

Supreme Court of India

Kanaya Ram And Ors. vs Rajender Kumar And Ors. on 5 December, 1984

Equivalent citations: AIR 1985 SC 371, 1984 (2) SCALE 1039, (1985) 1 SCC 436, 1985 (17) UJ 561 SC

Author: A Sen

Bench: A Sen, V B Eradi

JUDGMENT A.P. Sen, J.

1. This appeal by special leave is directed against the judgment of a Division Bench of the Punjab High Court in Letters Patent Appeal No. 80 of 1967 dated September 9, 1969 upholding the judgment and order of a learned Single Judge dated July 27, 1967. It follows the earlier common judgment delivered by the Division Bench in Letters Patent Appeal Nos. 357-359 of 1967. By the judgment the learned Single Judge allowed three writ petitions filed by respondent Nos. 1 and 2 who are purchasers from the original land-holder Kulwant Rai and have been held to be mere benamidars in Civil Suit No. 23 of 1967 decided on January 6, 1967 brought by respondent Nos. 3 to 14, the legal heirs of the aforesaid Kulwant Rai.

2. The arguments in the appeal mainly revolved around the question as to the applicability of the rule laid down by this Court in Rameshwar and Ors. v. Jot Ram and Ors. to the facts and circumstances of the present case. In Rameshwar's case, this Court held that the death of the large landholder Teja during the pendency of the appeal before the Financial Commissioner upon the happening of which event inheritance opened resulting in his legal heirs becoming small landholders had not the effect to stultify the rights acquired by his tenants who had applied for purchase of their holdings under Section 18(1) of the Punjab Security of Land Tenures Act, 1953 and who, pursuant to the Purchase Order made by the Prescribed Authority, had already made the deposit of the first instalment of the purchase price as required under Section 18(4)(a) and had thereupon by the legal fiction contained in Clause (b) thereof, to be deemed to have become the owners of the land since they had acquired a vested right to the grant of relief on the day they made the applications under Section 18(1). At the conclusion of the hearing, the case was adjourned to enable the parties to explore the possibility of a settlement because it seemed that the decision in Rameshwar's case was not really applicable to this case. Although learned Counsel appearing for respondent Nos. 3 to 14 signified the willingness of his clients to accept the terms suggested which were fair and reasonable, learned Counsel for the appellant kept on asking for adjournments. Despite repeated opportunities the parties did not reach any settlement. As there has been no settlement, we proceed to decide the appeal on merits.

3. It appears that against the common judgment of the Division Bench in Letters Patent Appeal Nos. 357-359 of 1967, three special leave petitions were filed in this Court viz. 572-573 of 1969 and they were all dismissed in limine on August 21, 1970. That being so, the present appeal has become infructuous. The High Court had disposed of Letters Patent Appeal No. 80 of 1967 in terms of the main judgment which has now become final.

4. Even apart from the above, there are no merits in the appeal. Admittedly, Harditta Ram, the predecessor-in-title of the appellants had made the application for purchase under Section 18(1) of the Act without impleading Kulwant Rai, the original land owner, the predecessor-in-title of

respondent Nos. 3 to 14. During the pendency of the proceedings before the Assistant Collector (Surplus) who is the Prescribed Authority under the Act, the aforesaid Kulwant Rai died on August 22, 1960 and on October 13, 1960 respondent Nos. 3 to 14 being the legal heirs of Kulwant Rai made an application to be impleaded as parties to the proceedings and that application of theirs was allowed by the Assistant Collector on November 8, 1960. The Assistant Collector however on February 23, 1961 struck off the names of respondent Nos. 3 to 14 from the array of respondents on the ground that they were not necessary parties to the proceedings. On the same day, he allowed the purchase application of Harditta Ram, the predecessor-in-title of the appellants against respondent Nos. 1 and 2 Madan Lal and Rajender Kumar, the transferees from Kulwant Rai. Both of them were closely related to Kulwant Rai, the original land-owner and obviously the transfers were collusive. Kulwant Rai purported to make oral sales of 10 bighas 10 biswas of land to his brother-in-law Madan Lal, respondent No. 2 and of the remaining 39 bighas 5 biswas of land in favour of his maternal uncle Rajender Kumar, respondent No. 1, and the so-called sales were followed by mutation of their names as per mutation entries Nos. 205 and 206 dated April 14, 1955. The alleged sales did not create any right or title in the transferees since the provisions of Section 54 of the Transfer of Property Act, 1882 were extended by the State Government of Punjab by a notification dated March 26, 1955 w.e.f. April 1, 1955 to the State. Respondent Nos. 1 and 2 preferred an appeal against the order of the Assistant Collector but the Collector rejected the same on August 31, 1961. The Assistant Collector and the Collector both held that Harditta Ram having fulfilled the requirements of Section 18(1) of the Act, he was entitled to purchase the lands from both the transferees.

