

BAHADUR SINGH AND ORS.

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v.

SHANGARA SINGH AND ORS.

OCTOBER 24, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

B

*Punjab Occupancy Tenant's Vesting of Property Rights Act, 1952—Sections 2 and 3—Occupancy tenants—Continuation in possession from 1931—Vesting of right of ownership in their favour by operation of law from June 15, 1951—Omission to have their names recorded in revenue records as occupancy tenants—Their accrued right of ownership not defeated—No estoppel against statute.*

C

Respondents Nos. 5 to 15 were the tenants in occupation of the demised lands from December 16, 1931. The Punjab Occupancy Tenants' Vesting of Property Rights Act, 1952 came into force on June 15, 1951. The names of the tenants had not been recorded in the revenue records as occupancy tenants and they continued to pay the rent upto 1974, the year in which they sold the lands to respondents Nos. 1 to 5. The appellants—landlords claimed right to obtain declaration as owners and for possession of the land. The High Court refused to grant the relief. Hence this appeal.

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Dismissing the appeal, this Court

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HELD : 1.1. Respondent Nos. 5 to 15 who had become absolute owners of the property as on June 15, 1951 when they sold the property on June 19, 1974. Thereby, the appellants had no right to obtain declaration as owners and for possession of the land as sought for.

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(145-B)

1.2. A perusal of Sections 2 and 3 of the Punjab Occupancy Tenants' Vesting of Property Rights Act, 1952 clearly indicates that occupancy tenant immediately before the commencement of the Act i.e. June 15, 1951, has been conferred with a right of ownership on the demised lands and the pre-existing right, title and interest held by the owner has been extinguished by operation of law. The landlord has become entitled to receive and be paid such compensation as may be determined under the Act. The occupancy tenant is enjoined to pay direct to the Government only the land revenue accruing due in respect of the land. Thereby the pre-existing jural relationship of landlord and

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- A tenant has been put to an end to by operation of law and the new relationship as an owner between him and the State has been created by operation of law. When the pre-existing right, title and interest of the landlord has been divested by operation of law, the contract under which the tenants came into possession on December 16, 1931 and the covenants contained thereunder no longer subsist and operate between the erstwhile landlord and the tenant after the appointed date, namely, June 15, 1951. (144-E-F)

- 1.3. It is true that the names of the tenants had not been recorded in the revenue records as occupancy tenants and the tenants continued to pay the rent upto 1974, the year in which they sold the lands to respondent Nos. 1 to 5. It would show the ignorance of the tenants and their truthfulness to abide by the contract. In view of the admitted tenancy and their continuation in possession from 1931, the accrued right in their favour by operation of law does not get defeated merely by omission to have their names recorded in their revenue records as occupancy tenants. Equally, the payment of the rent by them does not have the effect of divesting the rights, they had acquired under the statute. There is no estoppel against the statute. (144-G-H, 145-A)

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7567 of 1994.

- E From the Judgment and Order dated 7.4.86 of the Punjab and Haryana High Court in R.S.A. No. 1292 of 1977.

Anant Vijay Palli, Atul Sharma, E.C. Agarwala and Ms. Rekha Palli, for the Appellants.

- F J.K. Sibal, Ms. S. Bagga, (NP) and Ms. Kamini Jaiswal for the Respondents.

The following Order of the Court was delivered :

Leave granted.

- G This appeal arises from the judgment and order dated 7.4.1986 of the High Court of Punjab and Haryana made in Regular Second Appeal No. 1292 of 1977.

- H Admittedly, respondent Nos. 5 to 15 were the tenants in occupation of the demised lands from December 16, 1931. The Punjab Occupancy

Tenant's Vesting of Property Rights Act, 1952, (for short 'the Act') came into force on June 15, 1951. Section 2 of the Act defines "appointed day" and "occupancy tenant", thus: A

"(a) 'Appointed day' means -

(i) in relation to any tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant of any land in the revenue records, the 15th day of June, 1951; B

(ii) In relation to any tenant who obtains a right of occupancy in any land after the commencement of this Act, the date on which he obtains such right of occupancy." C

"(f) 'Occupancy tenant' means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors-in-interest of an occupancy tenant." D E

Then, Section 3 of the Act reads :

"Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords - Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day - F

(a) All rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord; G H

- A Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of the obtaining occupancy rights whichever is later.
- B (b) The landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;
- C (c) The occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land;
- D (d) The occupancy tenant shall be liable to pay, and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act."

A perusal of the said provisions would clearly indicate that occupancy tenant immediately before the commencement of the Act has been conferred with a right of ownership on the demised lands and the pre-existing right, title and interest held by the owner has been extinguished by operation of law. The landlord has become entitled to receive and be paid such compensation as may be determined under the Act. The occupancy tenant is enjoined to pay direct to the Govt. only the land revenue accruing due in respect of the land. Thereby the pre-existing jural relationship of landlord and tenant has been put an end to by operation of law and the new relationship as an owner between him and the State has been created by operation of law. As stated earlier, when the pre-existing right, title and interest of the landlord has been divested by operation of law, the contract under which the tenants came into possession on December 16, 1931 and the covenants contained thereunder no longer subsist and operate between the erstwhile landlord and the tenant after the appointed date, namely, June 15, 1951. It is true that the names of the tenants had not been recorded in the revenue records as occupancy tenant and the tenants continued to pay the rent upto 1974 the year in which they sold the lands to respondent Nos. 1 to 5. It would show the ignorance of the tenants and their truthfulness to abide by the contract. In view of the admitted tenancy and their continuation in possession from 1931, the accrued right in their favour by operation of law does not get defeated merely by omission to have their

names recorded in the revenue records as occupancy tenants. Equally, the payment of the rent by them does not have the effect of divesting the right, they had acquired under the statute. There is no estoppel against the statute. A

The result is that respondent Nos. 5 to 15 who had become absolute owners of the property as on June 15, 1951 when they had sold the property to the respondent Nos. 1 to 4 in June 19, 1974. Thereby, the appellants had no right to obtain declaration as owners and recur for possession of the land as sought for. The High Court has rightly refused to grant the relief though for different reasons. B

The appeal is accordingly dismissed. No costs.

A.G.

Appeal dismissed. C