

Supreme Court of India

Mohan Lal vs Kartar Singh & Others on 17 October, 1995

Equivalent citations: 1995 SCC, Supl. (4) 684 JT 1995 (7) 573

Author: N G.T.

Bench: Nanavati G.T. (J)

PETITIONER:

MOHAN LAL

Vs.

RESPONDENT:

KARTAR SINGH & OTHERS

DATE OF JUDGMENT 17/10/1995

BENCH:

NANAVATI G.T. (J)

BENCH:

NANAVATI G.T. (J)

JEEVAN REDDY, B.P. (J)

SEN, S.C. (J)

CITATION:

1995 SCC Supl. (4) 684 JT 1995 (7) 573

1995 SCALE (6) 27

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T NANAVATI J.

This appeal, under certificate granted under Article 133 (1) (a) of the Constitution, by the High Court of Punjab and Haryana, is against its decision in LPA No. No.366 of 1969.

Nahar Singh, original plaintiff and father of the respondents, on 18.5.1964, filed a suit in the court of sub-judge, Dhuri for possession of the suit land, on the basis of ownership of the land and also on the ground that the order of eviction passed against him by the Collector under Section 43 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as 'the Act') on 12.5.62 was void and ineffective. His case was that he has purchased the suit land from Sharif Hussain on 24.2.1955. At that time Mohan Lal, original defendant and appellant in this appeal, was in occupation of that land as a tenant. Mohan Lal continued to hold the land as his tenant after the

sale. Some time in June 1955, he approached the Village Panchayat as Mohan Lal had not given him his share in the produce. On 16.6.1955 a compromise was arrived at between him and Mohan Lal whereunder Mohan Lal had agreed to relinquish possession of the land as he was not able to pay the rent and on his part he had agreed not to recover his share/rent. Pursuant to the compromise the Panchayat also passed a resolution to that affect and Mohan Lal willingly handed over possession of the land to him. On 21st June, 1955 i.e. within 5 days of the compromise Mohan Lal approached the Sub-Divisional Magistrate of that area and alleged that he was forcibly dispossessed and claimed restoration of possession under Section 43 of the Act. The Sub Divisional Magistrate rejected that application as an application under Section 43 could be made to the Collector and not to him. Soon after the SDM was invested with that power Mohan Lal again applied to him. On 12.5.1962 the SDM allowed that application and passed an order for his eviction. Mohan Lal got back possession of the land under that order on 25th May, 1962. He filed an appeal to the Commissioner. It was dismissed. His revision application to the Financial Commissioner was also rejected. He then filed a writ petition in the Punjab and Haryana High Court and that was also dismissed. It was also his plea that as the order passed by the SDM was without jurisdiction and, therefore void ab-initio, earlier proceedings under the Act were no bar to his filing the suit.

The learned Civil Judge believed the version of the plaintiff that Mohan Lal had voluntarily surrendered his possession and, therefore, held that the relationship of landlord and tenant between the parties had come to an end and for that reason the Sub-Divisional Magistrate had no jurisdiction to pass an order of eviction under Section 43 of the Act. He decreed the suit. Mohan Lal filed an appeal to the District Court but it failed. He then filed a second appeal in the High Court. It was not disputed before the learned Single Judge who heard that appeal that if Mohan Lal had been forcibly dispossessed by Nahar Singh on 16.6.1955, then Nahar Singh would be a person in wrongful or unauthorised possession of the land, to the use and occupation of which he would not be entitled under the provisions of the Act. In view of the rival contentions, what the learned Judge was required to decide was "whether the dispute about the manner in which the respondent obtained possession of the land from the appellant on 16th June, 1955, was to be decided by the Collector or by the Civil Court". The contention raised on behalf of Nahar Singh was that the dispute before the Court was not a matter covered by Section 47, and that before the Collector could assume jurisdiction, the facts covered by clauses (a) and