5. Against the order of the Collector, respondent Nos. 1 and 2 preferred a revision to the Commissioner who by his order dated June 18, 1962 made a reference to the Financial Commissioner holding that since Harditta Ram made a statement before the Assistant Collector on December 22, 1960 by which he confined his application for purchase under Section 18(1) of the Act against respondent No. 2 Rajender Kumar alone, the Assistant Collector had no jurisdiction to make an order for the purchase of land belonging to respondent No. 1 Madan Lal. He opined that the order of the Assistant Collector as well as that of the Collector affirming the same were therefore without jurisdiction. The Financial Commissioner by his order dated December 18, 1962 however declined to interfere with the order of the Assistant Collector and the Collector and directed that the reference papers be filed. He held that the alleged transfers in favour of respondent Nos. 1 and 2 were apparently collusive and therefore the Assistant Collector and the Collector were justified in ignoring the same. As regards the objection that Kulwant Rai having died during the pendency of the proceedings on August 22, 1960, there was a change in status of the land-owners against whom the application under Section 18(1) of the Act was made as on that date inheritance opened and his legal heirs became small landowners, he held that admittedly the application as made by Harditta Ram was competent on the day it was filed and the rights of the parties had to be adjudicated upon that basis and that the objection that there was a change of status as his legal heirs became small landowners could not prevail since the death of Kulwant Rai was subsequent to the making of the application.

6. The impugned order of the Financial Commissioner was assailed by respondent No. 1 Rajender Kumar before the High Court by a petition under Article 226 of the Constitution. A learned Single

Judge by his judgment dated December 16, 1966 quashed the impugned order of the Assistant Collector, as affirmed in appeal by the Collector and in revision by the Financial Commissioner on the ground that once the transfers effected by Kulwant Rai were ignored, the changed situation brought about by the death of the big landowner had to be taken into account in determining the right of the tenant under Section 18(1) of the Act when as a result of inheritance his legal heirs became small landowners. He held that the original landowner Kulwant Rai should be deemed to have continued to own the lands in question till August 22, 1960 when he died and in view of the order of the Collector dated July 17, 1961 declaring respondent Nos. 3 to 14 to be small landowners, the rights of the tenant under Section 18(1) of the Act abated. The learned Single Judge was evidently of the view that under the scheme of the Act devolution of interest by inheritance or survivorship had to be taken into account for purposes of determining the rights of tenants under Section 18(1) of the Act.

7. Aggrieved by the judgment of the learned Single Judge the appellants who are the legal heirs of Harditta Ram filed Letters Patent Appeal No. 80 of 1967 on February 27, 1967, with which we are concerned. Respondent Nos. 3 to 14, the legal heirs of Kulwant Rai had in the meanwhile brought a suit on January 6, 1967 for declaration that they were the owners of the lands in dispute in as much as the transferees Madan Lal and Rajender Kumar, respondent Nos. 1 and 2, were mere benamidars of Kulwant Rai and further that no title passed in them as the alleged sales were not effected by any registered instrument as required by Section 54 of the Transfer of Property Act, with consequential prayer for delivery of possession of lands to them. That suit of theirs was decreed by the Subordinate Judge, Fazilka on February 20, 1967. On July 1, 1968 they applied for being impleaded as parties on the ground that the Collector, Ferozepur by his order dated July 17, 1961 while determining the surplus area of the landowner Kulwant Rai held that the alleged sales in favour of respondent Nos. 1 and 2 Madan Lal and Rajender Kumar were benami and consequently they had no right or title in the lands. The Collector further held that upon the death of Kulwant Rai on August 22, 1960, the lands were inherited by respondent Nos. 3 to 14 and that they were small landowners thereof. On July 17, 1968 they were impleaded as party-respondents in Letters Patent Appeal No. 80 of 1967.

