

## LETTERS PATENT APPEAL.

Before Harbans Singh, C.J. and Gurdev Singh, J.

LABH SINGH,—Appellant.

versus.

The Punjab State etc.—Respondents.

**Letter Patent Appeal No. 733 of 1970.**

May 19, 1971.

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955 as amended by IX of 1956)—Sections 32-L and 32-M—Application and scope of—Acquisition by redemption of mortgage with possession—Whether amounts to acquisition by ‘transfer’ or ‘agreement’ under section 32L—Such acquisition—Whether null and void and to be ignored while determining the surplus area of the mortgagor.*

*Held*, that on reading sections 32-L and 32-M of the Pepsu Tenancy and Agricultural Lands Act, 1955, what transpires is:—(i) Both these sections deal with acquisitions of land made after 1956 when the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, came into force; (ii) Both sections deal with acquisitions of land if, with or without the land already owned or held by the person acquiring it, it exceeds the permissible limit, (iii). If such an acquisition of land falls under sub-section (1) of Section 32-L, then such transfer or acquisition is null and void and no further question arises; (iv); If the acquisition is made by inheritance, bequest or gift from somebody to whom he is an heir, then section 32-M will apply. (Para 9)

*Held*, that when a mortgage is created by a landowner, he transfers an interest in the land concerned. In case the mortgage is with possession, then the landowner, not only transfers an interest in the immovable property, but also transfers possession thereof. Obviously when this mortgage is redeemed, the mortgagor must necessarily take back the interest which he had earlier transferred and this would amount to re-transfer to him. Thus redemption involves two things, (a) re-transfer of the interest which had been originally transferred to the mortgage and (b) delivery of the possession. Both these things are done by virtue of the terms of the mortgage and, therefore, in pursuance of an agreement between the parties. Hence when a mortgagor redeems the land mortgaged by him with possession and acquires back the interest as well as the possession, which he had earlier transferred to the mortgagee, he acquires back the interest or the possession by “transfer” and by “agreement”. (Paras 11 and 12)

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*Held*, that the process by which the mortgagor acquires the interest, which he had earlier transferred, in the land and also acquires possession is necessarily a process of transfer by the mortgagee under an agreement entered into between the parties. This acquisition by redemption is an acquisition within the meaning of section 32-L of the Act. Under subsection (2) of the Section, this transfer is null and void and, therefore, non-existent. Being non-existent, there is no acquisition in the eye of law and, consequently, this transfer has to be ignored while determining the surplus area of the mortgagor. This effect has to take place, because section 32-L applies notwithstanding anything to the contrary in any law, custom or agreement. (Para 15)

*Letters Patent Appeal under Clause X of the Letters Patent against the order dated 21st October, 1970 passed by Hon'ble Mr. Justice C. G. Suri in Civil Writ No. 2839 of 1968.*

R. N. MITTAL AND B. S. KAMTHANIA, ADVOCATES, for the appellant.

S. P. GOYAL, AND Y. P. GANDHI, ADVOCATES, for the respondents.

#### JUDGMENT

HARBANS SINGH, C.J.—This appeal under Clause 10 of the Letters Patent against the judgment of the learned Single Judge dismissing the writ petition, involves the interpretation of the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Pepsu Act). Brief fact necessary for the decision of this appeal may be stated as under :—

(2) Admittedly on the date of the commencement of the Pepsu Act, the appellant, Labh Singh, owned land totalling an area of 32.8 standard acres. Out of this an area of 7.4 standard acres in village Brindpur was at that time under mortgage with possession and, consequently, he was not in possession thereof. A "landowner" is defined in clause (f) of section 2 of the Pepsu Act as having the meaning assigned to it in the Punjab Land Revenue Act, 1887, and includes an allottee. The explanation added to this clause is as follows :—

"In respect of land mortgaged with possession, the mortgagee shall be deemed to be the landowner."

In view of this definition, the area which was under mortgage with possession had to be excluded in finding out whether Labh Singh was a small landowner whose holding did not exceed the permissible

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limit or he was a big landowner, whose holding exceeded the permissible limit. As his total holding was 32.8 standard acres and out of this 7.4 standard acres of land was under mortgage with possession at the commencement of the Pepsu Act, he was obviously a small landowner.

