(13) In view of the finding that the relationship between an Agent and the Bank is not of master and servant or employer and employee, but is only that of a Principal and Agent, it is impossible to hold that an Agent is a workman. Consequently, this petition is wholly lacking in merit. It is dismissed.

(14) As already noticed above, the Bank had offered to give an agency to the petitioner if she gives an undertaking that she would not claim the status of a workman. The claim of the petitioner has been rejected by me. In view of this situation, if she now applies to the Bank and gives an undertaking that she would not claim to be a workman, it is hoped that the Bank would consider her case sympathetically and mitigate the hardships that she may undoubtedly be facing.

J.S.T.

Before : *A. L. Bahri & V. K. Bali, JJ.*

TILAK RAJ AND OTHERS,—*Petitioners.*

versus

FINANCIAL COMMISSIONER (REVENUE), PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 13808 *of* 1991

December 5, 1991

Constitution of India 1950, *Art.* 226/227—*Punjab Security of Land Tenures Rules*, 1956, *Rule* 6(5) *and* 6(6)—*Punjab Security of Land Tenures Act* 1953 *section* 10 *A(b)—Locus standi of resettled tenants to challenge order declaring land surplus in hands of original landowner—Such order sought to be reviewed on demise of original landowner—Petitioners resettled on land during lifetime of original landowner—Death of original landowner after enforcement of* **Punjab Ultization of Surplus Area Scheme 1973—Plea of respondents** *that petitioners or resettled tenants have no right to challenge order regarding surplus area of landowner—Plea not tenable.*

Held, that the land was declared surplus in the hands of the original landowner way back in the year 1964. The Punjab Land Reforms Act 1972 came into force on 2nd of April 1973. Under the Act aforesaid, the manner in which the surplus land is to be allotted, a scheme known as Punjab Utilization of Surplus Area Scheme 1973

was also framed. Paragraph 13 of the aforesaid Scheme runs as follows:—

> "A tenant resettled on the surplus area of a landowner in accordance with the provisions of the Punjab Law and the rules framed thereunder at any time before the commencement of the Act shall be deemed to have been alloted land in accordance with the provisions of this scheme; Provided that the provisions of this paragraph shall not be applicable where the tenant is deemed to have become the owner in accordance with clause (b) of sub section 4 of section 18 of the Punjab Law before the commencement of the scheme."

Paragraph 13 of the scheme is, thus, attracted to the facts of the present case. The landowner died on 25th May, 1974 i.e. after the enforcement of scheme of 1973. The tenants who were settled on the surplus land on account of paragraph 13 of the scheme reproduced above improved their status and became allottees. It was not disputed by the learned counsel for the petitioners that under the scheme of 1973, a tenant settled on the surplus area had a right to get allotment as proprietor persons who were tenants under the Act of 1953 became allottees in view of the provisions of Punjab Land Reforms Act and Punjab Utilization of Surplus Area Scheme, it cannot be urged on any meaningful ground that they would not have a right to be heard or they would not have a right to challenge the order if their rights were going to be prejudiced on account of any order that might either reduce the surplus area or totally obliterate the same. The judgement cited by the learned counsel in support of his contention that the tenants or resettled tenants have no right of hearing nor they have any right to challenge the order with regard to surplus area of landowner has, thus, no substance and, thus, deserves to be rejected.

(Paras 3 & 4)

Punjab Security of Land Tenures Act, 1953—*Sections 5B & 24—Punjab Tenancy Act*, 1987—*Section 82—On appeal commissioner reduced area declared surplus by Collector—Qua landowner order attained finality—Mortgagee from Landowner sought review—Plea of petitioners that once order of declaration of surplus area were set aside allotment made on the basis of orders.*—vide *which land of big landowner was declared surplus would* ipso *facto become void—Plea not tenable—Order passed in view cannot be interpreted to mean that part order not even challenged also set aside.*

Held, that the order passed on the review application cannot possibly be interpreted so as to mean that part of the order which was not even challenged by any one was also set aside. The Financial Commissioner after thoroughly going through the facts of the case came to the correct conclusion that while permitting the review, the Additional Commissioner ought to have limited the scope of the review to the extent of protecting the interests of the mortgage and if the order is read as a whole, it would be clear that review was to

cover the interest of mortgagee only and in all other respects, order dated April 18, 1963 had not to be touched.

