

(1991) 04 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 61 of 1984

Mrs. Peter Butt and Others

APPELLANT

Vs

Sister Roseline Kokara

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 11, 2(3), 2(5)

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 11(1), 2(17),
2(2), 2(7)

Punjab Security of Land Tenures Act, 1953 — Section 8

Punjab Tenancy Act, 1887 — Section 4(1), 4(7)

Transfer of Property Act, 1882 — Section 34

Citation : (1992) 2 ShimLC 124

Hon'ble Judges : Devinder Gupta, J;D.P. Sood, J

Bench : Division Bench

**Advocate : Chhabil Dass, Anand Sharma and Tarlok Chauhan, for the Appellant;
None, for the Respondent**

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—Defendant-Appellants have preferred this first appeal against the judgment and decree passed on May 23, 1984, in Civil Suit No. 52 of 1980, by the learned Single Judge of this Court, in its original civil jurisdiction, decreeing the suit of the Plaintiff-Respondent.

2. The Plaintiff on December 23, 1980, filed a suit for grant of a decree for possession of the house known as "West View Cottage" alongwith land appurtenant thereto admeasuring 45000 acres comprised in Khasra No. 100-min, which was a part of land entered at Khewat No. 211 in Jamabandi for the year 1977-78, situate within municipal limits of Dalhousie. Tehsil Bhattiat, District Chamba. The basis for claiming the decree was that one Francis D. Butt was a tenant on the suit property on payment of Rs. 25 per month as rent and on his death, which took place on January 5, 1973, his widow Mrs. Tearsa Butt occupied

the same who too died on December 12, 1974 and after her death it was Defendant Peter Butt, who occupied the property without any authority. It was alleged that the Defendant was the son of one Khargu, the earlier husband of Mrs. Tearsa Butt and he had no right to remain in occupation of the property. The cause of action for filing the suit was stated to have arisen on December 12, 1974, when the widow of Francis D. Butt died. Earlier a suit had been filed by the Plaintiff against the Defendant in the court of Senior Sub Judge, Chamba, but the same was permitted to be withdrawn with liberty reserved to file a fresh one on the same cause of action. On these basis, a decree for possession was claimed.

3. The suit was contested by Defendant Peter Butt on various grounds. The primary defence, besides other legal objections, raised by him, was that Francis D. Butt was the tenant of the land and houses, which were being used for agricultural purposes and for purposes subservient to agriculture. On the death of Francis D. Butt, his widow Mrs. Tearsa Butt succeeded to the tenancy rights and on her death he being the adopted son of original tenant succeeded to such right as an heir of his mother Mrs. Tearsa Butt. A preliminary objection was also raised about the jurisdiction of civil court to entertain and decide the suit, which according to him pertained to agricultural land, as defined in the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974) (hereinafter to be called as the Act). In the replication, the Plaintiff denied that the property was being used for agricultural purposes or for purposes subservient thereto or that it was "land" as defined under the Act. It was also pleaded that the Defendant was not a "tenant" within the meaning of the word contained in the Act and as such the civil court had jurisdiction to try the suit.

4. During the pendency of suit, on December 22, 1982, the Defendant died and the present Appellants, who are his heirs were brought on record in his place as legal representatives, who hereinafter will be referred as the Defendants.

5. On the pleadings of the parties, the learned single Judge, on August 17, 1981, framed the following issues:

1. Whether the suit has been filed by a duly authorised person?
2. Whether the Plaintiff tendered Rs. 150 on account of costs assessed vide order dated 24-11-1979 of the Subordinate Judge, Dalhousie allowing withdrawal of the previous suit filed by the Plaintiff with permission to file a fresh suit?
3. Whether the property forming subject-matter of this suit is land as defined in the H.P. Tenancy and Land Reforms Act? If so to what effect?
4. Whether the Defendant is in possession of the property in dispute as tenant under the Plaintiff?
5. Relief.

