Bhagwan Das

VS

The state of Punjab

Civil Appeal No. 541 of 1963

(K. Subba Rao, R. S. Bachawat, J. R. Mudholkar JJ)

04.11.1965

JUDGMENT

BACHAWAT, J. -

The appellant is a displaced person to whom 105 ordinary acres of land equivalent to 42 standard acres 11 units in village Jamalpur, Tehsil Hansi, District Hissar, were allotted by the Custodian on October 5, 1949 under the conditions published in the Notification of the East Punjab Government No. 4892/S dated July 8, 1949. The Punjab Security of Land Tenures Act, 1953 (Punjab Act No. 10 of 1953), hereinafter referred to as the Act, came into force on April 5, 1953. On that date, the aforesaid land was equivalent to 42 standard acres 11 units, and having regard to proviso (ii)(b) to s. 2(3) of the Act, was permissible area in relation to the appellant, and as the appellant did not own any other land in the State of Punjab, he was a small landowner within the meaning of s. 2(2) of the Act. On October 22, 1955, as a result of consolidation proceedings, the appellant was granted 101.4/5 ordinary acres of land in exchange for the land originally allotted to him in 1949. Respondent No. 4 is a tenant of the appellant in respect of a portion of this land.

On February 20, 1958, the appellant filed an application before the Assistant Collector, 1st Grade, Hissar for ejectment of respondent No. 4 under s. 9(1)(i) of the Act on the ground that he is a tenant of the appellant who is a small landowner. On that date, the aforesaid 101.4/5 acres of land owned by the appellant was equivalent to more than 50 standard acres. On February 17, 1960, the Assistant Collector dismissed the application. He held that the appellant was a big landowner, because on the date of the application the land owned by him was equivalent to more than 50 standard acres. On appeal, on May 2, 1960, the Collector of Hissar set aside the aforesaid order, and allowed the application for ejectment. He held that the appellant was a small landowner as he was a displaced person and an allottee of less than 50 standard acres. On August 30, 1960, the Commissioner, Ambala Division, dismissed a second appeal, and on January 2, 1961, the Financial Commissioner dismissed a revision petition filed by respondent No. 4. Following his previous ruling in Pat Ram v. Milawa Ram ([1961] 40 Lahore Law Times, p. 28.) and Har Chand Singh v. The Punjab State ((1961) 40 Lahore Law Times, p. 9.), the Financial Commissioner held that the status of the appellant must be determined on the date of the commencement of the Act and subsequent accretions to his holding arising out of consolidation of holdings and improvements due to good husbandry or advent of irrigation should be ignored. On August 22, 1961, the Punjab High Court allowed a petition preferred by respondent No. 4 under Art. 227 of the Constitution of India and set aside the orders of the Collector, the Commissioner and the Financial Commissioner. The High Court held that the status of the appellant must be determined by evaluating his land in terms of standard acres on the date of the application for ejectment. The appellant now appeals to this Court by special leave.

The question is whether the appellant is a small landowner within the meaning of s. 9(1)(i) of the Act. On a combined reading of ss. 2, 3, 4, 5, 5A, 5B, 5C, 10A, 19A and 19B, the scheme of the Act appears to be as follows : The entire land held by the landowner in the State of Punjab on the date of the commencement of the Act must be evaluated as on that date and the status of the landowner and his surplus area, if any, must be then ascertained. If he is then found to be a small landowner, he continues to be so for the purpose of the Act, until he acquires more land, and on taking into account the value of the land in terms of standard acres on the date of the acquisition, he is found to be a big landowner. The landowner is required to make the necessary reservations or selections and to give the necessary declarations so that his status and the surplus area, if any, held by him may be so determined. If he is a small landowner at the commencement of the Act, his status is not altered by reason of improvements in the value of his land or re-allotment of land on compulsory consolidation of holdings.

In an unreported decision in Surja v. Financial Commissioner of Punjab and others Civil Writ No. 486 or 1961.), the Punjab High Court held that the status of the landowner for the purposes of an application under s. 14A of the Act should be determined by evaluating his land on the date of the application. On the basis of this ruling, the improvements in the land subsequent to the commencement of the Act could not be ignored; but the legislature considered that this decision had the effect of defeating the purpose of the Act. It is well-known that with a view to get rid of this decision, the legislature inserted s. 19-F(b) in the Act by the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962 (Punjab Act No. 14 of 1962). The object of this amendment will appear from the following passage in the statements of Objects and Reasons published in the Punjab Gazette (Extr.) dated April 27, 1962 :

