
(1970) 12 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 416 of 1970

Abdul Latif Khan

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 17-12-1970

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 32N

Citation : (1970) 12 P&H CK 0040

Hon'ble Judges : D.K. Mahajan, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : Kuldip Singh with Mr. R.S. Mongia, for the Appellant; S.C. Sibal for Respondent Nos. 1 to 3 and Mr. Narinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan and B.R. Tuli, JJ.—This appeal under clause 10 of the Letters Patent is directed against the judgment of a learned Single Judge dated May 26, 1970, dismissing C.W. 2138 of 1967 filed by the appellant. The appellant challenged the orders of the Revenue Officers declaring his land as surplus area under the provisions of the Pepsu Tenancy and Agricultural Lands Act, 13 of 1955 (hereinafter called the Pepsu Act) on the ground that the said officers had taken into consideration the banjar and ghair mumkin lands of the appellant for the purpose. It is submitted that banjar and ghair mumkin lands cannot be taken into consideration while assessing the surplus area of a landowner because they are not "land" as defined in the Pepsu Act. For this submission reliance is placed on a Division Bench judgment of this Court in Nemi Chand Jain v. The Financial Commissioner, Punjab, and another, ILR 1964 P&H 780 which has been affirmed by their Lordships of the Supreme Court in Amar Surjit Singh v. State of Punjab and another, 1970 PLJ 277 (C.A. No. 165(N) of 1968, decided on September 2, 1968). In that case, it was held that banjar land was not "land" for the purposes of the Punjab Security of Land Tenures Act, 1983 (hereinafter called the Punjab Act). That case is, therefore, distinguishable as the definition of "land" in the

Punjab Act is different from the one stated in the Pepsu Act. This matter was considered by a Division Bench of this Court in *The State of Punjab and others v. Attar Singh and another*, CA No 165(N) of 1968 where in it was pointed out that-

"Nemi Chand's case (supra) concerns the Punjab Security of Land (sic) Act, 1953, wherein "land" does not include Banjar Qadim and Banjar Jadid as was held in that case. In section 32-N of the Pepsu Tenancy and Agricultural Lands Act, 1955, "land" has been defined to include Banjar land save as otherwise provided. Under this Act, therefore, Banjar Qadim and Banjar Jadid land will have to be taken into consideration for the purposes of proceeding under Chapter IVA of the said Act.

The Learned Counsel for the appellant challenges the correctness of that judgment and it was on this basis that this appeal was admitted by the Motion Bench on 24th July, 1970.

The Learned Counsel for the appellant has drawn our attention to the definition of "standard acre" in section 2(i) of the Pepsu Act reading as under:-

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.

Clause (m) of section 2 of the said Act provides that:-

all other words and expressions used herein and not defined but defined in the Punjab Tenancy Act, 1887 (Punjab Act XVI of 1887), or the Punjab Land Revenue Act, 1887 (Punjab Act XVII of 1887), shall have the meanings assigned to them in either of those Acts.

From the provisions of clause (m) of section 2 of the Pepsu Act it is submitted that as the word "land" has not been defined in this Act, we should look for its definition in the Punjab Land Revenue Act or the Punjab Tenancy Act. "Land" is not defined by the Punjab Land Revenue Act but is defined in section 4(1) of the Punjab Tenancy Act, as under:-

"Land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of building and other structures on such land.

The Learned Counsel for the appellant, while making this submission, ignores the provisions of section 32-N(3) of the Pepsu Act wherein "land" has been defined to include banjar land save as otherwise provided. "Banjar land" is also defined in clause (b) of section 2 of the Pepsu Act as under:-

"Banjar land" means land which has remained uncultivated for a continuous period of not less than four years immediately preceding the date on which the question whether such land is banjar or not arises.

It is thus clear from the various definitions set out above that for the the purpose of the Pepsu Act land includes banjar land and ghair mumkin land and the Revenue Officers rightly included banjar and ghair mumkin land of the appellant in his holdings while declaring his surplus area. Banjar land has been given a special meaning by the Pepsu Act. The landowner has the right to select his reserved area under sections 5 and 5A of the Pepsu Act. It is only if he fails to select his reserved area that the Collector makes the selection for him. Section 32-A of the Pepsu Act provides that no person shall be entitled to own or hold as landowner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limit. The Learned Counsel for the appellant submits that the definition of "land" given in section 32-N(3) of the Pepsu Act only applies to Chapter IV-A and not to other Chapters of the Act, but it is only Chapter IV-A which provides for ceiling of land and other matters connected therewith, that is, in order to calculate the permissible area of a landowner or tenant, land has to be taken as including banjar land. "Permissible limit" is defined in section 3 of the said Act as under:-

3. Permissible limit.-(1) "Permissible limit" for the purposes of this Act means thirty standard acres of land and where such thirty standard acres on being converted into ordinary acres exceed eighty acres, such eighty acres:

Provided that in the case of an allottee,-

(a) who has been allotted land exceeding forty standard acres, the permissible limit shall be forty standard acres and where such forty standard acres on being converted into ordinary acres exceed one hundred acres, such one hundred acres: and

(b) who has been allotted land exceeding thirty standard acres, but not exceeding forty standard acres, the permissible limit shall be equal to the area of land allotted to him.

(2) For the purposes of computing the permissible limit under sub-section (1)-

(a) where a person holds some land as a landowner and some other land as an allottee both kinds of land shall be included;

(b) land occupied by an occupancy tenant shall not be included in the holdings of the landowner but it shall be included in the holdings of the occupancy tenant in whom proprietary rights in respect of such land vest under the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1954 (18 of 1954);

(c) where a landowner owns land jointly with other landowners, his share of such land as ascertained from the record of rights shall alone be included;

(d) where a landowner died within a period of six months from the commencement of the President's Act, the permissible limit shall be determined with reference to the land which has devolved upon each of his successors-in-interest, including any land held by such successors-in-interest immediately

before the death of the landowner;

(e) any transfer of land made by the landowner after the commencement of President's Act shall be disregarded;

This definition of "permissible limit" clearly means that area in possession of a landowner or tenant, which he is entitled to retain, has to be calculated in ordinary acres. Even the standard acres owned and held by him have to be converted into ordinary acres and not vice versa, that is the land held by him has not to be converted into standard acres to determine his permissible limit. It is only for the (sic) of standard acres into ordinary acres that the definition of standard acres" will come into play on the basis of the yield from the land. It therefore, follows that the banjar and ghair mumkin land has to be calculated as ordinary acres and the question of their conversion into standard acres does not arise. Undoubtedly banjar land and ghair mumkin land are capable of being measured in ordinary acres and, therefore, the banjar land and the ghair mumkin land held by a landowner or a tenant has to be taken into consideration for the purposes of determining his permissible limit and declaring the balance as surplus area. The judgments under the Punjab Act are of no help in interpreting the word land in the Pepsu Act on account of the difference in its definition in the two Acts. We are, therefore, of the opinion that the case of State of Punjab and others v. Attar Singh and another (supra) was correctly decided by the Division Bench and therefore, there is no necessity of making a reference to a larger Bench. No other point has been argued.

For the reasons given above, there is no merit in this appeal which is dismissed but without any order as to costs.