CIVIL MISCELLANEOUS

Before R. S. Narula, J.

RAM PARTAP AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 868 of 1968
&
Civil Misc. No. 1944 of 1968

April 2, 1969

Punjab Security of Land Tenures Act (X of 1953 as amended by Act XI of 1955)—Sections 1(4)(ii) 10-A(a) and 10-A(b)—Co-operative Societies exempted under the Act as passed on April 15, 1953—Such exemption taken away by the amendment of the Act on May 25, 1955—Co-operative Societies—Whether can claim exemption after the amendment—Determination of surplus area of a land-owner—Position as prevailed on April 15, 1953—Whether to be seen—Applicability of the Act to a particular class of persons—Whether to be judged on the date of such determination.

Held, that Co-operative Farming Societies were exempt from the operation of Punjab Security of Land Tenures Act as passed on April 15, 1953, by virtue of section 1 (4) (ii) of the Act. The Act was amended on May 25, 1955, taking away the exemption. The amending Act has not taken away the exemption granted with retrospective effect but only with effect from May 26, 1955, the date on which the amending Act came into force. As a result, therefore, the Co-operative Societies which were exempt from the operation of the Act up to May 25, 1955, cannot be asked to part with the profits accrued to them from the land during the period commencing April 15, 1953. When, however, the Collector takes upon himself the question of determining the surplus area of a Co-operative Society at any time after May 26, 1955, he does not have before him any provision in the statute book granting an exemption in favour of a Co-operative Society and hence the Co-operative Society cannot continue to claim exemption from the provisions of the Act after its amendment. (Para 9)

Held, that clauses (a) and (b) of section 10-A of the Act require the authorities under the Act to ignore transfers after April 15, 1953, and judgments, orders or decrees etc. passed after that date which have the result of reducing the surplus area of any land-owner. What these clauses of section 10-A of the Act contemplate by referring to the date of the coming into force of the Act, i.e., April 15, 1953, is the quantity of the land in standard acreage held by a land-owner on that date. Even for the purposes of determining the surplus area of the land-owner members of the Co-operative Society, it is the position as it prevailed on April 15, 1953, *qua* the area owned by the respective land-owners that will have to be taken into account. But the fact that certain class of land-owners were excluded from the operation of the Act on April 15, 1953, would not entitle those persons to claim to continue to enjoy the exemption even after the Legislature has withdrawn the same. The correct position is that in determining

whether the holding of a land-owner is within his permissible limit or not, the position to be seen *qua* determination of the surplus area or **permissible** area ordinarily is as it prevailed on April 15, 1953. But for **arriving at** a decision as to which land-owner is or is not subject to the provisions **of the** Act, the situation which has to be kept in view is the one which **prevails** on the date on which the surplus area has to be determined.

(Para 9)

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 directions* ***be issued quashing*** *the orders of respondents* ***Nos. 3, 4*** *and 5, dated* ***3rd August, 1967, 10th August, 1966*** *and* ***30th April, 1955, respectively.***

D. N. AWASTHY, K. C. PURI AND S. K. GOYAL ADVOCATES, **for the** Petitioners.

B. S. DHILLON, ADVOCATE-GENERAL, PUNJAB, for Respondent No. 1,

C. D. DEWAN, ADVOCATE-GENERAL, HARYANA, for Respondent No. 2, and

P. C. KHUNGAR, ADVOCATE, for Respondents Nos. 7 to 10.

JUDGMENT

NARULA, J.—As the same two questions of law arise in these thirteen connected writ petitions (Civil Writs 868 to 880 of 1968), I propose to dispose them all of by this common judgment. The facts relating to the case of Ram Partap and others (Civil Writ 868 of 1968) may first be surveyed. It is agreed by all the counsel that it would be unnecessary to take notice of the facts of other connected cases for disposing of the matters in issue in these petitions.

