

# PUNJAB AND HARYANA HIGH COURT

Bhagirath Ram Chand

Vs

State of Punjab

(Khosla, C.J. Falshaw and Soni, JJ.)

27.10.1953

## JUDGMENT

**Khosla, J.**

1. In these two petitions (Civil Writ Application No. 162 of 1953 and Civil Writ Application No. 163 of 1953) the validity of the Punjab Security of Land Tenures Act (Punjab Act No. 10 of 1953) hereinafter called the Act, as amended by Ordinance No. 5 of 1953, had been challenged before us. There are several other petitions pending in this Court in which the same point has been raised and the fate of those petitions will depend upon our decision in the two petitions with which this order deals. The petitioners are landlords against whom their tenants have filed applications under Section 10 of the Act. The applicants were ejected tenants, and they wished to be restored to their tenancy according to the terms of the Act. The landlords contend that the Act is 'ultra vires' the Constitution and pray for the issue of a writ of 'mandamus' directing the officials concerned not to entertain the application of the tenants.

2. Mr. Chatterjee who argued the case on behalf of the landlords based his attack on several grounds but before stating these grounds or discussing them it is necessary to set out briefly the aims and objects of the Act and the manner in which the Legislature has sought to achieve them.

3. The Act is called the Punjab Security of Land Tenures Act and the preamble states that, the Act is intended to provide for the security of land tenure and other incidental matters. The main provisions of the Act are that landlords cannot in effect eject their tenants except for reasons mentioned in Section 9 which are :

(a) failure to pay rent regularly without sufficient cause ;

(b) the rent being in arrears at the commencement of the Act;

(c) failure on the part of the tenant to cultivate the land to the extent customary in the locality;

(d) user of tenancy in a manner which renders-the land unlit for the purpose for which, he holds it;

(e) subletting on the part of the tenant;

(f) refusal on the part of the tenant to execute a 'qabuliyat' or a 'patta';

(g) if the landlord is what is described as a small land-owner. The maximum holding is limited to 30 standard acres except in the case of displaced persons who may hold up to a maximum of 50 standard acres. Certain tenants are given the right to pre-empt the land in case the land-owner wishes to sell it and certain tenants have even been given the right to purchase the land. The tenant's right to water is guaranteed and the amount of maximum rent is fixed at one-third of the produce. Tenancy during the period of its duration is heritable. There are certain other incidental provisions but the important ones have been set out above. It will thus be seen that the Act makes the position of the tenants much securer than it was under the old law. The Act is further intended to prevent large holdings and the concentration of land in a few individuals. Where a land-owner owns land in excess of the maximum limit permissible under the Act his holding is reduced, but the Act does not have the effect of confiscating any part of his property.

4. The objections raised against the Act may be stated briefly as follows:

(1) The Act contravenes the provisions of Article 19(f) of the Constitution inasmuch as it prevents the land-owner from enjoying, controlling and disposing of his property freely;

(2) It offends against the provisions of Article 31 inasmuch as it deprives him of his property against his will. His property can be preempted by the tenant (Section 17) and can even, be acquired by him against his wishes (Section 13);

(3) The Act offends against the provisions of Article 31(2) of the Constitution inasmuch as it deprives the landlord of his property and the Act makes no provision for the payment of compensation to him;

(4) The statute nullifies retrospectively 'bona fide' gifts, exchanges and family settlements made by the land-owner and therefore abrogates vested rights and interests (Section 16);

(5) The Act offends against the provisions of Article 14 of the Constitution inasmuch it classifies landlords and tenants in an unreasonable manner by dividing them into displaced persons and non-displaced persons;

(6) It places unreasonable restrictions upon the rights of the individual by artificially restricting the area of self-cultivation and by giving a wholly unreasonable definition to the expression "self-

cultivation" (Section 2 of the Act and Section 2 of the Amending Ordinance);

(7) The penal provision contained in Section 11 of the Act with regard to the supply of canal or well water is wholly unlawful;

(8) The Act goes against the directive principles contained in Article 48 of the Constitution because agriculture on modern and scientific lines is impossible if the land is fragmented into small holdings;

(9) The Act is not within the legislative competence of the State as it is not covered by any of the Items in either List II or List III of Schedule 7 to the Constitution;

(10) The Act is not saved by the provisions of Article 31A of the Constitution which is only intended to provide for the acquisition, extinguishment or modification of rights in estates. "Estate" in this context has the meaning given to it in Section 3 of the Punjab-Land Revenue Act.

