

(1963) 05 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 449 of 1962

Bir Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 21-05-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1964 P&H 30

Hon'ble Judges : Jindra Lal, J; D. Felshaw, J

Bench : Division Bench

Advocate : Jagjit Singh Chawla and R.K. Sain, for the Appellant; L.D. Kaushal, D.A.G., S.C. Sibal and K.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Falshaw, C.J.—This is a petition under Articles 226 and 227 of the Constitution which has been referred by Mehar Singh J. to a larger Bench in consequence of the fact that he discovered that an earlier decision of his own on the point in issue was in conflict with a decision of Shamsheer Bahadur J. on the same point.

2. The case arises out of the Pepsu Tenancy and Agricultural Lands Act, XIII of 1955, the effect of which is to restrict the holding of any landowner to 30 standard Acres, the balance of his land becoming so called surplus area which is taken away and allotted to tenants.

3. The relevant facts are that Bir Singh Petitioner owned 58 standard acres of land which he partitioned among the members of his family, his son and his two wives who are also Petitioners, by means of a report made to the Patwari on the 4th of September 1956. Bir Singh and his son constituted a joint Hindu family.

4. By Punjab Act III of 1959 Section 32-FF was inserted in the Pepsu Act as from the 30th of October 1956. This section reads:

Save in the case of land acquired by the State Government under any law for the

time being in force or by an heir by inheritance or up to the 30th of July 1958 by a landless person or a small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, for consideration up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit, no transfer or other disposition of and, effected after the 21st of 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:

Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation for it, to the person from whom he received it.

A similar provision in the Punjab Security of Land Tenures Act, X of 1953, was considered by a Division Bench of this Court in *Jagan Nath v. The State of Punjab* ILR 19(sic)2 (I) Pb. 811 : 64 P.L.R. 22, and it was held that when a partition of a Joint Hindu family occurs no one takes any property not previously belonging to him nor does any of them pass any interest in such property to another, and hence on such a partition there is in law no transfer or other disposition of property within the meaning of the Act. The effect of this was that Hindu joint family arrangements similar to that in the present case were not hit by the provision in the Punjab Act corresponding to Section 32-FF in the Pepsu Act.

5. This decision was given towards the end of 1961 and, evidently with the object of nullifying its effect, the State Government introduced similar amendments into both of Pepsu and Punjab Acts. By Punjab Act XVI of 1962 Section 32-KK was inserted in the Pepsu Act with effect from the 30th of October 1956 i.e. the date from which Section 32 FF and other provisions contained in Section 4-A of the Act had come into force. Section 32-KK reads:

Notwithstanding anything contained in this Act or in any other law for the time being in force:

(a) Where, immediately before the commencement of this Act, a landowner and his descendants constitute a Hindu undivided family, the land owned by such family shall, for the purposes of this Act, be deemed to be the land of that landowner and no descendant shall, as member of such family, be entitled to claim that in respect of his share of such land he is a land owner in his own right, and (b) a partition of land owned by a Hindu undivided family referred to in Clause (a) shall be deemed to be a disposition of land for the purposes of Section 32-FF.

6. The validity of the amending Acts was challenged by petitions filed in this Court, but their validity has been upheld, and the question which arises in this case is what is the position as regards a partition of land among the member of a joint Hindu family effected between the 21st of August 1956, the date mentioned in Section 32-FF, and the 30th of October 1956 from which date Section 32-KK was to be deemed to have been in force.

7. In two cases, *Badlu v. The Collector, Agrarian Reforms Jind* C.W. No. 17 of 1962, decided on the 12th of December 1962, and *Balwant Singh v. The State of Punjab* C.W. No. 1553 of 1961), decided on the 16th of January 1963, Shamsheer Bahadur J. has taken the view that a partition which took place between the dates in question is to be deemed to be a disposition of land for the purposes of Section 32-FF, whereas in *Bhura v. The State of Punjab* C.W. No. 1249 of 1961, decided on the 11th of January 1963 Mehar Singh J. took a contrary view. The first of the cases decided by Shamsheer Bahadur J. about a month before his decision was apparently not brought to the notice of Mehar Singh, J.

8. In neither of the judgments in which these conflicting views have been expressed is there very much in the way of argument. Mehar Singh J. was simply of the opinion that since according to the provisions of the amending Act of 1962 Section 32-KK as well as certain other amendments introduced in the Act were to have effect from the 30th of October 1956 the new section could not affect a transaction which had taken place before that date. On the other hand Shamsheer Bahadur J. was of the opinion that this interpretation would virtually amount to amending Section 32-FF, which was obviously not intended. He was of the opinion that what was clearly intended was that all dispositions of property other than those specifically excepted by the provisions of Section 32-FF which took place after the 21st of August 1956 were hit by that section and the result of the amendment was simply that this applied also to partitions of Joint Hindu family property made after that date.

9. As a matter of fact there is little scope for argument on a point of this kind. All that the learned Counsel for the Petitioners could do was to quote the general principles regarding retrospectivity in the standard work "Crane on Statute Law" to the effect that no statute should be given retrospective effect unless this is expressly mentioned or necessarily implied, and that where a statute is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended.

10. On the whole I am of the opinion that the view taken by Shamsheer Bahadur J. was correct. In my opinion Section 32-KK is no more than a clarification of and an addition to the provisions of Section 32-FF, which itself was retrospective to the extent that although it only came into force on the 30th of October 1956 it hit certain transactions which took place after the 21st of August 1956. The obvious reason for choosing the 30th of October 1956 as the date from which Section 32-KK was to have effect was to bring it into line with Section 32-FF, which was also operative from the same date. Thus as the law now stands Section 32-FF and Section 32-KK have to be read together, and certain transactions which were not thought to be covered by Section 32-FF, though the Legislature probably intended them to be are now to be deemed to be covered by it. It is inconceivable to me that by fixing the date from which Section 32-KK was to be operative as the 30th of October 1956 the Legislature intended to exempt partitions of Joint Hindu family property which took place between the

21st of August and the 30th of October from its scope. I am therefore of the opinion that the writ petition fails and must be dismissed, but the parties may be left to bear their own costs.

Jindra Lal, J.

11. I agree.