

A

## STATE OF PUNJAB AND ORS.

v.

## BHAI ARDAMAN SINGH &amp; ORS. ETC.

May 3, 1968

B

[J. C. SHAH AND V. BHARGAVA, JJ.]

*Pepsu Tenancy and Agricultural Act 8 of 1953, s. 43(1)(b)—scope of—if has retrospective operation conditions precedent for exercise of jurisdiction by collector—whether order can be passed on subjective satisfaction or on judicial determination.*

C

Certain tenants of land applied to the Collector, Sangrur and Bhatinda, alleging that they had been forcibly deprived of the lands in May/June, 1943 and sought an order for restoration of possession under s. 43 of the Pepsu Tenancy and Agricultural Act 8 of 1953. The Collector granted the applications and ordered possession to be restored to the tenants. His orders were confirmed by the Commissioner who was of the view that an order under s. 43 could be passed by the Collector on his subjective satisfaction that a person was in wrongful or unauthorised possession of land. The Financial Commissioner also confirmed the orders on the ground that substantial justice had been done by the subordinate revenue authorities.

D

The first respondent challenged these orders by a writ petition but this was dismissed by a Single Bench holding that the Act 8 of 1953 was a code in itself and provided for a complete machinery for the decision of disputes like the resent one. But a Division Bench in appeal allowed the petition and held that Act 8 of 1953 which came into force on December 13, 1953, had no retrospective operation.

E

On appeal to this Court

HELD, dismissing the appeals :

F

(i) Apart from the allegation of the tenants that the first respondent was in wrongful or unauthorised possession of the lands previously occupied by them, it was further necessary to establish that under cl. (b) of s. 43(1) the person in wrongful or unauthorised possession was not entitled to the use and occupation of the lands under the provisions of the Act. There was no provision which disentitled the first respondent to the use and occupation of the lands. Section 43(1)(b) therefore had no application in the present case. The condition precedent to the investment of jurisdiction in the Collector being absent, the revenue authorities had no power to pass the order in ejectment which they purported to pass.

G

(ii) The proceedings of the Collector are judicial in character and although the trial is summary, the Collector is bound to exercise the jurisdiction vested in him not on a subjective satisfaction, as the Commissioner assumed, but on a judicial determination of facts which invest him with jurisdiction to pass an order in ejectment. When the condition precedent to the exercise of jurisdiction does not exist the Collector cannot clothe himself with authority to pass the impugned orders. Furthermore, the High Court had rightly held the terms of cl. (b), s. 43(1) had no retrospective operation.

H

(iii) If the Collector had no jurisdiction except in the special condition prescribed by s. 43, his order could not be sustained merely because

another authority may, if the proceeding were before that authority, on the findings recorded, have granted relief to the tenants of restoration to possession of their respective lands. Authorities which are vested with powers-judicial or quasi-judicial—can exercise their power within the limits of their jurisdiction and their actions without jurisdiction cannot be sustained merely because another body or authority, which if lawfully approached, may have jurisdiction to pass the order complained of.

**CIVIL APPELLATE JURISDICTION :** Civil Appeals Nos. 1016 to 1050, 1052 to 1075 and 1077 to 1084 of 1964.

Appeals by special leave from the judgment and order dated May 14, 1959 of the Punjab High Court in L. P. Appeal No. 148 of 1968 etc.

*N. S. Bindra* and *R. N. Sachthey*, for the appellant.

*M. C. Chagla* and *R. V. Pillai*, for the respondents.

\*The Judgment of the Court was delivered by

**Shah, J.** In this group of appeals the dispute relates to agricultural lands situate in village Dialpura-Bhaika, District Bhatinda in the former State of Pepsu and now in the State of Punjab. The lands originally belonged to Bhai Arjan Singh. On his death in 1946 the lands devolved upon his son Bhai Ardaman Singh, the first respondent in these appeals. Alleging that Bhai Arjan Singh forcibly deprived them of the lands some time in May-June 1943, seventy tenants applied to the Collector Sangrur and Bhatinda for an order for restoration of possession under s. 43 of the Pepsu Tenancy and Agricultural Act 8 of 1953. The Collector granted the applications and ordered that possession be restored to the tenants. The orders were confirmed in appeal by the Commissioner. The Commissioner was of the view that the order under s. 43 could be passed by the Collector on his subjective satisfaction that a person was in wrongful or unauthorised possession of lands. The Financial Commissioner confirmed the order of the Commissioner on the ground that substantial justice had been done by the subordinate revenue authorities, and no interference with the orders was called for.

