

PETITIONER:
GULZARA SINGH

Vs.

RESPONDENT:
THE COLLECTOR, LUDHIANA & OTHERS

DATE OF JUDGMENT 07/03/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 SCC Supl. (2) 253 JT 1995 (3) 26
1995 SCALE (2) 141

ACT:

HEADNOTE:

JUDGMENT:

K. RAMASWAMY, J.:

1. The lands bearing Khasra Nos. 75/ 10/2, 11, 12, 19/1, admeasuring 25 kanals 4 marlas along with other Nazool lands in a total extent of 47 kanals 3 marlas situated in Bassi Gujran, Tehsil Samrala, District Ludhiana, were granted to the appellant by the Collector, Ludhiana, in File No.217 on June 27, 1968, subject to the appellant paying a sum of Rs.1,520/- for redemption of the mortgage in respect of the aforesaid 25 kanals 4 marlas of land. Pursuant thereto, the appellant had deposited the aforesaid money with the Collector on June 30, 1968. The appellant was put in possession of the said land on September 11, 1968. By proceedings dated September 13, 1968, the Collector cancelled the said grant, without notice to the appellant, on the ground that the respondents-mortgagees, namely, Fakir Chand, Prem Prakash and Gurdas Ram, were in possession and enjoyment for over 50 years and they cannot be dispossessed and the property cannot be redeemed by operation of the provisions of Redemption of Mortgage (Punjab) Act, 1913 (for short, 'the Act') and redelivered possession to the respondents on September 21, 1968.

2. The appellant filed Civil Suit No.204 of 1970 challenging the order cancelling grant and redelivering possession of the lands to the respondents. After adduction of evidence, the trial court considered the evidence adduced by the parties and by judgment and decree dated March 17, 1972, decreed the suit and, on appeal, it was confirmed. The High Court of Punjab & Haryana in Regular Second Appeal No. 1506/75, though recorded

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practically all the findings in favour of the appellant, holding that grant was valid and cancellation was void, inoperative and does not bind appellant, allowed the appeal and reversed the decree for possession on the ground that mortgage was not redeemed in accordance with the provisions

of the Act. Thus this appeal by special leave.

3. The question is whether the High Court is right in refusing the relief of possession to the appellant. Under Rule 2(d) of Government of Patiala and East Punjab States Union Notification dated May 28, 1956, The Nazool lands (Transfer) Rules, 1956 (forshort, 'the Rules') for grant of Nazool lands have been made. Rule 2(d) defines Nazool land to mean (i) "the land which has escheated to the State Government and has not already been appropriated by the State Government for any purpose; (ii) such other lands as the State Government may make available for being transferred under these rules". Rule 3 provides the procedure for transfer of Nazool land. Clause (b) is relevant which reads thus:-

"(b) In the village where Nazool land available is 10 acres or more, the scheduled castes land-owing co-operative societies may be formed by the heads of scheduled caste families in accordance with the serials and the Nazool land may be allotted to them. If a co-operative society cannot be formed, then the Nazool land may be allotted to present lessees, i.e. members of a scheduled castes individually up to the Unit of Nazool land as defined in the rules provided they do not own any land of their own. Those who own some land, they may be allowed such area as would make up the Unit of Nazool land when added to their own area and the rest may be allotted to other members of the scheduled castes."

4. Under these rules, the land granted by the Collector being admittedly below 10 acres of land, the grant of the land to the appellant was valid. In this behalf, all the courts below concurrently recorded the finding in favour of the appellant. This was done in implementation of the constitutional mandate to render socioeconomic justice to the Scheduled Castes. As enjoined in the Preamble and in Article 46 of the Constitution, the Nazool lands vested in the State were granted and transferred to the appellant. Rule 3-A envisages the procedure regarding mortgaged Nazool land. It says thus :-

"3-A. Mortgaged Nazool land - In the case of Nazool lands mortgaged with possession the mortgagors rights be transferred to the co-operative society of scheduled castes, where the land is 10 acres or more and to be the individual members of scheduled castes where it is less than 10 acres, in the manner prescribed in rule 3(a) and (b) and the mortgagors should pay the, entire mortgage amount which would be deemed as equal to the sale price of the land, in cases where mortgage money exceeds the price to be charged by Government under rules. Where the mortgage amount is less than the price to be charged according to the rules, the difference between the two amounts should be paid to the Government and the mortgage money to the mortgagees. "

A reading thereof clearly indicates that in the case of a Nazool land burdened with possessory mortgage, the land would be transferred to Scheduled Castes Cooperative Society or a member of Scheduled Castes as indicated in Rule 3 and the grantee was treated as mortgagor. Thereby the right of redemption has been conferred on the grantee. The grantee

should pay the entire mortgage amount which would

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be deemed as equal to the sale price of the land. In cases where the mortgage money exceeds the price to be charged by the Government under the Rules the same should be paid. Where the mortgage amount is less than the price to be charged, the difference between the mortgage money and the price charged should be paid to the Government and the mortgage money to the mortgagee. Thereby it would be clear that the grant is subject to the payment of the price. The mortgage money or the difference of the price was treated to be the price payable to the State and the mortgage money is payable to the mortgagee. In the light of the definition of the Nazool land, since the land admittedly is escheat, the lands stood vested in the State subject to the redemption of the mortgage. Where Nazool land is burdened with possessory mortgage, the State has the power either itself to redeem the mortgage by paying the amount to the mortgagee or the grantee would be entitled to redeem the mortgage by paying the amount to the mortgagee.