(3) On 1st April, 1959, however, Labh Singh redeemed 7.4 standard acres of land and thus, on and after that date, he became a holder of 32.8 standard acres of land. Before any area could be declared as surplus area, he sold the land; which he had redeemed earlier, on 23rd May, 1966, and, consequently, on and after that date, he again came to hold land less than the permissible limit.

(4) In the proceedings taken under the Pepsu Act, the Collector by an order, dated 25th April, 1967, ignored the sale made by Labh Singh on 23rd May, 1966, and acting under section 32-M read with section 32-FF of the Pepsu Act, declared an area of 2.8 standard acres as surplus. Labh Singh approached the higher authorities but without success and his writ petition, out of which the present appeal has arisen, was dismissed by the learned Single Judge.

(5) The main contention before the learned Single Judge was that section 32-M of the Pepsu Act corresponds to section 19-B of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Punjab Act) and similarly section 32-FF of the Pepsu Act corresponds to clause (b) of section 10-A of the Punjab Act and that; consequently; the ratio in *Sampuran Singh v. The State of Punjab and others* (1), would apply and, therefore; any transfer made prior to the declaration of the surplus area shall have to be excluded while determining the fact whether the holder is a big or a small landholder.

(6) This contention was repelled by the learned Single Judge on the ground that the wording of section 10-A(b) of the Punjab Act was substantially different from that of section 32-FF of the Pepsu Act and, consequently, *Sampuran Singh's case* (1) did not help Labh Singh. The learned Single Judge, therefore, upheld the decision of the Authorities under the Pepsu Act declaring 2.8 standard acres of land as the surplus area.

(7) Before us the learned counsel for the appellant took up the position that, in fact, the acquisition of 7.4 standard acres of land

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(1) 1968 P.L.R. 377.

made by Labh Singh by means of redemption would be hit by the provisions of section 32-L of the Pepsu Act and, therefore, this acquisition of land would be null and void, and that being the case, there was no occasion for the application of section 32-M of the Pepsu Act. In the alternative he stated that, in any case, if section 32-FF of the Pepsu Act was applicable, then section 32-FF corresponded to clause (b) of section 10-A of the Punjab Act, and, therefore, *Sampuran Singh's case* (1), was fully applicable.

(8) In this case, as already indicated, on the date of the commencement of the Pepsu Act, Labh Singh was definitely a small landowner. He could not be considered owner of 7.4 standard acres of land which had been mortgaged by him with possession. *Qua* this area of 7.4 standard acres, the mortgagee was to be treated as the landowner. There can be no manner of doubt that by redemption on 1st April, 1957, he did 'acquire' possession of this area. *Inter alia*, section 32-L and 32-M of the Pepsu Act are the two sections which deal with such subsequent acquisitions. The relevant parts of these sections may be reproduced with advantage :

"32.L. (1) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, no person whether as landowner or tenant, shall acquire or possess by transfer, exchange, lease, agreement or settlement any land which with or without the land already owned or held by him, shall in the aggregate exceed the permissible limit.

(2) Any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of sub-section (1), shall be null and void.

32-M. (1) If, after the commencement of the Pepsu Tenancy and Agriculture Lands (Second Amendment) Act, 1956, any person, whether as landowner or tenant, acquire by inheritance or by bequest or gift from a person to whom he is an heir any land or if after such commencement and subject to the provisions of section 32-FF any person acquires in any other manner, except as specified in section 32-L, any land which with or without the lands already owned or held by him, exceeds in the aggregate the permissible limit

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(9) On reading section 32-L and the relevant part of section 32-M of the Pepsu Act, reproduced above, what transpires is —

- (i) Both these sections deal with acquisitions of land made after 1956 when the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act came into force.
- (ii) Both sections deal with acquisitions of land if, with or without the land already owned or held by the person acquiring it, it exceeds the permissible limit.
- (iii) If such an acquisition of land falls under sub-section (1) of section 32-L, then such transfer or acquisition is null and void and no further question arises.
- (vi) If the acquisition is made by inheritance, bequest or a gift from somebody to whom he is an heir, then section 32-M will apply.
- (v) In case of an acquisition otherwise than by inheritance, bequest or gift; as stated above; and if such an acquisition does not fall under section 32-L; then again section 32-M will apply.

