Gurmej Singh and Another

Vs

State of Punjab and Others

Civil Appeal Nos. 1289-90 of 1981

(S. Saghir Ahmad, M. B. Shah JJ)

12.03.1999

JUDGMENT

SHAH, J. –

1. These appeals are filed against the judgment and order dated 10-10-1980 passed by the Punjab and Haryana High Court in Letters Patent Appeals Nos. 657 and 682 of 1980 dismissing the LPAs in limine.

2. The brief facts of this case are as under :

> One Smt. Charanjit Kaur was the owner of land admeasuring 692 bighas and 2 biswas in Village Piand, Tahsil and District Patiala in the erstwhile State of Pepsu. By a sale deed dated 5-6-1959, she sold 306 bighas and 6 biswas of land for a consideration of Rs. 20,000 to the appellants, Respondents 19 and 20 and predecessor-in-title of Respondents 16 to 18 (Bisan Singh). Respondents 5 to 15 were the sitting tenants; they filed applications under Section 22 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as "the Tenancy Act") on 15-3-1961 before the Revenue Authorities for grant of proprietary rights of the lands of which they were tenants. Those applications were allowed by order dated 13-9-1961. The appellate authority remanded the matter to the prescribed authority by order dated 7-9-1962. Again the Assistant Collector, 1st Grade, Patiala by his order dated 27-2-1963 allowed the purchase applications. The transferee-landowners preferred appeals to the Collector, Patiala. Those appeals were dismissed on 30-8-1963. The revision petitions filed before the Financial Commissioner were also dismissed by order dated 4-5-1964. Those orders were challenged by filing writ petitions before the High Court. Again by order dated 14-6-1966, the High Court remanded the matter for de novo decision and the authorities were directed to determine the following issues :
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> "1. Whether on the date, the President's Act 8 of 1953 came into force, Shrimati Charanjit Kaur was in possession of any area in excess of 30 standard acres and thus it was not necessary for her to apply for reservation under Section 5 of that Act ?

2. Whether Shrimati Charanjit Kaur had a right to apply for reservation of land under Section 32(b) of the Pepsu Tenancy and Agricultural Lands Act, 1955 ? and

> 3. If the answer to the above question is in the negative, whether her application for

reservation made in May 1958 was within time in view of the provisions of Section 5 of the Pepsu Tenancy and Agricultural Lands Act, 1955 ?"

3. The Assistant Collector by order dated 29-6-1967 decided the aforesaid three questions in favour of the tenants and allowed the applications filed by the tenants. The appeals filed by the landowners before the Collector were also dismissed by order dated 26-3-1968. Revision petitions filed by the transferees were also dismissed by the Financial Commissioner by order dated 27-4-1973. At this stage, we would refer to some of the findings given by the Financial Commissioner. He arrived at the conclusion that it was established that Smt. Charanjit Kaur owned 692 bighas 2 biswas of land in accordance with the entries of Jamabandi for the year 1952-53. Out of this land 581 bighas 17 biswas was Banjar Kadim, 128. It bighas Gair Mumkin, 9 bighas 1 biswa Barani and 88 bighas 8 biswas Nehri. He also arrived at the conclusion that on record Smt. Charanjit Kaur owned land to the extent of 51.38 standard acres as on 1-8-1956 and she became a direct landowner from Kharif 1955 onwards when the land was reclaimed and cultivated. He also came to the conclusion that there was no force in the contention that banjar land could not be included in the land while determining surplus area of Smt. Charanjit Kaur. He, therefore, held that Charanjit Kaur was holding more than 30 standard acres, i.e., 51.38 standard acres on 1-8-1956 and the tenants sitting on the land could not be ejected or view of the provisions contained under Section 7-A of the Tenancy Act.

