Before Harbans Lal, J.

WING COMMANDER PARAMPRIT SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 5928 of 1983

6th August, 2008

Constitution of India, 1950—Art. 226—Punjab Tenancy Act, 1887—S.4(1)—Land Revenue Assessment Rules, 1929—Rl.2(2)—Determination of surplus area—Collector taking into account "Gair Mumkin" as well as "Barani" land for assessing surplus area of petitioner—Such land has to be excluded from surplus area—Sufficient ground to quash impugned orders—Petition allowed, case remanded to Collector.

Held, that evidently *"Gair Mumkin" as well as "Barani"* land has also been computed towards total holding of the landowner in contravention of the definition of 'land' as laid down in Section 4(1) of the Punjab Tenancy Act, 1887. In Rule 2(2) of the Land Revenue Assessment Rules, 1929 *Banjar Jadid* land has been described as uncultivated land, which has remained unsown for four consecutive harvests. *Banjar Kadim* land has been defined as uncultivated land, which remained unsown for eight consecutive harvests and *Gair Mumkin* land which has for any reason become uncultivable, such as land under roads, buildings, streams, canals, tanks or the like or land which is barren sand or ravines. Order of Collector (Annexure P-1) depicts that *"Gair Mumkin"* land has also been taken into account for assessing the surplus area of the petitioner. Though the same has to be excluded. As regards *'Barani'* land it may be cultivable or uncultivable. The 'Barani' land as shown in Annexure P-1 if falls within the ambit of *'Banjar Jadid'* or *'Banjar Kadim'* has to be excluded from surplus area. This sole ground being sufficient to quash the impugned orders.

(Paras 15 and 16)

L. N. Verma, Advocate *for the petitioner.*

Parveshinder Singh, Additional Advocate General, Punjab.

JUDGMENT

HARBANS LAL, J.

(1) This petition has been filed by Wing Commander Paramprit Singh under Articles 226 and 227 of the Constitution of India for quashing the orders Annexures P-4 to P-6 with directions to re-process the matter for surplus area of the petitioner in accordance with law.

(2) The facts giving rise to this petition are that the petitioner owns land measuring 29 Kanals 01 Marla at village Vadala, 58 Kanals 18 Marlas at village Boot, 31 Kanals 02 Marlas at village Basti Bawa Khel and 10 Kanals 6 Marlas at village Garha. The Sub-Divisional Officer (Civil), Jalandhar as Collector Agrarian decided the surplus area case of the petitioner,—*vide* order Annexure P-1. On the basis of classification, the area of 129 Kanals 7 Marlas was converted into first quality land of 6.05 hectare. The land measuring 226 Kanals 7 Marlas was converted into first quality area of 8.78 hectare. The total first quality land was assessed at 14.83 Hectares. An area of 7 Hectares was allowed to the petitioner as his permissible area and the balance area of 7.83 Hectares was declared as surplus,—*vide* Annexure P-1. Feeling aggrieved with order, Annexure P-1, the petitioner filed an appeal, which was dismissed,—*vide* order, Annexure P-2 by the Commissioner, Jalandhar Division. He went up in revision, which also met failure,—*vide* order Annexure P-3. He filed CWP No. 331 of 1979 for quashing Annexure P-1 to P-3, which was dismissed in limine,—*vide* order dated 25th April, 1979. He preferred Special Leave Petition. The Apex Court partly allowed Civil Appeal No. 2998 of 1979 and remitted the case back to the Collector Agrarian, Jalandhar,—*vide* order dated 23rd October, 1979 reproduced in Annexure P-4. After remand, the Collector, Jalandhar decided the case again,—*vide* order dated 28th February, 1980 and maintained the earlier order, Annexure P-1. An area of 7.83 Hectares of first quality was declared surplus. The petitioner preferred an appeal against the order dated 28th February, 1980 before the Commissioner, who allowed the same,—*vide*

order dated 2nd December, 1980 and remanded back the case to the Collector for fresh decision with the direction to offer proper and reasonable opportunity to the petitioner as directed by the Apex Court, to make selection of his permissible area. After remand, the Collector decided the matter again,—*vide* Annexure P-4 dated 30th June, 1981 and rejected offer of area to be taken in surplus pool made by the petitioner and declared the same field number of 7.83 Hectares of area as surplus as had been declared,—*vide* order dated 28th February, 1980. He filed an appeal against order Annexure P-4, which was dismissed,—*vide* order Annexure P-5 dated 20th May, 1983 by the Commissioner, Jalandhar Division. The orders Annexures P-4 and P-5 were challenged by way of revision before the Financial Commissioner, Punjab, who dismissed the same,—*vide* order Annexure P-6 dated 11th August, 1983. In this petition, these orders Annexures P-4 to P-6 have been sought to be quashed on the grounds mentioned in it.