Before examining what happens under section 32-M of the Pepsu Act, it is, therefore, necessary to see whether an acquisition of land made; on account of which the aggregate holding of the land exceeds the permissible limit; does or does not fall under section 32-L of the Pepsu Act. If it does; no other question arises and we cannot go to section 32-M. In case it does not fall under section 32-L; then the provisions of section 32-M of the Pepsu Act will have to be looked into.

(10) It was not seriously disputed that by redemption Labh Singh did acquire or possess an additional area of 7.4 standard acres which together with the holding he already had with him in the aggregate, exceeded the permissible limit. Consequently, the first requirement of section 32-L of the Pepsu Act, i.e., the acquisition which together with the existing holding exceeded the aggregate permissible limit, was fully satisfied. The dispute, however, was whether this acquisition was "by transfer; exchange; lease; agreement or settlement". The transaction was certainly neither an exchange, nor a lease nor a settlement. It could be either a transfer or an agreement. Section 58 of the Transfer of Property Act defines 'mortgage' as follows :—

"A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of

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money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.”

(11) Thus when a mortgage is created by a landowner, he *transfers* an interest in the land concerned. In case the mortgage is with possession, then the landowner not only transfers an interest in the immovable property; but also transfers possession thereof. Obviously, when this mortgage is redeemed, the mortgagor must necessarily take back the interest which he had earlier transferred and this would amount to re-transfer to him. So the acquisition by him would be a transfer to him.

(12) Section 60 of the Transfer of Property Act deals with the right of the mortgagor to redeem. Relevant part of this section runs as under :—

“At any time after the principal money has become due, the mortgagor has a right, on payment or tender — — of the mortgage-money, to require the mortgagee to deliver to the mortgagor the mortgage-deed and all documents — — —, where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and — — either to re-transfer the mortgaged property to him — — , or to execute — — acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished :

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Thus redemption involves two things, (a) re-transfer of the interest which had been originally transferred to the mortgagee and (b) delivery of the possession. Both these things are done by virtue of the term of the mortgage and, therefore, in pursuance of an agreement between the parties. Thus the re-transfer of the interest is also by virtue of an agreement and re-delivery of the possession is also in pursuance of such an agreement. It is, therefore, futile to say that when a mortgagor redeems the land mortgaged by him with possession and acquires back the interest as well as the possession, which he had earlier transferred to the mortgagee, he does not acquire back the interest or the possession by “transfer” or by “agreement.”

(13) On behalf of the respondents, who took the position that such an acquisition is not by virtue of a transfer or an agreement, reliance is placed on three cases, *Bhajan Lal and others v. The State and others* (2), decided by Narula J., which was followed by D. K. Mahajan; J. in *Shri Bishan Singh v. The State of Punjab and others*; (3); and another judgment of Narula; J. reported as *Kahan Singh v. The State of Punjab and others*, (4). All these three cases involved the interpretation either of sections 32-FF and 32-N of the Pepsu Act or of section 10-A of the Punjab Act, and none of these was under section 32-L of the Pepsu Act. The relevant part of section 32-FF is as follows :—

“— — — — — no transfer or other disposition of land effected after 21st August, 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition :

— — — — —.”

In the above-mentioned cases the landowner had certain land, which was his ownership land, and some other land in which he had only mortgagee rights. After the relevant date, i.e., 21st August, 1956, the mortgagor got the land redeemed with the result that the landowner lost possession of the area over which he had mortgagee rights only. The question for determination was whether, while determining his permissible area, the mortgagee rights, notwithstanding the fact that the same have been redeemed, should also be taken to be with the landowner. The view taken was that allowing the land to be redeemed is not a voluntary transfer. Under the law a mortgagor has a right to redeem the mortgaged land at any time after the principal amount has become due by tendering the amount payable and, therefore, it is not a voluntary act of transfer which is hit by section 32-FF of the Pepsu Act or by section 10-A of the Punjab Act.

