

Before M. M. Punchhi, J.

HARDIT SINGH AND ANOTHER,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 3380 of 1977.

August 27, 1984.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 3 & 32-MM—Pepsu Tenancy and Agricultural Lands Rules, 1958—Rule 22(1)—Punjab Land Reforms Act (X of 1973)—Sections 9 & 13—Big landowner having a joint holding with a small landowner—Surplus area declared in the hands of the big landowner—Field numbers in physical possession of the small landowner declared surplus—No partition between the two landowners—Small landowner complaining that the land in his possession could not be taken to be exclusive ownership of the big landowner—Application of the small landowner dismissed—Small landowner objecting again on receipt of notice under Section 9 of the 1972 Act—Application dismissed by the authorities in view of the earlier orders—Collector—Whether should have separated the share of the small landowner under Section 32-MM—Separation of shares—Whether could be done despite the existence of the earlier orders.

Held, that the word 'alone' occurring in section 3(2)(c) of the Pepsu Tenancy and Agricultural Lands Act, 1955 is important, that is to say, for the purposes of computing the permissible limit, the land of the small landowner has to be carved out. The Legislature, looking to the mischief which was likely to be caused by the areas of big and small landowners remaining joint, stepped in to insert section 32-MM in the Act. As is obvious from this provision, the section comes into operation even when the surplus area has been declared. It is equally applicable to a case where surplus area has not been declared. Where the surplus area has been declared, section 32-MM comes to afford relief to the persons interested in such land. Obviously a small landowner whose holding is joint with a big landowner is a person interested in such land, being a co-sharer therein. Every inch of the land put in the surplus pool was owned by the small landowner, though in a joint way with the big landowner. Therefore, the Collector had the power to separate the shares of the small landowner and cause necessary adjustments without violating any of the orders passed on the file earlier. This provision had come about after the petition of the small landowner had been dismissed and that order, in view

of the provisions of section 32-MM, was open to be taken to its logical conclusion, by effecting therein change which were consequential in nature without the least affecting the merits of the case. The objections filed by the small landowner in proceedings under Section 9 of the Punjab Land Reforms Act, 1972, had to be viewed in the light of section 3 and 32-MM of the Pepsu Act. There is no provision in the Punjab Land Reforms Act which would in any way take away the applicability of the aforesaid two sections. Nothing in the Punjab Land Reforms Act is inconsistent with the aforesaid two provisions. They sustain even now despite section 28 of the Punjab Land Reforms Act. Rather reiteratingly, even the Legislature has put section 13 in the Punjab Act, which allows the same thing to be done as was required to be done under section 32-MM. The spirit behind such legislation is that not an inch of land of a small landowner should be taken in the surplus pool. Therefore, the only course open to the authorities was to separate the share of the small landowner from that of the big landowner in the joint holding.

(Para 5).

Petition under Article 226 of Constitution of India praying that petition be accepted and :

- (a) respondents be directed to produce the record;
- (b) A writ of certiorari be issued and the impugned Annexures P. 1 to P. 3 be quashed;
- (c) a writ of mandamus or any other appropriate writ, order or direction be issued to the respondents to proceed Under Section 13(1) of the Punjab Act;
- (c) Any other relief to which the petitioners are found entitled may be granted; and till the decision of this petition, the dispossession of the petitioners be stayed.

Surjit Singh Advocate, for the Petitioner.

R. P. Bhatia, Advocate, for A.G. Punjab.

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) This is a petition for certiorari under Article 226 of the Constitution. The State of Punjab has produced the record and with the aid of which facts need be noticed, as pleaded.

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(2) The petitioners herein are two brothers. They were by themselves co-shares of some land in Village Sibian, Tehsil and District Bhatinda. Their holding was joint with Dalip Singh respondent No. 5. Whereas the petitioners were small landowners, respondent No. 5 was a big landowner, as the terms are known in the Pepsu Tenancy and Agricultural Lands Act, 1955, (hereafter referred to as 'the Act'). Obviously, the petitioners could sleep in peace but respondent No. 5 had to be on his toes. It appears from the departmental file, that land of respondent No. 5 was computed and a draft statement prepared under rule 22(1) of the Pepsu Tenancy and Agricultural Lands Rules, 1958 (hereafter referred to as 'the Rules'). In the column meant for the total area owned by the landowner, details of field numbers as also their area were summed up to come to 996 Kanals 19 Marlas, out of which 668.3 was *Nahri*, 320.11 was *barani* and 8.5 was *gair mumkin*. It was taken that respondent No. 5 had 1/3rd share in the said land. Computing that rateably, his holding was assessed at 332 Kanals, 6 Marlas, bearing the same proportion as to quality of land. It was then assessed as 41.54 ordinary acres and 33.72 standard acres. On that calculation 3.72 standard acres were drafted to surplus area comprising in Khasra No. 155 min (2—15) and 156 min (4—15). Obviously, the draft statement was served on respondent No. 5, and was finalised on 2nd May, 1960. The surplus area was published in the official Gazette on 31st March, 1961. The petitioners at no stage were made parties thereto for it was a deal between the State and respondent No. 5.

