

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-712-2017 (O&M)

Reserved on : 28.07.2022

Date of Pronouncement : 05.08.2022

Smt. Bhag Devi and others

....Petitioners

VS

Financial Commissioner Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.D. Bawa, Advocate
for the petitioners

Mr. Rajneesh Chadwal, AAG Haryana

Mr. Abhilaksh Grover, Advocate and
Mr. Sukhsharan Sra, Advocate
for respondent No. 5

SUDHIR MITTAL, J.

An application dated 11.01.2007 was filed by respondent No. 5 for eviction of petitioners-tenants under Section 9(1)(i) of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the Act') on the ground that he was a small land owner. An amended written statement dated 30.09.2011 was filed on behalf of the petitioners stating that he was not a small land owner. The eviction application was allowed vide order dated 30.03.2012 passed by the Assistant Collector 1st Grade and the petitioners were ordered to be ejected. It was held that respondent No. 5 was proved to be a small land owner on the basis of statement of the concerned Patwari and the petitioners had failed to produce any evidence to the contrary. It was also found that the petitioners were holding more than 5 standard acres of land. Appeal filed by the petitioners was dismissed vide order dated 04.12.2012 passed by the Collector and revision was dismissed vide order dated

Commissioner also failed. It was dismissed vide order dated 11.08.2016.

Meanwhile, the petitioners purchased 12 kanals of land out of the land in dispute vide two registered sale deeds both dated 03.07.2013. On the same day the petitioners executed a relinquishment deed in respect of the remaining land in dispute i.e. 36 kanals 12 marlas. This relinquishment deed is under challenge in a civil suit instituted on 25.07.2013.

Learned counsel for the petitioners has argued that application under Section 9(1)(i) of the Act was not maintainable in law as respondent No. 5 had not been declared to be a small land owner. In support of this argument reliance has been placed upon ***Jugti vs. Financial Commissioner, Haryana, 1986 PLJ 852*** and judgment dated 17.11.2020 passed in CWP No. 6392 of 1999 titled as ***Brij Lal through LRs and others vs. State of Haryana and others*** and two connected cases. It has also been contended that the order of ejectment is illegal also because no order of re-settlement under Section 10-A of the Act was passed nor any compensation was granted under Section 70 of the Punjab Tenancy Act, 1887 (hereinafter referred to as 'the Tenancy Act').

The aforementioned submissions have been opposed by learned counsel for respondent No. 5. He support the impugned orders.

Section 9(1)(i) of the Act is reproduced below:-

9. Liability of tenant to be ejected- *[(1) Notwithstanding anything contained in any other law for the time being in force, (no land-owner other than a land owner who is a member of the Armed Forces of the Union or a Non-Resident Indian) 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]

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The aforementioned provision provides for ejectment of a tenant if he is the tenant of a small land owner. Further, Section 5 of the Act stipulates that any land owner owning land in excess of the permissible area may reserve any parcel or parcels of land not exceeding the permissible area by intimating the selection to the Patwari of the estate in a prescribed form and manner. The reservation is required to be intimated within six months from the date of coming into force of the Act. A supplemental provision of Section 5-A was inserted vide Punjab Act No. 46 of 1957 providing for furnishing of a declaration supported by an affidavit in respect of land owned or held by every land owner or tenant owning or holding land in excess of a permissible area. The declaration was to be furnished within a period of six months from commencement of the Punjab Act No. 46 of 1957. In case of failure to do so, section 5-C, added by the same amendment, provided for penalty in the form of restriction of the permissible area to 10 standard acres. Thus, a big land owner (owner owning land in excess of the permissible area) and every tenant holding land in excess of the permissible area was duty bound to furnish a declaration disclosing the extent of the land owned by him. No such duty has been cast upon a small land owner (person holding land less than the permissible area). Thus, the submission that a small land owner was required to get a declaration to this effect is illogical. The judgment in *Jugti (supra)* is not attracted in the facts and circumstances of this case. In the said case the petitioner was sought to be evicted under Section 9(1)(i) of the Act on the ground of the land owner being a small land owner. Eviction was ordered by the Assistant Collector and appeal against said order failed. The Commissioner, however, recommended the acceptance of the revision petition of the tenant but the recommendation was rejected by the Financial Commissioner. The High Court held that after coming into force of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as 'the 1972 Act') a small land owner may not continue to be small land owner as

permissible area had been reduced to seven hectares. Such an argument was never raised before any of the authorities below and can not be permitted to be raised for the first time in this writ petition. The argument raised before the authorities below was that respondent No. 5 had never got his status decided either under the Act or under the 1972 Act and this argument was rightly rejected because a small land owner is not required in law to approach the concerned authorities for such a declaration. Proceedings for declaration of surplus area are commenced by the authorities below under the various statutes *suo moto* where reservation of land has been made voluntarily or a declaration has been furnished in compliance with Section 5-A of the Act. Such proceedings may also be initiated where a big land owner fails to submit a declaration and this fact comes to the knowledge of the authorities based on the revenue record. Respondent No. 5 could only prove his case by examining the revenue official and the same has been done. Thereafter, it was for the petitioners to produce proof of initiation of surplus area proceedings. They could also have produced proof by way of revenue record to establish that respondent No. 5 was a big land owner but nothing of the kind was done. The case of ***Brij Lal (supra)*** is not applicable because the writ petition arose out of a surplus area case and petition filed by the tenants for purchase. Such is not the situation in the present writ petition. Moreover, the question decided in the said case is regarding the scope and extent of Section 18 of the 1972 Act and this question does not arise in the instant case.

The argument based on Section 10-A of the Act is also misconceived. Section 10-A stipulates that the State Government is competent to utilize surplus area for the re-settlement of tenants ejected under Section 9(1) (i) of the Act. Thus, the surplus land can be utilized for the purposes of re-settlement of tenants. Orders of ejectment have not been made subject to the condition of re-settlement. Such a condition has been imposed by Section 9-A of the Act but the same is also not

attracted as according to the proviso thereof the tenant of a small land owner can be permitted to retain possession only to the extent of 5 standard acres inclusive of land which is not the subject matter of the tenancy. A perusal of the order of the Assistant Collector 1st Grade shows that the petitioners owned/possessed land in excess of 5 standard acres. This finding has been returned on the basis of amended written statement filed before the Assistant Collector wherein it has been stated that the petitioners owned land less than 5.8 standard acres. The argument on the basis of Section 70 of the Tenancy Act also can not be accepted as such an argument has never been raised before any of the authorities below nor a claim for compensation was raised at the time of filing of the amended written statement.

Even if the relinquishment deed dated 03.07.2013 is held to be a forged document, the petitioners can not escape eviction. They would, however, be entitled to retain possession of 12 kanals land purchased by them.

With the above rider, the writ petition is dismissed being merit less.

05.08.2022

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**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No