Bhai Ardaman Singh then filed writ petitions in the High Court of Punjab challenging the orders passed by the Financial Commissioner. The petitions were heard by Gosain, J. In the view of the learned Judge Act 8 of 1953 was a complete code in itself and provided for a complete machinery for the decision of disputes like the dispute before him. He observed :

“Under this law Tribunals of special jurisdiction have been created and invested with powers which should enable them to effectively deal with disputes not only those which arise between the landlord and the tenant, but also those which arise between persons

- A entitled to possession and persons wrongly dispossessing them. It may be that in the latter case the enquiry contemplated to be made by the Collector is only summary and that the aggrieved party may be able to have recourse finally to the civil court but the jurisdiction to make enquiry and to order eviction has been given by the law to the Collector."

B In appeals under the Letters Patent the High Court reversed the order passed by Gosain, J. The High Court was of the opinion that Act 8 of 1953 which came into force on December 13, 1953, had no retrospective operation and that Gosain, J., was in error in making an order for possession of the lands when dispossession had taken place before the Act was brought into force. The High Court also held that the proceedings of the Collector were vitiated because the Collector declined to give to the first respondent opportunity to lead evidence which he desired to lead. With certificate granted by the High Court, these appeals have been preferred by the State of Punjab.

C Section 43 of the Pepsu Act 8 of 1953 provides :

D "(1) Any person who is in wrongful or unauthorised possession of any land—

- (a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act, or
- E (b) to the use and occupation of which he is not entitled under the provisions of this Act, may, after summary enquiry, be ejected by the Collector who may also impose on such person a penalty not exceeding five hundred rupees.

F Clause (a) has evidently no application. It is not the case of any party that there was any transfer of the lands which was invalid by virtue of the provisions of the Act. The tenants alleged that the first respondent was in wrongful or unauthorised possession of the lands previously occupied by them. But in order that the jurisdiction of the Collector to hold a summary enquiry and to pass the order complained of may be attracted, it was further necessary to establish that under cl. (b) of s. 43(1) the person in wrongful or unauthorised possession was *not entitled to the use and occupation of the lands under the provisions of the Act*.

G Counsel for the State of Punjab is unable to invite our attention to any provision which renders the first respondent disentitled by virtue of the provisions of the Act to the use and occupation of the lands. Section 43(1)(b) has, therefore, no application. The condition precedent to the investment of jurisdiction in the Collector being absent, the revenue authorities had no power to pass the order in ejectment which they purported to pass.

We must point out that the proceedings of the Collector are judicial in character. The trial is summary, but the Collector is bound to exercise the jurisdiction vested in him not on a subjective satisfaction, as the Commissioner assumed, but on a judicial determination of facts which invest him with jurisdiction to pass an order in ejectment. When the condition precedent to the exercise of jurisdiction does not exist the Collector can not clothe himself with authority to pass the impugned orders. We also agree with the High Court that in view of the terms of cl. (b), s. 43 had no retrospective operation. On the view we take, it is unnecessary to consider the argument advanced by Mr. Chagla on behalf of the first respondent that s. 43 has no application to cases in which a dispute relating to tenancy of land arises between the landlord and his tenant.

It is also not necessary to consider in this group of appeals whether the proceedings of the Collector were vitiated, because as alleged by the first respondent the Collector did not afford sufficient opportunity to lead evidence on the first respondent's plea that there had been no wrongful dispossession of the tenants.

Mr. Bindra on behalf of the State contended that in any event this Court should not countenance interference with the impugned orders of the revenue authorities, even if erroneous, because those authorities have in passing the orders done substantial justice. Counsel contended that the tenants had been wrongfully deprived of possession of the lands by the use of force by the first respondent and the order passed by the Collector though not strictly warranted by law was not liable to be disturbed by the High Court in exercise of their jurisdiction to issue a writ of *certiorari*. We are unable to agree with that contention. If the Collector had no jurisdiction except in the special conditions prescribed by s. 43, his order could not be sustained merely because another authority may, if the proceeding were before that authority, on the findings recorded, have granted relief to the tenants of restoration to possession of their respective lands. Authorities which are vested with powers—judicial or quasi-judicial—can exercise their power within the limits of their jurisdiction and their actions without jurisdiction cannot be sustained merely because another body or authority which if lawfully approached, may have jurisdiction to pass the order complained of.

The appeals are therefore dismissed with costs. One hearing fee.

R.K.P.S.

*Appeals dismissed.*