(2) Twelve landlords and eleven tenants formed a co-operative society in 1952. Before the society could be registered, an official inspection into their scheme was made. A copy of the report of the Inspector of Co-operative Societies, Fazilka, dated April 10, 1952 (in Urdu), is Annexure 'A' to the writ petition. Annexure 'A/1' is a translation of the same into English. The report reveals that at the time of inspection 3138 Bighas of land were in the cultivation of the owners themselves, and 1414 Bighas were in the cultivating possession of tenants-at-will. According to the inspection report, petitioner No. 9 society was to undertake joint cultivation of about 1000 Bighas of land in village Alamgarh and about 725 Bighas in village Sayadwala in Ferozepore District. The society was stated to have commenced its work with effect from Kharif, 1952. Petitioner No. 9 society was duly registered under the Co-operative Societies Act on June 16, 1952. The Punjab Security of Land Tenures Act (10 of 1953) (hereinafter called the Act) did not at that time

(i.e. on 15th April, 1953), apply to co-operative societies because section 1(4)(ii) of the Act stated :—

> "Save as elsewhere expressly provided in this Act nothing contained therein shall apply to land held by co-operative farming societies during the period of their continuance, subject to their fulfilling the conditions prescribed under this Act."

The relevant conditions were prescribed under rule 12 of the Punjab Security of Land Tenures Rules, 1953, in the following terms :—

> "For the purposes of clause (ii) of sub-section (4) of section 1 of the Act, a co-operative farming society shall fulfil the conditions of a registered society governed by bye-laws for a Co-operative Better Farming Society Limited, and the rules made under the Co-operative Societies Act, 1912."

It is the common case of the parties that petitioner No. 9, society fulfilled all the requirements of rule 12, and was, therefore, exempt from the operation of the 1953 Act so long as section 1(4)(ii) thereof existed in its original terms. The said provision (sub-section (4) of section 1) was, however, amended by section 2 of the Punjab Security of Land Tenures (Amendment) Act, 1955, and for the original provision the following was substituted :—

> "Save as elsewhere expressly provided in this Act nothing contained therein shall apply to co-operative garden colonies which were registered before the coming into force of this Act."

The result was that the exemption granted by the original provision in favour of co-operative societies covered by rule 12 of the 1953 Rules was taken away, except for co-operative garden colonies in which category petitioner No. 9 does not fall.

(3) The only other amendment to the principal Act which is relevant for our purpose is the one brought about by the introduction of sections 19-A and 19-B by section 4 of the Punjab Security of Land Tenures (Amendment) Act No. 4 of 1959. Section 19-A(1) provides that no person, whether as land-owner or tenant, shall acquire or possess by transfer, exchange, lease, agreement or settlement any land, which exceeds his permissible area. "Permissible area" has been defined for all practical purposes to mean thirty standard acres. Proviso to sub-section (1) of section 19-A states that nothing contained in that sub-section would apply to

lands belonging to registered co-operative societies formed for purposes of co-operative farming "if the land owned by an individual member of the society does not exceed the permissible area."

(4) Thereafter, the Special Collector concerned took up proceedings for determining the surplus area of the various land-owners who had jointly formed the co-operative society. By his order, dated February 28, 1961, the Collector declared the surplus area of the respective land-owners. The petitioners, i.e., the land-owners as well as most of the tenants preferred separate appeals against the order of the Special Collctor on August 7, 1961. All these appeals were disposed of by the order of Shri Damodar Dass, Additional Commissioner, Jullundur/Ambala Division, dated May 8, 1963 (Annexure 'C'). The learned Additional Commissioner observed that while determining cases of surplus holdings, the Collector had not taken into account the existence of the co-operative societies and though the Collector had left thirty standard acres with each of the land-owners, no area had been left by him for the tenants on the ground that their continuous tenancy had not been proved according to the revenue records. He held that the entire area of owners and tenants should be treated as one unit, and since an area of thirty standard acres is allowed to each owner, and a tenant the permissible limit should be generally determined taking into account the number of land-owners and tenants, allowing each of them thirty standard acres for self cultivation. He allowed this relief to seven land-owners (who had preferred the appeals) and eleven tenants who had originally constituted the co-operative society prior to the enforcement of the 1953 Act, and ignored the claims of those members who had joined the society after the coming into force of the Act. As a result, he allowed 210 standard acres to the seven land-owners and 330 standard acres to the eleven tenants, and declared their remaining area of 1,083 standard acres and 13½ Units as surplus.