8. This appeal was heard along with Letters Patent Appeal Nos. 357-359 of 1967 as they were all directed against the same judgment of the learned Single Judge. It appears that it was conceded by learned Counsel appearing for the appellant before the learned Judges that the findings reached by the learned Single Judge were unassailable. The learned Judges held that in view of Section 54 of the Transfer of Property Act having been made applicable to the State of Punjab w.e.f. April 1, 1955, no oral sale of the lands could be effected and therefore the transfers made by Kulwant Rai in favour of respondent Nos. 1 and 2 could not and did not pass any title whatsoever. In that view of the matter, the learned Judges expressed no opinion on the question whether the claim of a tenant under Section 18(1) of the Act could be repeated by original landowner subsequent to the making of the application when by reason of inheritance or survivorship his heirs became small landowners.

9. We are at a loss to comprehend the nature of relief that can be granted to the appellants. This court having refused to grant special leave under Article 136 of the Constitution against the main judgment in Letters Patent Appeal Nos. 357-59 of 1967 this appeal is no longer tenable. The Division Bench in dismissing Letters Patent Appeal No. 80 of 1967 had merely followed the main judgment

in the connected Letters Patent Appeals which now has attained a finality that cannot be upset. Besides, Harditta Ram, the predecessor-in-title of the appellants for reasons best known to him, did not implead the original landholder Kulwant Rai in his application made under Section 18(1) of the Act. The aforesaid Kulwant Rai died on August 22, 1960 and respondent Nos. 3 to 14 made an application as his heirs to be impleaded as parties to the proceedings. That application of theirs was allowed by the Assistant Collector on November 8, 1960. But the Assistant Collector by his order dated February 23, 1961 deleted their names from the array of respondents presumably on the objection raised by the appellants that they were not necessary parties to the proceedings. Thus, neither the original landholder Kulwant Rai nor respondent Nos. 3 to 14 who are his heirs and legal representatives, are bound by the order of the Assistant Collector dated February 23, 1961 allowing the application of Harditta Ram under Section 18(1) of the Act. Furthermore, the respondents had already been declared to be small landholders by the Collector, Ferozepur by his order dated July 17, 1961 and the learned Subordinate Judge of Fazilka by his judgment and decree dated February 10, 1967 declared their right and title to the lands in dispute holding that respondent Nos. 1 and 2, the transferees of Kulwant Rai, were mere benamidars as also granted them a decree for possession thereof. In the premises, the judgment of the High Court does not warrant any interference.

10. Much reliance was placed on the decision of this Court in Rameshwar's case, *supra*, but it is clearly distinguishable on facts. There, the Court was dealing with a case where the tenants who had applied for purchase of their holdings under Section 18(1) of the Act had in compliance with the order made by the Prescribed Authority in their favour, made the requisite deposit of the first instalment of the purchase price as required by Section 18(4)(a) and thereupon were deemed to have become owners of the lands by reason of the legal fiction contained in Clause (b) thereof, The Court was therefore dealing with a case where the tenants had acquired a vested right to purchase the lands and the case had gone beyond the stage of a mere application under Section 18(1). The Court accordingly held that the death of Teja, the large landholder, during the pendency of the appeal before the Financial Commissioner, on the happening of which event inheritance opened resulting in his legal heirs becoming small landholders, would not nullify or annul the order made by the Prescribed Authority in favour of the tenant who had acquired a vested right to the grant of relief on the day they made their application under Section 18(1) of the Act. The observations made by Krishna Iyer, J. that the right of parties are determined by the facts as they exist on the date the action is instituted must be read in the context in which they were made and do not lay down any rule of universal application. The decision in each case must depend on its own facts. In the present case, Harditta Ram, the predecessor-in-title of the appellants, when he made the application for purchase under Section 18(1) of the Act, had a mere hope or expectation of, or liberty to apply for acquiring a right, and not a 'right acquired or accrued' under Section 18(1). It has been held ever since the leading case of *Abbot v. Minister for Lands* LR (1895) AC 425 that a mere right to take advantage of the provisions of an Act is not an accrued right. *Abbot's* case has been followed by this Court in a number of decisions. In such a situation, the Court is bound to take into consideration the subsequent events and mould the relief accordingly. The decision in Rameshwar's case clearly turned on the legal fiction contained in Section 18(4)(b) of the Act and the death of the large landholder Teja during the pendency of the appeal before the Financial Commissioner on which inheritance opened and his legal heirs became small landholders, could not impair the vested rights acquired by the tenants by virtue of the order passed by the Prescribed Authority and the deposit by

them of the first instalment of the purchase price as required under Section 18(4)(a).

11. In view of the foregoing, the appeal must fail and is dismissed without any order as to costs.