(Para 2)

R. L. Aneja, Advocate, *for the Petitioner.*

M. C. Berry, DAG, Punjab, *for respondents No.* 1 *and* 2.

Balraj Behal, *for respondents Nos.* 3 *to* 9.

JUDGMENT

V. K. Bali, J.

(1) The original big landlord Kashmiri Lal was admittedly owner of 92 Standard Acres 8¼ units of land located in village of Salemshah. On the appointed date i.e. April 15, 1953 admittedly notice under the Punjab Security of Land Tenures Act 1953 was issued to determine if he had any surplus land. The matter or the aforesaid purpose came before Collector Agrarian, Fazilka who,—*vide* his order dated September 13, 1960 after leaving 50 Standard Acres of land as permissible area declared 42 Standard Acres 3/4 units as surplus. The landowner challenged the aforesaid order by way of an appeal before the Commissioner and the same was accepted,—*vide* order dated February 1, 1962. However, the case was remanded for fresh decision and a direction was given that the transfers made by the landowner in favour of Amar Nath, Chuni Lal and Tilak Raj who were none other than the present petitioners and are admittedly his successors by way of Civil Court decree obtained by them in the year 1956 be taken into account. The Collector Fazilka,—*vide* his order dated August 28, 1962 after allowing 50 Standard Acres of land as permissible area declared 34 Standard Acres 14¼ units as surplus. It is significant to mention that the transfers made by the big landowner in favour of his sons on the basis of Court decree were not held to be *bona fide.* The matter was further agitated by way of an appeal before the Additional Commissioner, Jalandhar who,—*vide* his order dated April 18, 1963 accepted the appeal and reduced the surplus area from 34 Standard Acres 14¼ units to 33 Standard Acres 4¾ units. The landowner thereafter did not agitate the matter but as some part of the area declared surplus had since already been mortgaged by the landowner, the mortgagee sought review of the order dated April 18, 1963. The plea of mortgagee succeeded and.—*vide* order dated October 28, 1965 the Additional Commissioner

Jalandhar reviewed his earlier order dated April 18, 1963. This order of Additional Commissioner, Jalandhar was challenged in appeal before the Financial Commissioner, Punjab, Chandigarh who,—*vide* his order dated December 31, 1965 dismissed the revision petition. The landowner then filed Civil Writ Petition No. 432 of 1966 in this Court which too did not find any favour with his Court and it was dismissed,—*vide* order dated May 7, 1975. However, the litigation was going on when the new Act i.e. Punjab Land Reforms Act, 1972 came into being. Original landowner Kashmiri Lal died on May 25, 1974. Collector,—*vide* his order dated November 17, 1976 on account of demise of the original landowner held that inasmuch as the successors of the landowner would be small landowners and no lands in their hands could be declared surplus, the death of original landowner would result in non-operation of the earlier order declaring his land as surplus. Before, however, the aforesaid order was passed in the manner indicated above, land measuring 11 Standard Acres 10¼ units had since been allotted in favour of Bishan Singh, Jugraj Singh, Jalla Singh, Mangal Singh and others. Obviously, the allotment was out of the land declared surplus in the case of the big landlord and the same was made way back in the year 1964. When the successors of the original landowner i.e. the present petitioners after obtaining a favourable order in their favour proceeded against the allottees mentioned above and filed an application for their ejectment before the Collector Agrarian, Fazilka who actually ordered their eviction,—*vide* order dated January 3, 1978. Respondents No. 3 to 9 went in separate appeals before the Additional Commissioner, Ferozepore Division who after hearing the parties at length,—*vide* order dated November 30, 1981 accepted the appeal and set aside the orders dated November 17, 1976 of the Collector. The aforesaid reversal of decision was obviously not to the liking of the petitioners who agitated the matter before the Additional Commissioner and being unsuccessful from that Court as well, they have approached this Court by way of present Writ Petition with a prayer to quash orders passed by Additional Commissioner, Ferozepore as also the Financial Commissioner.