> "Some of the recent judicial pronouncements have the effect of defeating the objectives with which the Punjab Security of Land Tenures Act, 1953 was enacted and amended from time to time.... Under the scheme of the parent Act a specific period was allowed for filing of reservations by the landowners the object of which was to find out whether a person was a small landowner or not. Once that was found the intention was that such a person should continue to be treated as such for the purposes of the Act so long as he did not acquire more lands. In other words, his status was not to be altered on account of improvements made on the land or reallotment of land during consolidation. However, the High Court took a different view in Civil Writ No. 486 of 1961 (Surja versus Financial Commissioner, Punjab and other....). Accordingly clauses 3, 6 and 7 of the Bill seek to neutralise the effect of the aforesaid decisions."

Clause 7 of the Bill related to ss. 19-E and 19-F. The amending Act of 1962 was passed on July 4, 1962 during the pendency of the appeal in this Court. Section 19-F is retrospective in operation and is deemed to have come into force on April 15, 1953. Section 19-F(b) reads :

> "19-F. For the removal of doubts it is hereby declared, -
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> (b) that for evaluating the land of any person at any time under this Act, the land owned by him immediately before the commencement of this Act, or the land acquired by him after such commencement by inheritance or by bequest or gift from a person to whom he is an heir, shall always be evaluated for converting into

> standard acres as if the evaluation was being made on the date of such commencement, and that the land acquired by him after such commencement in any manner shall always be evaluated for converting into standard acres as if the evaluation was being made on the date of such acquisition."

On a reading of s. 19-F(b), it would appear that for the purpose of determining the status of the landowner and evaluating his land at any time under the Act, the land owned by him immediately before the commencement of the Act must always be evaluated in terms of standard acres as if the evaluation was being made on the date of such commencement. It is not disputed that if the land held by the appellant immediately before the commencement of the Act is so evaluated, the appellant would be a small landowner. There is no scope for evaluating the subsequent improvements in the land due to consolidation operations or otherwise. The appellant did not acquire any land after the commencement of the Act. His status as a small landowner was not altered by reason of subsequent improvements or re-allotments of land on compulsory consolidation of holdings. On the date of the application for eviction, he, therefore, continued to be a small landowner. The High Court was in error in holding that the status of the appellant should be determined by evaluating his land in terms of standard acres on the date of the application for eviction.

In the result, the appeal is allowed. We set aside the order of the High Court and restore that of the Financial Commissioner upholding the orders of the Commissioner and the Collector. We direct that costs throughout will be borne by the parties as incurred.

Mudholkar, J. This is an appeal by special leave from a judgment of the High Court of Punjab allowing a writ petition under Art. 227 of the Constitution and setting aside orders of the Collector, the Commissioner and the Financial Commissioner made under certain provisions of the Punjab Security of Land Tenures Act, 1953 (hereafter referred to as the Act).

The relevant facts are briefly these : The appellant Bhagwandas is a displaced person from West Pakistan. He owned 74 standard acres 13 3/4 units of agricultural land in certain villages in West Pakistan. On October 5, 1949 he was allotted 42 standard acres and 11 units of land in the village Jamalpur, Tehsil Hansi, District Hissar. Subsequently proceedings for consolidation of holding were taken under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Act 50 of 1948). After those proceedings were finalised the appellant was granted an equivalent area of land in the same village as described in a sanad granted by the President on October 22, 1955 in exchange for the land earlier granted to him. Under the sanad the appellant was granted proprietary rights in the land.

On February 20, 1958 the appellant, claiming to be a small holder made an application under s. 14-A(i) of the Punjab Security of Land Tenures Act, 1953 before the Assistant Collector, I Grade, Hissar, for the ejectment of respondent no. 4 who was a tenant of the land. In his application the appellant alleged that as he held less than 50 standard acres of land he was a "small land owner" and as such had the right to evict the tenant and instead cultivate the land himself. The application was rejected by the Assistant Collector. Unfortunately neither party has placed the order of the Assistant Collector on the record of this appeal. It is, however, common ground that the reason for rejecting the application was that the Assistant Collector found that because of certain improvements the income from the lands had risen considerably and that consequently the standard acreage of this land had risen from 42 standard acres to a standard acreage above 50 standard acres and that the appellant's application was, therefore, untenable under s. 14-A. In an appeal preferred by the

