Munshi Ram and Others

Vs

Financial Commissioner, Haryana and Others

Civil Appeal No. 277(N) of 1969

(V. D. Tulzapurkar, R. S. Sarkaria JJ)

15.12.1978

JUDGMENT

SARKARIA, J. –

1. This appeal on certificate is directed against a Full Bench judgment of the High Court at Chandigarh, rendered on November 22, 1968 in Letters Patent Appeal No. 47 of 1967. It arises out of these facts :

2. Bishan Das was a displaced person from West Pakistan, where he owned a considerable area of agricultural land. He died on April 11, 1948, after his migration to India, leaving behind his five sons, who are the appellant before us.

3. After Bishan Das's death, the Rehabilitation Department allotted 124 standard acres and 1/4 unit of evacuee land in his (Bishan Das) name On August 26, 1949. Permanent rights in regard to this allotted land were conferred by the Managing Officer on behalf of the President of India under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, in the names of the sons of Bishan Das on January 2, 1956. Prior to it, a mutation was allowed by the Rehabilitation Authorities on February 17, 1953 in favour of the appellants herein, showing each of them entitled to 24 standard acres and 13 units of land.

4. Ram Dhan, respondent 2, was in possession of the land as a tenant. The appellants applied under Section 9(1)(i) of the Punjab Security of Lands Tenure Act, 1953 (hereinafter called the Act) for his ejectment on the ground that each of them is a 'small land-owner', as defined in Section 2(2) of the Act; and that they require the land for self-cultivation.

5. The Assistant Collector, Hissar, rejected their application. Their appeal was dismissed by the Collector, on January 4, 1965. Their Revision was rejected by the Commissioner of Ambala Division on October 26, 1965. Their further Revision to the Financial Commissioner, also, met the same fate on May 17, 1966.

6. The appellants then moved the High Court by a writ petition under Articles 226 and 227 of the Constitution, alleging that the aforesaid orders of the Assistant Collector, Commissioner and the Financial Commissioner, were illegal, without jurisdiction and ultra vires the provisions of the Act and the rules made thereunder. Their contention was that the land had been allotted to them in lieu of the land abandoned by their father, Bishan Das, in Pakistan, and consequently, the permissible area of each of them is to be computed under proviso (ii) to Section 2(3) of the Act, and so computed, the holding of each of the five could be well below the permissible limit of 30 standard

acres prescribed thereunder. It was further contended that since the allotment was made in standard acres, and not in ordinary acres, the 'permissible area' of each of the appellants would be 30 standard acres, notwithstanding the fact that on conversion into ordinary acres, it exceeds 60 ordinary acres. On these grounds, the appellants claimed that each of them is a 'small land-owner' and as such, entitled to move for eviction of the tenant under Section 9(1)(i) of the Act.

7. The learned Single Judge of the High Court dismissed the writ petition.

8. Munshi Ram and his four brothers filed Letters Patent Appeal, which was eventually heard by a Full Bench. The Bench held that since the appellants were not 'displaced persons' within the meaning of the East Punjab Displaced Persons (Land Resettlement) Act, 1949, the concession of an enhanced permissible area under proviso (ii) to sub-section (3) of Section 2 of the Act was not available to them, and their permissible area would be 60 ordinary acres each; that since the holding of each of the appellants exceeds that limit, they are not 'small land-owners', and as such, were not competent to seek ejectment of the tenant. With this reasoning, the Full Bench dismissed the appeal.

9. Before considering the contentions canvassed, let us have a look at the definition of 'permissible area' in Section 2(3) of the Act. This definition reads as under :

> 'Permissible area' in relation to a land-owner or a tenant, means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceeds sixty acres such sixty acres :
>
> Provided that -
>
> #(i) .....##
>
> (ii) for a displaced person -
>
> (a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred acres, as the case may be;
>
> (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;
>
> (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, it any, that he owns in addition.

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.

10. The first contention of Mr. Naunit Lal is that the words "such thirty standard acres" in the substantive part of the definition clearly exclude conversion into ordinary acres, where the area held in standard acres falls below 30 standard acres. In short, the point sought to be made out is that the definition ensures an irreducible minimum of 30 standard acres to a land holder.

11. The contention does not stand a close examination. The flaw in the proposition propounded by the counsel is that it takes into account only one aspect of the definition, while ignoring the other.

As rightly observed by the High Court, in devising this formula for computing the permissible area, the Legislature was concerned to put limits on the holdings of land both in its qualitative aspects. The concept of 'standard acre', being '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', has been introduced in the definition of 'permissible area' to emphasis the qualitative aspect of a land-holding, and the maximum limit of 60 ordinary acres delineates its qualitative aspect.

