

Sohan Lal
and others
v.
The State of
Punjab
and others

As points; other than the one decided by us; also arise in the various petitions; these will now be placed before a learned Single Judge for decision.

Harbans Singh, J.
Falshaw, C.J.

D. FALSHAW; C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

RAGHBIR SINGH AND OTHERS,—*Petitioners.*

versus

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

Civil Writ No. 153 of 1963.

1964
Feb., 12th.

Punjab Security of Land Tenures Act (X of 1953)—Ss. 5 and 18—Landowner omitting to include area in his self-cultivation at the commencement of the Act in the Permissible Area reserved by him—Whether makes the whole reservation bad.

Held, that according to section 5 of the Punjab Security of Land Tenures Act, 1953, a landowner has to include the area under his self-cultivation at the commencement of the Act while making reservation of his permissible area. If he omits to include any such area in his permissible area, the reservation made by him of the permissible area does not become void. An irregularity or defect in making this reservation cannot result in depriving a landowner of the permissible area, which the Act authorises him to keep. It was not the intention of this enactment that in such a contingency a landowner should lose even his permissible area. The correct procedure, in such a case, is that the land, which he had to include in his reserved area and which he had failed to do, should be so included and an equivalent area should be excluded out of

the one, which had already been reserved by him. The entire reservation cannot, however, be declared to be illegal.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate Writ, Order or direction be issued quashing the impugned orders dated 27th October, 1961, 31st January, 1962, 18th October, 1962 and 29th December, 1962, respectively and dismiss the application filed by respondents Nos. 2 to 4 under section 18 of the Act for the purchase of the land in dispute which is admittedly included in the reserved area of petitioner No. 1

H. L. SARIN, ADVOCATE, for the Petitioner.

K. L. SACHDEVA, ADVOCATE, for the Respondents.

ORDER

PANDIT, J.—This is a writ petition filed by Raghbir Singh and his two sons challenging the validity of the order dated 29th December, 1962, passed by the Financial Commissioner, Revenue, Punjab, respondent No. 1.

Pandit, J.

According to the allegations of the petitioners, on 12th October, 1953 Raghbir Singh, petitioner No. 1, who is a landowner duly reserved permissible area of land under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act) in village Alamshah, district Ferozepore. On 8th June, 1961 Mahla Ram and others, tenants, respondents 2 to 4, filed an application under section 18 of the Act for the purchase of the land measuring 12 Acres and 7 Marlas out of the said reserved area. After contest, the Assistant Collector First Grade, Ferozepore; by his order dated 27th October, 1961 allowed the said application on payment of Rs. 7,505.37 nP. in ten equal six-monthly instalments. Against this

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order, the petitioners filed an appeal before the Collector, Ferozepore, who by his order dated 31st January, 1962 dismissed the same. Thereafter, the petitioners filed a revision petition before the Additional Commissioner, Jullundur Division; and the same was also dismissed by him on 18th October, 1962. This order was further confirmed in revision by the Financial Commissioner, - *vide* the impugned order dated 29th December, 1962 mentioned above. He held that since two khasra Nos. 594 and 595, which were under the self-cultivation of the petitioners, had not been included in the reserved area, the reservation made was invalid. This led to the filing of the present writ petition on 28th January, 1963.

Learned counsel for the petitioners contended that even if the petitioner had erroneously not included *khasra* Nos. 594 and 595 in his reserved area, the entire reservation made by him could not be held to be bad, because this action of the learned Financial Commissioner was not warranted by law and the petitioners could not be deprived of the area, which could be reserved under the Act.

Section 5 of the Act deals with the reservation of land. According to this section, a landowner, who owns land in excess of the permissible area, is entitled to reserve out of the entire land held by him, any land not exceeding the permissible area and for this purpose he has to supply this information in the prescribed form. This section further lays down that while making this reservation, he has to include the area under his self-cultivation at the commencement of this Act. Now the question arises that if a landowner purposely or by mistake omits to include certain *khasra* numbers, which were under his self-cultivation at the time of the commencement of the Act in his reserved

area, then will the entire reservation become invalid and be completely ignored so that the tenants could purchase even this land under the provisions of section 18 of the Act? It may be mentioned that section 18 of the Act authorises certain tenants to purchase those lands only, which are not included in the reserved area of the landowners. There is no provision in the Act which enables the Authorities to hold such a reservation as invalid, in case it is later on discovered by them that there were certain defects or irregularities in the reservation made by a landowner. It is, however, clearly laid down in the Act that a landowner is entitled to keep the permissible area with him and the remaining land can be purchased by the tenants under the provisions of section 18 of the Act. In my view, an irregularity of defect in making this reservation cannot result in depriving a landowner of the permissible area, which the Act authorises him to keep. It was not the intention of this enactment that in such a contingency a landowner should lose even his permissible area. The correct procedure, in such a case, is that the land, which he had to include in his reserved area and which he had failed to do, should be so included and an equivalent area should be excluded out of the one, which had already been reserved by him. The entire reservation cannot, however, be declared to be illegal. In the present case, it has been found by the Revenue Authorities that certain *khasra* numbers, which were under the self-cultivation of the petitioner, had not been included by him in his reserved area. That being so, those *khasra* numbers should be included in the reserved area and an equivalent area should be taken out of the reservation already made by the petitioner. It may be mentioned that the Learned Financial Commissioner has held that there were only two *khasra* numbers, which were under the self-cultivation of

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the petitioner and which he had failed to include in his reserved area, while the Additional Commissioner, the Collector and the Assistant Collector, First Grade, have on the other hand, stated that there were other *Khasra* numbers as well, which were under the self-cultivation of the petitioner at the commencement of the Act and he had omitted to include them in his reserved area. This matter, therefore, requires fresh determination by the Revenue Authorities and once a definite finding is given by them in this respect, then that area should be included in the reserved area and an equivalent area should be excluded from the reservation made by the petitioner.

It may be noted that the learned counsel for the petitioners also challenged the *vires* of section 19-E of the Act; but this contention was repelled by a Bench decision of this Court in *Bhagat Gobind Singh v. Punjab State and others* (1); wherein this provision of law was held to be constitutional and valid.

In the light of the observations made above, this petition succeeds and the impugned order of the learned Financial Commissioner declaring the entire reservation of the petitioner as invalid is set aside. In the circumstances of this case, however, I will leave the parties to bear their own costs in these proceedings.

B.R.T.

(1) I.L.R. 1963 (1) Puni. 500—1963 P.L.R. 105.