4. Against that judgment, some of the purchasers filed Civil Writ Petition No. 835 of 1974 which was dismissed by order dated 12-5-1980. The learned Single Judge held that the only conclusion possible was that after reclamation of Banjar Kadim land by the landowner from Kharif 1955 her total land was 51.38 standard acres on 1-8-1956 and thus, the landowner had a right of reservation under Section 5-A of the Act which she did not avail of and the tenants were not liable to be ejected under Section 7-A of the Tenancy Act. He also negatived the contention raised by the learned course for the petitioner to challenge the valuation of the land by the Collector of the ground that the land was not properly evaluated and there was no material justifying the same by holding that considering the order of the Collector (Agrarian), the value of the land was 51.38 standard acres it accordance with Jamabandi Khasra Girdawari and the order of the Collector : dated 18-5-1960 was not challenged either in appeal or in revision and the same has become final.

5. At the time of hearing of these appeals, it is not disputed that Smt. Charanjit Kaur owned 692 bighas and 2 biswas of land on 18-12-1953 when the President's Act 8 of 1953 (Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953) came into force. We said Act was repealed by the Pepsu Tenancy and Agricultural Lands Act, 1955 which came into force from 6-3-1955. Sub-section (2) of Section 1 specifically provided that clause (a) of sub-section (1) of Section 7 and also sub-section (2) of that section and Chapter IV was to come into force on such date as the State Government may by notification in the Official Gazette appoint the date. Thereafter, the Tenancy Act was amended by Act 15 of 1956. Sub-section (2) provided that the provisions of Section 7-A and Chapters IV, IV-A and IV-B shall, save as otherwise provided in those provisions, come into force from 30-10-1956. Thereafter, the landlady out of her holding of 692 bighas and 2 biswas sold 306 bighas and 6 biswas of land to the appellant and others for a consideration of Rs. 20,000 vide sale deed dated 5-6-1959. The tenants applied for acquisition of proprietary rights under Section 22 of the Tenancy Act. Undisputably, the landlady had not filed any application for reservation under Section 7 or 7-A within the prescribed time. Further, at the time of hearing of the writ petition before the High Court, the learned counsel for the petitioners raised only two contentions, namely, (i) if the landowners have not made any reservation of her permissible area, the Collector should collect information under Section 32(c) of the Tenancy Act and make a selection of

her permissible area and (ii) the valuation of the land as 51.38 standard acres is not correct.

6. In these appeals, the learned counsel for the appellant contended that considering the findings of the courts below, it is apparent that on 3-12-1953, value of the entire holding of Smt. Charanjit Kaur was 18.87 standard acres when the President's Act (Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953) came into force. It is submitted that she had not acquired any land by purchase or inheritance at any time after 3-12-1953 and before 5-6-1959 when she sold 306 bighas and 6 biswas to the appellants. It is contended that reclamation carried out in 1955 cannot be taken into consideration for arriving at the valuation of the standard acres held by the landlady. It is, therefore, submitted that as the landlady was holding less than 30 standard acres of land, hence, she was not required to file an application under Section 5 or 5-A of the Pepsu Tenancy and Agricultural Lands Act, 1955.

7. The aforesaid contention was not raised before the courts below and it was rightly not raised because the landlady was holding more than the "permissible limit" of the land as defined in the President's Act (Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953) which came into force on 3-12-1953. Her total holding was 692 bighas of land and, therefore, permissible area would be at the most 60 acres of land. This we state so because the learned counsel for the respondent-tenant submitted that her holding is to be determined on the basis of the second proviso to Section 3 which provides that where the holding of a landowner exceeds 10 standard acres, the area of permissible limit shall be 10 standard acres Section 3 is as under :

> "3. Permissible limit. - (1) 'Permissible limit' for the purposes of this Act means thirty standard acres of land and where such thirty standard acre on being converted into ordinary acres exceed sixty acres, such sixty acres :
>
> Provided that the permissible limit shall not exceed one-half of the holding of a landowner :
>
> Provided further that where the holding of a landowner exceeds the standard acres, the minimum area of permissible limit shall be ten standard acres and where the holding is ten standard acres or less, the permissible limit shall he an area equal to the holding of the landowner.
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> (2) For the purposes of computing the permissible limit under sub-section (1) -
>
> #(a)-(d) * * *##
>
> (e) any transfer of land made by the landowner after the commencement of this Act shall be disregarded;
>
> #(f) * * *##