(2) Although in the petition, number of points have been raised but the learned counsel appearing for the petitioners has mainly contended that once the orders of declaration of surplus area were set aside,—*vide* order October 28, 1965, the allotments made on the basis of orders,—*vide* which the land of big landowner was declared surplus would *ipso facto* become void. The facts, however, as narrated above would go to show that orders dated August 28, 1962 and April 18, 1963 in so far as landowner is concerned, had become

final. He had not agitated the matter thereafter and in fact an application for review was carried only by the mortgagee. As indicated above, the review application preferred by the mortgagee was accepted. It is that order which was later on challenged by the original landowner before the Financial Commissioner and the High Court and as indicated above, he was unsuccessful at every stage. Order dated April 18, 1963 had, therefore, attained finality qua the landowner. As mentioned above, he had only challenged the order dated April 18, 1963 and,—*vide* order dated October 28, 1975 the review of order April 18, 1963 was permitted. The order passed on the review application cannot possibly be interpreted so as to mean that part of the order which was not even challenged by anyone was also set aside. The Financial Commissioner after thoroughly going through the facts of the case came to the correct conclusion that while permitting the review, the Additional Commissioner ought to have limited the scope of the review to the extent of protecting the interests of the mortgagee and if the order is read as a whole, it would be clear that review was to cover the interest of mortgagee only and in all other respects, order dated April 18, 1963 had not to be touched.

(3) The learned counsel for the petitioners also contends that the order by which on demise of original big landowner no effect was to be given to the earlier orders passed under the Punjab Security of Land Tenures Act could not possibly be challenged by the tenants who had been settled on the land declared surplus. In support of his aforesaid contention, the learned counsel relies upon decision of Division Bench of this Court in *Bhupinder Singh* v. *The State of Punjab and others* (1). The facts of Bhupinder Singh's case (Supra) would, however, show that while interpreting Rules 6(5) and 6(6) of the Punjab Security of Land Tenures Rules, 1956, it was held that the "reference to the tenants in this rule is clearly to such tenants who were already on the land of the landlord in their capacity as such before the declaration of surplus area by the Special Collector. Such tenants were considered to be necessary parties and it was imperative to hear them because the scheme of the Act is clear that the land of a tenant who was cultivating the same as such at the time of the enforcement of the Act, could not be reserved by the big landlord at the time of the declaration of surplus area by the Special Collector". It was also held that "insofar as the resettled tenant is concerned, he is brought on the surplus land of the landlord after it is declared surplus by the

(1) 1980 Punjab Law Journal 72.

Special Collector. Thus his status as a tenant or a resettled tenant follows the declaration of some area out of the land of the landlord as surplus. Such tenants or resettled tenants were not to be divested of their rights of any specific order to that effect as a result of the setting aside of the order declaring some area to be surplus in the hands of a particular landlord." We are, however, not inclined to agree with the contention raised by the learned counsel for the petitioners. It shall be seen from the facts of the present case that the tenants were settled on the land which was declared surplus in the hands of the original landowner way back in the year 1964. The Punjab Land Reforms Act 1972 came into force on 2nd of April 1973. Under the Act aforesaid, the manner in which the surplus land is to be allotted, a scheme known as Punjab Utilization of Surplus Area Scheme 1973 was also framed. Paragraph 13 of the aforesaid Scheme runs as follows :—

> "A tenant resettled on the surplus area of a landowner in accordance with the provisions of the Punjab Law and the rules framed thereunder at any time before the commencement of the Act shall be deemed to have been allotted land in accordance with the provisions of this scheme; Provided that the provisions of this paragraph shall not be applicable where the tenant is deemed to have become the owner in accordance with clause (b) of sub-section (4) of section 18 of the Punjab Law before the commencement of the scheme."

(4) Paragraph 13 of the scheme is, thus, attracted to the facts of the present case. The landowner died on 25th May, 1974 i.e. after the enforcement of scheme of 1973. The tenants who were settled on the surplus land on account of paragraph 13 of the scheme re-produced above improved their status and became allottees. It was not disputed by the learned counsel for the petitioners that under the scheme of 1973, a tenant settled on the surplus area had a right to get allotment as proprietor persons who were tenants under the Act of 1953 became allottees in view of the provisions of Punjab Land Reforms Act and Punjab Utilization of Surplus Area Scheme, it cannot be urged on any meaningful ground that they would not have a right to be heard or they would not have a right to challenge the order if their rights were going to be prejudiced on account of any order that might either reduce the surplus area or totally obliterate the same. The judgment cited by the learned counsel in support of his contention that the tenants or resettled

tenants have no right of hearing nor they have any right to challenge the order with regard to surplus area of landowner has, thus, no substance and, thus, deserves to be rejected.