(b) of sub-section (1) of Section 43 should have been either admitted or established in a Civil Court and that the Collector did not have jurisdiction under Section 43 to adjudicate upon matters relating to status or title over the land. The learned Single Judge after considering the beneficent object of the Act and its material provisions held that those provisions should be liberally construed. He also held that the Act is a complete Code in itself and provides for a complete machinery for decision of a dispute like the one which was before him. He further held that it was open to the Collector while dealing with an application under Section 43 of the Act to go into the disputed questions like whether the dispossession of the tenant was illegal and whether the compromise was entered into by the tenant voluntarily or under duress. He further held that the language used in Section 43 shows that the legislature by necessary intendment, if not expressly, has given to the Collector the power to enquire not only into the question whether the person concerned is liable to be ejected on the basis of certain facts admitted or already proved before the Civil Court but also into the existence of those

facts. In other words, he held that it was open to the Collector to decide the disputed question namely whether the compromise pleaded by the land owner was entered into voluntarily or under duress and as he found on enquiry that the compromise was arrived at under duress and, therefore, possession of the land owner was unlawful, the jurisdiction of the Civil Court was barred in respect of that matter, by virtue of Section 47 of the Act. He, therefore, allowed the appeal and dismissed the plaintiff's suit.

Aggrieved by the decision Nahar Singh filed a Letters Patent Appeal in the High Court. In view of its previous decisions in Harnam Singh and ors. vs. Dalip Singh and ors. 1963 P.L.R. 1133 and Hartej Bahadur Singh vs. The State of Punjab and ors. 1964 P.L.R. 751, wherein it has been held that Section 7 of the Act which lays down a ground on which the landlord can terminate tenancy does not constitute a bar to tenancy rights being given up by the tenant himself when he no longer wishes to remain in possession as a tenant, the High Court held that as possession was handed over by Mohan Lal in view of the compromise Nahar Singh's possession was, *prima facie*, neither unlawful nor opposed to the provisions of the Act. Relying upon the observations made by this Court in State of Punjab vs. Bhai Ardaman Singh and ors., A.I.R. 1969 SC 13 the High Court further held that it was open to the Civil Court to consider whether the condition precedent to the exercise of power by the Collector was satisfied or not. The High Court further held that as possession was taken by the landlord in pursuance of the compromise between him and the tenant through the instrumentality of the Panchayat it was certainly not unlawful and, therefore, the Collector had no jurisdiction to go into the matter and put the tenant in possession. The decision of the Collector was held as void and of no legal effect. As regards the question whether the compromise was a result of fraud or coercion it held that it was not a question which was required to be settled decided or dealt with under the Act and, therefore, Section 47 of the Act was no bar to the Civil Court going into that question. As the enquiry to be conducted by the Collector under Section 43 is of a summary nature the High Court held that the Collector does not have jurisdiction to decide civil disputes of complicated nature wherein disputed questions of facts relating to status and title to property are required to be determined. The High Court further held that even if it becomes necessary for the Collector incidentally to decide such a disputed matter that would be only for the purpose of giving immediate possession to the tenant but his decision would not become final as it is the Civil Court which can pronounce finally on such matters. The High Court, therefore, allowed the Letters Patent Appeal, set aside the order passed by the learned Single Judge and restored that of the lower appellate court.

During the pendency of this appeal Mohan Lal died and he is now represented by his legal heirs. When this appeal came up for hearing before a two Judge Bench of this Court, it doubted correctness of the decision in Bhai Ardaman's case (*supra*) and expressed the view that it requires reconsideration for the following reasons:

"We do not see any warrant for the proposition that in order to attract Section 43(1) (b) there should be a specific and express provision in the Tenancy Act itself to the effect that those who are in illegal occupation will not be entitled to use the land. The Collector has been invested with the power to eject unlawful occupants under Section 43(1) (b). The provision will become meaningless if even in cases where a tenant admittedly in possession hitherto is forcibly dispossessed, and that the Collector has

no jurisdiction to evict him by holding an appropriate enquiry on being satisfied that the tenant was forcibly dispossessed.

Certainly, no express provision providing that a person in unlawful occupation will not have a right to continue in occupation of the land. It is implicit in Section 43(1) (b) that an unauthorised or unlawful occupant has no right under the said Tenancy Act to remain in possession. In view of the numerous judgments of this Court in regard to tenancy legislations, the said decision requires constitute a complete code and are specially enacted to protect the tenants without obliging them to resort to time-and-money consuming civil suit, the decision in Ardaman Singh's case requires reconsideration."

