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Pandit, J.

of the land, whereas those, who were already proprietors and have now been declared as *bhumidhars*, have not to pay any kind of compensation to anybody. This means that the status of the *bhumidhars* is that of the proprietors or landlords. Besides, it has not been shown that they are the tenants of anybody.

In the present case, admittedly, Baldev and Har Nath were the owners of the land in dispute in 1953/1954, when the Delhi Act was passed. After the coming into force of this Act, they became *bhumidhars*. In view of what I have said above, the succession to their rights would be governed by the provisions of the Hindu Succession Act, 1956, and not the Delhi Land Reforms Act, 1954. That being so, when Baldev died in June, 1960, his rights would devolve on the plaintiff, who is his daughter. Under these circumstances, both the Courts below were right in decreeing her suit.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs in this Court.

K. S. K. . .

CIVIL MISCELLANEOUS

Before Mehar Singh and H. R. Khanna, JJ.

NEMI CHAND JAIN,—*Petitioner*

versus

THE FINANCIAL COMMISSIONER, PUNJAB, AND ANOTHER,—*Respondents.*

Civil Writ No. 1379 of 1961

1963

Nov., 14th.

Punjab Security of Land Tenures Act (X of 1953)—S. 2(8)—Banjar Jadid or Banjar Qadim *land—Whether covered by "land" as defined in the Act.*

Held, that according to section 2(8) of the Punjab Security of Land Tenures Act, 1953, the word "land" has the same meaning as is assigned to it in the Punjab Tenancy Act, 1887. The definition of the word "land" as given in the Punjab Tenancy Act, 1887, looks to the actual state of the land and the use to which it has been put and not to its future potentialities. As such the *banjar jadid* or *banjar qadim* land cannot be held to answer the description of the word "land" as given in Punjab Security of Land Tenures Act, 1953.

Case referred by Hon'ble Mr. Justice Mehar Singh, on 1st February, 1963, to a larger bench for decision of an important question of law involved in the case and the case was finally decided by Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice H. R. Khanna, on 14th November, 1963.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, *or any other appropriate writ, order or direction be issued quashing the order of respondents No. 1 and 2, dated 31st July, 1961 and 31st March, 1960, respectively.*

HIRA LAL SIBAL, AND G. P. JAIN, ADVOCATES, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondents.

ORDER

Khanna, J.

KHANNA, J.—This case has been referred to the Division Bench in pursuance of the order of Mehar Singh, J., and the only question which arises for determination is whether the land, which is shown *banjar jadid* or *banjar qadim* in the *jamabandi* of 1952-53, answers to the description of the land as defined in section 2(8) of the Punjab Security of Land Tenures Act No. 10 of 1953 (hereinafter referred to as the Act).

The brief facts of this case are that the petitioner is a resident of Rewari and owns considerable property there including a large area of land. The Act came into force on 15th April, 1953, and it

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was provided therein that a landowner could have certain permissible area which, in the case of the petitioner, means thirty standard acres or sixty ordinary acres. The landowner was entitled to reserve the permissible area and the rest of the area was denominated as surplus area and was available for utilization by Government as provided in the Act. The petitioner in pursuance of the Act reserved an area for himself. In 1959, the petitioner made an application to the Collector stating that some portion of the land belonging to him was uncultivable and as such was exempt from the provisions of the Act as it did not fall within the definition of the word "land" as given in the Act. It was further submitted that land, mentioned in annexure A-1 of the petition, was uncultivable and had neither been occupied nor let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and the same could not be treated as land. The petitioner also applied in 1960 for reservation to himself of thirty standard acres of land a second time in lieu of the earlier reservations made by him. On receipt of the application mentioned above of the petitioner the Collector ordered on 1st January, 1960 that *Ghairmumkin* lands should not be included in calculating the area of the petitioner but *banjar jadid* and *banjar qudim* lands should be calculated. On 5th January, 1960 the Collector sent the file to the Tahsildar, Rewari, for spot inspection. It was further directed that the area of the land, which came within the definition of the word "land", as defined in the Punjab Tenancy Act, might be counted, keeping in view the instructions of the Punjab Government. The Tahsildar thereafter made a report, dated 3rd March, 1960, (Annexure A-4) stating that on inspection of the spot houses had been found on the land bearing certain *khasras* and they did not fall within the definition of land. The remaining land, description of which is given in that

annexure, was found to be *banjar qadim*. Further orders were also solicited. The Collector then passed an order on 21st August, 1960, that the areas, which did not come within the definition of land, should be excluded. The Tahsildar thereafter made a report dated 22nd March, 1960, to the effect that the area of land, which had been found to be *banjar jadid* or *banjar qadim*, could not be excluded from the total holding of the petitioner. The petitioner then filed objections before the Collector, but the Collector made an order on 31st March, 1960 to the effect that all types of *banjar* land was to be counted as part of the ownership of the landowner while calculating his permissible area. The objections of the petitioner on this score were, accordingly, held to be not tenable. Appeal as well as revision filed by the petitioner against that order to the Commissioner and Financial Commissioner were dismissed. The petitioner thereafter filed the present writ petition under Article 226 of the Constitution of India for quashing the orders of the Collector and the Financial Commissioner.

