AJMER SINGH AND ORS. ETC.

v.

STATE OF HARYANA AND ORS.

NOVEMBER 17, 1989

[LALIT MOHAN SHARMA AND V. RAMASWAMI, JJ.]

The Punjab Security & Land Tenures Act 1953, Sections 3, 4, 5A to 5C—Small Land owner—Right to reservation—Whether arises.

These appeals are by tenants against the land-owners.

One Bishan Das owned considerable extent of land in Pakistan. He died on April 11, 1948 after he had migrated to India. After his death the Rehabilitation Department allotted 124 standard acres and 4-1/4 units of evacuee land to Respondents Nos. 2 to 5 his sons and to Nos. 6 & 7 who were the legal heirs of one his deceased son. Each of the five sons was deemed entitled to 24 standard acres and 13 units of land and accordingly mutuation in respect of each of them was allowed by the Rehabilitation Department. Permanent rights in regard to the allotted land were also conferred by the authorities on the said respondents. Thereupon the said respondents-land owners initiated ejectment proceedings under sec. 9(1)(i) of the Punjab Security of Land Tenures Act, 1953 against the tenants who were then in occupation of the Lands in question on the ground that each one of them was a small land owner 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. Their appeals were dismissed by the Collector on 4.4.1965. Their revision preferred before the Commissioner, Ambala Division was also rejected. Land-owners' further revision to Financial Commissioner also failed whereupon they filed a Writ Petition before the High Court on the ground that the land had been allotted to them in lieu of the land owned by their father in Pakistan and consequently the permissible area of each of them was to be computed under the proviso to section 2(3) of the Act, and so computed the holding of each of the five was well below the permissible limit of 30 standard acres prescribed thereunder. The High Court dismissed the Writ petition.

Respondents preferred Letters Patent Appeals wherein the High Court held that in view of the Explanation to the proviso to section 2(3), the heirs and successors of the displaced persons to whom lands were allotted could not claim the benefit of the proviso and that the permissi-

ble area under the substantive part of section 2(3) was 60 ordinary acres.

The respondents preferred appeals to this Court. This Court confirmed the view of the High Court. However this Court accepted an argument advanced on behalf of the respondents-land owners that in computing the permissible area of each of the land-owner, the uncultivated area of "banjar Jadid", "banjar Kadim" and "gair Mumkin" lands as on April 15, 1953 could not be included. As the authorities had wrongly included these types of lands, their orders were set aside and the case was remanded to the Collector concerned with a direction that should ascertain the extent of "banjar Jadid", "banjar Kadim" and "gair mumkin" lands of the Respondents allotted as on 15.4.1953. When these proceedings were pending, applications filed by the appellants-tenants under section 18 of the Act for purchase of surplus area also came to be considered by the authorities. When the matter came up before the Financial Commissioner he set aside the orders of the Collector and remanded the appellants-tenants cases for purchase of surplus land with a direction that the Collector must decide the cases of surplus area after allowing the permissible 60 acres to the land owners. In a subsequent proceedings, the Financial Commissioner directed the Collector to determine the permissible area after excluding all "banjar lands". The tenants filed Petitions before the Financial Commissioner against the order. However by the time these cases came up for orders, this Court had decided the land-owners' eviction cases viz in *Munshi Ram & Ors.* v. *Financial Commissioner, Haryana & Ors.*, [1979] 2 SCR 846.

As such the revision Petitions were dismissed and the Collector was asked to determine the permissible area with reference to relevant date viz., April 15, 1953. By his order dated 6.5.82 the Collector accordingly determined the area held by each of the land owner after excluding the "banjar lands", as less than the permissible area and found that no area owned by them could be declared surplus and on that footing dismissed the purchase applications filed by the appellants-tenants. Their Petitions having been dismissed by the Authorities under the Act, they filed Writ Petitions questioning the dismissal of their purchase applications. The High Court having dismissed the Writ Petitions, they have filed these appeals.

Dismissing the appeals, this Court,

HELD: The Punjab Security Land Tenures Act 1953 is intended to

place a ceiling on holding of land by fixing a maximum area permissible to be held by a land-owner. In other words the excess over the permissible area shall be available as surplus area to be dealt with under the provisions of the said Act. [217H]

In calculating the total extent held by a person on the date of the Act for purposes of determining whether a person is small land-owner, the banjar lands cannot be taken into account. [216C]

The need to make a reservation would arise only when the land-owner on the relevant date held land in excess of the permissible area. [217C]

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 land owner. [218B]

It is not necessary and the Act does not make it obligatory, on pain of consequences provided under section 5C, for a small land-owner to make a reservation under sections 3, 4, 5, 5A or 5B. [218C]

Bhagwan Das **v.** *State of Punjab*, **[1966] 2 SCR 510;** *Gurbux Singh* **v.** *State of Punjab,* **AIR 1964 SC 502, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 806-810 of 1986.

From the Judgment and Order dated 16.3.1985 of the Punjab & Haryana High Court in Civil W.P. No. 2050-2054 of 1984.

M.S. Gujral and Prem Malhotra for the Appellants.

Kapil Sibal, M.R. Sharma, S.K. Mehta, Vinod Mehta, Atul Nanda and M.K. Dua for the Respondents.

