

PETITIONER:
BHAJAN LAL

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT:
28/09/1970

BENCH:
[J. C. SHAH AND A. N. GROVER, JJ.]

ACT:
Punjab Security of Land Tenures Act of 1953 ss. 14A 18-
Applications for ejectment by landlord, and for purchase of
land by tenant-If tenant's application can be ordered.

HEADNOTE:
The appellant instituted a proceeding in ejectment under s. 14A of the Punjab Security of Land Tenures Act, 1953 but before orders were passed on the application, the tenant initiated a proceeding under s. 18 exercising his right to purchase the land. The two proceedings ended in orders dismissing the ejection application and declaring the tenant entitled to purchase the land. On the question whether the tenant's application could be granted.

HELD : Under s. 18 of the Act if a tenant had remained in continuous occupation of the land for a minimum period of six years he is entitled to purchase the land on payment of the compensation determined. Under s. 14A, the landowner may obtain possession of the land on the ground of non-payment of rent by a proceeding filed before the Assistant Collector. If the tenant, after notice, fails to pay the rent or give proof of payment, the Assistant Collector shall after a summary inquiry, eject the tenant and put the landowner in possession. But so long as the Assistant Collector has not passed the ejectment order, the tenant's right is not extinguished; he continues to be a tenant and being a tenant is entitled to exercise his right of purchase. [501 C-G]

In the present case, before the Assistant Collector passed an order in ejectment, the tenant exercised his right to purchase the land, and that right would not be defeated merely because, on a subsequent date, an order of ejectment was passed against him. He is entitled to purchase the land on payment of the amount of compensation together with the amount of rent due by him. [501 G-H; 502 E]

Har Sarup v. Financial Commissioner, Revenue, Punjab, (1965) 44 Lah. L.T. 157, approved.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1338 of 1967.
Appeal by special leave from the order dated March 7, 1967 of the Punjab and Haryana High Court in Civil Writ No. 326 of 1967.

B. R. L. Iyengar, R. L. Kohli and J. C. Talwar, for the appellant.

S. C. Manchanda, M. L. Aggarwal and N. K. Aggarwal, for respondent No. 3.

The Judgment of the Court was delivered by
Shah, J. Bhajan Lal was the owner of land measuring 21
498

bighas 2 biswas and bearing Khasra Nos. 11/12, 18, 20 and 43 in village Sukhchen. Shadi was the tenant of the land for agricultural use. Alleging that Shadi had failed to pay the rent due by him for the period Kharif Season 1957 to Rabi Season 1960, Bhajan Lal applied under S. 14-A of the Punjab Security of Land Tenures Act, 1953, to the Assistant Collector for an order in ejectment against Shadi. The application was dismissed by the Assistant Collector and that order was confirmed in appeal by the Collector. The Financial Commissioner set aside the order and remanded the case for a fresh decision by order dated January 8, 1962.

There was yet another proceeding regarding the same lands. On February 20, 1961 Shadi applied to the Assistant Collector to purchase the lands under S. 18 of the Punjab Security of Land Tenures Act, 1953. The Assistant Collector rejected the application. The Collector confirmed that order. By order dated October 5, 1962, the Financial Commissioner remanded the case for determining whether Shadi was in occupation of the lands for six years before the date of the petition.

The Assistant Collector held that Shadi could claim to purchase the lands under s. 18 of the Punjab Security of Land Tenures Act, 1953 on paying Rs. 8,409/- in ten equal instalments to Bhajan Lal. The Assistant Collector held in the proceeding for ejectment started by Bhajan Lal that the tenant Shadi had without sufficient cause committed default in paying rent and ordered that he be evicted. The two orders were passed on April 30, 1964. Whereas in the proceeding started by Bhajan Lal he held that Shadi was liable to be evicted from the lands because he had without sufficient cause committed default in paying rent, in the proceeding filed by Shadi the Assistant Collector declared that Shadi was entitled to purchase the lands from Bhajan Lal. The two orders were challenged respectively by Shadi and Bhajan Lal in revision applications filed before the Additional Commissioner. The Additional Commissioner set aside the order in favour of Shadi and dismissed the application filed by Shadi. In a revision application, the Financial Commissioner set aside the order of ejectment against Shadi and restored the order of the Collector declaring him entitled to purchase the lands.

Against the order whereby Shadi was declared entitled to purchase the lands, Bhajan Lal applied to the High Court of Punjab for an order setting aside the order of the Financial Commissioner. The High Court dismissed the petition in limine. Bhajan Lal has appealed to this Court with special Leave

Section 9(1) of the Punjab Security of Land Tenures Act, 1953 provides

499

.lm15

"Notwithstanding anything contained in any other law for the time being in force, no landowner shall be competent to eject a tenant except when such tenant-

(i) is a tenant on the area reserved under this Act or is a tenant of a small landowner; or

(ii) fails to pay rent regularly without sufficient cause; or

(iii) is in arrears of rent at the commencement of this Act; or
(iv) has failed, or fails, without sufficient cause, to cultivate the land comprised in his tenancy in, the manner or to the extent customary in the locality in which the land is situate; or
(v) has used, or uses the land comprised in his. tenancy in a manner which has rendered, or renders it unfit for the purpose for which he holds it; or
(vi) has sublet the tenancy or a part thereof; provided that where only a part of the tenancy has been sublet, the tenant shall be liable to be. ejected only from such part; or
(vii) refuses to execute a Qabuliyat or a Patta, in the form prescribed, in respect of his tenancy on, being called upon to do so by an Assistant Collector on an application to him for this purpose by the landowner.