(5) The State went up in revision against the Commissioner's order to the Financial Commissioner. By his order dated October 28, 1963 (Annexure 'D'), the Financial Commissioner, Revenue, Punjab, allowed the revision petition filed by the State. He held that there could be no quarrel with the proposition that both the land-owners as well as the tenants were entitled to their permissible area of thirty standard acres each, but he was doubtful if the co-operative societies in which all the members were not land-owners (but some were tenants), could claim the benefit of the proviso to section 19-A(1) of the Act, but for which proviso no co-operative society could hold more than thirty standard acres. He

referred to several possible interpretations of the proviso to section 19-A(1), and found that the cases before him could not be decided without ascertaining certain further facts. He also found himself faced with the difficulty that there was no evidence on the record before him to show as to when the tenant members had become tenants, and whether the eleven tenants were genuine tenants or their tenancies had been created by the land-owners members simply in order to continue to enjoy the profits, from larger areas of land which they would not have been otherwise entitled to possess. The Financial Commissioner, therefore, framed the following five issues and remanded the case to the Special Collector for fresh determination of the surplus area in each case after deciding those issues:—

"(1) Can a registered co-operative farming society consisting of both land-owner and tenant-members claim the benefit of the proviso to section 19-A(1) ?

(2) If so, can each land-owner and tenant-member retain his permissible area for the purpose of co-operative farming ?

(3) Were the tenants, who originally and subsequently joined the Dharampura Co-operative Farming Society as members, tenants of the land-owner-members, and if so, from which date and what were the area which each of these tenants had in tenancy ?

(4) If the tenant-members had been tenants of the land-owner-members before the Co-operative Society was formed, is there any legal objection to their joining the Society as members ?

(5) Can persons to whom the land-owners had given parts of their surplus areas in tenancy, be allowed to retain these areas simply because they had joined the Co-operative Society ?"

(6) In his post-remand order, dated April 30, 1965 (Annexure 'E'), the Collector held on issue No. 1 that in order to obtain the benefit of the proviso to section 19-A(1), all the members of the Society should be owners of the land pooled for the purpose of co-operative farming, and that a Society so formed would be entitled to the benefit of the proviso only if the land owned by each member did not exceed his permissible limit. On that basis he held that only the land-owner-members could have their permissible area of thirty

standard acres each irrespective of their holding having been transferred to the co-operative society. On account of his finding on the first issue be held on issue No. 2 that the tenant-members would not be entitled to have any permissible area. He recorded his finding on issue No. 3 to the effect that the introduction of the so-called tenants in the Society had been made to defeat the scheme of the Act as the statements of the tenants were vague, and they had not even mentioned the date with effect from which they had been in cultivating possession of the land as tenants, and they had not described the areas which were under their cultivation. Issue Nos. 4 and 5 were held to have become redundant in view of his finding on issue No. 3. The prayer of the land-owners to be given a choice of revising their selection of permissible area was allowed. Surplus area was determined by the Collector on the above-mentioned basis. 13 sets of appeals were filed against the order of the Collector. Copy of the petition of appeal is Annexure 'F' to the writ petition. One of the grounds of appeal (ground 'f') was that under section 1(4)(ii) of the 1953 Act as it originally stood, a co-operative society was exempt from the provisions of the Act with the result that when the Act came into force, the land held by the society was exempt. All the thirteen appeals were disposed of by the appellate order of Shri H. B. Lall, Commissioner, Jullundur Division, dated March 10, 1966, (Annexure 'G'). He held that the original exemption in favour of the Co-operative Society had been taken away by the 1955 Act, and that since the surplus area had to be determined in accordance with the law in force on the date of such determination, the original exemption which had since been withdrawn could not be taken into account. He, therefore, upheld the order of the Collector allowing only the permissible area of thirty standard acres in respect of each land-owner member of the petitioner Society. He also upheld the finding of the Collector to the effect that there was hardly any proof on the record regarding the alleged tenancies. All the appeals were, therefore, rejected.

