Ajmer Singh and Others

Vs

State of Haryana and Others

Civil Appeal Nos. 806-10 of 1986

(L. M. Sharma, V. Ramaswami II JJ)

17.11.1989

JUDGMENT

RAMASWAMI, J. -

1. One Bishan Das who is the father of respondents 2 to 5 and another by name Mubari Ram whose legal representatives are respondents 6 and 7, owned considerable extend of land in Pakistan. He died on April 11, 1948 after he migrated to India. After his death the Rehabilitation Department allotted 124 standard acres and 4 1/4 units of evacuee land on August 26, 1949. The five sons of Bishan Das were treated as entitled to this land as heirs and successors of the displaced person and accordingly mutation was allowed by the rehabilitation authorities on February 17, 1953 in favour of the five sons showing each of them entitled to 24 standard acres and 13 units of land. Permanent rights in regard to this allotted land were also conferred by the authorities under the provisions of the said Displaced Persons (Compensation and Rehabilitation) Act in the names of the sons of Bishan Das on January 2, 1956. These lands were in the occupation of different tenants against whom the five brothers initiated ejectment proceedings by filing applications under Section 9(1)(i) of the Punjab Security of Land Tenures Act, 1953 (hereinafter called 'the Act') for ejectment on the ground that each of them is a "small landowner" as defined in Section 2 (2) of the Act and that they required the land for self-cultivation. The Assistant Collector, Hissar rejected the application. The owners' appeals were dismissed by the Collector on January 4, 1965. Their revision also was rejected by the Commissioner of Ambala Division on October 26, 1965. Their further revision to the Financial Commissioner also met with the same fate on May 17, 1966. Thereafter the landowners moved the High Court by a writ petition under Articles 226 and 227 of the Constitution on the ground that the land had been allotted to them in lieu of the land owned by their father Bishan Das in Pakistan and consequently the permissible area of each of them is to be computed under the proviso to Section 2 (3) of the Act and so computed the holding of each of the five were well below the permissible limit of 30 standard acres prescribed thereunder. The writ petition was dismissed but the letters patent appeals filed against the same came up for consideration before a Full Bench of the High Court of Punjab and Haryana (Munshi Ram v. Financial Commissioner, Haryana, 1967 Punj LR 913 : AIR 1968 P&H 162 : 1967 Punj LJ 206). The High Court held that in view of the explanation to the proviso the heirs and successors of the displaced persons to whom land were allotted could not claim the benefit of the proviso and that the permissible area under the substantive part of Section 2(3) is 60 ordinary acres. Against this decision the respondent landowners preferred appeals to this Court. By a judgment dated December 15, 1978 in Munshi Ram v. Financial Commissioner, Haryana ((1979) 1 SCC 471 : (1979) 2 SCR 846), this Court confirmed the view of the Full Bench. However, this Court accepted an argument on behalf of the landowners that in computing the permissible area of each of the landowners the uncultivated area of 'banjar jadid', 'banjar kadim' and 'gair mumkin' lands as on April 15, 1953 could not be included.

As the authorities under the Act had illegally and wrongfully included these types of uncultivated lands orders of the various authorities were set aside and the case was remanded to the Collector concerned of Hissar District with a direction that he should ascertain the extent of the 'banjar jadid', 'banjar kadim', and 'gair mumkin' of the landowners allottees at the relevant date, namely, April 15, 1953 and recompute their permissible area after excluding such land. It is now ascertained that so computed each of the landowners were holding at the relevant date less then 60 acres. When these proceedings were pending simultaneously applications filed by the tenants under Section 18 of the Act for purchase of the surplus area were also being considered by the various authorities. When that matter came up before the Financial Commissioner, Haryana, in surplus area cases after noting the judgment of the Full Bench of the High Court in the landowners' case, the Financial Commissioner set aside the orders of the Collector and remanded the tenants cases for purchase of surplus land with a direction that the Collector must decide the case of surplus area after allowing the permissible 60 acres to the landowners. Thereafter, the Collector took up consideration of the surplus area cases in the light of the remand order. However, by this order dated February 2, 1978 the Collector held that the landowners should include in the permissible area all the 'banjar' lands which have since been brought under cultivation and accordingly directed the landowners to produce the list of permissible area. On appeal by the landowners the Financial Commissioner remanded the cases to Collector with a direction that he must decide the cases after excluding all 'banjar lands'. The tenants filed petitions against this order to the Financial Commissioner. By the time these cases came up for orders the Supreme Court had decided the landowners eviction cases on December 15, 1978 (supra). Therefore, the revision petitions were dismissed. However, the Collector was asked to determine the permissible area with reference to relevant date, viz., April 15, 1953. By his order dated May 6, 1982 the Collector determined the area held by each of the landowners, after excluding the 'banjar' lands as less than the permissible area and that, therefore, no area owned by them could be declared surplus and accordingly dismissed the purchase application filed by the tenants. The Commissioner by his order dated April 18, 1983 confirmed this decision of the Collector. The tenants went in revision before the Financial Commissioner. It was again argued before the Financial Commissioner that the should not have allowed the 'banjar' area to be excluded from their holding since they had subsequently been brought under cultivation. The Financial Commissioner agreed with the landowners that 'banjar' lands could not be treated as 'lands' for the purpose of computing the permissible area, that the relevant date for purpose of determining the permissible area is April 15, 1953 and in that view dismissed the purchase applications filed by the tenants. The tenants having failed in the writ petition filed by them questioning the dismissal of their purchase applications, have filed these five appeals.