appellant the Collector, Hissar held by his order dated May 2, 1960 that since the appellant was allotted only 42 standard acres and 11 units he is entitled to be treated as a small owner of the land and since the tenant had more than 5 standard acres under his cultivation in addition to the appellant's land he was liable to be ejected from the land belonging to the appellant which was in his possession. The Collector's order was upheld by the Commissioner, Ambala Division by his order dated August 30, 1960. The tenant moved the Financial Commissioner, Punjab in revision against the order of the Commissioner but without success. He then preferred a writ petition before the High Court which, as already stated, was granted. According to the High Court the status of a landlord had to be ascertained as existing on the date of the application under s. 14-A of the Act and not on the date of the allotment. Further, according to the High Court, what is "permissible area" available to a landlord under the Act has also to be determined as obtaining on the date of the application for eviction made by the landlord. In coming to the conclusion the High Court followed a judgment of S. B. Capoor J., in a similar matter.

In order to appreciate the contentions urged before us on behalf of the parties, it is necessary to refer to certain provisions of the Act. At the outset I must point out that the object of the Act was to provide to the tenants a security against ejectment by the landlords except for a just cause. The Act has, however, drawn a distinction between "small land owner" and a "large land owner". Sub-section (2) of s. 2 of the Act defines small landowner to mean one whose entire land in the State of Punjab does not exceed the permissible area. Now, sub-s. (3) of s. 2 defines permissible area. This definition draws a distinction between a land owner who is not a displaced person and one who is a displaced person. In so far as the former is concerned the permissible area is 30 standard acres. In so far as the latter is concerned the second proviso to sub-s. (3) enacts :

> "Provided that -
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> ... ...
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> (ii) for a displaced person -
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> (a) who has allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case may be.
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> (b) who has been allotted land in excess of thirty standard acres, but less than fifty standard acres, the permissible area shall be equal to his allotted area.
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> (c) who has been allotted land less than thirty standard acres, the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition.
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> Explanation :- For the purposes of determining the permissible area of a displaced person, the provisions of proviso (ii) shall not apply to the heirs and successors of the displaced person to whom land is allotted."

The expression 'standard acre' is defined thus in sub-s. (5) of s. 2 :

> "Standard acre" means a measure of area convertible into ordinary acres of any class of land according to the prescribed scale with reference to the quantity of yield and quality of soil."

If a land owner is in possession of land in excess of the permissible area he is required to follow a certain procedure for indicating which particular land he wants to be treated as "reserved area". Land in excess of that area is treated as surplus area. The former expression means the area lawfully reserved under the Punjab Tenants (Security of Tenures) Act, 1950 while the latter expression is defined in sub-s. (5-A) of the Act. It is not necessary to set out this definition for the purpose of the discussion of the question before us. Under s. 27 of the Act rules have been framed for carrying out the purpose of the Act. There are two sets of rules, one is the Security of Land Tenures Rules, 1953 and the other is Punjab Security of Land Tenures Rules, 1956. The latter are supplementary to the rules of 1953. Rule 2 of the Rules of 1953, which is the relevant rule, is as follows :

> "Conversion of ordinary acres into standard acres. - The equivalent, in standard acres, of one ordinary acre of any class of land in any assessment circle, shall be determined by dividing by 16, the valuation shown in Annexure 'A' to these rules for such class of land in the said assessment circle :
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> Provided that the valuation shall be -
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> (a) in the case of Banjar Qadim land, one-half of the value of the class previously described in the records and in the absence of any specific class being stated, one-half of the value of the lowest barani land;
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> (b) in the case of Banjar Jadid land, seventh-eighth of the value of the revelant class of land as previously entered in the records, or in the absence of specified class in the records, of the lowest barani land; and
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> (c) in the case of cultivated thur land subject to waterlogging, one-eighth of the value of the class of land shown in the records or in the absence of any class, of the lowest barani land."

In the table, Annexure A, land is classified under four heads which are : "Irrigated (nehri)", "Irrigated Chahi" "Unirrigated" and "Sailab". Irrigated nehri is further classified as "perennial" and "non-perennial" In Col. 3 is given the valuation for irrigated nehri land. For Hansi tehsil valuation of the land which is perennially irrigated by canals is given as 16 which means 16 annas in the rupee per acre and of non-perennial as 10 annas in the rupee per acre. The valuation for irrigated chahi land in the entire tehsil is 10 annas in the rupee per acre and of unirrigated land as 5 annas in the rupee per acre. There is no valuation for sailab land which apparently means there is no land of this category in the tehsil. From Table A it would appear that land which falls under one classification at the time of allotment or at the time of coming into force of the Act may well fall under some other head later on because the quantity of yield is liable to vary. For instance, if irrigation facilities come to be provided in land which is unirrigated at the time of coming into force of the Act or making the allotment the land may receive the benefit of irrigation later either perennially or non-perennially and its yield therefrom may accordingly increase.