When the petition came up for hearing before Mehar Singh, J., the only question arising for determination was found to be whether the *banjar jadid* or *banjar qadim* land of the petitioner answers to the description of land as defined in the Act. Although the learned Judge was of the view that *banjar jadid* or *banjar qadim* land did not answer to the description of the land as defined in the Act, in view of the fact that the question was likely to arise in a large number of cases, he directed that the matter should be decided by a larger Bench.

According to section 2 (8) of the Act, the word "land" shall have the same meaning as is assigned to it in the Punjab Tenancy Act of 1887. The definition

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of the word "land" as given in section 4(1) of the Punjab Tenancy Act is 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 left for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land."

It would appear from the above definition that before land can fall under the definition of the land as given above, two factors are essential to be proved:

(1) that it should not be land which is occupied as the site of any building in a town or village; and

(2) is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture.

The first part of the definition is obviously not applicable as the land in question is not occupied as the site of any building in a town or village. The second part of the definition, in my opinion, also does not cover the land in question because it has not been shown that the land is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture. On the contrary the fact that the land is *banjar jadid* or *banjar qadim* goes to show that it has not been occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture. According to Land Revenue Assessment Rules of 1929 uncultivated land, which has remained unsown for four successive harvests, is classified as *banjar jadid* land, while the land, which has remained unsown for eight successive harvests, is described as *banjar qadim.*

As such the *banjar jadid* or *banjar qadim* land cannot be held to answer to the description of the word "land" as given in the Act.

Land was also defined in section 2 (3) of the Punjab Alienation of Land Act, 1900, and the definition read as under:—

> "the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes—
>
> (a) the sites of buildings and other structures on such land;
>
> (b) a share in the profits of an estate or holding;
>
> (c) any dues or any fixed percentage of the land-revenue payable by an inferior landowner to a superior landowner;
>
> (d) a right to receive rent;
>
> (e) any right to water enjoyed by the owner or occupier of land as such;
>
> (f) any right of occupancy;
>
> (g) all trees standing on such land."

Although the definition of the word "land" as given in the Punjab Alienation of Land Act, 1900, had a wider scope because of the addition of the clauses (a) to (g) in the definition, the comparison of the two definitions would go to show that but for the addition of those clauses the definition was identical. While dealing with the above definition of the word "land",

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as given in the Punjab Alienation of Land Act, it was held in *Gopi Mal and another* v. *Muhammad Yasin and another* (1), that where the land had not been used for agricultural purposes for the six years preceding the sale and was subsequently sold as a building site, the land was not covered by that definition. The above case was followed in *Mandir Gita Bhawan Shiri Kurukhsetra Jiran Uddar Kuru Khsetra through Lala Mansa Ram* v. *Sadhu Ram and another* (2), and it was held that where the land had not been used for agricultural purposes or for purposes subservient to agriculture for a period of twenty years but had been lying uncultivated except for one year, when there was a garden on a small portion of it, it could not be said to fall within the definition of the word "land". The above authorities clearly lay down the principle that the non-cultivation of land for a number of years goes to show that it does not answer to the definition of the word "land".

Learned Additional Advocate-General has argued that even though the land in question is *banjar jadid* or *banjar qadim,* the possibility of its being brought under cultivation in future cannot be ruled out, and when the land is so brought under cultivation it would fall within the definition of the word "land". This contention is, however, devoid of force because the definition of the word "land", as given in the Punjab Tenancy Act, looks to the actual state of the land and the use to which it has been put and not to its future potentialities.

I may also state that before the revenue authorities an attempt was made to rely on certain administrative instructions in order to show that even the *banjar jadid* or *banjar qadim* land could be taken into account in calculating the land of the petitioner. Those

(1) A.I.R. 1924 Lah. 657.
(2) A.I.R. 1939 Lah. 554.

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instructions were, however, not produced at the hearing of the petition and it is nobody's case before us that those instructions can in any way modify the definition of the word "land" as given in the Act.

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As a result of the above, I hold that *banjar jadid* and *banjar qadim* land of the petitioner, mentioned in annexure A-4 of the petition, cannot be taken into account while considering the surplus area under the Act. The order of the revenue authorities holding to the contrary are quashed. Let an appropriate writ issue in the matter. The petitioner shall be entitled to recover his costs from the respondent. Counsel's fee Rs. 75.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Harbans Singh, J.

ARUNA RANI,—*Petitioner.*

versus

THE DISTRICT BOARD, AMRITSAR AND ANOTHER,—*Respondents.*

Civil Writ No. 1186 of 1960.

1963

Nov., 18th.

Constitution of India (1950)—Article 276(2)—Interpretation of—Tax on professions, trades, callings and employments—Whether can be imposed by the State, municipality, district board, local board or other local authority, each up to a maximum of Rs. 250 per annum or the aggregate limit of such tax imposed by any one or more of them cannot exceed Rs. 250 per annum.

Held, that the words "the total amount payable in respect of any one person to the State or to ony one municipality, district board, local board or other local authority"