Before S. S. Sandhawalia, C.J. and Harbans Lal, J.

STATE OF PUNJAB AND OTHERS,—*Appellants*

versus

RAM SINGH,—*Respondent.*

L.P.A. No. 369 of 1975.

February 13, 1979.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 32-BB (2)—Constitution of India 1950—Articles 14 and 31-A—Sub-section (2) of section 32-BB—Whether arbitrary and vests unguided power in the Collector—Such provision—Whether a legislation for agrarian reforms and thus protected by Article 31-A—Article 31-A—Scope of.

Held, that Article 31-A(1)(a) of the Constitution of India, 1950, was intended to provide protection in particular to laws directed towards agrarian reforms. (Para 6)

Held, that section 32-BB of the Pepsu Tenancy and Agricultural Lands Act, 1955, itself and the context in which the same is set in Chapter 4-A cannot but be deemed as a statutory provision directly and primarily related to measures of agrarian reforms and therefore the Act in general and section 32-BB in particular attract the protective cloak of Article 31-A(1)(a). Once the protection of Article 31-A is attracted to section 32-BB then it is obvious that no challenge could be laid thereto under Article 14 and further even under Articles 19 and 31 of the Constitution. (Paras 7 and 9)

Held, that the filing of the returns and the affidavits by persons having land in excess of the ceiling area is the very bedrock of the agrarian legislation. In so far as persons having surplus land in a single Patwar Circle are concerned the revenue Patwari or other officials of the said area can easily discover and determine the surplus land in the hands of a particular landowner. However, with regard to persons holding land in more than one Patwar Circle and in many cases in different districts at one extreme corner of the State to the other it would be obviously difficult, if not impossible, for the revenue authorities to detect the quantum and the quality of the land so held or to determine whether it exceeds the permissible limits. Therefore, the particular necessity of a legal obligation laid down on such landowners or

tenants is to disclose their holdings by filing the requisite returns and affidavits. Once it is so, it would equally become necessary to effectuate this purpose to provide some sanction in the face of the non-filing of the return or filing of incorrect returns by such land-owners or tenants. Indeed, some sanction in this context is necessary if the very purpose of the statute is not to be frustrated in this particular context. The legislature in its wisdom had chosen to lay that sanction in sub-section (2) of section 32-BB and it is not for the High Court to sit in judgment over the wisdom of the legislature in prescribing some penalty or quantum thereof. Even if the sanction under section 32-BB may be construed as a bit stringent it was nevertheless necessary for the laudable purpose of the agrarian reforms. The provision itself lays down that a penal order thereunder is not to be passed unless the person concerned had been given an adequate opportunity of being heard. Further, safeguards have then been provided by the provisions of an appeal against any penalty order therein and also a power of revision even thereafter. In the matter of imposition of penalty it inevitably becomes necessary to vest in the authority empowered to do so some discretion and when the same is vested in a responsible officer and governed by appellate and revisional powers then it cannot be characterised as either arbitrary or uncanalised or unguided. Sub-section (2) of section 32-BB of the Act does not, therefore, vest any arbitrary or unguided power in the Collector. (Paras 11 and 12)

Letters Patent Appeal under Clause X of the Letteds Patent against the judgment of Hon'ble Mr. Justice A. S. Bains, passed in Civil Writ No. 1005 of 1967 on 13th May, 1975.

I. S. Tiwana, Additional A.G., *for the appellants.*

K. C. Jain, Advocate, with Tirath Singh, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether sub-section (2) of section 32-BB of the Pepsu Tenancy and Agricultural Lands Act, 1955 vests such an uncanalised and unguided powers in the prescribed authority so as to infract the guarantee of equality before law under Article 14 of the Constitution of India, is the sole, though meaningful, question that arises for determination in this appeal under clause X of the Letters Patent.