The Judgment of the Court was delivered by

V. RAMASWAMI, J. One Bishan Das who is the father of respondents 2 to 5 and another by name Muhari Ram whose legal representative are respondents 6 and 7, owned considerable extent 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 unit of evacuee land on 26th August, 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 Punjab Security of Land Tenures Act, 1953 (hereinafter called 'the Act') for 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 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 land-owners moved the High Court by a writ petition under Article 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 L.P. Appeals filed against the same came up for consideration before a full Bench of the High Court of Punjab and Haryana. 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. The decision of the full Bench is reported in 1967 Punjab Law Reporter 913. Against this decision the respondent land-owners preferred appeals to this Court. By a judgment dated December 15, 1978 in *Munshi Ram & Ors.* v. *Financial Commissioner, Haryana & Ors.*, [1979] 2 SCR 846 this Court confirmed the view of the full Bench. However, this Court accepted and argument on behalf of the land-owners that in computing the permissible area of each of the land-owners 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 land-owners 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 land-owners were holding at the relevant date less than 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 land-owners 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 land-owners. Thereafter, the Collector took up consideration of the surplus area cases in the light of the remand order. However, by his Order dated February 2, 1978 the Collector held that the land-owners should include in the permissible area all the 'banjar' lands which have since been brought under cultivation and accordingly directed the land-owners to produce the list of permissible area. On appeal by the land-owners 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 land-owners 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 land-owners, 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 he 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 land-

owners 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.

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 land-owner 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 land-owner has made the reservation as contemplated in sections 3, 4, 5 and 5A, he incurs the penalty under section 5C 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 land-owner including the land under the personal cultivation of the land-owner, 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 land-owners had not made any reservation under sections 3, 4 and 5 originally nor did they make it after section 5A was introduced, though their lands were situated in more than one Patwar Circle within section 5A. However, the stand taken by the land-owners was that they were small land-owners having less than 60 acres and, therefore, they were not obliged to make any reservation and section 5C would not be attracted at all.

The following proposition have been settled by the decisions of this Court in *Bhagwan Das* v. *State of Punjab*, [1966] 2 SCR 510 and *Munshi Ram* v. *Financial Commissioner, Haryana*, (supra).

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.

2. If a person is a small land-owner 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.

3. Banjar Kadim, Banjar Jadid and Gair Mumkin cannot be taken into account while computing the permissible area and surplus area under the Act.

4. Banjar Kadim and Banjar 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.

5. Permissible area under the substantive part of section 2(3) for a person who is not a displaced person is sixty ordinary acres.

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 sixty acres its quantitative aspect.

Section 2(2) of the Act defining small land-owner reads as follows:

> "Small land-owner means land-owner whose entire land in the State of Punjab does not exceed the 'permissible area'.
>
> Explanation—In computing the area held by any particular land-owner 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."

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 (XVI of 1887).'

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

A " '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".

B This Court had held in *Munshi Ram* v. *Financial Commissioner,* (supra) 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 land-owner, these banjar lands cannot be C taken into account.

We are also not impressed with the argument that a land-owner shall make a reservation under the Act in all cases irrespective of whether he is a small land owner or not. Section 3 of the Act speaks of D a small land-owner 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 land-owner may select out of the entire area held by him as a land-owner land not exceeding the permissible area and reserve it for himself. The E section thus implies that as a small land-owner 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 to the extent of permissible area and to reserve to himself, again emphasising that holding more F than the permissible area as a necessary requirement to oblige a land-owner to make a selection or reservation. Section 4 deals with the case where the person was not a small land-owner 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 G Property Act, 1950 had been modified or revised since his earlier reservation. Section 5 of the Act provides:

"Any reservation before the commencement of this Act, shall cease to have effect and subject to the provisions of sections 3 and 4 any land-owner who owns land in excess of H the permissible area may reserve out of the entire land held

> by him in the State of Punjab as land-owner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form 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 land-owner 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 5A also deals with a case where a land-owner holding in excess of the permissible area but it is with refrence to a land-owner who has land situate in more than one patwar circle. Section 5B authorised a land-owner 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 land-owner on the relevant date held land in excess of the permissible area.

This Court in *Gurbux Singh* v. *State of Punjab,* AIR 1964 SC 502 accepted that:

> "The main purpose of the Act seems to be to:
>
> (i) provided a 'permissible area' of 30 standard seems to a land-owner/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 land-owner. 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

A eviction states that "tenants on the area reserved under this Act or is a tenant of a small land-owner" is liable for eviction. If in every case irrespective of whether the person is a small land-owner or not he had to make a reservation then the later portion of this clause referring to a tenant of small land-owner was absolutely not necessary. The right of reservation given to a person who holds land in excess of the permissi-
B ble 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 land owner. It may be mentioned that section 18 of the Act itself specifically provides that the right to purchase is available to a tenant
C only against a land-owner "other than a small land-owner". In our view, therefore, it is not necessary and the Act does not make it obligatory, on pain of consequences provided under section 5C, for a small land-owner to make a reservation under sections 3, 4, 5, 5A or 5B.

D It was then contended by the learned counsel for the appellant that an area of 0.33 ordinary acres had been excluded in determining total extent held by the land-owner 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
E for the first time in this Court.

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.

F Y. Lal Appeals dismissed.