Section 43 and 47 of the Act, in the context of which we have to decide the questions which arise for our consideration, read as under:

"Section 43. (1) Any person who is in wrongful or unauthorised possession of any land:-

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act, or

(b) to the use and occupation of which he is not entitled under the provisions of this Act, may, after summary enquiry, be ejected by the Collector, who may also impose on such person a penalty not exceeding five hundred rupees. (2) the Collector may direct that whole or any part of the penalty imposed under sub-section (1) shall be paid to the person who has sustained any loss or damage by the wrongful or unauthorised possession of the land.

Section 47. (1) No Civil Court shall have jurisdiction to settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the prescribed authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority made under or in pursuance of this Act shall be called in question in any Court."

In Bhai Ardaman Singh's case the tenants had applied to the Collector under Section 43 of the Pepsu Agricultural Lands and Tenancy Act of 1953 (Pepsu Act 8 of 1953), which had come into force on December 13, 1953, for restoration of possession of lands which were in their possession earlier, alleging that they were forcibly dispossessed by the land owner and, therefore, he was in wrongful and unauthorised possession of those lands. The Collector granted the applications and ordered restoration of possession. The orders were confirmed in appeal by the Commissioner. A learned Single Judge of the High Court dismissed the petitions filed against those orders. In appeals under the Letters Patent the High Court reversed the orders passed by the learned Single Judge an two

grounds.

It held that the Act of 8 of 1953 did not have retrospective operation and, therefore, no order for restoration of possession could have been passed as dispossession had taken place in 1943 i.e. long before the Act was brought into force. It also held that the proceedings of the Collector were vitiated because the landowner was not given an opportunity to lead evidence. This Court upheld the view of the High Court that Section 43 had no retrospective operation. It also held that in order to attract the jurisdiction of the Collector to hold a summary enquiry and to pass an order of eviction and restoration of possession under clause (b) of Section 43 (1), it was necessary to show that the person in wrongful or unauthorised possession was also not entitled to the use and occupation of the land under the provisions of the Act. As no provision was pointed out which had rendered the landowner disentitled by virtue of the provision of that Act to the use and occupation of the land, it was held that the condition precedent to the investment of jurisdiction in the Collector being absent, the orders passed by the revenue authorities were without jurisdiction. Obviously that view was taken by this Court because in that case the tenants had made applications under Section 43 of Act 8 of 1953 and, therefore, unless the conditions mentioned in that Section were satisfied no order of eviction could have been passed thereunder. The said Act did not have retrospective operation and the remedy provided by Section 43 was intended for acts of unlawful or unauthorised dispossession which were to take place after that Act came into force and for those cases where a person was found in unlawful or unauthorised possession since before that Act and the Act had rendered that person disentitled to the use and occupation of that land. It was in this context that this Court observed that no provision of that Act was pointed out to show that the landlord besides being in unlawful or unauthorised possession, was not entitled to the use and occupation of those lands under the Act. In view of the peculiar facts of that case, we are of the opinion that, it was correctly decided by this Court. Another factor which possibly influenced this Court in taking that view was that prior to the passing of that Act the tenants did not enjoy the protection as was granted by Section 7 of that Act and it was open to the landlord to terminate the tenancy at any time without giving any reason.

In this case, it is not in dispute that if Nahar Singh had in fact dispossessed Mohan Lal forcibly then Nahar Singh would be a person in unlawful and unauthorised possession and also not entitled to the use and occupation of that land. It was not contended before us, and in our opinion rightly, that even after the Act has come into force, it would still be necessary for the person applying under Section 43 for an order of eviction to show that the other person is not only in unlawful or unauthorised possession of the land but is also not entitled to its use and occupation under the Act.

We will now deal with the contentions raised before us. The contention raised on behalf of the appellant was that under Section 43, the Collector had the jurisdiction to decide whether Nahar Singh was in wrongful or unauthorised possession of the land and whether the other condition contained in clause (b) was satisfied or not. In order to find that out the Collector had also the jurisdiction to consider the correctness or otherwise of the grounds on the basis of which it was contended by the respondent that it was lawful. It was conceded on behalf of the respondent that a mere denial by the opponent that his possession is not unlawful or unauthorised and that the other condition contained in clause (a) or (b), as the case may be, is not satisfied, will not be sufficient to bust the jurisdiction of the Collector. It was also not disputed that before the Collector can exercise

his powers under Section 43 it is not necessary that the facts constituting the condition precedent to the exercise of power are either admitted or first established in a civil court. What was contended on behalf of the respondent was that the respondent had not merely disputed that he was in unlawful or unauthorised possession but had further pleaded that he had taken possession under a voluntary compromise evidencing surrender of tenancy and also produced a compromise deed in support of that plea. Therefore, the question which arose for consideration by the Collector was not merely whether the respondent was in unlawful or unauthorised possession of the land and not entitled to its use and occupation; but, a further question whether that compromise was voluntary or was entered into as a result of the duress or coercion as contended by the appellant arose and that was not a question which was required to be decided under the Act. Therefore, it was open to the civil court to go into that question and the civil court's decision should be regarded as final on that point.