(2) As is evident from the above, the facts would pale into relative insignificance and it suffices to mention that the prescribed authority

penalised the respondent-landowner under the provisions of section 32-BB sub-section (2) of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as 'the Act') for making default with regard to the filing of the returns thereunder. An area of 5 standard acres was declared surplus, specifically for not complying in strictness with the aforesaid provision, leaving in the hands of the respondent-landowner only 25 standard acres of land. The respondent though having statutory right of appeal under the statute, under section 32-D sub-section (3) of the Act, failed to resort to that remedy and instead he preferred a revision before the Financial Commissioner, which the latter declined for the reasons recorded in his order Annexure 'B' dated 9th April, 1963.

(3) It deserves to be recalled that the petitioner had earlier preferred Civil Writ Petition No. 2055 of 1963, but not having challenged the vires of section 32-BB of the Act therein he withdrew the same and then preferred the present writ petition, from which the proceedings arise and under which as noticed by the learned Single Judge, the sole question raised was the vires of section 32-BB of the Act. It is manifest that no other point was urged and agreeing with the challenge posed on behalf of the respondent, the learned Single Judge held that section 32-BB(2) was violative of Article 14 and not saved by Article 31(2-B) of the Constitution. On these premises alone the writ petition was allowed and the impugned orders of the Collector and the Financial Commissioner were quashed.

(4) It appears to me that the learned counsel for the parties before the learned single Judge were slightly remiss in not presenting the matter in a correct perspective. An analysis of the judgment would disclose that no reference or reliance was placed on Article 31-A, which is obviously attracted to the situation and instead some argument was sought to be built around Article 31(2-B), which appears to me as of no great relevance at all to the issue. It is plain that at the very threshold, it is first to be determined whether the impugned section 32-BB (2) of the Act is saved and protected under Article 31-A of the Constitution and, therefore, immune from any challenge under Articles 14, 19 or Article 31. The weighty argument of Mr. I. S. Tiwana, learned Additional Advocate-General for the appellant State of Punjab, is that Article 31-A provides an impenetrable shield around the impugned provisions against any attack on the ground of unreasonableness either under Article 14 or under Article 19.

(5) Inevitably the argument must revolve around the relevant provisions of Article 31-A and the impugned provisions of section 32-BB (2) of the Act. It is, therefore, necessary to read them first:—

"31-*A. Saving of laws providing for acquisition of estates, etc.*

(1) Notwithstanding anything contained in Article 13, no law providing for—

(a) the acquisition by State of any rights therein or the extinguishment or modification of any such rights, or

(b) * * * *.

(c) * * * *.

(d) * * * *.

(e) * * * *.

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:

Provided that where such law is a law made by the legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent".

"*Pepsu Tenancy and Agricultural Lands Act*" 32-*BB*.—Declarations supported by Affidavits to be furnished by certain landowners and tenants:

(1) Every landowner or tenant required to furnish a return under section 32-BB, whose land is situated in more than one patwar circle, shall furnish to the Collector within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958, a declaration supported by an affidavit in respect of the lands owned or held by him in such form and manner as may be prescribed.

(2) If a landowner or tenant fails to furnish the declaration supported by an affidavit as required by sub-section (1), the prescribed authority not below the rank of Collector may, by order, direct that the whole or part of the land of such landowner or tenant, in excess of 10 standard acres, to be specified by such authority, shall be deemed to be the surplus area of such landowner or tenant, and thereupon such area shall be included by the Collector as the surplus area of such landowner or tenant in the statement to be prepared in respect of him under section 32-D:

Provided, that nothing herein shall affect—

(a) the lands of such landowner or tenant which have been exempted under section 32-K; or

(b) the right of such person to any compensation in respect of such surplus area to which he may be entitled under this Act:

Provided further that no such order shall be made without giving the person concerned an opportunity of being heard.

(3) Where a landowner or tenant, who is required to furnish a declaration under sub-section (1) fails to do so, the Collector may in respect of him obtain the information required to be shown in the declaration through such agency as he may deem fit."

