



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

I. RSA-1391-1993 (O&M)
STATE OF HARYANA AND OTHERS APPELLANTS

Vs.
SMT. CHAWLI AND OTHERS RESPONDENTS

II. RSA-1392-1993 (O&M)
STATE OF HARYANA AND OTHERS APPELLANTS

Vs.
CHUNI LAL AND OTHERS RESPONDENTS

III. RSA-1393-1993 (O&M)
STATE OF HARYANA AND OTHERS APPELLANTS

Vs.
BHUP SINGH RESPONDENT

Reserved on : 08.05.2024
Pronounced on: 24.05.2024

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. Praveen Kumar Aggarwal, DAG, Haryana.

Mr. Varun Parkash, Advocate,
for respondent No.2 (in RSAs-1391 & 1392-1993).

None for the respondent (in RSA-1393-1993).

DEEPAK GUPTA, J.

In all the three Regular Second Appeals titled above, all filed by
the defendants-State of Haryana, arising out of three civil suits, the common
questions of law involved are as under: -

- (i) Whether tenant in long possession of the land prior to August 1947 under lease given by the Muslim landowners, loses the lease hold rights after migration of Muslim owners to Pakistan or whether it results in automatic cancelation of his lease.
- (ii) Whether such a property, earlier owned by Muslims, though in possession of the lessee, after migration of the Muslim landowners to Pakistan, automatically vests in the custodian.
- (iii) Whether the lessee in possession acquires the rights of occupancy tenants in such land and after coming into force of the Punjab Occupancy Tenants (Vesting of Property) Act, 1952, becomes owners thereof.

2. The facts, relevant to the disposal of the three appeals, are as under: -

(i) Civil Suit No.145 of 1987 was filed by plaintiffs Smt. Chawli etc. claiming to be perpetual lessee on the suit land ever-since 20.08.1889 under the Muslim owners. They claimed to have acquired rights of occupancy tenants in the said land and that after coming into force of the Act, they had become owner thereof. They sought a decree of declaration to that effect and also sought to restrain the defendants from interfering in their possession. The stand of the defendants-State was that after migration of the Muslim landowners to Pakistan, the land had vested in the custodian and the lease hold rights of the plaintiffs came to an end and that they had become liable to be evicted. The possession of the plaintiffs on the suit land was alleged to be illegal and unauthorized. After framing necessary issues, suit was decreed by

the trial Court on 14.06.1990 and the civil appeal No.52 of 1990 filed by the defendant-State was dismissed by the First Appellate Court on 29.01.1993. which led to filing of RSA-1391-1993.

(ii) RSA-1392-1993 has arisen out of the dismissal of the Civil Appeal No.53 of 1993 on 29.01.1993 against the judgment and decree dated 14.06.1990 of the Id. trial Court, whereby Civil Suit No.144 of 1987 of plaintiffs Chunni Lal etc. was decreed in the similar facts and circumstances, with the difference that in that case, plaintiffs were lessee in possession of the suit land under Muslim owners since 26.03.1915.

(iii) RSA-1393-1993 has arisen out of dismissal of the Civil Appeal No.50 of 1990 decided on 29.01.1993 against judgment and decree dated 14.06.1990 of the trial Court, whereby Civil Suit No.147 of 1987 of plaintiff Bhup Singh, was decreed by the trial Court. In that case, plaintiff was lessee in possession of the suit land under Muslim owners since 27.07.1889.

3. It is, thus, apparent that all the three appeals are against the concurrent findings of the two Courts below, in the similar fact situation. In all the cases, plaintiffs were found to be lessee in possession on their respective suit land since much prior to partition of the country in August 1947. In all the three cases, the Muslim owners of the land had migrated to Pakistan. Defendants claimed that on migration of the Muslim owners to Pakistan, the land in dispute became evacuee property and vested in the custodian, whereas plaintiffs claimed to have acquired occupancy tenancy rights and then to have become owner thereof by virtue of 1952 Act.