(7) Not satisfied with the order of the Commissioner, the petitioners filed thirteen separate petitions for revision before the Financial Commissioner (copy Annexure 'H'). When these petitions were dismissed by the order of the Financial Commissioner (Revenue), dated August 3, 1967 (Annexure 'J'), (holding that a registered co-operative society can claim exemption under proviso to section 19-A(1) only if every land-owner-member of the society does not own more than his permissible area even if the whole of the permissible area of the member has not been transferred to the society, though there was no objection to tenants being members of the society provided

the land with each tenant was within his permissible area, and on the further finding that in none of the cases before him there was any reliable evidence to show that the tenant-members were old tenants, and the area cultivated by them as members were within their respective permissible limits) the petitioners came up to this Court under Articles 226 and 227 of the Constitution for having quashed the above-mentioned orders of the respondents whereunder the surplus area of the petitioners had been determined.

(8) The Deputy Secretary to the Government of Haryana has filed his affidavit by way of written statement on behalf of State of Haryana (respondent No. 2). Respondents 1 and 3 to 5 (State of Punjab, the Financial Commissioner (Revenue), Punjab, the Commissioner, Jullundur Division and Special Collector) have filed a common written statement. Though an additional ground was sought to be urged before the Financial Commissioner consequent on the reorganisation of the erstwhile united State of Punjab on account of part of the land of petitioner No. 9, society falling in the new State of Punjab, and part in the new State of Haryana, no reference to the same has been made at the hearing of the petition as this Court (Tuli, J.) has already settled in *S. Balwant Singh Chopra and others* v. *Union of India and others* (1) that the reorganisation of the State does not affect the declaration of the surplus area which had already been made.

(9) Mr. D. N. Awasthy, the learned counsel for the petitioners in all these cases, has pressed only two points in support of the cases of his clients. He has firstly submitted that the lands held by petitioner No. 9, society are exempt from the operation of the Act, because section 1(4)(ii) of the original Act which exempted Co-operative Farming Societies during the period of their continuance has been repealed by the substitution made by Act 11 of 1955 only with prospective effect and not retrospectively and inasmuch as surplus area has to be determined and declared in view of the position as it existed on April 15, 1953, it cannot be lawfully held that petitioner No. 9, Society had any surplus area as it could not have any such area on April 15, 1953, on which date the Co-operative Societies were exempt from the operation of the Act. Counsel has referred to the pronouncement of the Supreme Court in *Bhagwan Dass* v. *The State of Punjab* (2), wherein it was held that the scheme of the Act appears to be that the entire land held by the land-owners in the State

(1) 1968 P.L.J. 311.
(2) 1966 P.L.R. 300.

of Punjab "on the date of commencement of the Act" must be evaluated on that date and the status of the land-owner, and his surplus area, if any, must then be ascertained. Their Lordships held that if a land-owner is found to be a small land-owner, he continues to be so for the purposes of the Act unless he acquires more land, and on taking into account the value of the land in terms of standard acres on the date of the acquisition he is found to be a big land-owner. According to Mr. Awasthy, the ratio of the judgment of the Supreme Court in *Bhagwan Dass's case* (2), is that if a land-owner did not have any surplus area on April 15, 1953, he cannot possibly have any such area at any time thereafter. This manner of interpreting the judgment of the Supreme Court appears to be misconceived. Even in the *case of Bhagwan Dass* itself, their Lordships of the Supreme Court took into account the possibility of somebody becoming a big land-owner after the coming into force of the Act by acquiring more land. What sections 10-A (b) and (c) of the Act contemplate by referring to the date of the coming into force of the Act is the quantity of the land in standard acreage held by a land-owner on that date. Even for purposes of determining the surplus area of the land-owner members of the Co-operative Society, it is the position as it prevailed on April 15, 1953, *qua* the area owned by the respective land-owners that will have to be and has in fact been taken into account. But the fact that certain class of land-owners were excluded from the operation of the Act on April 15, 1953, would not entitle those persons to claim to continue to enjoy the exemption even after the Legislature has withdrawn the same. Mr. Awasthi referred to the observations of the Supreme Court in *State of Punjab* v. *Mohar Singh Pratap Singh* (3) and submitted that the vested right of the petitioners in the land in dispute could not be affected by construing the provisions of the amending Act of 1955 in a retrospective manner, inasmuch as the Legislature has not given retrospective effect to the amendment either expressly or by necessary intendment. There is no quarrel with the proposition of law on which the argument of Mr. Awasthi in this behalf is based. But the said proposition of law is not relevant for deciding the questions raised by the petitioners. It is indeed true that the 1955 Act has not taken away the exemption granted in favour of the Co-operative Societies with retrospective effect, but only with effect from May 26, 1955, i.e., the date on which the 1955 Act came into force. As a result, therefore, the Co-operative Societies which were exempt from the operation of the Act up to May 25, 1955, cannot be asked to part with the profits accrued to them from the