Provisions relating to the valuation of lands under the Act are to be found in s. 19F thereof which reads thus :

> "For the removal of doubts it is hereby declared, -
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> (a) that the State Government or any officer empowered in this behalf shall be competent and shall be deemed always to have been competent, to determine in the

prescribed manner the surplus area referred to in section 10-A of a landowner out of the lands owned by such landowner immediately before the commencement of this Act; and

(b) that for evaluating the land of any person at any time under this Act, the land owned by him immediately before the commencement of this Act, or the land acquired by him after such commencement by inheritance or by bequest or gift from a person to whom he is an heir, shall always be evaluated for converting into standard acres as if the evaluation was being made on the date of such commencement and that the land acquired by him after such commencement in any other manner shall always be evaluated for converting into standard acres as if the evaluation was being made on the date of such acquisition."

Now, surplus area would fall to be determined only where the land-owner is in possession of land in excess of the permissible area. I have already given the definition of permissible area. Where, as here, the landlord is a displaced person and the land allotted to him is less than 50 acres the permissible area so far as he is concerned would be the area actually allotted to him. In the case of the appellant it would thus be 42 standard acres and 11 units. Out of this he alleges that he has sold 18 standard acres. As, however, no argument was advanced before us on this basis I leave this circumstance out of account and proceed on the footing that the appellant is in possession not of an area less than the permissible area but of an area equal to the permissible area. Surplus area means an area other than the reserved area and, where no area is reserved, the area in excess of the permissible area. Where there is no reserved area or where the area held by a person is not in excess of the permissible area the provisions of s. 4 which deal with the reservation of area or those of ss. 5A to 5C which deal with selection of permissible area or those of s. 10-A which deal with the utilization of surplus area are not attracted. Therefore, the provision of s. 19F(a) which are attracted to a case falling under s. 10-A will also not apply. Moreover the provisions of s. 10-A have no bearing on a case like the one before us. For, they contemplate the ascertainment of surplus area held immediately before the commencement of the Act. Obviously, therefore, the determination must refer to the classification of the land at that time. Apart from that, the appellant does not possess any surplus area since what is in his possession is merely the permissible area. The question of utilization of any surplus area cannot thus arise in his case. That being so, no question can arise of evaluating his lands afresh. Indeed, fresh evaluation at any time is permissible only under s. 19-F(b), but that provision deals with only special types of cases. It may be mentioned that ss. 5-A to 5-C which deal with the selection of permissible area do not contemplate a case where the classification of land held by the landlord has undergone a change because of rise in the yield therefrom and the standard acreage of the land is his possession could be said to have increased. Section 19-A of the Act specifically prohibits the future acquisition by the landlord of land by transfer, exchange, lease, agreement or settlement any land which with or without the land already held by him exceeds the permissible area. Similarly the Act has made specific provision to deal with a case of augmentation to the land held by the landlord subsequent to the commencement of the Act by inheritance, bequest or gift. These are to be found in s. 19-B. What is to be done in a case of that type is provided for by s. 19-F(b). The power to evaluate land conferred by this provision is exerciseable at 'any time' but obviously that power is exerciseable only in the context of the circumstances set out therein, that is to say where the landlord obtains land after the commencement of the Act by inheritance, bequestor gift and in no other circumstance. It would, therefore, seem that where the provision of s. 19F are not attracted the Revenue Assistant before whom an application under s. 14-A for ejectment of a tenant is made by a landlord, is not entitled to evaluate the land of the landlord afresh for ascertaining whether he is in possession of land in excess of the permissible

area. Elaborate rules have been framed under the Act and elaborate provisions are also contained in the Act with a view to extend its protection as far as possible to tenants cultivating land. The omission, therefore, to make any provision as to what has to be done, if as a result of improvements made by the landlord or by reason of the rise in the yield of the land through other causes would point only to one conclusion and that is that this circumstance is not to be taken into account for evaluating the land afresh and re-calculating the standard acreage. If that is so, then it would follow that the High Court and the Assistant Commissioner were in error whereas the Collector, Commissioner and the Financial Commissioner were right in deciding this case. For these reasons I set aside the order of the High Court and restore that of the Financial Commissioner upholding the orders of the Commissioner and the Collector. In the particular circumstances of the case I, however, direct that costs throughout will be borne by the parties as incurred.

Appeal allowed.

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