Explanation.-For the purpose of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent."

Section 14-A of the Act insofar as it is relevant provides "Notwithstanding anything to the contrary contained in any other law for the time being in force, and subject to the provisions of section 9-A, -

(i) a land-owner desiring to eject a tenant under this Act shall apply in writing to the Assistant Collector, First Grade, having jurisdiction, who shall thereafter proceed as provided for in sub-

500

section (2) of, Section 10 of this Act, and the provisions of sub-section (3) of the said section shall also apply in relation to such application,

(ii) a land-owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade, having jurisdiction, who shall thereupon send a notice, in the form prescribed, to the tenant either to deposit the rent or value thereof, if payable in kind, or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent, or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice.

Section 18 of the Act, insofar as it is relevant provides

"(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) * shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the landowner, 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

By virtue of S. 14-A the land-owner may obtain possession of the land on the ground of non-payment of rent by a proceeding

501

filed before the Assistant Collector, during the subsistence of the tenancy. If the tenant has remained in continuous occupation of the land for a minimum period of six years he is entitled to purchase the land under S. 18 of the Act.

It was urged that since S. 18 commence with a non obstante clause, viz. "Notwithstanding anything to the contrary contained in any law, usage or contract", if a proceeding in ejectment is lodged against the tenant which ultimately is allowed, the tenant cannot make a claim during the pendency of the proceeding to purchase the land. To hold otherwise, it was urged, would enable a tenant in default to defeat the claim in a suit in ejectment by commencing a proceeding for purchasing the land. We do not think that the expression "Notwithstanding anything to the contrary contained in any law, usage or contract" whittles down the right of the tenant at the date when he makes a claim to purchase the land merely because the tenancy is liable to be terminated in a proceeding then pending for an order in ejectment under s. 14-A, at the instance of the land-owner. Under the Act, the tenancy does not stand terminated merely because a proceeding in ejectment is instituted. The tenancy is determined 'only in the conditions, prescribed by s. 9 and in the manner provided by s. 14-A. If a tenant is in default in payment of rent the land-owner desiring to recover rent due by the tenant may apply in writing to the Assistant Collector who shall thereupon send a notice to the tenant to deposit the rent due or give proof of having paid it. If the tenant fails to pay the rent or give proof of payment, the Assistant Collector shall, after a summary inquiry, if he is of the view that the tenant has not paid or deposited the rent, eject the tenant summarily and put the land-owner in possession of the land concerned. But so long as the Assistant Collector has not passed the order, ejecting the tenant the right of the tenant is not extinguished : he continues to remain a tenant and being a tenant he is entitled to exercise his right to purchase the land.

Shadi was a tenant prior to the date of the institution by Bhajan Lal of the proceeding in ejectment and he continued to remain a tenant till an order was passed by the Assistant Collector on April 30, 1964. But before that date Shadi had exercised his right to purchase the land and that right to purchase the land would not be defeated merely because on a date subsequent thereto an order in ejectment was passed against him. Shadi, had therefore, at the date when he initiated proceeding under s. 18 right to purchase the land. By the subsequent order in ejectment made against him, the statutory right of Shadi was not prejudicially affected.

-L436 Sup.CI/71

50 2

We agree with the observations of Mahajan, J., in Har Sarup and Anr. v. The Financial Commissioner, Revenue Punjab(1) at p. 15 9 :

"But, at the time when section 18 application was filed, no order for eviction had been passed. Therefore, at that time, the relationship of landlord and tenant did exist. Mr. Daulta has not been able to point to me any provision of law which would make the eviction decree operative from the date of the eviction application. The mere fact that the tenants had incurred the liability for eviction by reason of non-payment of rent would not put an end to the admitted relation-

ship of landlord and tenant between the parties. This liability only puts an end to the aforesaid relationship when the eviction decree is passed. The eviction decree was passed long after the section 18 application. Therefore, the present petition is liable to, succeed only to have extent of section 18 application, that is, the tenants would be entitled to purchase the land. * * * *"

But a slight modification needs to be made in the order. A proceeding for recovery of rent was commenced against Shadi. It is not clear whether the amount of compensation determined by the Assistant Collector as payable by Shadi for purchasing the land includes the rent in arrears. We declare that Shadi will be entitled to purchase the land on payment of the amount of compensation together with the amount of rent due by him. The Assistant Collector will pass appropriate order in that behalf and direct that payment be made in appropriate instalments under s. 18 (4) (a).

Subject to that modification, the appeal fails and is dismissed with costs.

V.P.S.

Appeal dismissed.

(1) (1965) 44 Lah. Law Times 157

50 3