuary mortgage in terms of Section 91 of the Transfer of Property Act. On the basis of such reasoning the High Court confirmed the respondents' decree for possession and dismissed the second appeal. The aggrieved defendants have thereupon preferred this appeal by special leave.

8. Mr. Anil Dev Singh, learned counsel for the appellants contended before us that once the High Court had accepted the position that the Rules framed by the Pepsu Government in 1956 had no application to the mortgaged items of land on account of the transfer of the lands to State of Punjab in 1950, the High Court must have further held that no title passed to the respondents under the order of allotment made by the Collector and hence the respondents had no right to seek redemption of the mortgage or demand possession of the land. The second submission of the learned counsel was that even if the land had escheated to the State and the State wanted to allot the lands to the respondents as a rehabilitative measure, the respondents would not constitute 'buyers' of the land in the eyes of law merely because of their deposit of the sale price-cum-redemption charges of the land without having acquired title to the land under a registered deed of conveyance

in their favour. The third submission was that the respondent should have had at least a valid agreement of sale in their favour if they are to claim the benefit of a statutory charge under Section 55(6)(b) for the sale price deposited by them.

9. Mr. Mahajan, learned counsel for the respondents controverted the arguments of Mr. Anil Dev Singh and argued that this was a case where the appellants wanted to unjustly cling to their possession and enjoyment of the land inspite of having been in enjoyment of the land for about 70 years by reason of having paid a meagre sum of Rs. 2,230/- to the previous mortgagees and obtaining an assignment of their rights in their favour. He pointed out that as the land had reverted to the State, the State wanted to rehabilitate the respondents belonging to the weaker section of the society and had, therefore, allotted the land to them subject to the condition that they should deposit the mortgage amount for redeeming the mortgage but the appellants have been successfully keeping the respondents out of possession for over 20 years by filing successive appeals and in such circumstances this was not a fit case for this Court to examine under Article 136 of the Constitution the merits of the contentions of the appellants. In so far as the legal contentions of the appellant's counsel are concerned, Mr. Mahajan stated that once the lands had reverted to the State the State stepped into the shoe of the mortgagor and was entitled to redeem the mortgage and allot the land to the respondents or in the alternative the State can allot the land first and empower the allottee to redeem the mortgage and take over the possession of the lands.

10. On a consideration of the matter we find that none of the : contentions advanced by the appellant's counsel is a tenable one. It is no doubt true that the village Batan Kalan in which the mortgaged land is situate had been transferred to the State of Punjab in 1950 and, therefore the Rules framed by the Pepsu Government in 1956 for distribution of Nazool lands would not apply to it. That would not, however mean that the Government had no power to allot the land to the respondent. It has been concurrently found by the Courts that the land had reverted to the State of Punjab on the death of Smt. Bhagwani as she did not leave behind any heirs to inherit her properties. The State had, therefore, stepped into the shoes of the erstwhile owner and become entitled to redeem the mortgage and take over the possession of the land. Mr. Anil Dev Singh had to concede the position that if the State itself had sought to redeem the mortgage through its officers, the appellants would have no right to refuse redemption of the mortgage or to surrender possession of the land. He also accepted the position that a transferee of the State Government would also be entitled to redeem the mortgage but only contended that there should be a valid deed of conveyance in favour of the transferee or there should at least be a valid agreement in his favour for transfer of the land to him by the State. His argument therefore was that since there was no registered deed of conveyance or a valid agreement for conveying title to the respondents but only an order of allotment issued by the Collector, the respondents could not in law be treated as the buyers of the land and held entitled to delivery of possession of the land and in the absence of delivery, to be entitled to a charge over the land under Section 55(6)(b) of the Transfer of Property Act for the sale price deposited by them. In support of his arguments the counsel placed reliance on two decisions one rendered by the High Court of Gujarat and the other High Court of Bombay.

