CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

WARYAM SINGH,—*Petitioner.*

versus

THE COLLECTOR AGRARIAN REFORMS AND OTHERS,—*Respondents.*

Civil Writ No. 686 of 1963.

1963

Nov. 13th

Pepsu Tenancy and Agricultural Lands Rules, 1958—Rule 5 and Schedule A—Whether ultra vires—*Chahi-Niayin and Chahi-Khalis land—Meaning of—Whether can be assessed at the same rate.*

Held, that Schedule A to the Pepsu Tenancy and Agricultural Lands Rules, 1958, so far as it relates to Sangrur District is *ultra vires* Rule 5 as well as the definition of 'standard acre' in section 2(1) of the Act as it values all Chahi land at the same rate irrespective of its sub-divisions into *Chahi-Niayin* and *Chahi-Khalis.*

Held, that Chahi-Niayin land means land irrigated from a well and which is manured while Chahi-Khalis is the land which is irrigated from a well, but which is not manured. The yield from manured land is always more than the yield from unmanured land and, therefore, *Chahi-Niayin* and *Chahi-Khalis* lands cannot be assessed at the same rate.

Writ Petition Under Articles 226/227 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 respondent No. 1 dated 17th October, 1961 and subsequent orders of the Commissioner, dated 14th August, 1962 and of respondent No. 2 dated 1st February, 1963.

ATMA RAM, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, for the Respondents.

ORDER

MAHAJAN, J.—This petition under Article 226 of the Constitution is directed against the order of the

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Collector declaring certain area of land belonging to the petitioner as surplus. The order was challenged on a number of grounds both before the authorities below and in this Court. Learned counsel for the petitioner has confined his arguments to three matters, namely:—

1. that the valuation of land has not been correctly fixed. The valuation has been fixed under Rule 5 of the Pepsu Tenancy & Agricultural Lands Rules, 1958, read with Schedule 'A' to the Rules and the contention is that Schedule 'A' is *ultra vires* the Act and the Rules;

2. that there is an orchard on the land for which the necessary exemption under section 32-K of the Pepsu Tenancy & Agricultural Lands Act has not been allowed; and

3. that under the provisions of the Riwaj-i-am of Malerkotla, the petitioner and his sons were separate owners of the land and the entire land could not be treated as land of the petitioner for the purposes of determination of the surplus area.

So far as the last two contentions are concerned, they may be disposed of first, because none of them has any merit.

As regards the contention concerning the orchard the order of the Pepsu Land Commission has not been filed along with the petition. Moreover, the petition challenging that order has been filed two years after the order was passed and on the ground of laches I am not inclined to go into this matter, particularly when the dispute is on a question of fact. The Commission declared that the orchard was not planted within the

period provided in the Act. The contention of the petitioner was that the orchard was planted within that period. Therefore, it is evident that the sole question that required determination under the second contention is a pure question of fact and cannot be gone into in these extraordinary proceedings. Therefore, this contention is overruled.

As regards the third contention, it was pressed in a half-hearted manner and there is no substance in it. It is more or less on the same basis as is the contention with regard to the members of the joint Hindu Family. The revenue records do not show that the sons are entered as owners along with the father and the question as to what are the rights of the sons under the Riwaj-i-am is a question which has to be determined in a regular proceedings and cannot be gone into in these extraordinary proceedings under Article 226 of the Constitution. Therefore, I repel the third contention as well.

Adverting to the first contention, it appears that it has substance and must prevail. It is, therefore, necessary to set out the facts which have been proved beyond dispute. In the revenue records, Chahi land of the petitioner is recorded in two categories—Chahi Niayin and Chahi Khalis. For purposes of Rule 5, the relevant part of which reads thus—

> "5. An equivalent, in standard acres, of one ordinary acre of any class of land in any tahsil shall be determined by dividing by 100, the valuation shown in Schedule A for such class of land in the said tahsil.
>
> Provided that * * * * * * *
>
> (a) * * * * * * * *
>
> (b) * * * * * * * *
>
> (c) * * * * * * * *

