way, affect the previous orders passed by the Additional Director under section 42 of the Act, which had become final between the parties to those petitions. In the circumstances of this case, however, I leave the parties to bear their own costs.

SHAMSHER BAHADUR, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

MAGHAR SINGH,—*Petitioner.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Writ No. 2349 of 1963

August 25, 1967.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 32 NN—Pepsu Tenancy and Agricultural Lands Rules (1958)—Rule 5 Explanation—Valuation of land—At what date to be calculated—Explanation to Rule 5—Whether inconsistent with S. 32 NN.

Held, that according to section 32 NN of the Pepsu Tenancy and Agricultural Lands Act, 1955 the land owned by a person *immediately before* the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, has to be seen for evaluating it for converting into standard acres. The date of the commencement of the above-mentioned Second Amendment Act, 1956, was 30th of October, 1956 which is, therefore, the relevant date.

Held that according to the Explanation at the end of Rule 5 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, the entries in the latest jamabandi on the relevant date are to be conclusive for the purpose of determining the class of any land. It, therefore, does not seem to be in consonance with the provisions of section 32 NN of the Act which undoubtedly have to take precedence over the rules. Assumed that in a particular case; the latest Jamabandi is of the year 1950-51 and due to one reason or the other, no Jamabandi for the subsequent years was

prepared. That does not mean that the entries therein would be conclusive for the purpose of determining the class of the land, because during the intervening period, the value of the land might have either improved due to various factors, for example, it later on became canal irrigated, or it could have decreased due to reasons like waterlogging etc. The valuation has to be made according to the kind of the land immediately before 30th of October, 1956 and not its class recorded in the latest Jamabandi.

Petition under Articles 226/227 *of the Constitution of India, praying that a writ in the nature of* certiorari mandamus *or any other appropriate writ, order or direction be issued quashing the orders of respondents Nos.* 2, 3 *and* 4 *declaring the land belonging to the petitioner measuring* 11 *Standard Acres and* II-3/4 *Units as surplus area.*

TIRATH SINGH, ADVOCATE, for the Petitioner.

G. R. MAJITHIA, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB), for the Respondents.

ORDER.

PANDIT, J.—On 2nd January, 1961, the Collector, Agrarian Reforms, Sangrur, respondent No. 4, declared agricultural land measuring 11 Standard Acres and 11¾ Units as surplus area with Maghar Singh, petitioner. This order was confirmed on appeal by the Commissioner, Patiala Division, respondent No. 3, on 14th August, 1961, and later by the Financial Commissioner, Punjab, at Chandigarh, respondent No. 2, in revision on 19th November, 1963. Against these orders, the petitioner has filed the present petition under Articles 226 and 227 of the Constitution.

The main argument urged by the learned counsel was that about 100 bighas of land belonging to the petitioner was *Thur Sem* (waterlogged) and was lying waste and uncultivated (*Khali*), but even then it was evaluated as *Nehri* and *Rosli Barani* while declaring his surplus area, with the result that great injustice had been done to the petitioner. The reply filed by the State regarding this objection was that the evaluation of the petitioner's land had been correctly made in accordance with the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955, (hereinafter called the Act), and the Pepsu Tenancy and Agricultural Lands Rules, 1958 (hereinafter referred to as the Rules). According to the explanation to rule 5, the entries in the latest Jamabandi on the relevant date were to be conclusive for

the purpose of determining the class of any land. The relevant date, according to the return, was 21st August, 1956, and on that date the Jamabandi for the year 1954-55 was the latest available. In that *Jamabandi,* the land in dispute was not shown to be *Thur Sem* or *Khali* as alleged by the petitioner.

Section 32NN of the Act reads as under:—

> "For the removal of doubts it is hereby declared that for evaluating the land of any person at any time under this Act, the land owned by him immediately before the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, or the land acquired by him after such commencement by inheritance or by bequest, or gift from a person to whom he is an heir, shall always be evaluated for converting into standard acres as if the evaluation was being made on the date of such commencement, and that the land acquired by him after such commencement in any other manner shall always be evaluated for converting into standard acres as if the evaluation was being made on the date of such acquisition."

According to this section, which was inserted by Punjab Act, No. XVI of 1962, the land owned by a person *immediately* before the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, had to be seen for evaluating it for converting into standard acres. The date of the commencement of the above-mentioned Second Amendment Act, 1956, was 30th of October, 1956. Admittedly, therefore, this was the relevant date, and not 21st August, 1956 as mentioned in the return filed by the State, for evaluating the land. In other words, for evaluating the petitioner's land, the Collector, Agrarian Reforms, had to see its kind immediately before 30th of October, 1956. According to the petitioner, the Khasra Girdwaries from 1955, upto 1963, showed that the land had remained *Khali* (uncultivated). It could not be shown *Thur Sem* in the revenue records, because such entries were ordered to be recorded for the first time in pursuance of the Punjab Land Revenue (*Thur, Sem, Chos* and Sand) Remission and Suspension Rules, 1960. Before these rules came into force, even if the land was *Thur* or *Sem,* it was, according to the petitioner, shown as *Khali* and not entry with respect to its being waterlogged was made either in the Jamabandi

or Khasra Girdwari. The Jamabandi for the year 1954-55 relied on by the State would not, therefore, correctly show the kind of the land immediately before 30th of October, 1956. The explanation at the end of rule 5 of the Rules says:—

> "For the purpose of determining the class of any land, the entry in the latest jamabandi relating to such land shall be conclusive."

According to it, the entries in the latest Jamabandi on the relevant date were to be conclusive for the purpose of determining the class of any land. It, therefore, does not seem to be in consonance with the provisions of section 32NN of the Act which undoubtedly have to take precedence over the rules. Assume that in a particular case, the latest Jamabandi is of the year 1950-51 and due to one reason or the other, no Jamabandi for the subsequent years was prepared. That does not mean that the entries therein would be conclusive for the purpose of determining the class of the land, because during the intervening period, the value of the land might have either improved due to various factors, for example, it later on became canal irrigated, or it could have decreased due to reasons like water-logging, etc. The valuation has to be made according to the kind of the land immediately before 30th of October, 1956, and not its class recorded in the latest Jamabandi. It is undisputed that the valuation entirely depends on the kind of the land and if the quality of the land has either decreased or increased since the preparation of the latest jamabandi, the basis for its evaluation should be its kind immediately before the 30th of October, 1956, and not its class recorded in the latest Jamabandi. In the present case, concededly, the evaluation had been done according to the Jamabandi of 1954-55 and not according to the class of the land immediately before the 30th of October, 1956. As already observed by me above, according to section 32NN of the Act, however, the kind of the land immediately before 30th of October, 1956, has to be seen and this is a question of fact which would be determined by production of relevant evidence on the point. There is thus an apparent error of law in the impugned orders, which has resulted in manifest injustice to the petitioner.

I would, therefore, accept this petition, quash the impugned orders and direct the Collector, Agrarian Reforms, to evaluate the land afresh in accordance with law in the light of the observations made above. There will, however, be no order as to costs.

B.R.T.