(14) The basic idea of section 32-FF of the Pepsu Act is that no landowner, who, on 21st August, 1956, held land exceeding the

(2) 1968 P.L.J. 213.

(3) 1968 P.L.J. 259.

(4) 1969 C.L.J. 556.

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permissible limit should be allowed to diminish the surplus area available to the Government by making transfer of the land. So far as the mortgagee rights are concerned, under section 32-E of the Pepsu Act if mortgagee rights are declared surplus, then only those mortgagee rights vest in the Government. A redemption being an act which, under the law, is available to the mortgagor, a mortgagee cannot be treated to have voluntarily transferred his mortgagee rights to the mortgagor. The word 'transfer' as used in section 32-FF of the Pepsu Act is obviously meant to cover only voluntary transfers and hence the learned Judges, if we may say so with respect, very rightly held that if the mortgagee rights had been redeemed, those cannot be taken into consideration while considering the holding of the landowner from whom such mortgagee rights had been redeemed. These cases have, therefore no bearing on the interpretation of section 32-L of the Pepsu Act.

(15) We are here concerned with an acquisition made by a mortgagor. His act is a voluntary act and he acquires the land by an act of transfer from the mortgagee. Though such an act may not be a voluntary act qua the mortgagee, which will be hit by section 32-FF of the Pepsu Act, as it is an act which he is bound to perform by virtue of section 60 of the Transfer of Property Act, yet the process by which the mortgagor acquires the interest, which he had earlier transferred, in the land and also acquires possession must necessarily be a process of transfer by the mortgagee and a process under the agreement entered into between the parties. We have no hesitation in holding that the acquisition made by Labh Singh of 7.4 standard acres of land by redemption does amount to acquisition within the meaning of section 32-L of the Pepsu Act. That being the case, under sub-section (2) of the said section, this transfer, by which Labh Singh has acquired interest in land and its possession, must be deemed to be null and void and, therefore, non-existent. The transfer being non-existent, there is no acquisition in the eye of law and, consequently, this transfer has to be ignored and not to be taken into consideration. This effect has to take place, because section 32-L of the Pepsu Act applies notwithstanding anything to the contrary in any law, custom or agreement.

(16) It is not necessary for us to go into the question raised by the learned counsel for the appellant that such a transfer would be void only to the extent to which the aggregate area exceeds the permissible limit and not in its entirety. That is a question which shall



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have to be determined in a proper case if there is a dispute between the mortgagor and the mortgagee as to whether the act of redemption is null and void as a whole or to the extent of some part. So far as the present proceedings are concerned, the position is quite simple. The so-called acquisition is hit by section 32-L of the Pepsu Act and is, therefore, non-existent in the eye of law being null and void, and does not have the effect of making Labh Singh the owner of an area exceeding the permissible limit.

(17) In view of the above, it is not necessary to go into the question whether section 32-M is applicable or not. However, *prima facie* the wording of section 32-FF of the Pepsu Act is substantially different from that of clause (b) of section 10-A of the Punjab Act, because clause (b) of section 10-A deals with transfer of area which would be surplus "at the commencement of this Act" and makes such transfer as ineffective so far as the right of the Government to declare or utilize the surplus area is concerned whereas in section 32-FF of the Pepsu Act the words "at the commencement of this Act" are missing. The words used are general and affect all transfers made after 21st August, 1956. As already indicated above, it is not necessary to go into this question in further details, because in view of our finding that the acquisition is hit by section 32-L of the Pepsu Act, section 32-M of the said Act cannot apply and it is not necessary to go into the question as to what is the effect of subsequent transfer by Labh Singh.

(18) For the reasons give above, we accept this appeal and quash the orders of the Authorities below declaring 2.8 standard acres of land as surplus. In view of the fact that the point, on which the appellant has succeeded in this Court, was not taken in the writ petition and we allowed it to be taken before us because it was a pure question of law and we did not want to leave the controversy still open, there would be no order as to costs.

Gurdev Singh, J.—I entirely agree.

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B. S. G.