(3) In the written statement filed on behalf of the respondents, it has been admitted that the petitioner owns land in the villages as mentioned in the petition. It has been alleged that proper opportunity was afforded to the petitioner while passing the impugned order by the Collector dated 30th June, 1981. The sales were made after the appointed day i.e. in the year 1975. The area was rightly declared surplus by the Collector Agrarian. The Hon'ble Supreme Court of India remanded back the case only for affording proper opportunity to the petitioner, so far as selection of permissible area is concerned. This clearly shows that surplus area case was not opened as a whole. Hence the liability of the petitioner is to surrender his surplus area to the State. The petitioner is being dispossessed rightly under the Law and Rules. Lastly, it has been prayed that this petition may be dismissed with costs and the stay granted by the Court may be vacated.

(4) I have heard learned counsel for the parties.

(5) Mr. L. N. Verma, Advocate appearing on behalf of the petitioner urged with great eloquence that the order dated 23rd October, 1979 of the Apex Court has not been complied with in letter and spirit. Literally, the requisite area of 7 Hectares had already been allowed to the petitioner,—*vide* order Annexure P-1. Yet, the Apex Court remitted

the matter back to the Collector with a direction to afford reasonable opportunity to the petitioner to submit his choice of permissible area. The area of 7 Hectares allowed,—*vide* Annexure P-1 was neither of first quality nor of his choice. Almost, the entire land of the petitioner has been evaluated as first quality land, whereas a lot of his area is *Barani, Banjar and Gair mumkin as is evident from Jamabandi* for the year 1963-64, Annexure P-8. It is well settled that such land is not land and has to be excluded and cannot be computed towards total holding of the land owner for the purpose of determining his status and surplus area in his hands. The reference may be made to the observations made by the Apex Court in re: **Munshi Ram etc.** *versus* **The Financial Commissioner (1),** and **Ajmer Singh and others** *versus* **State of Haryana and others (2).**

(6) It is further argued that the petitioner had contracted to sell an area of 31 Kanals 2 Marlas of village Basti Bawa Khelan in the ownership of minor children to Gurmit Singh etc. for a sum of Rs. 35,000 and executed agreement of sale dated 15th March, 1967 in their favour and received a sum of Rs. 4,250 as earnest money. However, a dispute arose and Naranjan Singh filed Civil Suit for specific performance of the said agreement, which was decreed by the learned Sub Judge Ist Class, Jalandhar, on 28th February, 1973 and the petitioner executed the sale deed, Annexure P7/A dated 13th January, 1975 in compliance of the aforesaid agreement of sale as well as the said decree of the Civil Court. The permission to sell the land of minors had already been granted by the Guardian Judge, Jalandhar,—*vide* order dated 10th December, 1973, Annexure P-10. The sold area has been included in the permissible area of the petitioner and the sale has been ignored on the ground of having been made after the commencement of the Punjab Security of Land Tenures Act, 1953 (for short, 'the Act'). The area sold,—*vide* the above mentioned sale deed was required to be excluded and could not be included in the permissible area of the petitioner for the reason that the sale was made in compliance of the afore-referred Court decree and the sale made in consequence of the decree would date back to the date of agreement and the title of the

(1) 1979 P.L.J. 182
(2) 1990 P.L.J. 116

vendee would also relate back to the date of agreement as ruled by this Court in re: **Gurdial Singh and others** *versus* **Sewa Singh and others (3).** It has been further pressed into service that the Act came into force with effect from 2nd April, 1973 but the sale was made in compliance of the above mentioned decree and, therefore, the sale dated 13th January, 1975 would relate back to 13th May, 1967 and could not be ignored on the ground that it was made after the commencement of the Act. It is further submitted that the sale made,—*vide* Sale Deed, Annexure P7/A could not even otherwise be ignored and the area sold could not be included in the permissible area of the petitioner.