(6) As regards the true nature and scope of Article 31-A(1)(a), it is unnecessary to dilate on this point very much on principle, because a long line of precedent has by now established that this Article was intended to provide protection in particular to laws directed towards agrarian reform. Nor is it in serious dispute that under the provisions of this Article 31-A the acquisition and even extinction of all rights of any citizen (which inevitably includes agricultural land) made by a law for the purpose of agrarian legislation have been made immune from any challenge under Articles 14, 19 or 31. This being so the crucial and indeed the only question which would first arise is whether the impugned provisions of section 32-BB(2) of the Act is a law falling within the ambit of legislation for agrarian reforms and consequently protected by Article 31-A(1)(a).

(7) At the very outset, however, it may be first noticed that herein admittedly the procedural requirement of the proviso to Article 31(A)(1) stands satisfied insofar as the assent of the President has been duly secured for the impugned provisions of the Act. This being so, one may straightway proceed to first examine the larger object and scope of the whole Act, itself. Now the fact that this statute is pre-eminently directed towards agrarian reform is writ so large upon its provisions that it might perhaps look wasteful to elaborate this matter in any great detail or to delve into its legislative history. Even the learned counsel for the respondent did not and perhaps could not raise any serious contention to controvert this obvious situation. It, therefore, suffices to mention that the very preamble of the Act declares that it is to provide for certain measures of land reforms. The definition of the permissible limit under section 3 and the reservation for personal cultivation under section 5 and an additional reservation in specified cases under section 5-A of the Act are in the very beginning clear pointers to the larger object of the imposition of a ceiling on the holding of land by citizens. This would obviously bring the statute under the label of legislation directed to land reform. This apart, Chapter IV-A which was introduced a year or more later by Pepsu Act No. 15 of 1956 would leave no manner of doubt that agrarian reform is the primary intent of the framers of the statute. This Chapter in its very heading provides that it relates to ceiling on land and acquisition and for the disposal of surplus area as a result thereof. Section 32-A lays down the ceiling on land holding and to effectuate that purpose section 32-B provides for an obligation of filing returns on all holders of land having the same in excess of the prescribed ceiling. Then follows section 32-BB with which we are directly concerned which obligates a further declaration supported by an affidavit in the very case of persons whose whole holding may be situated in more than one Patwar Circle. Section 32-E, then prescribed for the vesting of the surplus area in the State Government and section 32-F empowers the Collector to take possession thereof. It is perhaps unnecessary to notice other provisions because even those referred to above make it more than amply manifest that the impugned section 32-BB itself and the context in which the same is set in Chapter IV-A cannot but be deemed as a statutory provision directly and primarily related to measures of agrarian reform.

(8) Adverting now to the particular section 32-BB it deserves recalling that this was inserted in the statute by Punjab Act No. 3

of 1959. The relevant part of the 'objects and reasons' thereof deserves pointed notice and is in the following terms:—

> "To enable Government to make correct assessment of surplus area available with landowners and tenants owning or holding lands in excess of the permissible limit (ceiling) in more than one Patwar Circle, it has been decided that every such landowner and tenant should furnish a declaration, supported by an affidavit, in respect of his lands within a period of one month, and that he should suffer penalty in the event of his committing a default".

A close examination of this section in its context would indicate that it first requires a declaration supported by the affidavits to be furnished both by the landowner and the tenant, as the case may be, who holds land in excess of the ceiling area to be filed with the Collector in case of persons holding lands in different Patwar Circles. It is thus evident, that virtually the pre-conditions for the application of ceiling laws are the returns filed by persons on the basis of which the prescribed authority or the Collector proceeds to determine the surplus area, if any, in their hands. It may, therefore, be well said that this filing of returns under sections 32-B and 32-BB(1) is the corner-stone upon which the super-structure of the ceiling law is sought to be rested. In this context particular emphasis deserves to be placed on the fact that in cases of landowners or tenants whose land is situated in more than one Patwar Circle it is the owner or the tenant of the land in whose special knowledge it is whether the land in the aggregate held by him in all these Patwar Circles exceeds the prescribed permissible limit or not. But for this requirement or obligation laid on such landowner or tenant under section 32-BB(1) it would be extremely difficult, if not impossible, for the surplus Areas Authority to note the particulars or to determine the agricultural area by the landowner or tenant in different villages. Therefore the specific obligation laid out is in sub-section (1) and the sanction provided for the violation thereof is prescribed in sub-section (2) of section 32-BB of the Act, in case where the landowner or the tenant fails to furnish such a declaration. Therefore, this section in particular must necessarily be construed as a provision having a direct nexus with the object of agrarian reform.

