

Bhajnu Vs. Raiya

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Court : Himachal Pradesh

Decided On : Oct-31-1952

Reported in : AIR1953HP59

Judge : Chowdhry, J.C.

Acts : [Constitution of India](#) - Article 227; ;[Punjab Tenancy Act, 1887](#) - Sections 5(1), 8 and 84

Appeal No. : Civil Misc. Petn. No. 12 of 1952

Appellant : Bhajnu

Respondent : Raiya

Advocate for Def. : G.L. Verma, Adv.

Advocate for Pet/Ap. : Dalip Singh, Adv.

Disposition : Application dismissed

Judgement :

Chowdhry, J.C.

(1) This is an application to this Court by Bhajnu for setting aside the Judgment and decree of the Financial Commissioner of Himachal Pradesh, dated 2-2-1952, in exercise of this Court's powers of superintendence under Article 227 of the

Constitution.

(2) The petitioner as landlord applied to the Revenue Officer under Section 43, Punjab Tenancy Act, for ejectment of the respondent Raiya from land of which he stood recorded as a te-nant-at-will. On the requisite notice of ejectment being served upon him, Raiya instituted a suit to contest his liability to ejectment on the ground that he was an occupancy tenant of the land. That suit was dismissed by the Assistant Collector 1st grade on 15-5-1951 on the ground that although Raiya had been in cultivatory possession of the land for 35 years or more, he had not acquired occupancy rights therein. Raiya was however awarded Rs. 1160/- as compensation under Section 70 of the Act.

(3) Raiya then filed an appeal to the Collector under Section 80 but the Collector dismissed, the appeal on 30-6-1951 affirming the findings of the trial Court on both the points. Thereafter Raiya went up in revision to the Financial Commissioner under Section 84 of the Act, and the Financial Commissioner passed the judgment which is now sought to be revised by Bhajnu. The learned Financial Commissioner allowed the revision, set aside the decisions of the Courts below and declared Raiya an occupancy tenant under Section 8 of the Punjab Tenancy Act in the land in dispute.

(4) A plethora of rulings was cited by the learned counsel for the petitioner in regard to the powers of this Court under Article 227 of the Constitution. It is not necessary to refer to all of them and it would be sufficient to cite the observations of Misra J. in--'Pambhi v. State', A. I. R. 1952 All. 526. This ruling followed amongst others a ruling of the Calcutta High Court cited by the learned counsel for the petitioner himself and reported as--'Dalmia Jain Airways v. Suku-mar Mukherjee', A. I. R, 1951 Cal. 193 (S. B.). It was laid down in the Allahabad ruling as follows:

'The superintendence referred to in Article 227 does not invest the High Court with an unlimited prerogative to interfere in cases where a wrong decision has been arrived at either in fact or in law and the powers contained therein must be restricted to cases of grave dereliction of duty and flagrant abuse of any fundamental principles of law. The right to obtain relief under it depends further on

the conditions that no other remedy is available to the applicant and the remedying of the wrong is essential in order to prevent very serious results.'

(5) It was argued by the learned counsel for the petitioner that the learned Financial Commissioner had expressed certain views which ran counter to the entire scheme of the Tenancy Act. The views expressed by the learned Financial Commissioner are the following : 'Whenever any land is let out to a tenant on a stipulated rent and it is not specifically stated at the time as to how long the tenancy would last or how it would be determined, there is a considerable room for the natural presumption to arise that at the time of granting the tenancy there was an implied agreement between the landlord and the tenant; that the tenancy would last so long as he paid the stipulated rent.'

(6) The learned counsel for the petitioner argued that the learned Financial Commissioner was in error in concluding, as he appears to have done, that it was possible for a tenant to acquire occupancy rights by mere long payment of rent. He contended that mere payment of rent does not exempt even an occupancy tenant or a fixed term tenant from ejectment, as shown by the provisions of Sections 39 and 40 of the Act. He further contended that under Section 9 of the Act no tenant shall acquire a right of occupancy by mere lapse of time. He therefore argued that the learned Financial Commissioner has laid down law which is totally unwarranted, and that the ruling of the Financial Commissioner is resulting in serious consequences inasmuch as it is being followed by subordinate Courts. It was strenuously argued by him therefore that this was an exceptional case in which this Court should set aside the decision of the Financial Commissioner in exercise of its powers of superintendence under Article 227 of the Constitution. It is however noteworthy that the decision of the learned Financial Commissioner was not based on the above observations. The decision really proceeded on the following view expressed by him after making the said observations: 'In this case the petitioner tenant settled, in this land, built houses, planted trees and made other improvements at considerable cost and labour. The Commissioner assessed the value of those improvements to be Rs. 1160/-. These facts and circumstances appear to show that there was an implied promise not to terminate the tenancy, so long as the tenant paid his rent.' It appears therefore that the learned Financial

Commissioner took into consideration certain facts and circumstances in order to arrive at the conclusion that the respondent Raiya had acquired occupancy rights under Section 8, Punjab Tenancy Act. These circumstances were that Raiya. settled in the land, built houses, planted trees and made other improvements at considerable cost and labour. Whether those facts and circumstances were, or were not, sufficient to warrant the conclusion is quite another matter. In the circumstance, the aforesaid observations of the learned Financial Commissioner which, according to the learned counsel for the petitioner, run counter to the entire scheme of the Tenancy Act are in the nature of mere obiter dicta. If any of the subordinate Courts are basing their decisions on those observations, and if those observations are contrary to law, the aggrieved party can have the matter set right by going up in appeal or revision as the case may be. The first ground on which the petitioner wants this Court to interfere with the decision of the Financial Commissioner has therefore no force.

(7) It was next argued by the learned counsel for the petitioner that the respondent Raiya claimed to have acquired occupancy rights on allegations which fell under Section 5(1)(c) of the Tenancy Act, and therefore the learned Financial Commissioner was not justified in making out a new case for him by holding that he had acquired the rights of an occupancy tenant under Section 8 of the Act. In this connection he argued that the learned Financial Commissioner had exceeded his jurisdiction under Section 84 of the Act which conferred upon him the power on only those grounds on which a High Court would exercise revisional Jurisdiction under the law for the time being in force. His argument in other words, was that the learned Financial Commissioner had no jurisdiction to set aside the decision of the Collector since the Collector had neither exercised a jurisdiction not vested in it by law, nor failed to exercise a jurisdiction so vested, nor acted in the exercise of its jurisdiction illegally or with material irregularity. The argument is however a little fallacious. The correct position is that the learned Financial Commissioner did certainly have the jurisdiction under Section 84, Punjab Tenancy Act, to hear the revision, but that he had committed an error in the exercise of that jurisdiction. That being so, according to the Allahabad and Calcutta rulings cited above, the powers of superintendence of this Court under Article 227 of the Constitution cannot be invoked merely for the purpose of correcting errors in decision on questions of

fact or law. The application is misconceived and it is hereby rejected with costs.

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