(3) It appears from the departmental file that Ran Singh, one of the petitioners, on 10th August, 1961 made a miscellaneous application to the Revenue Assistant, Agrarian, lamenting that the aforementioned field numbers which had been taken to be belonging to Dalip Singh respondent No. 5 exclusively had wrongly been declared surplus because those field numbers were in his possession, and unless a regular partition had taken place, those two fields could not be taken to be the exclusive ownership of respondent No. 5. In that regard, relief was claimed. In support thereof, Khasra Girdwari was produced. The Revenue Assistant-cum-Collector, Bhatinda,—*vide* his order dated 26th August, 1961 took the view that on 21st August, 1956 (appointed date) the cultivation was joint, and even after consolidation the holding of the co-shares had remained joint. Further he observed that the original order

declaring surplus area was on the basis of the share of Dalip Singh and that their separate possession was not due to any *pacca* partition. He thus took the view that in view of the previous order, he had no jurisdiction when the land had vested in the State. Thereby the application was rejected. Neither of the petitioners took the matter further to any officer in the higher hierarchy. A grievance petition sent by Ran Singh petitioner to the Chief Minister, Punjab, trickled down to the Collector, Agrarian, Bhatinda, but that too was dismissed on 7th February, 1963 in view of the earlier order dated 26th August, 1961. Years passed by. Then the Punjab Land Reforms Act, 1972, came on the scene. The Collector, Agrarian, issued notice under section 9 to the petitioners to deliver possession of the declared surplus area. It is at this time that they objected to the area being utilised as surplus.

(4) The Collector, Agrarian,—*vide* order dated 3rd July, 1975 (Annexure P. 1) taking stock of the facts afore-referred to, shut out the petitioners in view of the existence of the orders dated 26th August, 1961 and 7th February, 1963 on the file. Their appeal before the Commissioner was dismissed. Fault was found with the petitioners that they should have challenged the aforesaid orders before the higher officers. The appellate order is of January 18, 1977 (Annexure P. 2). The revision petition of the petitioners was dismissed on August 4, 1977 (Annexure P. 3) by the Financial Commissioner (Revenue) Punjab. And thus the petitioners are before this Court.

(5) Having heard the learned counsel for the parties, the petitioners claiming that the impugned orders be set aside and the matter remitted back for re-hearing and the State clamouring for the maintenance of the said orders, I am of the view that the officers, dealing with the matter, have off-tracked completely. Two important provisions of the Act which they failed to notice are sections 3 and 32-MM. Relevant extracts of section 3 are reproduced hereafter:—

“3 (1) ‘Permissible limit’ for the purposes of this Act means thirty standard acres of land and where such thirty standard acres on being converted into ordinary acres exceed eighty acres, such eighty acres:

... ..

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(2) For the purposes of computing the permissible limit under sub-section (1)—

... ..
... ..

(c) where a landowner owns land jointly with other landowners his share of such land as ascertained from the record of rights shall alone be included;

... ..

Now the word 'alone' occurring therein is important that is to say, for the purposes of computing the permissible limit his land has to be carved out. The Legislature, looking to the mischief which was likely to be caused by the areas of such landowners remaining joint, stepped in to insert in the Act with effect from 13th July, 1962 section 32-MM, sub-section (1) be relevant for the purpose, which is reproduced hereafter:—

“32-MM. (1) Where a landowner owns land jointly with other landowners and his share of such land or part thereof, as ascertained from the record of rights, has been or is to be declared as surplus area, the officer competent to declare, such area, or, where such area has been declared, the Officer competent to utilise it may on his own motion, after summary enquiry and affording to the persons interested in such land an opportunity of being heard, separate his share of such land or part thereof in the land owned by him jointly with other landowners.”

As is obvious from the aforesaid provision, this section comes into operation even after the surplus area has been declared. It is equally applicable to a case where surplus area has not been declared. But in the instant case, as the surplus area has been declared, section 32-MM comes to afford relief to the persons interested in such land. Undisputably the petitioners were persons interested in such land being co-sharers thereof. Every inch of the land put in the surplus pool was owned by the petitioners, though in a joint way with the big landowner. Therefore, the Collector had the power to separate their share and cause necessary

adjustments, without violating any of the orders passed on the file earlier. This provision had come about after when the regular petition of Ran Singh petitioner had been dismissed on 10th August, 1961. That order, in view of the provisions of section 32-MM, was open to be taken to its logical conclusion, by affecting therein changes which were consequential in nature without the least affecting the merits of the case. In this view of the matter, the objections filed by the petitioners in proceedings under section 9 of the Punjab Land Reforms Act had to be viewed in the light of sections 3 and 32-MM of the Act. Nothing has been brought to my notice from the provisions of the Punjab Land Reforms Act, 1972, which would in any way take away the applicability of the aforesaid two sections. Nothing in the Punjab Land Reforms Act is inconsistent with the aforesaid two provisions. It seems to me that they sustain even now despite section 28 of the Punjab Land Reforms Act. Rather reiteratingly, even the Legislature has put section 13 in the aforesaid Act, which allows the same thing to be done as was required to be done under section 32-MM. The spirit behind such legislation is that not an inch of land of a small landowner should be taken in the surplus pool. Obviously, the respondent-officers did not apply the aforesaid provisions and thereby caused injustice to the petitioners. Their orders are thus unsustainable.

(6) For the foregoing reasons, this petition is allowed, orders Annexures P. 1 to P. 3 are set aside and the matter is remitted back to the Collector, Agrarian, for his re-consideration in the light of the afore-pointed provisions as also the observations. The parties through their counsel are directed to put in appearance before the Collector, Agrarian, for the purpose on 28th September, 1984. No costs.

N. K. S.

Before S. S. Kang, J.

CHANDU RAM AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4235 of 1981.

February 15, 1985.

*Punjab Municipal Act (III of 1911)—Sections 20, 232 & 236—
Punjab Municipal Election Rules, 1952—Rule 47—Election of a*