The rival contentions require us to examine the true scope and ambit of Section 43. Was it intended to make available a remedy in simple cases which can be decided by holding a summary enquiry? Did the legislature intend to exclude from its purview those cases where the dispute becomes complicated because of the facts of the case and pleas raised by the contesting party? As can be seen from its Preamble, the Act has been enacted with a view to amend and consolidate the law relating to tenancies and agricultural lands and to provide for certain measures of land reforms. The object of the Act, as can be gathered from its provisions, is to restrict the rights of the landlord, to protect the tenancies, confer new rights on the tenants and to implement land reforms. It restricts the right of the landowner to retain land beyond the permissible limit for his personal cultivation and requires him to make a choice, once and for all, of the lands which he wants to retain. Sections 7 and 7A put restrictions on his right to terminate tenancy. It also confers on the tenant an important and a valuable right to acquire proprietary rights over the lands held by him as a tenant. Now no tenancy can be terminated except in accordance with the provisions of the Act or except on the grounds specified in Sections 7 and 7A. The Act also provides machinery for deciding the questions that are likely to arise in the implementation of the Act and further provides for appeals and other miscellaneous matters. The Act is thus a beneficent legislation and a complete code in itself.

Section 43 is aimed at a person who may be found by the Collector in unlawful or unauthorised possession of land because of one of the two contingencies mentioned in that Section. Even if the transfer in his favour is by an act of the parties or by operation of law, if it is declared to be invalid under the provisions of the Act, the Collector can treat it as unlawful and eject him from the land. So also, a person in possession of land, if found not entitled to its use and occupation under the provisions of the Act, can also be ejected therefrom. This provision clearly indicates the intention of the legislature that it should prevail over not only the acts of the parties but operation of laws also, in the matter of transfer and possession of agricultural lands. The purpose of this provision is to see that the object of protection of tenancy rights and land reforms is fulfilled. Therefore, it confers a new right and provides a quick and effective remedy for enforcement of that right. It also confers power on the Collector to impose a penalty. The power can be exercised by the Collector suo motu. The words "under the Act" used in clauses (a) and (b) indicate the scope of enquiry and fix the ambit of the jurisdiction of the Collector to deal with cases of unlawful and unauthorised possession of the land. They also lead to the conclusion that if the nature of possession is to be determined in terms of clauses (a) and (b) then it would be a matter to be decided under the Act. The decision of the

Collector made under or in pursuance of the Act has been made final in the sense that it cannot be called in question in any court. Section 47 specifically bars the jurisdiction of civil court in matters which are required to be settled decided or dealt with by the Collector. It, therefore, becomes clear that the legislature wanted the Collector to be an exclusive forum for the matters falling within the scope of Section 43.

On consideration of the object of the Act the purpose of Section 43 and the bar contained in Section 47 it becomes clear that the legislature intended to bust the jurisdiction of the civil court and confer exclusive jurisdiction on the Collector in matters which fall within the scope and ambit of Section 43. As rightly contended by the learned counsel for the appellant this view would be in consonance with the principles of interpretation pointed out by this Court in *Dhulabhai and others vs. The State of Madhya Pradesh* and another 1968 (3) SCR 662.