5. The question emerges whether the Act, 1913, would be applicable to the redemption of possessory mortgage of the Nazool land? The High Court and the courts below clearly found that in respect of the Nazool land "it is clear from the language of the Rule that the allottee is required to pay the mortgage money himself to the prior mortgagee". But the High Court found that he is required to redeem the mortgage by following the procedure prescribed under the Act. It also found that the Collector was not authorised to take the price and redeem the mortgage. Section 2 of 'The (Government) Grants Act, 1895, provides that "nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of any person whomsoever, but every such grant and transfer shall be construed and take effect as if the said Act had not been passed". Thereby it is clear that for any grant and transfer of the land or of any interest therein and, in favour of, by and on behalf of the Government to or in favour of any person whomsoever for such grant or transfer the provisions of the Transfer of Property Act shall not apply or be deemed ever to have applied to such grant or transfer and that Act takes effect as if the Transfer of Property Act has not been passed. Section 3 further adumbrates that all provisions, restrictions, conditions and limitations over, contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding. In other words, notwithstanding any rule of law, statute or enactment of the Legislature contrary to the provisions, restrictions, conditions and limitations contained in any such grant or transfer, shall be valid and take effect according to the tenor. It would thereby be clear that not only that the provisions of the Transfer of Property Act should not apply to such grant or transfer of land, the operation of any rule of law or statute or enactment of the State Legislature including the Act stand excluded to the grant or transfer of the Nazool land. Section 3 clearly manifests that the operation of the Act stands excluded, Therefore, the need for the appellant to follow the procedure prescribed under the Act was obviated. The question then is whether the appellant is entitled to pay the amount as directed by the tenor or conditions

mentioned in the letter of grant

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or transfer of the Nazool land? It is seen that the appellant had paid the said amount on June 30, 1968. The order of cancellation indicates that the cancellation was effected solely on the premise that the respondents were in possession and enjoyment as a possessory mortgagees for over 50 years and that, therefore, it would be improper to dispossess them from the Nazool lands. The question emerges whether the payment of the amount as ordered by the Collector and thereby the lands stood redeemed under the Rules is within the limitation prescribed in that behalf? it is true that though the escheat land stood vested in the State, the escheat land burdened with possessory mortgage was differently treated by Rule 3-A. In other words, the Rule indicates that despite vesting of the land as escheat for the lands burdened with possessory mortgage, the State is burdened with the right to redeem the land by paying the redemption money by itself or by the grantee or transferee. The grant or transfer for such land was for price. The mortgage money was treated to be the price. In case of excess, the difference between the price fixed and the mortgage money was to be paid to the State. In this case, admittedly, the price fixed was the money payable under the mortgage which amount was deposited by the appellant. The Limitation Act, 1918, prescribed 60 years for the State to redeem the mortgage but the Limitation Act, 1963, prescribed 30 years which had come into force with effect from January 1, 1964. Section 30 of the Limitation Act provides that where limitation given in the old Act has been reduced by the new Act, the suit would be filed within five years from January 1, 1964. By further amendment, by Act 10, 1969, the period of five years was extended to seven years. The period of limitation for redemption of the mortgage was extended up to 1971. Since the grant of the Nazool land was made in 1968 and amount was deposited on June 30, 1968, the appellant had lawfully redeemed the mortgage by paying the amount as contained in the order of grant. The counsel for the respondent candidly conceded in the appellate court that the redemption was within limitation but contended that the procedure prescribed under the Act had not been followed and by the date of suit it was barred and that, therefore, the payment by the appellant was not in accordance with law and the mortgage was not redeemed as per the law as on the date of the suit. That finding, though was negatived by the appellate court, it was found favour with the High Court. In view of the fact that the State itself has right to redeem the Nazool land burdened with the possessory mortgage, the grant of the same land subject to the redemption, the grantee gets the right of redemption within limitation available to the State. That could be in terms of the order, namely, making the payment to the mortgagee or deposit with the Government. Since the order specifically postulates payment with the government and the same had been paid, the need to follow the procedure prescribed under the Act has been obviated not only by operation of Section 3 of the (Government) Grants Act but also by the terms of the grant or transfer of the Nazool land.

6. The High Court, therefore, was not right in refusing the relief of possession to the appellant. Accordingly, the judgment and decree of the High Court is set aside and that of the trial court is confirmed as prayed for. The appeal is accordingly allowed with costs throughout.

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JUDIS