12. The language of sub-section (3) of Section 2 is plain and unambiguous. It proclaims in no uncertain terms, the legislative imperative that no landowner or tenant shall hold land exceeding 30 standard acres or 60 ordinary acres. By no stretch of imagination, therefore, the words "such thirty acres" occurring in the definition can be construed to limit the conversion into ordinary acres only to a case where the holding is 30 'standard acres', and not less.

13. Mr. Naunit Lal next contended that since the land was allotted in the name of Bishan Das deceased, who was a displaced person, the Explanation will not be attracted, with the result that the permissible area of each of his five sons would be 30 standard acres in accordance with clause (c) of Proviso (ii) of sub-section (3) of Section 2. Since each of them was holding only about 24 standard acres, they were small land-owners.

14. The argument rests on the fallacy that the land was allotted to a 'displaced person'. The true position is that it was allotted to the sons of Bishan Das, who were not 'displaced persons' within the contemplation of the aforesaid Proviso (ii). Section 2(11) of the Act says : "Displaced person" has the meaning assigned to it in the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949). According to the definition of the term in East Punjab Act XXXVI of 1949, a 'displaced person' means "a landholder in the territories now comprised in the Province of Punjab in Pakistan or a person of the Punjab extraction who holds land in the (west Pakistan) and who has since the last day of March 1947, abandoned or has been made to abandon his land in the said territories on account of civil disturbances or the fear of such disturbances, or the partition of the country". Now, the sons of Bishan Das never owned or abandoned any land in West Pakistan. Evidently, they were not 'displaced persons' within the meaning of proviso (ii) to Section 2(3). They are merely "heirs of a displaced person" who died after his migration to India. Proviso (ii) therefore, does not apply to the case of the appellants who, and not their father, were the persons to whom the land in dispute had been allotted. The Explanation appended to Section 2(3), therefore, clearly excludes the application of proviso (ii) to their case. Their case is fully covered by the substantive part of the definition of 'permissible area' according to which the maximum which they could hold is 60 ordinary acres. Each of them was holding, at the material date, in excess of that area and such, they were not 'small land-owners'.

15. The last contention of Mr. Naunit Lal is that in computing the 'permissible area' of each of the appellants, the Collector had illegally and wrongfully included uncultivated area of Banjar Jadid, Banjar Qadim and Gair Mumkin land as on April 15, 1953, and had also through some oversight failed to allow deduction for the diminution in their holdings resulting from consolidation. The argument is that such Banjar land does not fall within the definition of 'Land' for the purpose of Punjab Security of Land Tenures Act, 1953, also. In support of this contention, reference has been made to several decisions of the High Court at Chandigarh.

16. According to sub-section (8) of Section 2 of the Act, "Land" shall have the same meaning as is assigned to it in the Punjab Tenancy Act, 1887. Section 2(c) of that Act defines 'Land' to mean "land which is not occupied as the site of any building in a town or village and is occupied or has been let

for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land".

17. In Nemi Chand Jain v. Financial Commissioner, Punjab, (AIR 1964 Punj 373 : (1964) 66 PLR 278) H. R. Khanna, J., speaking for a Division Bench of the High Court, held that Banjar Qadim and Banjar Jadid land cannot be taken into account while computing the surplus area under the Act, because not being occupied or let for agricultural purposes or purposes subservient to agriculture, it does not fall within the purview of 'Land' under the Act. This ruling has been consistently followed by the High Court in its subsequent decisions, some of which are reported as Sadhu Ram v. Punjab State (1965 Punj LJ 84); Amolak Rai v. Financial Commissioner, Planning, Punjab ((1966) 45 Lah LT 195); Jaggu v. Punjab State ((1967) 46 Lah LT 64 : 1967 Punj LJ 248 (Ed : Decision of the Financial Commissioner, Revenue)) and Jiwan Singh v. State of Punjab (AIR 1972 P&H 430 : 1971 Punj LJ 65).

18. In our opinion, this view taken by the High Court proceeds on a correct interpretation of the statutory provisions as it stood at the relevant time.

19. Learned Counsel for the tenant-respondent also does not question the soundness of this view. He, however, does not accept the particulars of the areas of Banjar and Gair Mumkin Lan supplied by Mr. Naunit Lal, in the from of a Goshwara.

20. We will, therefore, while upholding the view taken by the High Court in regard to the interpretation and application of Section 2(3) proviso (ii) of the Act, allow this appeal and set aside the decision of the High Court and the impugned orders of the Assistant Collector, Collector, and the Commissioner and remit the case to the Collector concerned of Hissar District with the direction that he should ascertain the extent of the Banjar Qadim and Banjar Jadid and Gair Mumkin land of the appellants-allottees at the relevant date and re-compute their permissible area after excluding such Banjar and Gair Mumkin land, and then dispose of the applications of the appellants under Section 9(1) (i) afresh. In the circumstances of the case, there will be no order as to costs.

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