5. These objections are met by the learned. Advocate-General with the argument that the Act is intended to carry out the directive principles-contained in Article 39 of the Constitution. It imposes only reasonable restrictions upon the right to hold and enjoy property and it contains an ample provision for the payment of compensation to the landlord whenever he is deprived of a portion of his property.

6. I shall now proceed with the various objections raised on behalf of the landlords 'seriatim'. The first contention raised is that the statute-contravenes the provisions of Article 31 of the Constitution inasmuch as it prevents the owner from, the free enjoyment of his property. He cannot, cultivate all of it himself or through his servants because a maximum limit of 30 acres has been imposed by the Act, nor can he let the land out to tenants of his choice. He may have lawfully ejected a tenant but under the Act he is compelled to have him back and he is therefore deprived of the right to use his property freely. There is no doubt that certain restrictions upon the enjoyment of property are imposed by this Act, but a careful examination of the various provisions shows that those restrictions are not arbitrary or capricious and are nothing more than reasonable restrictions having regard to the aims of the Act. Now, the object of this legislation is to give-security to the tenants and to safeguard them against unreasonable or capricious ejection by I their landlords. It is intended to prevent the exploitation of the poorer peasantry and these are aims which are laid down by the Constitution in Article 39 which runs as follows :

"39. The State shall, in particular, direct its policy towards securing:

(a) That the citizens, men and women equally have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed

as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

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7. This matter was considered by their Lordships of the Supreme Court in -- '*State of Bihar v. Kameshwar Singh*' and: Mahajan J. observed at p. 274 :

"Now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based. The purpose of the acquisition contemplated by the impugned Act therefore is to do away with the concentration of big blocks of land and means of production in the hands of a few individuals and to so distribute the ownership and control of the material resources which come in the hands of the State as to subserve the common good as best as possible.

In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The Legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute certainly is in accordance with the letter and spirit of the Constitution of India."

Their Lordships were in that case considering the validity of the Bihar Land Reforms Act. The Punjab Act is a much milder enactment inasmuch as it does not seek to acquire the land of the big holders. It is only intended to limit large holdings and makes ample provision for compensation to the landlords. The landlords can sell the excess holding to anyone they like and the tenants are given the right to pre-empt. The tenants' right to purchase under Section 18 is subject to the payment of a fair price. Therefore it is clear that the restriction imposed by this Act upon the right given to the individual under Article 19(f) of the Constitution is a reasonable restriction and it is a restriction in the interests of the general public. The number of persons who will be benefited by this legislation far exceeds the number who will be adversely affected.

8. The second argument that the landlord may be deprived of his land under Section 18 of the Act has also very little force. This restriction too is nothing more than a reasonable restriction. The abrogation of decrees of Courts under Section 23 of the Act is intended to achieve the objects of the Act. Mr. Chatterjee argued that the Act in effect took away the land of one individual and made it over to the other and this was wholly invalid. He relied upon certain observations made by Mahajan J. in the 'Bihar case (A)', cited above. Mahajan J. observed that

private property cannot be acquired for a private purpose and there is no power in the sovereign to acquire private property in order to give it to private person. This Act, however, is not an Act aiming at the acquisition of private property. The Act merely modifies rights in estates and this is permissible under the terms of Article 31A of the Constitution. The Bihar Act empowered the State Government to acquire the land of the 'zemindars'. The Punjab Act, however, does not give any such power to the State. It merely limits the maximum holding of a landlord and lays down a procedure for attaining this object. It therefore does nothing more than modify rights in estates.