2. The main contention of Mr. Gujral, learned counsel for the petitioner in these cases was that in determining the question whether a person is a small landowner for the purpose of the Act the entire land owned by him whether cultivated or not cultivated and whether it is 'banjar' or any other land shall be taken into account. If the total extent of the land so calculated is above the permissible area, then unless the landowner has made the reservation as contemplated in Sections 3, 4, 5 and 5-A, he incurs the penalty under Section 5-C and the 'permissible area' will be reduced to 10 standard acres and then again he cannot also choose these 10 standard acres but the tenants would have the option to purchase any land of the landowner including the land under the personal cultivation of the landowner, leaving only 10 standard acres. The point in this form was never raised before and, therefore, the learned counsel for the respondent objected to the counsel raising it for the first time in this Court. But since it is a question of law and the facts were not in dispute we have permitted the counsel to raise this point. It is not in dispute that the landowners had not made any reservation under Sections 3, 4 and 5 originally nor did they make it after Section 5-A was introduced, though

their lands were situated in more than one Patwar Circle within Section 5-A. However, the stand taken by the landowners was that they were small landowners having less than 60 acres and, therefore, they were not obliged to make any reservation and Section 5-C would not be attracted at all.

3. The following propositions have been settled by the decisions of this Court in Bhagwan Das v. State of Punjab ((1966) 2 SCR 511 : AIR 1966 SC 1869) and Munshi Ram v. Financial Commissioner, Haryana ((1979) 1 SCC 471 : (1979) 2 SCR 846) :

> 1. The relevant date for determining the permissible area and the surplus area is April 15, 1953 the date on which the Punjab Security of Land Tenures Act, 1953 came into force and not the date on which the eviction application was filed.
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> 2. If a person 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.
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> 3. Banjar kadim, banjar jadid and gair mumkin cannot be taken into account while computing the permissible area and surplus area under the Act.
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> 4. Banjar kadim and banjar jadid do not jadid do not fall within the purview of the definition of 'land' under the Act as they are not being occupied or let for agricultural purposes or purposes subservient to agriculture.
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> 5. Permissible area under the substantive part of Section 2 (3) for a person who is not a displaced person is 60 ordinary acres.
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> 6. The concept of standard acre being a measure of area convertible into ordinary acres of any class land according to prescribed scales with reference to the quantity of the yield and quality of the soil, has been introduced in the definition of permissible area to emphasise the qualitative aspect of a land holding and the maximum limit of 60 acres its quantitative aspect.

4. Section 2(2) of the Act defining small landowner reads as follows :

> "Small landowner means landowner whose entire land in the State of Punjab does not exceed the 'permissible area.'
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> Explanation. - In computing the area held by any particular landowner the entire land owned by him in the State of Punjab, as entered in the record-of-rights, shall be taken into account, and if he is a joint owner only his share shall be taken into account."

5. The learned counsel for the appellant wanted us to understand and interpret the words "entire land" with reference to the definition of the word 'land' in Section 2(8) and that sub-clause reads as follows :

> "'Land' and all other terms used, but not defined in this Act, shall have the same meaning as are assigned to them in the Punjab Tenancy Act, 1887 (16 of 1887)."

6. Section 4(1) of the Punjab Tenancy Act, 1887 defines land as follows :

> "'Land' means 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."

