



“Right of Occupancy under Punjab Tenancy Act: a Review”

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Abstract

India is land of agriculturist. Approximately 70 percent of population is dependent on agriculture. Most of the agriculturists in India are tenants. During the British period the tenants were insecure due the policies of the British government and land revenue authorities appointed by the government. In result, land reforms were at duck at that time. In order to reforms the land and system of tenancy various laws have been passed to reform the land and to provide security to the tenant. In state of Punjab, the Punjab Tenancy Act was passed in the year 1887 by amending the Punjab Tenancy Act, 1868 to regulate the relationship between landlord and tenants. Research scholar in this research paper has made effort to review and analyze the law relating to right of occupancy tenant under the Punjab Tenancy Act, 1887.

Key words: Land Owner, Occupancy Tenant, Tenancy

Introduction

Punjab tenancy act has been passed due to exploitation of the tenants. It was the result of land reforms in India. Land reforms were started due to problems arises in relation to management of agriculture land, relationship between landlord and tenants, land owner and government.

Punjab tenancy act is a land reforms law which deals with relationship of landlord and tenant. Before that law tenant was being exploited as there was no security of possession to the land for tenants. In 1868, first time right of occupancy was granted to the tenants. Now, the Punjab Tenancy Act, 1887 provides for the same right of occupancy, with modification, to the tenant.

Tenant Meaning and Origin

A tenant means a person who holds the land under landlord and pay rent for that land to the landlord or he would be liable to pay rent but has been exempted by special contract between the



landlord and tenant.¹

A tenant is one who cultivates the land on certain conditions. Most of the agriculturists in our country are tenants. The emergence of tenant took place during British period when in 1793, the zamindari system emerged due to permanent land settlement. Zamindar were acting as intermediary between state and tenants. They used to collect rent from the tenants and paid land revenue to the state which was ruled by the British.

These classes of tenants were severely exploited suffered by Zamindars due to high payment of rents to them. There was no protection for tenant. This necessitated the enacting the legislature for tenancy reforms. Therefore, different tenancy Acts were passed in the country. In state of Punjab the Punjab Tenancy Act was passed in the 1868. Punjab Tenancy Act, 1868 was required to be amended and in 1887 it was amended in result Punjab Tenancy Act, 1887 came in to picture.

Classes of Tenant

There are two types of tenants under Punjab Tenancy Act.² One is occupancy tenant and second is non occupancy tenant. Non occupancy tenant may be for year to year tenancy or for fixed term tenancy. Non occupancy tenant can be ejected from the land after the expiration of the term of the tenancy. Occupancy tenant is a tenant who acquires the right of occupancy under section 5 of the Punjab Tenancy Act. Occupancy right is a permanent right of possession of the land .It is shown in the record of right in Khana Kasht as Mazaria Mouroosi. It also shows if land is cultivated by occupancy tenant himself or any other in his behalf or if such land has been leased out to a tenant and cultivated by such tenant or anyone on his behalf. Tenant having an occupancy right on the land cannot be ejected. So, tenant who fulfills the conditions of section 5 of the Act³ gets the right of occupancy and known as occupancy tenant.⁴

Mode of Acquiring Right of Occupancy

Following are the modes in which right of occupancy can be acquired by a tenant:

(i) Occupying Land for more than Two Generations

A Tenant who at the commencement of the act has been occupying land for more than two

¹The Punjab Tenancy Act, 1887 (Act XVI of 1887) s. 4(5)

²The Punjab Tenancy Act, 1887 (Act XVI of 1887)

³*Ibid.*

⁴*Id.*, s.5



generations in the male lineage through grandfather or grand uncle and for a period of not less than 20 years paying no rent has a right of occupancy in the land so occupied⁵.

So, following conditions must be fulfilled;

- a) A Tenant must be in possession of the land on dated 01-11-1887.
- b) Occupied land for more than two generation in male lineage.
- c) This total possession is continuing for minimum 20 years before dated 01-11-1887.
- d) Tenant paying no rent.

A tenant who fulfills all above conditions simultaneously will get the right of occupancy. If any of the condition is not fulfilled than tenant will get no right of occupancy. Paying land revenue to the state govt and other charges on the occupied land does not disentitle him of right of occupancy. Twenty year period shall be calculated up to the date of 01-11-1887. So tenant should be in possession of the land from 1868 to 1887. Further generation of the male lineage shall be taken in to consideration. Female lineage does not create any right of occupancy.

It is not necessary that the claimant himself should fulfill the above conditions. It is enough of if his predecessor fulfills these conditions. The word tenant includes predecessors and successors in interest of a tenant.⁶

(ii) Occupation for Continuous 30 Years

A Tenant who has been in continuing possession of the land for not less than 30 year before the date of institution of suit against landlord and paying no rent for that 30 years has a right of occupancy in the land.⁷

So, following two conditions must be fulfilled;

- a) Continuing possession of the land for not less than 30 year before the date of institution of suit.⁸
- b) Paying no rent for those 30 years.

It is not necessary that same tenant should be in continuing possession for 30 years. Tenant include also in its definition predecessor in interest and successor in interest. If tenant purchased

⁵*Id.*, s.5 (1)a

⁶*Polar v. Khayali* 17 PR 1973

⁷The Punjab Tenancy Act, 1887 (Act XVI of 1887) s. 5(2)

⁸*Punjab National Bank Ltd. v. Dina Nath* AIR 1944 Lah. 276



the property from a person occupancy tenant than purchaser who purchase that land shall also be an occupancy tenant.