9. This argument also provides an answer to the third objection raised by Mr. Chatterjee, namely that the Act provides for the acquisition of land without the payment of compensation. The learned Advocate-General argued that there was no question of acquisition here but even if by any stretch of meaning section 18 of the Act could be construed into a provision for acquisition the same section contained a provision for the payment of compensation, inasmuch as the tenant had to pay a fair price for the land which he wished to purchase. Sub-section (2) of Section 18 of the Act lays down the procedure for determining the value of the land. It therefore could not be said that the Act authorised compulsory acquisition of property without making provision for the payment of compensation to the owners.

10. The next argument raised was that the statute nullifies retrospectively all gifts, exchanges land family settlements and this was against the spirit of the Constitution and natural justice. Counsel relied upon certain observations contained in a decision of the Calcutta High Court in '*Subodh Oopal v. Behari Lal*'<sup>2</sup>, In that case Section 7, Bengal Land Revenue Sales (West Bengal Amendment) Act was declared invalid on the ground that it purported to deprive individuals of right which they had acquired retrospectively. There can, however, be no doubt that the Legislature can pass laws with retrospective effect. This power was recognised in a decision of the Federal Court -- '*United Provinces v. Mt. Atiqa Begum*'<sup>3</sup>, So long as the retrospective effect of the Act is in conformity with the objects of the Act and does not violate any principles of the Constitution the provision must be held to be valid. The Act gives certain rights to those tenants who were ejected after 15-8-1947 and there seems to be nothing unreasonable in giving them the same rights as are acquired by persons who are tenants at the commencement of the Act. In the same way the abrogation of mala fide transactions is brought under the mischief of the Act by Section 16. This section is intended to prevent evasion of the provisions of the Act by colourable transactions.

11. With regard to the classification between displaced persons and non-displaced persons this classification is wholly reasonable and is in conformity with the directive principles of the Constitution. It places the displaced persons at an advantage over the non-displaced persons and it cannot be said that this is an unreasonable classification.

12. The same argument disposes of the objection that the area of self-cultivation has been restricted by the Act and the expression "self-cultivation" has been defined somewhat stringently. Once it is conceded that large holdings are to be discouraged and a more even distribution of land is to be promoted a somewhat strict definition of the expression "self-cultivation" will become necessary and a land-owner will not be allowed to hold an area in excess of the maximum limit by merely pretending that his close relations are cultivating it. If indeed land is being cultivated by his relations there should be a separation and the land should be owned and cultivated by the relations themselves.

Nor is there any force in the argument that the penal provision contained in Section 11 is invalid. The learned Counsel relied upon the ruling of the Supreme Court in -- '*Raghubir Singh v. Court of Wards, Ajmer*'<sup>4R</sup> but that case is distinguishable from the case before us on several grounds. In that case Section 112 of the Ajmer Tenancy and Land Records Act was impugned on the ground that its provisions were penal. Their Lordships of the Supreme court, declared that section invalid. The section provided :

"If a landlord habitually infringes the rights of a tenant under this Act, he shall, notwithstanding anything in Section 7, Ajmer Government Wards Regulation 1888 (1 of 1888), be deemed to be a 'landlord who is disqualified to manage his own property' within the meaning of Section 6 of the said Regulation and his property shall be liable to be taken under the superintendence of the Court Of Wards." Section 110 contained a penal clause and made the landlord liable for the offence of extortion. Their Lordships of the Supreme Court held that this section had the effect of depriving the landlord of his property for an indefinite period merely on the subjective determination of an executive officer and was for that reason invalid. There were therefore two distinguishing features at least between that Act and the Punjab Act. In the first place, under the Ajmer Act there was an arbitrary determination by an executive officer of when a landlord habitually infringes the rights of a tenant, No machinery was provided in the Act for an objective determination of the landlord's position. In the second place, under the Act there was a complete suspension of the landlord's rights for an indefinite period. In the Act under consideration the rights of the landlord are not suspended, nor is there any penalty imposed upon him, as a result of a subjective or arbitrary determination. Under Section 11 of the Act the landlord has to be tried by a Court of law and he can be punished if he does not supply to his tenant water in the same quantity as was enjoyed by him before the commencement of the Act. The fact is to be determined by a criminal Court not below the rank of a second class Magistrate and therefore the Supreme Court ruling has no application to the facts of the present case.