4. After hearing ld. counsel for both the sides, this Court does not find merit in any of the appeals.

5. Similar question has already been considered by this court in its detailed judgment dated 02.04.2024 passed in *RSA-326-1992* titled as *State of Haryana and another Vs. Jaswant Singh and others*. The relevant portion of the said judgment is as under: -

“13. Admittedly, the land was owned by Muslims prior to the partition of the country in 1947. The contention of the appellants- defendants is that on migration of the Muslim owners, the suit property came to be vested in the custodian by virtue of Section 4 of the 1947 Act, to be read with Section 8(4) of the 1950 Act and that all tenancy rights on the evacuee land stood terminated and the possession of the plaintiffs became unauthorised in view of Section 9 of the 1949 Act.

14. The question is as to whether the suit property had automatically vested in the custodian by virtue of Section 4 of the 1947 Act, as is contended by the defendants. Sections 4 and 6 of East Punjab Evacuee (Administration of Property) Act, 1947 (as they stood at the relevant time) read as under:-

"4. Vesting of evacuee property in the Custodian.-All evacuee property situated within the province shall vest in the Custodian for the purposes of this Act and shall continue to be so vested until the Provincial Government by notification otherwise directs.

6. Custodian to take possession of evacuee property.-

(1) The Custodian shall take possession of all evacuee property vesting in him under this Act.

(2) The custodian shall comply with the following provisions in taking possession of any immovable property under Sub-section (1), namely:

(a) The custodian shall publish in the locality a notice specifying the property of which he intends to take possession.

(b) Where the property is occupied by any person.

(i) The custodian shall give his notice in writing requiring such person to vacate the property;

(ii) And if that person claims to be entitled to continue in possession of the property, the Custodian shall hold a summary inquiry and determine the claim;

(iii) The Custodian may allow such person to continue in possession on such terms and conditions as he thinks proper if such person is held to be so entitled;

(iv) If such person refuses or fails to vacate the property the Custodian may evict such person and use all force necessary thereto, and may after giving reasonable warning and facility to any women not appearing in public to withdraw, remove or open any lock or bolt or break open any door or do any act necessary for taking possession.

(c) The Custodian shall proceed to take possession of the property in the presence of not less than two residents of the locality, at least one of whom if possible shall be a member of the community to which the evacuee owner belongs, and shall prepare a record, in duplicate, of the proceedings which shall be signed by him and each of the witnesses."

15. Though as per Section 4 of the 1947 Act, the evacuee property situated in province of East Punjab is to vest in the custodian for the purpose of the Act but custodian is required to take possession of the same by following procedure laid down in Section 6 of the 1947 Act.

16. In the present case, plaintiffs were already in possession of the suit property much prior to the 1947 Act. It is not case of defendants-appellants that they ever took possession of the property in dispute by following the procedure as laid down in Section 6 of the Act. As possession was never taken from the plaintiffs by following the procedure as laid down in Section 6 of the 1947 Act, therefore, said possession cannot be held to have become unauthorised.

17. Learned counsel for the appellants has also referred to Section 9 of The East Punjab Displaced Persons Land Re-settlement Act, 1949 so as to contend that possession of the plaintiff on the suit land, which was now evacuee property, had become unauthorised, as their lease was deemed to have terminated on 25.07.1949. Section 9 of 1949 Act reads as under:

"9. Termination of leases of land by evacuees in favour of non-evacuees.

(1) Notwithstanding anything contained in any law for the time being in force, all leases of land except such leases as the Custodian may by order exempt from the operation of this section, made by an evacuee in favour of a person other than an evacuee shall be deemed to have terminated on the 25th July. 1949, and the land shall be deemed to have vested under this Act in the Custodian with effect from the same date free from all rights of the lessee or persons claiming under such lessee.

(2) Where any lease is determined under this section, there shall be paid compensation the amount which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say -

(a) Where the amount of compensation can be fixed by agreement between the Custodian and the lessee, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached, the State Government shall appoint as arbitrator any Subordinate Judge having jurisdiction in the district where the land is situated.

(c) At the commencement of the proceedings before the arbitrator the Custodian and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(d) An appeal shall lie to the District Judge against an award of an arbitrator except in cases where the amount thereof does not exceed the amount prescribed in this behalf by the rule made by the [State] Government.

(e) Save as provided in this section and in any rules made thereunder nothing in any law for the time being in force shall apply to arbitration under this section.