For example;

Person A purchased a right of occupancy on land from occupancy tenant B in 1884. B was in possession of the land and got recorded as occupancy tenant in the year 1850 by the settlement of records. C land owner filed a suit against A for the ejection of A. C asserted that A does not fulfill the conditions of section 5 of Punjab tenancy act because A purchased the right of occupancy in 1884 and at the commencement of the act his possession on the land was only for 3 years.

It was held that definition of tenant includes both predecessor in interest and successor in interest of the tenant. Thus B was predecessor in interest of the Tenant A. So total period of possession on the land shall be counted from the year 1850 and not from 1884 when A purchased the right. So, A is also occupancy tenant having the possession of the land for more than 30 year.⁹

(iii) Recorded as Occupancy Tenant before the Punjab Tenancy Act, 1868

If any tenant who has been entered into record of rights as occupancy tenant before 21st October, 1868 and continues to be like that and also if there must be no other proof like a decree of competent court present before passing of this act.¹⁰

A tenant, who has been recorded in record of rights as occupancy tenant before passing of the Punjab Tenancy Act 1868, has a right of occupancy tenant under this act. The tenant must have continued possession of the land from the time of preparation of that record till date 01-11-1887(date of commencement of the Punjab Tenancy Act, 1887). This record must be prepared and also sanctioned by the state government. If record is not sanctioned there will be no right of occupancy. Further, Tenant will not entitle to right of occupancy if contrary has been proved by opposite party against the right of the occupancy of tenant.

(iv) Exchange of Land

If the tenant exchanged such land on which he enjoys right of occupancy to some other land belonging to the same landlord then such right of occupancy will be deemed to be existing on

⁹*Ghaya v. Devidas* 1926 LIT 33

¹⁰The Punjab Tenancy Act, 1887 (Act XVI of 1887) s.6



such exchanged land.¹¹

Exchange of land should be voluntarily by the tenant. If tenant intentionally and deliberately give up the land on the understanding that he will get another land will get no right of occupancy tenant¹².

(v) Landowner

If the tenant proves that he was landowner of such land and did not cease to be landlord due to any of such reasons mentioned hereinafter;¹³

- (a) Due to forfeiture to the government.
- (b) Due to his own voluntary act.
- (c) He also needs to prove that he continuously had possession of the land since the day he ceased to be land owner.

(vi) Inhabitation

A person who is the founder of the village or was settled by the founder for the purpose of cultivation has right of occupancy. Founder of the village is person who first time establishes the village and start residing in and cultivating the land of the village. Person have to prove following conditions;

- a) That he was settled in that land as a founder.
- b) That he held the land on 21st October 1868 or settled by the founder there for cultivation provided that if landlord proves that such settlement on land previously cleared and brought under cultivation by or at expense of founder.
- c) He had continuously occupied the said land since that date.¹⁴

(vii) Jagirdar

In British India, jagir were allotted to the person or tenants by the British government who served the government well. The person who was allotted jagirs was known as jagirdar.

According to Punjab Tenancy Act Jagirdar includes any person other than a village servant, to whom the land revenue of any land has been assigned in whole or in part by the government. So,

¹¹*Id.*, s.7

¹² D.P.Narula, *Punjab and Haryana Land Laws* 10 (Allahabad Law Agency, Reprint, 2015)

¹³The Punjab Tenancy Act, 1887 (Act XVI of 1887) s.5(1)b

¹⁴*Id.*, s.5(1)c



jagirdar is a person to whom land revenue is assigned by the government.¹⁵

If the tenant has been jagirdar of that estate of any part in that estate in which he occupied land for not less than 20 year. In other case if in the capacity of jagirdar he occupied land for not less than 20 years.¹⁶

(viii) Other Grounds

Nothing will bar any tenant to prove his right of occupancy on the ground other than mentioned hereinbefore¹⁷. Under section 8 promise not to eject any incumbent person can be an example.

In case of *Khairati v. Mannu Khan*¹⁸ it was held there are four other grounds on the basis of which right of occupancy can be acquired by the tenant;

- a) Where tenant shows that the occupancy rights have been generally of customarily conceded to those similarly circumstanced tenants in the village or in its neighborhood.
- b) Where the recognition of right would be in accordance with the custom of the country.
- c) There has been a promise never to eject.
- d) The right would exist but for a palpable error in the settlement records.

Further court held that this list is not exhaustive and every case should be decided according to the fact and circumstances of the case.

Conclusion

Punjab Tenancy Act, 1887 is a land reforms law which deals with relationship of landlord and tenant. Before that law, tenants were being exploited as there was no security of possession to the land for tenants. In 1868, first time right of occupancy was granted to the tenants. Now, sections 5 to 8 of Punjab Tenancy Act, 1887 provides for the same right of occupancy to the tenant. It deals various mode of acquiring right of occupancy. It secures the tenant in possession of land for long term. It provides security to the tenants and their families who are totally dependent on the land they have been cultivating from many years. Some provisions of this Act looks outdated, as this Act was passed in 1887. Now, circumstances have been changed but not law. Therefore, legislature must consider it again.

¹⁵*Id.*, s.4(15)

¹⁶*Id.*, s.5(1)d

¹⁷ *Id.*, s.8

¹⁸ *Khairati v. Mannu Khan* 43 PLR 1900