12a. With regard to the directive principles contained in Article 48 of the Constitution the learned Advocate-General pointed out that the Act is in conformity with the directive principles

contained in Article 39 and that the Act is not aimed at fragmentation of holdings but merely to prevent the concentration of the means of production in a few hands.

13. I now come to the question of legislative competence. It is clear that the Act falls under item 18 of List II of 7th Schedule. Item 18 is-

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

It is scarcely necessary to discuss this point at length and it is sufficient to say that all the provisions of the Act are concerned with rights in or over land, land tenures, the relation of landlord and tenant and collection of rents. The wording of the various items in the 7th Schedule must not be construed too strictly. It was pointed out as long ago as 1941: -- 'AIR 1941 PC 16 (C)', that the Items in the Lists are not to be read in a narrow or restricted sense. "Each general word should be held to extend to all ancillary or subsidiary matter which can fairly and reasonably be said to be comprehended in it." The Federal Court was in that case considering the Items in Schedule 7 of the Government of India Act of 1935, but these remarks apply with equal force to the Items in the 7th Schedule of the Constitution.

14. The last argument raised was that Article 31A of the Constitution did not save the Act because the Act did not affect estates but areas of land, large or small. An "estate" has been defined in the Punjab Land Revenue Act as "any area-

(a) for which a separate record-of-rights has been made; or

(b) which has been separately assessed to land revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed; or

(c) which the Provincial Government may, by general rule or special order, declare to be an estate."

It is clear that the whole includes the part and where an Act provides for rights in an estate It provides for rights in part of an estate. In this connection it is instructive to observe that the Punjab Act has been modelled for the greater part on the lines of the Bombay Act 67 of 1948. The provisions of the two Acts are very similar and the Bombay Act 67 of 1948 is mentioned in the 9th Schedule of the Constitution and this Act has been declared to be valid by the provisions of Article 31B. Articles 31A and 31B were enacted at the same time. Article 31B mentions certain specific instances of Acts which are saved by the provisions of Article 31A. The Bombay Act 67 of 1948 is one of the items which is saved by Article 31B, and it is clear therefore that in

enacting Article 31A the Constituent Assembly intended to deal not only with whole estates but also with parts of estates. The object appears to have been to bring all agricultural land as distinct from urban property within the ambit of the Article. There is therefore no force in the argument that the Punjab Act is invalid because it deals not with whole villages but with portions of estates held by the land-owners.

15. I would therefore hold that this Act is saved by the provisions of Article 31A of the Constitution inasmuch as it is intended to modify rights in estates; the Act is not against the provisions of Article 19(f) because it imposes nothing more than reasonable restrictions upon the rights of individuals and these restrictions are in the interests of general public; the classification between displaced and non-displaced persons is also a reasonable classification; and none of the provisions of the Act are against the letter or spirit of the Constitution. I would therefore hold that the Act is 'intra vires' the Constitution and the petitions of the landlords are liable to be dismissed. I would accordingly dismiss them but in the circumstances of the case make no orders as to costs.

Falshaw, J.

16. I have had the advantage of perusing the judgment of my learned brother Khosla J. and I agree with his views and cannot usefully add anything thereto. I accordingly agree that the petitions should be dismissed.

Soni, J.

17. I agree with my learned brother Khosla J. and have nothing to add.

Cases Referred.

1 AIR 1952 SC 252 (A)

2 AIR 1951 Cal 85 (B)

3 AIR 1941 FC 16 (C)

4 AIR 1953 SC 373 (D)