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

the revenue records of the latest jamabandi shall be taken as conclusive. We must, therefore, start with the basis that the Chahi land of the petitioner is of two categories Chahi Niayin and Chahi Khalis. Chahi Niayin, accroding to the Settlement Report of Malerkotla, is land which is heavily manured and Chahi Khalis is the land which is not so manured. Moreover, in the assessment, Chahi Niayin is assessed at Rs. 2-4-4 per Bigha whereas Chahi Khalis is assessed at Rs. 1-8-0 per Bigha. In the Douie's Punjab Settlement Manual, 4th Edition (1960) in paragraph 261, it is stated that manured land has sometimes been treated as a separate class under the names of *niai* or *gora*. In the Glossary of Vernacular Words, at the end of the Manual, Chahi Khalis is defined as land irrigated only from a well as distinguished from Chahi-Nehri or Chahi-Sailab; and Chahi-Niai is stated to be manured. Therefore, Chahi-Niayin would be land irrigated from a well and is manured and Chahi Khalis would be the land which is irrigated from a well and is not manured. It is also significant that in the Schedule 'A', Chahi-Niayin and Chahi-Khalis have been treated in separate categories. (See the valuation statement for Fatehgarh Sahib Sub-Division in Patiala District in Schedule 'A' to the Rules), According to the definition of 'standard acre' in section 2(1), which is in these terms:—

"'standard acre' is a measure of land convertible with reference to the yield from, and the quality of, the soil, into an ordinary acre according to the prescribed scale;"

While converting land into standard acres the yield from, and the quality of the soil is to be taken into consideration. Anyone, who is somewhat conversant with agriculture, will straightway recognise the fact that lands which are manured yield better crops than those which are not manured. The very fact that the genus is Chahi will not detract from its two distinct species, that is manured and not manured particularly when this classification has been recognised in the Schedule. It appears, therefore, that the Schedule so far as it relates to Sangrur District is *ultra vires* Rule 5 as well as the definition in section 2(i) of the Act. It may be mentioned that Schedule A relating to Sangrur District values Chahi land irrespective of its sub-divisions at the same rate. According to the definition contained in section 2(1) and Rule 5, this cannot be done. Therefore, the contention of the petitioner that his lands have not been correctly valued is correct.

The learned Advocate-General contended that the classification was a matter which was in the discretion of the Government and, therefore, this Court could not interfere with the classification. I am, however, unable to agree with this contention. The authorities cannot nullify the definition of standard acre by an arbitrary classification and it cannot but be said that the classification of Chahi land, so far as Sangrur District is concerned, is highly arbitrary. That being so, the contention of the learned Advocate-General is rejected.

In the result, this petition is allowed to this extent only that the order of the authorities evaluating Chahi land of the petitioner, which is of Niain and Khalis categories, at the same rate is unsustainable. The Collector will evaluate both types of land separately and then determine if there is any surplus area of

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the petitioner. The petitioner will be entitled to his costs which are assessed to Rs. 50.

R. S.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

GOPI CHAND AND OTHERS,—*Appellants.*

versus

BHAGWANI DEVI,—*Respondent.*

Regular Second Appeal No. 338-D of 1962.

1963

Nov., 13th.

Hindu Succession Act, (XXX of 1956)—S. 4—Delhi Land Reforms Act (VIII of 1954)—S. 50—Succession to bhoomidhari *rights—Whether governed by Delhi Land Reforms Act or by general provisions of Hindu Succession Act—Delhi Reforms Act—Whether provides for prevention of fragmentation of agricultural holding*—Bhoomidhari rights—Whether equivalent to tenancy rights.

Held, that sub-section (1) (b) of section of the Hindu Succession Act, 1956, clearly lays down that any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act. Certain exceptions have, however, been given in sub-section (2) of this section. The order of succession laid down in sectior 50 of the Delhi Land Reforms Act is inconsistent with th one prescribed in the Hindu Succession Act. Therefor the provisions of section 50 of the Delhi Reforms Act woulu not apply, unless it can be shown that the case is covered by the exceptions mentioned in sub-section (2) of section 4 of the Hindu Succession Act.

Held, that Delhi Reforms Act does not provide for prevention of fragmentation of agricultural holdings.

Held, that *bhoomidhars* are those persons, who hold land directly and are only liable to pay land revenue to the State like owners of the land. The ownership rights of these