(7) In view of the observations made in re: **Balbir Singh and others** *versus* **Financial Commissioner (Appeals), Punjab and others (4), Harbans Singh and Gurbaksh Singh** *versus* **Ajit Singh and others (5), Lajpat Rai and others** *versus* **State of Punjab and others (6), Mota Singh** *versus* **Financial Commissioner, Punjab and others (7), Bhool Chand and others** *versus* **The State of Punjab and others (8), and Ajit Singh and another** *versus* **Financial Commissioner, Revenue, Punjab and others (9),** there is no provision in the Act mandating that area sold by a big land owner after the commencement of the Act would be included in his permissible area and the legal position under the Punjab Land Reforms Act, 1972 is similar to the one under the Punjab Act of 1953 and, therefore, the case law under the Punjab Act in this behalf would apply with equal force to this Act and the area sold after the commencement of the Act is to be taken in surplus pool and cannot be computed towards permissible area of the land owner.

(8) It is further canvassed at the bar that the *quasi* permanent allotment cannot be made the basis for determining surplus area in the hands of the land owner, as such allotment is subject to reduction and even cancellation. An area of 191 Kanal 1 Marla stood allotted to the

(3) 1972 P.L.J. 395
(4) 1996 P.L.J. 514
(5) 1975 P.L.J. 85
(6) 1981 P.L.J. 316
(7) 1968 P.L.J. 338
(8) 1968 P.L.J. 360
(9) 1972 P.L.J. 738

petitioner on *quasi* permanent basis which was wrongly computed towards his total holding. A specific objection was raised in this behalf before the Collector as per Annexure P-1 and also before the Commissioner, but was ignored in a casual manner. It is further maintained that an area of 21.46 acres was excluded by the Special Collector Punjab while deciding surplus area case of the petitioner's father Sampuran Singh,—*vide* order dated 21st March, 1961, Annexure P-8. The petitioner is owner of ½ share of this area but this area has been computed in the total holding of the petitioner in violation of Section 27(e) of the Act. There is no provision in the Act or the Rules framed thereunder which restricts the right of selection to any particular area. The landowner has a statutory right to select his permissible area which cannot be defeated. It is obligatory on the authorities under the Act to ensure requisite permissible area of first quality to the landowner as also the permissible area of his choice and must respect his unfettered statutory right to select the permissible area of his choice. The petitioner offered specific field number to surplus pool, but his offer was arbitrarily rejected and the selection of his permissible area was made by the Collector, which is against law as also against the choice of the petitioner. In these premises, the orders Annexures P-4 to P-6 may be quashed and the matter may be remitted back to the Collector concerned with a specific direction to decide the same afresh in accordance with law and ensure the requisite first quality permissible area of his choice to the petitioner.

(9) Mr. Parvesh Inder Singh, the learned Additional Advocate General, Punjab, has submitted with great eloquence that no holes can be picked in the orders Annexures P-4 to P-6 for their having been passed in accordance with law and thus, this petition is liable to be dismissed.

(10) I have given a deep and thoughtful consideration to the rival contentions.

(11) Pargraphs No. 9, 10 and 11 of the judgment delivered by the Apex Court in re: **Munshi Ram etc.** *(supra)* read as under :—

> 9. According to sub-section (8) of section 2 of the Act 'land'shall have the same meaning as is assigned to it

in the Punjab Tenancy Act, 1887. Section 4(1) of that Act defines 'land' to mean "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 pasture, and includes the sites of buildings and other structures on such land."

10. In **Nemi Chand Jain** *versus* **Financial Commissioner, Punjab, AIR 1964** Punjab 373 = (1964) (LXVI) P.L.R 278 = (1963) P.L.J 137), H. R. Khanna, J, speaking for a Division Bench of the High Court held that Banjar Qadim and Banjar Jadid land cannot be taken into account while computing the surplus area, under the Act, because not being occupied or let for agricultural purposes or purposes subservient to agriculture, it does not fall within the purview of 'land' under the Act. This ruling has been consistently followed by the High Court in its subsequent decisions, some of which are reported as **Sadhu Ram** *versus* **Punjab State, 1965 P.L.J 84, Amolak Raj** *versus* **Financial Commissioner, Planning, Punjab (1966) 45** L.L.T 195 = 1967 P.L.J 319, **Jaggu** *versus* Punjab State, (1967) 46 L.L.T 64 = 1967 P.L.J 248, and **Jiwan Singh** *versus* **State of Punjab, AIR 1972** P & H 430 = 1971 P.L.J 865.