The first two issues were decided in favour of the Plaintiff. On the third issue, the learned single Judge, on the basis of the evidence on record, came to the

conclusion that the property forming subject-matter of the dispute was not "land" as defined in the Act. It was further held under issue No. 4 that since the Defendants had failed to prove the alleged adoption of Peter Butt by Francis D. Butt, therefore, the possession of Defendants cannot be held to be that of tenant. On the basis of these findings, the possession of the Defendants was held to be unauthorised one and on the basis of title Plaintiff's suit for possession was decreed. The plea of the Defendants that they had become owner of the suit property by virtue of provisions of Section 104 of the Act was not considered for want of any plea in the written statement and in the absence of any issue framed in this regard or evidence led. The Defendants feeling aggrieved have preferred the instant appeal against the judgment and decree of the learned single Judge. In appeal, they have confined their claim only to a part of the suit property that is, about 4 acres of land, which according to them is "land" as defined under the Act, and to the out-houses only which according to them are being used for purposes subservient to agriculture. Decree of the learned single Judge with respect to the main house in dispute has not been challenged.

6. We have considered the arguments advanced by the learned Counsel for the Appellants. No appearance has been put on behalf of the Respondent. We have perused the pleadings of the parties as well as the oral and documentary evidence on record. The main argument of the learned Counsel was that the property to the extent to which the Defendants-Appellants have confined their challenge in the appeal squarely falls within the definition of "land" as contained in Sub-section (7) of Section 2 of the Act and as on coming into force of the Act, admittedly, it was the mother of original Defendant Peter Butt, who was in occupation of the property in the capacity of widow of original tenant, therefore, he had succeeded to the tenancy rights held by her and as such the suit for possession against him treating him to be a trespasser was neither competent nor maintainable and on the basis of these submissions, it was pleaded that Peter Butt had become owner of the property by virtue of the provisions of Section 104 of the Act and Plaintiff had no right, title or interest in the same. As per the submissions of the learned Counsel for the Appellants, the disputed land was being used for agriculture purposes, part of which was covered with fruit and non-fruit trees and the remaining was under cultivation and the out-houses were used for purposes subservient to agriculture, namely, poultry house, therefore, the same was "land" as defined in the Act, which was also evident from the entries in revenue records contained in documents Ex. D-1 to D-4. In support of his submissions, the learned Counsel sought support from the judgment of the Division Bench of this Court in *The State of Himachal Pradesh v. Maharani Kam Sundri* ILR 1984 HP 397 and urged that even if a small portion of land is found to have been used by the tenant incidentally for ancillary or even an alien purpose, the major portion thereof is found to have been used for agricultural purposes or purposes subservient thereto. It was further contended that even though Peter Butt was not proved to have been adopted as son by Francis Butt, even then he being the son of his widow had inherited the tenancy rights held by Mrs. Tearsa

Butt by virtue of the provisions of Section 8 of the Punjab Security of Land Tenures Act, 1953 (Punjab Act No.X of 1953), which enactment was applicable to the area in question prior to coming into force of the Act