This Court had held in Munshi Ram v. Financial Commissioner ((1979) 1 SCC 471 : (1979) 2 SCR 846) that banjar kadim and banjar jadid do not fall within the purview of definition of land under the Act as they are not being occupied or let for agricultural purposes or for purposes subservient to agriculture. It necessarily follows that in calculating the total extent held by a person on the date of the Act for purposes of determining whether a person is a small landowner, these banjar lands cannot be taken into account.

7. We are also not impressed with the argument that a landowner shall make a reservation under the Act in all cases irrespective of whether he is a small landowner or not. Section 3 of the Act speaks of a small landowner who by virtue of an allotment made after the commencement of the Act under the Administration of Evacuee Property Act, 1950 "comes to hold more than the permissible area of the land". The section enables and provides that in such a case the small landowner may select out of the entire area held by him as a landowner land not exceeding the permissible area and reserve it for himself. The section thus implies that as a small landowner he was not obliged to make any reservation. But when by reason of allotment made subsequently under the Administration of Evacuee Property Act, 1950 he "comes to hold more than the permissible area", he was given an option to select out of the entire land, land go the extent of permissible area and to reserve to himself, again emphasising that holding more than the permissible area as a necessary requirement to oblige a landowner to make a selection or reservation. Section 4 deals with the case where the person was not a small landowner but has made a reservation under the original 1950 Act which was repealed and replaced by the 1953 Act. This provision enables him to make a fresh selection and reservation if his allotment under the Administration of Evacuee Property Act, 1950 had been modified or revised since his earlier reservation. Section 5 of the Act provide :

> "Any reservation before the commencement of this Act, shall cease to have effect and subject to the provisions of Sections 3 and 4 any landowner who owns land in excess of the permissible area may reserve out of the entire land held by him in the State of Punjab as landowner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed from and manner to the patwari of the estate in which the land reserved is situate or to such other authority as may be prescribed."

This again requires only a landowner who owns land in excess of the permissible area to make a fresh selection and reservation to an extent not exceeding the permissible area. Section 5-A also deals with a case where a landowner holding in excess of the permissible area but it is with reference to a landowner who has land situate in more than one patwar circle. Section 5-B authorised a landowner who was holding lands in excess of the permissible area but has not previously exercised the right of reservation, to select and reserve the permissible area for his own purposes within the extended period mentioned in that section. The need to make a reservation would thus arise only when the landowner on the relevant date held land in excess of the permissible area.

8. This Court in S. Gurbux Singh v. State of Punjab (AIR 1967 SC 502 : 69 Punj LR 173) accepted that : "The main purpose of that Act seems to be to :

(i) provide a 'permissible area' of 30 standard acres to a landowner/tenant, which he can retain for self-cultivation.

(ii) Provide security of tenure to tenants by reducing their liability to ejectment as specified in Section 9;

(iii) ascertain surplus areas and ensure re-settlement of ejected tenants on those areas;

(iv) fix maximum rent payable by tenants, and

(v) confer rights on tenants to pre-empt and purchase their tenancies in certain circumstances."

Thus the Act is also intended to place a ceiling on holding of land by fixing a maximum area permissible to be held by a landowner. In other words the excess over the permissible area shall be available as surplus area to be dealt with under the provisions of the Act. Then again section 9(1)(i) of the Act dealing with the liability of a tenant for eviction states that "tenants on the area reserved under this Act or is a tenant of a small landowner" is liable for eviction. If in every case irrespective of whether the person is a small landowner or not he had to make a reservation then the later portion of this clause referring to a tenant of small landowner was absolutely not necessary. The right of reservation given to a person who holds land in excess of the permissible area is, among others, to give him an option to select that land which he would like to retain for himself and avoid one of the consequences of enabling the tenant to choose under Section 18 of the Act any land including that which is under the personal cultivation of the landowner. It may be mentioned that Section 18 of the Act itself specifically provides that the right to purchase is available to a tenant only against a landowner "other than a small landowner". In our view, therefore, it is not necessary and the Act does not make it obligatory, on pain of consequences provided under Section 5-C, for a small landowner to make a reservation under Section 3, 4, 5, 5-A or 5-B.

9. It was then contended by the learned counsel for the appellant that an area of 0.33 ordinary acres has been excluded in determining total extent held by the landowner on the ground that area was under old tenants and that it should not have been excluded. This point was not raised at any stage. No facts relating to this area is available on record and, therefore, we cannot permit the counsel to raise this point for the first time in this Court.

10. In the result the appeals fail and they are dismissed. However, the parties will bear their respective costs in all the appeals in this Court.

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