(3) The compensation awarded shall be paid by the Custodian to the person entitled thereto according to the award:

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this section to pay the same to the person lawfully entitled thereto

18. Again, there is nothing on record to suggest that lease in favour of the plaintiffs, granted to them/their fore-fathers by their Muslim owners, who had become evacuee, was ever terminated by the custodian, in whom the property had

been vested by virtue of Section 4 of the 1947 Act, by following the procedure laid down in Section 9 (2) of the 1949 Act.

19. Further, Section 12 of The Administration of Evacuee Property Act 1950 (as it stood then) provides about power of the custodian to cancel any lease. It reads as under:

"12. Power to vary or cancel leases or allotments of evacuee property.-

(1) Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person, whether such allotment, lease or agreement was granted or entered into before or after the 14th day of August, 1947.

Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee

a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him.

b) has used or is using such property for a purpose other than that for which it was leased to him

c) has failed to pay rent in accordance with the terms of the lease."

20. Above provision make it quite clear that powers of the custodian to cancel any lease granted before 14th day of August, 1947, were taken away, unless the lease fell in any of the three categories mentioned in (a), (b) and (c) of the provision. In other words, all the leases given by the owners prior to the partition were saved.

21. Learned First Appellate Court has rightly referred to **Union of India Vs. Nathi, 1985(1) Land LR 545**, in which it was held by the Financial Commissioner that Section 12 of the 1950 Act did not authorise the custodian to terminate any lease with tenant under Muslim owners, which were of a point in time prior to 14.08.1947 notwithstanding Section 9 of the 1949 Act. Hon'ble Supreme Court in **Moola Vs. Financial Commissioner and others, 1980 PLJ 80**, has also held that the 1949 Act did not alter this position. It has been held by Hon'ble Supreme Court that where a tenant was in possession of the land prior to 14.08.1947, Section 9 of the Act of 1949 Act did not have the effect of automatic cancellation of his lease.

22. In the present case, it is not the case of the defendants- appellants that the present case fails under any of the categories mentioned at (a), (b) and (c) of Section 12 of the 1950 Act and as such, it is held that Section 12 of the Central Act of 1950 or Section 9 of the 1949 East Punjab Act did not affect the rights of the plaintiffs respondents as tenants on the suit land.

23. The next question arises as to whether with the passage of time, plaintiffs had acquired occupancy rights in the suit land by virtue of the provisions of the Punjab Tenancy Act, 1887. As has been noticed earlier that the plaintiffs are recorded to be in possession as tenants over the suit land at least since 1914-15 without paying any rent, except land revenue and cesses. In **Bishamber Vs. State of Haryana, 1989 P.L.J. 733**, it has been held that in case jamabandi shows possession on the disputed land for the last more than 30 years without payment of any rent to the land owner; and entry in the column of rent is "Bashra Malkan Bewajah Derina Kast"; and the tenants are only paying the land revenue and cesses, then a presumption arises that such a tenant fulfils the conditions of clause (a) of sub Section (1) of Section 5 of the Punjab Tenancy Act and, therefore, entitled to occupancy rights.

24. In the present case, plaintiffs being in possession of the suit land at least since 1914-15, without paying any rent to the owners and paying only the land revenue and cesses and the entry in the revenue record being "Bashra Malkan Bewajah Derina Kast", therefore, there can be no doubt in holding that plaintiffs had acquired the occupancy rights. The contention to the contrary as raised by counsel for the appellants- defendants is held to carry no weight.

25. Further, plaintiffs having acquired the occupancy rights in the suit land as has been found above, were vested with the ownership rights in view of the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. The contention of learned counsel for the appellants to the effect that possession of the plaintiffs being unauthorised; or the suit land being evacuee property, so, plaintiffs cannot be vested with the ownership rights, has no merit, as it has been found in the supra discussion that possession of the plaintiffs over the suit land was never unauthorised; and that they had acquired occupancy rights in the suit land. Besides, Section 9 of the Amending Act (Punjab Act No.31 of 1958), as introduced in 1958, made the provisions of the 1952 Act to be applicable to occupancy tenants of a landlord, who is an evacuee as defined in clause (d) of Section 2 of the 1950 Act. This view was also taken in **Mam Chand Vs. Union of India, 1984 PLJ 446**. As such, it is held that the plaintiffs had acquired the ownership rights in the suit land by virtue of the 1952 Act.”

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Pending application(s), if any, stand disposed of.

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No