11. In our opinion, this view taken by the High Court proceeds on a correct interpretation of the statutory provisions as it stood at the relevant time.

(12) Further, paragraph No. 3 of the judgment rendered by the Hon'ble Supreme Court in re: **Ajmer Singh and others** *(supra)* runs as under :—

(1) xx xx

(2) xx xx

(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 thc Act as they are not being occupied or let for agricultural purposes or purposes subservient to agriculture.

(13) Axiomatically, it is no longer a Res-integra that Banjar Kadim, Banjar Jadid and Gair Mumkin land being not covered by the definition of land cannot be taken into account while computing the surplus area under the Act. In the instant case, the order dated 18th February, 1976 Anneuxre P-1 in so far as is relevant for the decision of this case reads in the following terms :—

(14) As per revenue records, Shri Paramprit Singh owned land as on 24th January, 1971 as detailed below :—

Village Vadala : Chahi two crops		28 K-7 M
Ghair Mumkin		0-14
	Total :	29-1
(ii) Village Boot : Chahi two crops		39-13
	Chahi one crop	17-3
	Ghair Mumkin	2-2
	Total :	58-18

The area of village Wadala and Boot is irrigated by two electric motor of 5 H.P. Each. In conversion into first quality land (as detailed on a separate sheet attached with the file), the area of these two villages comes to 3.99

3. Basti Bawa Khel : Chahi two crops		30-9
	Barani	0-10
	Ghair mumkin	0-3
	Total :	31-2

On conversion into first quality land it comes to 1.62 hectares.

4. Village Garha :	Chahi two crops	8-15
	Ghair mumkin	1-11
	Total :	10-6

On conversion into first quality land it comes to 0.44 hectares.

5. Beerh Phillaur Teh. Phillaur

Quasi Permanent allotment

Chahi two crops	187-11
Ghair mumkin	2-10
Total :	191-1

Permanent allotment

Chahi two crops	25-17
Barani	9-9
Total :	35-6

Grand total of Birh Phillaur

Two crops chahi	213-8
Ghair mumkin	9-9
Total :	226-7

On conversion into first quality land, the area of Phillaur Tehsil which is the ownership of Paramprit Singh landowner comes to 8.78 hectares of the first quality land as per detail worked out on a separate sheet attached with the file. Thus the total holding of the landowner comes to 14.83 hectares of the first quality land. The family of the landowner Paramprit Singh consists of himself, his minor son Narwan Singh and minor daughter Aman Kaur. Thus he is entitled to possess only one unit i.e. 7 hectares of first quality land."

(15) Evidently, "Gair Mumkin" as well as "Barani" land has also been computed towards total holding of the landowner in contravention of the definition of 'land' as laid down in Section 4(1) of the Punjab Tenancy Act, 1887, which reads as under :—

> " '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 building and other structures on such land."

(16) In Rule 2(2) of the Land Revenue Assessment Rules, 1929, Banjar Jadid land has been described as uncultivated land, which has remained unsown for four consecutive harvests. Banjar Kadim land has been defined as uncultivated land, which remained unsown for eight consecutive harvests and Gair Mumkin land which has for any reason become uncultivable, such as land under roads, buildings, streams, canals, tanks, or the like or land which is barren sand or revines. Annexure P-1 depicts that "Gair Mumkin" land has also been taken into account for assessing the surplus area of the petitioner. Though the same has to be excluded in view of the observations extracted from the case of **Munshi Ram etc.** *(supra)* as well as **Ajmer Singh and others** *(supra)*. As regards 'Barani' land, it may be cultivable or uncultivable. The 'Barani' land as shown in Annexure P-1 if falls within the ambit of 'Banjar Jadid', or 'Banjar Kadim' has to be exculded from surplus area. This sole ground being sufficient to quash the impugned orders, I need not dilate upon other arguments. Sequelly, I allow this petition and quash the orders Annexures P-4 to P-6 and remit the case to the Collector concerned of Jalandhar District with the directions that he should ascertain the extent of Gair Mumkin land, Banjar Kadim and Banjar Jadid of the petitioner at the relevant date and re-compute his permissible area after excluding such type of land and then decide his case afresh. Of course, having regard to the peculiarity of facts and circumstances of the case, the parties are directed to bear their own costs.

(17) A certified copy of this order be sent to the Collector Agrarian, Jalandhar (Punjab).

R.N.R.