

(1976) 08 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3489 of 1970

Hukam Singh

APPELLANT

Vs

The Financial Commissioner, Punjab, Chandigarh and Others

RESPONDENT

Date of Decision : 13-08-1976

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 19DD, 9(1)

Citation : AIR 1976 P&H 395

Hon'ble Judges : Prem Chand Jain, J;Ajit Singh Bains, J

Bench : Division Bench

Advocate : Ram Rang, for the Appellant; Maluk Singh, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh Bains, J.—This petition first came up for hearing before me on July 25, 1975, when I referred it to a larger Bench, as it involved substantial question of law as to whether a landowner, whose land is exempt from surplus area u/s 19DD of the Punjab Security of Land Tenures Act, 1953 (hereinafter called "the Act"), is to be considered as small land-owner or such land is to be considered as reserve area within the meaning of Section 9(1)(i) of the Act. This is how it has come before us today.

2. Mr. Ram Rang, the learned counsel for the petitioner, has urged that the petitioner is to be deemed to be a small land-owner and that land exempt u/s 19-DD is to be considered as reserve area and that the application made by him u/s 9 (1) (i) of the Act for ejectment of his tenants (respondents 5 and 6) was competent and that the Financial Commissioner, the Collector and the Assistant Collector went wrong in dismissing the same. Mr. Maluk Singh, the learned counsel for respondents 5 and 6, concedes that u/s 19-DD of the Act where any land is granted for gallantry at any time before January 26, 1950, such lands shall not be taken into account in computing the surplus area under the Act and that a tenant on such land shall have no right of purchase u/s 18 of the Act, but urges that the gallantry-award-land is exempt only for limited purpose of Section

18 and for no other purpose and such a land-owner has to be considered as a big land-owner. The question, which requires to be settled, is whether a landowner, whose land is exempt from being declared as surplus u/s 19-DD of the Act, is to be considered as a small land-owner and his land is to be considered as reserve area within the meaning of Section 9 (1) (i) of the Act. The term "small land-owner" is defined in Sub-section (2) of Section 2 of the Act which is in the following terms:--

"2. In this Act, unless the context otherwise requires:--

(1) xx xx xx (2) "Small land-owner" means a landowner whose entire land in the State of Punjab does not exceed the "permissible area".

Explanation;-- In computing the area held by any particular land-owner, the entire land owned by him in the State of Punjab, as entered in the record-of-rights, shall be taken into account, and if he is a joint owner only his share be taken into account."

3. A bare reading of the aforesaid provision clearly shows that a small land-owner is a person whose entire land in the State of Punjab does not exceed the permissible area. But the term "big land-owner" is not defined in the Act. Section 19-DD was added in the Act on April 20, 1968, by Punjab Act No. 12 of 1968. It reads as under:--

"19-DD. Notwithstanding anything contained in this Act, where any land is granted for gallantry at any time before the 26th day of January, 1950, to any member of the armed forces, whether maintained by the Central Government or by any Indian State, then, so long as such land or any portion thereof, as the case may be, has not passed from the original grantee into more than three successive hands by inheritance or bequest, and is held by the grantee or any of such hands, such land or portion, as the case may be, shall not be taken into account in computing the surplus area under this Act, nor shall any tenant of such land or portion have the right to purchase it u/s 18:

Provided that where such land or portion has passed into more than three such hands and the person holding such land or portion, immediately before the 3rd August, 1967, is a person to whom it has passed by inheritance or bequest, the exemption, under this section shall apply to such land or portion thereof, as the case may be, during the lifetime of such person."

This Court had in case *Gian Singh v. State of Punjab*, reported as 1966 PLJ 105 held that Section 19-D of the Act was applicable only to those persons, who are allotted land as gallantry awards after January 26, 1950. It was only to solve this difficulty that Section 19-DD was added in the Act and made applicable to the gallantry awards granted before January 26, 1950 also. Admittedly, the land was allotted to the petitioner as a gallantry award before January 26, 1950, and since such a land could not be taken into account for determining surplus area, no proceedings were taken to determine the surplus area of the petitioner. In other

words, no land of the petitioner was declared as surplus, which would mean that the entire area held by the petitioner was within the permissible limit. The petitioner had moved an application for ejectment of respondents 5 and 6 u/s 9 (1) (i) of the Act, which reads as under:--

"9. (1) Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant-

(i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner; or"

4. A reading of this provision shows that a land-owner, in order to succeed, has to satisfy either of the two conditions -- that the tenant is on reserved area or he is a small land-owner. As noted earlier, the petitioner had not reserved any area under the Act, as it was not required, and no land was declared as surplus with the petitioner in view of provisions of Section 19-DD of the Act. In such a situation, when no land of the petitioner is declared as surplus he is to be deemed a small landowner and his entire holding as a result fell within his permissible limit. As stated earlier, no land with the petitioner had admittedly been declared as surplus. It is implicit in Section 19-DD that such a land-owner is to be considered as a small land-owner for every purpose. A special provision as contained in Section 19-DD of the Act has been made to afford protection to all such persons, who had served the country during the war. The section clearly lays down that such a land, which is given in lieu of the gallantry award, cannot be taken into account for computing the surplus area nor is a tenant on such land entitled to purchase u/s 18 of the Act. If the land-owner is to be considered as a big land-owner for other purposes as the learned counsel for respondent-tenants wants this Court to believe, then the benefits gained by him by this section would be rendered nugatory, as in that case he would not be able to get the tenants ejected. If Section 19-DD of the Act is not to be interpreted like this, then it would run counter to the very intention of the Legislature. In this view of the matter I hold that a land-owner, whose land is exempt from being included in the surplus area u/s 19-DD of the Act, is to be considered a small landowner and that the application made by him u/s 9 (1) (i) of the Act for ejectment of his tenants is competent.

5. NO other point was urged.

6. For the reasons recorded above, I allow this petition, set aside the order of the Financial Commissioner dated 3rd of September, 1970 (copy Annexure-G to the petition) and restore that of the Commissioner and send back the case to the Assistant Collector, 1st Grade, Dasuya, for deciding the petition afresh in accordance with the observations made in this judgment. In the circumstances of the case, I make no order as to costs.

Prem Chand Jain, J.

7. I agree.