(9) Once it is held as it must be that the Act in general and section 32-BB in particular is directed to agrarian reforms then it

inevitably follows that the same would immediately attract the protective cloak of Article 31-A(1)(a). The only ground on which the learned Single Judge chose to upset the judgment of the authorities below was that section 32-BB(2) offends Article 14 of the Constitution. Once the protection of Article 31-A is attracted to the impugned provision then it is obvious and indeed well-settled that no challenge could be laid thereto under Article 14 as found by the learned Single Judge and further even under Articles 19 and 31. The sole and the primary ground, therefore, upon which the learned Single Judge based himself for nullifying the provision is thus constitutionally not available in view of the protection given to the impugned legislation under Article 31-A.

(10) Principle apart, the matter seems to be equally covered by binding precedent. In the Full Bench decision reported as *Pritam Singh and others* v. *State of Punjab and others* (1), the provisions of section 32-FF and 32-G of this very Act were challenged as being violative of Articles 14, 19 and 31 of the Constitution. Repelling the attack on the ground that the statute was protected by Article 31-A it was held:—

> "The effect and scope of Article 31-A *vis-a-vis* agrarian reforms has come up for decision in a number of cases before the Supreme Court and it has been repeatedly held by their Lordships that such provisions, though violative of Articles 14, 19, and 31 are saved by Article 31-A of the Constitution. The very object of Article 31-A was to save such legislation from attack."

It is plain that what has been said above in the context of the other provisions of this very statute is equally applicable to section 32-BB(2). It must, therefore, be concluded that this section is immune from constitutional attack under Articles 14, 19 and 31.

(11) Apart from the above, Mr. I. S. Tiwana, learned Additional Advocate-General, Punjab for the appellant-State appears to be on equally firm ground in contending that the view taken by the learned Single Judge that the provisions of section 32-BB(2) are arbitrary and vest uncanalised and unguided power in the Collector is perhaps not tenable both on principle and precedent. The issue herein is pointedly with regard to the primary purpose and object of sub-section (2).

(1) A.I.R. 1967, Pb. 198.

As has already been noticed the filing of the returns and the affidavits by persons having land in excess of the ceiling area is the very bedrock of the agrarian legislation. Mr. Tiwana was, therefore, rightly able to contend that insofar as persons having surplus land in a single Patwar Circle are concerned the revenue Patwari or other officials of the said area can easily discover and determine the surplus land in the hands of a particular landowner. with regard to persons holding land in more than one Patwar Circle and in many cases in different districts at one extreme corner of the State to the other it would be obviously difficult, if not impossible, for the revenue authorities to detect the quantum and the quality of the land so held or to determine whether it exceeds the permissible limits. Therefore, the particular necessity of a legal obligation laid on such landowners or tenants is to disclose their holding by filing the requisite returns and affidavits. Once it is so, it would equally become necessary to effectuate this purpose to provide some sanction in face of the non-filing of the return or filing of incorrect returns by such landowners or tenants. We are ourselves of the view that indeed some sanction in this context is necessary if the very purpose of the statute is not to be frustrated in this particular context. Once it is so then the legislature in its wisdom had chosen to lay that sanction in sub-section (2) of section 32-BB and it is not easy for the Court to sit in judgment over the wisdom of the legislature in prescribing some penalty or the quantum thereof. Mr. Tiwana rightly contended that even if the sanction under section 32-BB may be construed as a bit stringent it was nevertheless necessary for the laudable purpose of the agrarian reforms and, therefore, the legislature would be perfectly entitled to prescribe the same.