(3) A.I.R. 1955 S.C. 84.

land during the period commencing April 15, 1953. When, however, the Collector takes upon himself the question of determining the surplus area of a Co-operative Society at any time after May 26, 1955, he does not have before him any provision in the statute book granting an exemption in favour of a Co-operative Society. The argument of Mr. Awasthi amounts to asking the Court to add to clauses (a) and (b) of section 10-A of the Act (which clauses require the authorities under the Act to ignore transfers after April 15, 1953, and judgments, orders or decrees, etc., passed after April 15, 1953, which have the result of reducing the surplus area of any landowner), an additional clause to the effect that the authorities under the Act should ignore any amendment to the principal Act whereby the exemption granted to a Co-operative Society in the original Act is taken away. There is no warrant for adopting any such course of action. The learned Advocate-General for the State of Punjab submitted that the amendment brought about by the 1955 Act was in the nature of an amendment whereby the permissible area of a land-owner under the Act might have been reduced. On such an amendment coming into force, it could not be argued that the land which would have been included in the permissible limit of a landowner should notwithstanding the amendment reducing such limit, continue to be part of his permissible limit; and be not declared as his surplus area. The correct position seems to be that in determining whether the holding of a landowner is within his permissible limit or not, the position to be seen *qua* determination of the surplus area or permissible area ordinarily is as it prevailed on April 15, 1953. But for arriving at a decision as to which landowner is or is not subject to the provisions of the Act, the situation which has to be kept in view is the one which prevails on the date on which the surplus area has to be determined. In these circumstances I am unable to find any error of law apparent on the face of the impugned orders in respect of this submission of the learned counsel.

(10) The only other point argued by Mr. Awasthi is that in any case there was no justification for the tenant-members of the petitioner No. 9 society being deprived of their permissible area. The authorities have clearly held that the tenant-members can also have their permissible area provided they had the same on April 15, 1953. The claim of the tenants has not been allowed in the impugned orders because of absolute want of evidence, to support their claim regarding their having held the land in question in their cultivating possession as tenants on or before April 15, 1953. Mr. Awasthi frankly conceded that even on the evidence now

available on the record of the case including the papers produced in the writ petition, he is unable to prove that the respective tenant-petitioners were in self-cultivating possession of any particular area (out of the area which was with petitioner No. 9 Society) on April 15, 1953. Keeping in view the fact that this was one of the points on which the petitioners had ample opportunity to adduce evidence after the order of remand passed by the Financial Commissioner, and the fact that the petitioners have failed to prove their allegation in this behalf in spite of the said opportunity, I am unable to interfere in this case on that ground, and to allow the prayer of the learned counsel for the petitioners to afford them another opportunity of proving the relevant facts in this behalf.

(11) No other point having been argued in this case, all these thirteen writ petitions fail, and are accordingly dismissed. In the circumstances of the case, however, there is no order as to costs.

(12) The thirteen Civil Miscellaneous applications (C.Ms. Nos. 1944 to 1956 of 1968) for staying dispossession of the petitioners pending disposal of the writ petitions have become infructuous on account of the disposal of the writ petitions, and are accordingly dismissed as such without any order as to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

KIRAN KUMAR PURI,—*Petitioner.*

versus

PANJAB UNIVERSITY AND ANOTHER,—*Respondents.*

Civil Writ No. 173 of 1969

April 7, 1969.

Panjab University Calender, 1967, Vol. I, Part III—Regulation 20—Action under—Whether can be taken against a person who is not an examinee on the day of the incident but is candidate in the examination.

Held, that Regulation 20 of Panjab University Calender, 1967, Vol. I, Part III, provides that a candidate who refuses to obey the Superintendent of the examination or any other member of the Supervisory staff or changes his seat with another candidate or deliberately writes another candidate's Roll Number on his answer-book, or creates disturbances of any kind during