7. In order to appreciate the arguments of the learned Counsel for the Appellants in the right perspective, It would be necessary to deal with the oral and documentary evidence on record and to find out the nature of the property The property in dispute is located within municipal limits of Dalhousie town. It is stated to have been rented out in 1948 and even then it was within the local limits of the municipality Ex.D-7 is the copy of Jamabandi for the year 1962-63 and it pertains to land comprised in Khasra No. 100 measuring 13.7031 acres. Plaintiff is shown to be the owner in possession thereof and the property has been described as "Bishop Villa" with its compound. No part of the property is described as agricultural land or land subservient to agriculture. The parties have not placed on record the copy of revenue entries prior to the year 1962-63. Ex. D-8 is the copy of the entries in Khasra Girdawari for the period from Rabi 1964 to 1968. For the first time, in Rabi 1964 on a portion of the property measuring 2.7031 acres, crops of potato, maize and some vegetables were shown to have been grown. The remaining area was described as Gair Mumkin Kothi. The subsequent entries show, that occasionally, besides crops of potato and maize, vegetables were being grown but generally the land used to remain vacant. During the life time of Francis D. Butt the name of Peter Butt was shown to be as an occupier without payment of any rent. This entry appeared when change in the nature of the aforementioned property occurred in the revenue records. These entries were later incorporated in Ex. D-2 Jamabandi for the year 1972-73. Peter Butt was shown to be in occupation of a portion of the property admeasuring 4,5000 acres, out of which 4.000 acres was described as Bagicha (Orchard) and the remaining 0.5000 acres as "Gair Mumkin Kothi" In the column of remarks there is an entry made on the basis of two orders, Ex. D-5 and Ex.D-6, passed on June 30, 1977 and March 23,1971, respectively by the Assistant Collector, IInd Grade, Dalhousie, deleting the name of Peter Butt and showing the name of Francis D. Butt in his place. Ex. D-3 is the copy of jamabandi for the year 1967-68 in which Peter Butt is shown to be in possession of the entire land measuring 13.7031 acres comprised in Khasra No. 100, out of which 3.5000 is shown as cultivateable, 20,000 acres as orchard and the remaining 8.2031 as Gair Mumkin Kothi. Nature of the possession is shown as Gair Maurusi (non- occupancy). In the column of rent the entry is Bila Lagan Bawazaha Tassawar Malkiat Khud meaning thereby that he was shown to be in occupation of the property without payment of any rent considering himself to be the owner Ex.D-4 is the copy of jamabandi for the year 1977-78, in which Francis D.Butt is shown to be in occupation of the property as Gair Maurusi on payment of Rs. 300 per annum as rent. The land is described as 4,5000 acres, out of which 4,000 acres is shown as Orchard and the remaining 5,000 as "Gair Mumkin Kothi. As per copy of death certificates. Ex. P-1 and Ex. P-2. Francis D. Butt died on January 5, 1973 and Mrs.Tearsa Butt on December 12, 1974. From these entries

in the revenue records, it is very clear that prior to 1964, no part of the property was being cultivated but the entire property was shown as Gair Mumkin Kothi alongwith its compound. It was only in the year 1964 and subsequently thereto that a fraction of the property is shown to have been brought under cultivation either by sowing potato or maize crop or with some vegetable crop. There are stray entries of some fruit trees having been planted on a portion of the property. Firstly, it was Peter Butt, who admittedly had nothing to do with the property during the life time of Francis D Butt, who was shown as occupying the property or having brought the same under cultivation but subsequently on the basis of orders passed by Assistant Collector, IInd Grade, Dalhousie, name of Peter Butt was deleted and the name of Francis D. Butt was incorporated, which was done in the year 1977, when Francis D. Butt had already died, Even there is no oral evidence on record to show that prior to 1964 the property or any part thereof was under cultivation.

8. The determination of the question as to whether the suit land falls within the term "land" as defined in the Act and whether Francis D. Butt held the property in the capacity of a "tenant" depends upon the construction of relevant provision. The "land" has been defined in Sub-section (7) of Section 2 of the Act as under:

"land" means land which is not occupied as the site of any building in a town or a village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture and includes,--

- (a) the sites of buildings and other structures on such land,
- (b) orchards,
- (c) ghasnies,
- (d) banjar land, and
- (e) private forests.

The tenant has been defined in Sub-section (17) of Section 2 as follows:

"tenant" means a person who holds land under a landowner, and is, or but for a contract to the contrary would be liable to pay rent for that land to that landowner, and includes--

- (i) a sub-tenant; and
- (ii) the predecessors or successors in interest of a tenant or a sub-tenant, as the case may be, but it does not include--
 - (a) a mere mortgagee of the rights of landowner, or
 - (b) a person to whom a holding has been transferred or an estate or a holding has been let in farm under the Himachal Pradesh Land Revenue Act, 1954 (6 of 1954), or the Punjab Land Revenue Act, 1887 (17 of 1887), as the case may be, for the recovery of an arrear of land revenue or a sum recoverable as such an

arrear.