8. From the aforesaid section, it is clear that the permissible limit for holding would be at the most 30 standard acres of land and where such standard acres on being converted into ordinary acres exceeds 60 acres, then 60 acres would be a permissible limit of the holding. First proviso further restricts by stating that permissible limit shall not exceed one-half of the holding of the landowner. Second proviso further provides that where the holding of a landowner exceeds 10 standard acres, the minimum area of permissible limit shall be 10 standard acres and that where the holding is 10 standard acres or less, the permissible limit shall be an area equal to the holding of the landowner.

As stated above, in the present case, the landlady was owning 692 bighas of land so in no set of circumstances, her permissible limit can exceed ordinary 60 acres of land. This question does not require more discussion as it is made clear by the decisions rendered by this Court upon which the learned counsel for the appellant has sought reliance. In the case of Ajmer Singh v. State of Haryana ((1990) 1 SCC 227) the Court was dealing with similar provisions of the Punjab Security of Land Tenures Act, 1953 wherein a contention was taken by the landowners that they were small landowners having less than 60 acres and therefore, they were not obliged to make any reservation of land as provided in the Act. The Court, inter alia, held that the following propositions have been settled by the decision of this Court in Bhagwan Das v. State of Punjab (AIR 1966 SC 1869 : (1966) 2 SCR 511) and Munshi Ram v. Financial Commr, Haryana ((1979) 1 SCC 471) :

> "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 of 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 landholding and the maximum limit of 60 acres its quantitative aspect."

9. In Munshi Ram case ((1979) 1 SCC 471) also, the Court dealt with similar provisions in the Punjab Security of Land Tenures Act, 1953 wherein "permissible area" is defined in Section 2(3) of the Act. The Court negatived the contention that the definition of permissible area ensures an irreducible minimum of 30 standard acres to a landholder. The Court held that in devising the formula be computing the permissible area, the legislature was concerned to put limits on the holdings of land both in its qualitative and quantitative aspects and 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". The Court held that permissible area as defined in sub-section (3) of Section 2 proclaims in no uncertain terms, the legislative imperative that no landowner or tenant shall hold land exceeding 30 standard acres or 60 ordinary acres.

10. The next question involved in these appeals is which tenants are entitled to file an application under Section 22 of the Tenancy Act for acquisition of proprietary rights. Section 22 provides that subject to other provisions contained in the Act, a tenant shall be entitled to acquire from his landowner in respect of the land comprising his tenancy the right, title and interest of the landowner in such land in the manner and subject to Conditions provided therein. Section 22 is in Chapter IV of the Tenancy Act. For the purpose of the said Chapter, the definition of the word "tenant" is given in Section 20 which reads as under :

> "20. Definition of tenant. - In this Chapter, the expression 'tenant' means a tenant as defined in clause (k) of Section 2, who is not liable to be ejected -
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> (a) under clauses (a) and (b) of sub-section (1) of Section 7-A; or
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> (b) under clauses (a) and (b) of sub-section (2) of Section 7-A :
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> Provided that this definition shall not apply to a tenant who is to be allotted by the State Government land under the proviso to sub-section (1) of Section 7-A."

11. In view of the aforesaid section a tenant as defined in Section 2(k) who is not liable to be ejected as provided in clauses (a) and (b) of sub-section (1) of Section 7-A is entitled to file an application for acquisition of proprietary rights. In the present case, it was not disputed at any point of time that the respondents were not the tenants within the definition of Section 2(k) of the Act. Therefore, we have to refer to Section 7-A to determine whether the landlady was entitled to eject the tenants as provided therein. Section 7-A is as under :

> "7-A. Additional grounds for termination of tenancy in certain cases. - (1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 may be terminated on the following grounds in addition to the grounds specified in Section 7, namely :
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> (a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II;
>
> (b) that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit :

Provided that no tenant shall be ejected under this sub-section -

> (i) from any area of land, if the area under the personal cultivation of the tenant does not exceed five standard acres, or
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> (ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres,

until he is allotted by the State Government alternative land of equivalent value in standard acres.