(12) Mr. Tiwana was further able to contend that the imposition of the penalty under section 32-BB(2) has again been deliberately kept in relatively responsible hands and the statute itself lays down that no authority below the rank of a Collector is authorised to impose the same. This apart, the provision itself lays down that a penal order thereunder is not to be passed unless the person concerned had been given an adequate opportunity of being heard. Further safeguards have then been provided by the provisions of an appeal against any penalty order therein by section 39 of the Act and also a power of revision even thereafter. It was also rightly argued that in the matter of imposition of penalty it inevitably becomes necessary to vest in the authority empowered to do so some discretion and when the same is vested in a responsible officer and governed by

appellate and revisional powers then it cannot and should not be characterised as either arbitrary or uncanalised or unguided. In the very nature of things the default of non-filing of returns or the filing of deliberately incorrect returns may be due to various reasons and may lead to myriad results. . It would, therefore, be neither prudent nor possible to lay down a fixed norm in each and every case which can be inflexibly applied, therefore, the vesting of discretion in a responsible authority is inevitable and when the same is controlled by the appellate and revisional jurisdiction it cannot easily be characterised either extraordinary or exceptional.

(13) Rationale apart, Mr. Tiwana was further able to contend that his stand was equally well supported by precedent. In this context what deserves highlighting in the fact that the provisions of section 5(c) of the analogous statute of Punjab Security of Land Tenure Act are virtually in *pari materia* with section 32-BB(2) and for facility of reference this may be set down:—

> "5-C(1) If a landowner or tenant fails to furnish the declaration supported by an affidavit as required by section 5-A, the prescribed authority not below the rank of Collector may, by order, direct that the whole or part of the land of such landowner or tenant in excess of ten standard acres to be specified by such authority shall be deemed to be the surplus area of such landowner or tenant and shall be utilised by the State Government for the purpose mentioned in section 10-A:
>
> Provided that no such order shall be made without giving the landowner or tenant concerned an opportunity of being heard.
>
> (2) Where a landowner or tenant who is required to furnish a declaration under section 5-A fails so to do, the prescribed authority may in respect of him obtain the information required to be shown in the declaration through such agency as it may deem fit".

The aforesaid section came up for consideration in Division Bench judgment in *Bhagat Gobind Singh* v. *Punjab State and others,* (2) and their Lordships thought the matter to be so plain that they summarily rejected any challenge to its constitutionality. The observations are in the following terms:—

> "* * It is stated in the petition that provisions of sections 5-A, 5-B and 5-C are *'ultra vires'* the Constitution, but it

(2) A.I.R. 1963 Pb. 319.

is not explained how, in what manner and in relation to which Article. At the hearing the learned counsel has addressed no argument in this respect. These sections merely provide a machinery for the enforcement of the substantive provisions of Punjab Act 10 of 1953 for ascertainment of permissible area, and of surplus area, and then for utilisation of surplus area. There is nothing in these sections which attracts violation of any Article of the Constitution. So this ground is without substance".

Counsel further pointed out that section 5-C of the Punjab Security of Land Tenures Act has thereafter held unchallenged sway.

(14) On this aspect also we agree with the appellant-State that the provisions of section 32-BB(2) cannot be characterised as either arbitrary or vesting uncanalised and unguided powers in the Collector.

(15) In the light of the aforesaid discussion we are, with great respect, constrained to set aside the judgment of the learned Single Judge and restore the orders of the revenue authorities below. The appeal is allowed but in view of the difficult questions raised, the parties are left to bear their own costs.

N. K. S.

Before S. S. Sandhawalia, C.J. and G. C. Mital, J.

SURJIT SINGH—*Petitioner.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ No. 3829 *of* 1978

March 21, 1979.

Code of Criminal Procedure (II of 1974)—*Section* 197—*Sanction refused for the prosecution sought—State Government—Whether can review its earlier order and grant sanction subsequently—Order passed under section* 197—*Nature of—Whether* quasi-judicial *—Opportunity of being heard—Whether necessary to be granted before the passing of such order.*