

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA No.1975 of 1990
Date of decision: 14.12.2017

State of Punjab and another

..... Appellants

Versus

Gurbax Rai

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Pawan Sharda, Sr. DAG, Punjab
for the appellants.

Mr. M.L. Saggar, Sr. Advocate with
Mr. Rohit Joshi, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants-State of Punjab and Union of India are in appeal against the judgment passed by learned First Appellate Court dated 15.05.1990. In the considered opinion of this Court, following substantial questions of law arise for determination:-

1. Whether jurisdiction of the Civil Court is barred under Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 challenging the orders passed by the authorities appointed under the Act particularly when the Civil Court does not find any error of jurisdiction or violation of any statutory provisions of the Act.
2. Whether a tenant who came in occupation of the property under an allottee can directly claim right of allotment as an unauthorized occupant under the Act of 1954.

FACTS

Plaintiff-respondent had filed a suit for declaration claiming that the orders dated 03.10.1977, 23.05.1979, 10.06.1980, 21.04.1981 and 08.02.1983 passed by the Settlement Commissioner, Managing Officer, Chief Commissioner and Financial Commissioner are illegal, null and void and without jurisdiction. The plaintiff also sought a consequential relief with a direction to defendants No.1 and 2 to decide the application of the plaintiff dated 16.05.1977 as per the rules.

It is not in dispute that originally the property in dispute was allotted to late Sh. Raja Singh on temporary basis. Raja Singh expired and Narinder Singh (his son), defendant came in occupation of the property. The plaintiff-Gurbax Rai and Narinder Singh entered into a partnership and thus Gurbax Rai came in occupation. The Civil Court in the previous litigation inter parties i.e. Gurbax Rai and Narinder Singh has already held that the partnership deed was farce and Gurbax Rai is in fact tenant under Narinder Singh.

At one point of time on the application submitted by the plaintiff-Gurbax Rai, the Managing Officer regularized the possession of the plaintiff-respondent. However, thereafter the authorities after considering the respective claims as set up by Narinder Singh and Gurbax Rai, have held that Narinder Singh is entitled to allotment of the property in dispute and Gurbax Rai cannot claim any right to allotment under the provisions of Act of 1954 and the rules framed thereunder. The plaintiff challenged the aforesaid order in appeal, revision and writ petition but failed.

Thereafter, the plaintiff-respondent filed the present suit with a declaration as noticed above. The suit was contested. Learned trial Court

after appreciating the evidence available on the file dismissed the suit by recording a finding that the jurisdiction of the Civil Court is barred so as to challenge to the orders passed by the authorities under the Act as per the provisions of Section 36 of the Act of 1954. The trial Court further held that the plaintiff-respondent cannot claim himself to be an unauthorized occupant within the meaning of provisions of the Act of 1954 and hence, as no independent right. However, learned First Appellate Court has reversed the finding of the learned trial Court and has decreed the suit filed by the plaintiff while setting aside the orders passed by the authorities. Now, the stage is set for considering the questions of law.

Question No.1

- (i) *Whether jurisdiction of the Civil Court is bared under Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 challenging the orders passed by the authorities appointed under the Act particularly when the Civil Court does not find any error of jurisdiction or violation of any statutory provisions of the Act.*

The Act of 1954 provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any Officer or Authority appointed under this Act is empowered by or under this Act to determine. Further, Section 27 of the Act of 1954 provides that the orders passed by the authorities in exercise of powers under the Act shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit. Section 27 and Section 36 of the Act of 1954 are extracted as under:-

“27. Finality of Orders:- *Save as otherwise expressly provided in this Act, every order made by an officer or authority under this Act, including a managing corporation, shall be final and shall not be called in question in any court by way of an*

appeal or revision or in any original suit, application of execution proceeding.

36. Bar of jurisdiction:- *Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”*

It is not disputed that the authorities under the Act were empowered to adjudicate upon whether who out of the plaintiff or defendant No.3 is entitled to allotment of the property in dispute under the Act. It is further undisputed that the plaintiff-respondent after having exhausted remedies provided under the Act of 1954 filed a writ petition in this Court which was dismissed. The plaintiff-respondent further filed Special Leave Petition before the Hon'ble Supreme Court which was withdrawn. This being the factual position, the jurisdiction of the Civil Court to challenge the orders passed by the authorities was barred.

No doubt, the Civil Court has the jurisdiction to examine the legality of the orders passed by the competent authorities under the Act if the Court arrives at a conclusion that the orders are either not in consonance with the provisions of the Act or the authorities have exercised the powers which are beyond the Act. In the present case, learned First Appellate Court has not recorded any such finding. In view of what has been discussed above, this Court is of the opinion that jurisdiction of the Civil Court was barred in the present case.

Question No.2

(ii) Whether a tenant who came in occupation of the property under an

allottee can directly claim right of allotment as an unauthorized occupant under the Act of 1954.

It is not in dispute that the plaintiff was a tenant under Narinder Singh after the finding in the earlier suit filed between Narinder Singh and Gurbax Rai-plaintiff which has become final. The issue which needs determination is whether the plaintiff-respondent can claim that he is in unauthorized occupation of the property as per the provisions of the Act of 1954 and the rules framed thereunder and therefore, entitled to allotment as per the various policy decisions taken by the Government. Once the plaintiff-respondent has been found in possession as a tenant under defendant No.3, the claim of the plaintiff that he is in occupation of the property in dispute in his own right within the meaning of word occupation is without any substance. Learned counsel for the appellant has vehemently argued that under Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1959 if an allottee parts with the possession, the allotment is liable to be cancelled. He has thus contended that once the Civil Court had found that defendant No.3 had parted with the possession in favour of the plaintiff, therefore, allotment in favour of the defendant No.3 was liable to be cancelled. Hence, the plaintiff-respondent had become unauthorized occupant in his own right.

This Court has considered the submission. However, do not find any substance in it. A tenant who has come into occupation of a property is bound to deliver back the possession to his landlord. Before surrender of possession, a tenant cannot claim adverse title to his landlord. In the present case, it is undisputed that the plaintiff-respondent has never surrendered the possession to defendant No.3. Such being the position, the plaintiff-respondent is estopped from denying the title of his landlord.

Still further, it is for the competent authorities under the Act to take action under Rule 102 of the 1954 Rules. The Civil Court cannot after assuming that the allotment has been cancelled in favour of defendant No.3 direct the authorities to consider the claim of the plaintiff.

In view of what has been discussed above, question No.2 is also answered in favour of the appellants.

Hence, the judgment and decree passed by the learned First Appellate Court is set aside and the judgment and decree passed by the learned trial Court is restored.

The pending miscellaneous application, if any shall stands disposed of accordingly.

Regular Second Appeal is allowed.

14.12.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No