11. Attractive as the arguments of the appellant's counsel seem to be, they do not really have merit in them. As we have already stated the reversion of the land to the State and the right of the State to

redeem the mortgage is beyond dispute in the case. The only question for consideration is whether the redemption should have been sought for by the State itself through its officers or whether the redemption can be sought for by a nominee of the State Government under an order or allotment made in his favour. In this case, in addition to the order of allotment made by the Collector, warrants of possession had also been issued in favour of the respondents. By reason of these two orders the respondents had acquired a right under the doctrine of promissory estoppel to call upon the Government to regularise the land to them if for any reason the order of allotment made by the Collector was defective in any manner. Such being the case, even if no registered deed of conveyance or agreement of sale had been executed by the Government, the respondents had become entitled in law to claim title to the land and seek delivery of possession of the allotted land to them and ask for charge, in the absence of delivery of possession over the property for the money deposited by them under the allotment order. Viewed from this angle, there is no room whatever for any contention that the respondents would not constitute the buyers of the land and are, therefore, not entitled to claim a charge over the allotted land under Section 55(6)(b) of the Transfer of Property Act. Though the provisions of the Transfer of Property Act are not applicable to the State of Punjab the principle enunciated in Section 55(6)(b) has been held applicable to Punjab on grounds of justice, equity and good conscience (vide Shankri v. Milkha Singh AIR 1941 (F.B.) 407). The logical consequence would then be that as charge-holders the respondents would be entitled under Section 91 of the Transfer of Property Act to seek the redemption of the mortgage.

12. We may now deal with the decisions relied upon by the appellant's counsel. In Nadoda Khima Keshar v. Bombay State and Ors. (ILR 1967 Gujarat 325), a vendor, sought to contend that the deed executed by him was not a deed of sale but only a mortgage and hence he was entitled to seek scaling down of the debt and recover possession of the land under the Saurashtra Agricultural Debtors Relief Act, 1954. When the first two Courts concurrently held that the transaction was an outright sale and not a mortgage, he alternatively contended that the purchaser stood in the position of a charge holder under Section 55(6)(b) of the Transfer of Property Act and in that event also the Debtors Relief Act was attracted. That contention was rejected by the High Court by pointing out that the sale as well as the agreement of sale which preceded it were in contravention of the Saurashtra Attachment of Agricultural Debtors Property Temporary Exemption Act and consequently the defendant would not constitute a buyer in the eye of law and therefore there can be no question of the defendant being entitled to a charge under Section 55(6)(b) for the sale price advanced by him. This authority is of no relevance to this case because there was no bar in law for the State Government to allot the land to the respondents after it had become the owner of the land by escheat or to the respondents claiming delivery of possession as the transferees of the land as per the order of allotment made in their favour and the warrant of possession issued to them. The second decision Dhyanu Babu v. Gulab Eknath (1960 (LXII) Bombay Law Reporter 940) rendered by the Bombay High Court pertains to case where the holder of an agreement of sale filed a suit against the owner of the land and his vendee for recovery of the earnest paid by him and incidentally sought a charge on the land agreed to be sold to him which by then had been purchased by the cultivating tenant himself in exercise of the right given to him by statute to purchase the tenancy land. The High Court held that the agreement of sale was invalid in law because of the right conferred by statute on cultivating tenants to purchase the lands in their tenancy and secondly because the tenant/purchaser had not derived title to the land under any contract of sale with the

owner but by reason of the statutory rights in his favour. In the present case there was no such legal impediment to stand in the way of the State allotting the land to the respondents or to the respondents seeking delivery of possession of the land allotted to them.

13. Another submission made by appellant's counsel was that in any event the respondents would only stand in the position of a simple mortgagee and hence their remedy was only to file a suit for bringing the hypothec to sale and in the event of their purchasing the hypotheca, to file a suit thereafter for recovery of possession. In support of this contention reference was made to the decision in Muihammad Usan v. Abdulla (ILR 1901 Madras 171). The contention is wholly misconceived because the State which stood in the shoes of the mortgagor had parted with the equity of redemption in favour of the respondent and called upon them to deposit the sale price so that it could be paid to the appellants to redeem the mortgage in their favour. There was, therefore, no question of the respondents seemingly entering into a mortgage transaction or their filing a suit for enforcement of mortgage.

14. The respondents plea that the lands had not escheated to the State having failed, the respondents cannot resist the redemption of the mortgage irrespective of whether the redemption was sought for by the State itself through its officers or by a transferee of the State duly authorised to redeem the mortgage and obtain delivery of possession of the allotted land.

15. For the aforesaid reasons the appeal fails and is accordingly dismissed with costs.