> (2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of twelve years or more under the same landowner or his predecessor-in-title, shall be ejected on the grounds specified in sub-section (1) -
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> (a) from any area of land, if the area under the personal cultivation of the tenant does not exceeds fifteen standard acres, or
>
> (b) from an area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres :

Provided that nothing in this sub-section shall apply to the tenant of a landowner who, both, at the commencement of the tenancy and the commencement of the President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity.

Explanation. - In computing the period of twelve years, the period during which any land has been held under the same landowner or his predecessor-in-title by the father, brother or son of the tenant shall be included.

> (3) For the purpose of computing under sub-sections (1) and (2) the are of land under

> the personal cultivation of a tenant, any area of land owned by the tenant and under his personal cultivation shall be included."

At present in this case we are not concerned with sub-section (2) to Section 7-A.

12. Considering the provisions of Section 7-A(1)(a), the first issue which requires determination would be whether the landlady was entitled to terminate the tenancy on the ground that the land comprising the tenancy has been reserved by the landlady for her personal cultivation in accordance with the provisions of Chapter II. Admittedly, in the present case, no such reservation is made. On the basis of clause (b), the second issue would be whether the landlady owns 30 standard acres or less land and the land falls within her permissible limit. In the present case, as discussed above, assuming that the relevant date is 3-12-1953 when the President's Act came into force then also the landlady was holding more than the permissible limit. However, we do not find any substance in the contention of the learned counsel for the appellants that the relevant date is 3-12-1953. The reason is that the Pepsu Tenancy and Agricultural Lands Act came into force in 1955 and Section 7-A and other provisions were inserted with effect from 30-10-1956. In our view, this issue also would not require much discussion in view of Section 32-NN which clarifies that the relevant date would be the date of commencement of the amending Act, i.e., 30-10-1956. Section 32-NN which is a clarificatory section for removal of doubt is as under :

> "32-NN. Removal of certain doubts. - For the removal of doubts it is hereby declared that for evaluating the land of any person at any time under this Act, the land owned by him immediately before the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, or 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."

13. From the aforesaid section it can be stated that for determining the relevant date for evaluating the land of any person under the Act the land owned by him immediately before the commencement of the Second Amendment Act, i.e., 30-10-1956 shall be the relevant date. It further clarifies that if the land is acquired after such commencement by inheritance, bequest or gift, then also it has to be evaluated for converting into standard acres as if the evaluation was being made on the date of such commencement. If the land is acquired in any other manner, it has to be evaluated for converting into standard acres as if the evaluation was being made on the date of such acquisition.

14. Learned counsel for the appellants, however, relied upon the decision of this Court in Bhagwan Das case (AIR 1966 SC 1869 : (1966) 2 SCR 511) and submitted that for the purpose of evaluation, the relevant date would be 3-12-1953 when the President's Act came into force and there is no scope for evaluating the subsequent improvements in the land due to consolidation operation or otherwise. In the said case, the Court considered Section 19-F(b) of the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962 and held 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 and as the landowner had not acquired any land after the commencement of the Act, his status as a small landowner was

not altered by reason of subsequent improvements or reallotments of land on compulsory consolidation of holdings. The said decision is based on the wordings used in Section 19-F(b) which specifically provides that for evaluating the land of any person at any time under the Act, the date would be the date of commencement of the Act and the Court has taken into consideration that date. As against this, Section 32-NN of the Tenancy Act specifically provides that the relevant date would be commencement of the Second Amendment Act (30-10-1956) and therefore, the contention of the learned counsel for the appellants has no force and is rejected accordingly.

15. In the result, the appeals fail and are rejected accordingly. There will be no order as to costs.