It was next contended that we should not construe Section 43 liberally and include within its scope other questions which may also arise for determination, before it can be decided by the Collector as to whether possession of the person against whom an application is made is unlawful or unauthorised. It was submitted that the enquiry which is contemplated by Section 43 is only a summary enquiry and, therefore, complicated questions of status or title and right to possess, where an elaborate enquiry would be necessary, should not be regarded as falling within the jurisdiction of the Collector. We do not find any force in this contention. Though the enquiry is summary it is judicial in nature. As pointed out by this Court in the case of *Ardaman Singh (supra)*, though "the trial is summary, the Collector is bound to exercise the jurisdiction vested in him not on a subjective satisfaction.... but on a judicial determination of facts which invest him with jurisdiction to pass an order in ejectment". The word "summary" implies a short and quick procedure instead of or, as in alternative to, the more elaborate procedure ordinarily adopted or prescribed for deciding a case. The proceedings before a court, tribunal or an authority are called summary proceedings if it is not required to follow the regular formal procedure but is authorised to follow a short and quick procedure for expeditious disposal. Therefore, merely because the Collector acting under Section 43 has to make a summary enquiry it cannot be said that he can decide only simple questions as regards the nature of possession and not those questions which are complicated but have a bearing on the nature of possession. The contention raised if accepted would result in unduly restricting the scope of enquiry and thereby frustrating the very purpose of enacting Section 43.

We, therefore, hold that when an application is made to the Collector under Section 43 he has to decide whether possession of the person against whom an application is made is wrongful or unauthorised because of two contingencies mentioned in that Section. It is his jurisdiction to enquire and decide whether transfer of possession from the applicant to the opponent is invalid under the provisions of the Act or not. Similarly, it would be within his jurisdiction to decide whether the person against whom an application is made is not entitled under the provisions of the Act to the use and occupation of the land of which he is alleged to be in wrongful or unauthorised possession. If the person against whom an application is made claims that he is not disentitled under the provisions of the Act to the use and occupation of the land then the Collector will have jurisdiction to examine the validity of the grounds on the basis of which the claim is made. If the application is resisted on the ground that there was a valid surrender then the Collector will have the

jurisdiction to decide whether there was a surrender or not and if a further question arises whether that surrender was voluntary or not that also would fall within the scope of his jurisdiction. Such a question cannot be said to be a collateral question not falling exclusively within the jurisdiction of the Collector. Though it is not specifically provided in the Act that whether the surrender was voluntary or not shall be decided by the Collector on true construction of Section 43, we hold that even that would be a matter required to be settled or decided under the Act. It appears that the legislature has advisedly not specified the questions to be decided by the Collector because on various grounds the party can claim that his possession is not unlawful or unauthorised.

So far as the facts of this case are concerned the case of the respondent was that he had obtained possession of the land under a voluntary surrender by the appellant. It was also contended on his behalf that voluntary surrender of tenancy rights is not prohibited by the Act as already held by the Punjab and Haryana High Court in Harnam Singh and others vs. Dalip Singh and another 1963 P.L.R. 1133 and Hartej Bahadur Singh vs. The State of Punjab and others 1964 P.L.R. 751. But in this case the surrender was disputed by the appellant. Therefore, the question which really arose before the Collector was whether there was a voluntary surrender of tenancy rights. For that reason the two decisions relied upon by the learned counsel for the respondent are of no help to him.

Once it is held that the question whether the surrender was voluntary or not fell within the jurisdiction of the Collector, it will have to be further held that in view of the bar contained in Section 47(2) Collector's decision on that point became final and could not have been called in question in suit. In view of the bar contained in Section 47(1) the civil court had no jurisdiction to consider the same. It is, therefore, not necessary to consider the alternate contention that the decision of the Collector operated as *res judicata* in view of Explanation VIII to Section 11 and to refer to the decision of this Court in *Sulochana Amma vs. Narayanan Nair JT 1993 (5) S.C. 448* wherein it is held that an order or an issue which had arisen directly or substantially between the parties or their privies and decided finally by a competent court or tribunal, though of limited or special jurisdiction, will operate as *res judicata* in a subsequent suit or proceeding, notwithstanding the fact that such court of limited or special jurisdiction was not a competent court to try the subsequent suit.

We are, therefore, of the opinion that the Division Bench of the Punjab and Haryana High court was not right in allowing the Letters Patent Appeal and holding that the civil court had the jurisdiction to consider whether possession of the land by the respondent was lawful or not in view of the compromise and voluntary surrender and that the order passed by the Collector in that behalf was not binding on the Civil Court. We allow this appeal, set aside the order passed by the Punjab and Haryana High Court in L.P.A. No.366 of 1969 and restore the order passed by the learned Single Judge in R.S.A. No.1496 of 1965. The respondent shall pay the cost of the appellant throughout.