(5) The contention of learned counsel for the petitioners cannot prevail for yet another reason and that is that the facts of the present case reveal that the tenants were settled on the land way back in the year 1964 and the death of the landowner occurred in the year 1974. Once the land stood utilized even the death of the landowner would not make any difference for reducing the surplus area, atleast to the extent that the same stood utilized as per provisions contained in Section 10-A (b) of the Punjab Security of Land Tenures Act 1953, it is only succession by inheritance or acquisition by the State that might result into reducing the surplus area in case of death of landowner but in so far as the land which has been utilized, that cannot possibly revert back to the landowner. The **Apex Court in *Sher Singh and others*** v. ***Financial Commissioner*** *of Planning, Punjab and others* (2), has held that "along with the order declaring the land of an owner as surplus, a corresponding right and duty accrue to the Government to utilise the surplus area for the re-settlement of tenants. In other words, the rights on the land declared as surplus get vested in the Government to be distributed amongst the tenants for re-settlement. This is an indefeasible right that the Government secures. The land owner could not get back the land, if the surplus had not been utilised. There is nothing in the Act which imposes any time limit for the Government to utilise the land for the purpose mentioned in the Act. Nor is there any provision enabling the owner of the land to claim back the land and to get it restored to him if utilisation is not made by the Government within a specified period. All that the Act contains by way of exception is what is seen in Section 10A(b). If at the time of the commencement of the Act, the land is acquired by the Government under the relevant acquisition laws or when it is a case of inheritance, the owner could claim exclusion of such land from his land for fixation of his ceiling under the Act. The second exception itself is further fettered by the provision in Section 10-B that where succession had opened after the surplus area or any part thereof had been utilised under Section 10A(a), the saving specified in favour of an heir by inheritance would not apply in respect of the area so utilised. To put it short, the Government had under the Act an unfettered right without time limit to utilise the land for re-settlement of tenants subject to the two exceptions mentioned

(2) A.I.R. 1987 S.C. 1307.

above. It is, of course, desirable that re-settlement should be done as expeditiously as possible. Inaction on the part of the Government to re-settle the tenants will not clothe the owner with a power for restoration of the land."

(6) A resume of facts as have been re-produced above would, thus, show that the tenants had acquired a right for allotment of the land. Therefore, it cannot be said by any stretch of imagination **that they had no *locus standi*** to challenge the orders,—***vide* which** the earlier orders declaring surplus land in the hands of the original **land owner was sought to be reviewed on the demise of Tilak Raj the original land owner. In *Bhikoba Shankar Dhuman (dead) by Lrs. and others* v. *Mohan Lal Punch and Tathed and* others (3) it** has been held that any person who is entitled to grant of land under the provisions of Act may question an order which would have the effect of reducing the extent of total surplus land in any village.

(7) Finding no merit whatsoever in this petition, we dismiss the same with costs which are quantified at Rs. 1,000.

J.S.T.

Before Hon'ble J. L. Gupta, J.

SHRI RAM PHAL PUNIA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1162 *of* 1991.

January 7, 1992.

Constitution of India, 1950—*Art.* 14 *and* 16—*Selection—Appointment*—Mandamus—*Applications invited for filling* 500 *posts of Conductors—Subordinate Services Selection Board recommending* 1517 *candidates to the Department in order of merit—No person lower in merit than petitioners appointed in general category—No particular names of persons lower in merit than petitioners pointed out who secured appointment—Person mentioned considered as belonging to Ex-Serviceman category—Question whether appointment of dependent of ex-serviceman proper-not gone into since petitioners belong to separate category and cannot challenge same—Petitioners, have no right to appointment.*

State of Haryana and another v. *Rajinder Kumar and others* 1990 (2) **R.S.J. 744 distinguished.**

(3) A.I.R. 1982 S.C. 865.