Punjab Tenancy Act, 1887 (Punjab Act No. XVI of 1887) was applicable when Francis D. Butt was given the property on rent. The words "land" and "tenant" have been defined in Sub-sections (1) and (7) respectively of Section 4 of the said Act. On coming into force of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (Act No. 15 of 1954), the Punjab Tenancy Act, 1887, as applicable to Himachal Pradesh stood repealed. Definition of "land" and "tenant" in Himachal Pradesh Act No. 15 of 1954 is in pari materia with the definition as contained in the Act.

9. Before considering the question of construction, it would be pertinent to notice the three decisions rendered by this Court in which the definition of these words though of different but analogous statutes have received judicial interpretation. In *Rajkumar Rajinder Singh v. State of Himachal Pradesh* and *Anr.* ILR 1973 HP 469 the question was whether the land classified as Banjar Qadim, Abadi, Kohlu, Gharat and Gair Mumkin is covered by the definition of "land" as contained in Sub-section (5) of Section 2 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953. It was held in that case that the land which is occupied or has been let for agricultural purposes or purposes subservient to agriculture and is not within the limits of any town or village would ordinarily be "land". It was further held that besides this the definition enlarges its scope by including therein the pastures, sites of building and other structures on the said land and orchards as well as ghasnies. A site of a building howsoever large in size which was occupied for agricultural purposes or purposes subservient to agriculture was held to be coming within the definition of "land". In *Gram Panchayat Khunyara etc. v. State of Himachal Pradesh etc.* ILR 1978 HP 225. The question for consideration was with respect of the definition of land for the purposes of Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974. In the said Act the definition of "land" as contained in the Himachal Pradesh Consolidation of Holdings (Prevention and Fragmentation) Act, 1972, had been adopted to define the word "land". The Division Bench, while considering the true scope and ambit of Sub-section 3 (of the Consolidation of Holdings Act), held as under:

This definition shows that it consists of two parts. The first part contemplates those parcels of land which are occupied or have been let for agricultural purposes or for purposes subservient to agriculture or for pasture. The second part consists of five clauses of inclusion, out of which first is with regard to sites of buildings other than structure on "such land". The expression "such land" clearly connotes the land referred to in the first part of the definition, namely, the land which is occupied or has been let for agriculture or for pasture. It follows, therefore, that sites of buildings and other structures would be falling within the definition of the word "land" provided they are in the land described as occupied or has been let for agricultural purpose or for purposes subservient to agriculture or for pasture. In other words, sites of buildings and structures

wherever found would not fall within the first category of inclusive clause. They would nonetheless fall within that category if they are found in the lands occupied or let for agricultural purposes or for purposes subservient to it or for pasture. Other items of the inclusive clause, namely, orchards, ghasni, banjar land and private forest are not governed by any qualification.

10. Both the above decisions were cited with approval in Kamsundri's case (supra), upon which reliance has been placed by the learned Counsel for the Appellant in support of his arguments. The question in Kamsundri's case was about the true scope of "land" under the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act. In the said case, Maharani Kamsundri had applied for acquisition of proprietary rights u/s 11 of the said Act. The Compensation Officer held that the entire property which was subject matter therein was not covered by the definition of the term "land" as given in Sub-section (5) of Section 2 of the said Act. Property in that case, which was known as "Bower Estate" comprised of one residential house and about 33 bighas and 15 biswas of land. The learned District Judge, in appeal, also concurred with the findings of the Compensation Officer and the learned single Judge of the Delhi High Court, which then exercised jurisdiction over the areas now forming part of Himachal Pradesh, held the entire land to be covered by the definition of "land". The matter was taken up in appeal. The Division Bench, after considering the entire evidence and by placing reliance upon the decision recorded in R.K. Rajinder Singh's and Gram Panchayat Khunyara's cases (supra) observed as under:

...the true scope and meaning of the expression "land" as defined. In order to be covered by the main part of the definition contained in Section 2(5) "land" must satisfy two conditions; first it must not have been occupied as the site of any building in a town or village and, secondly, it must have been occupied or let for agricultural purposes, or for purposes subservient to agriculture, or for pasture. By virtue of the inclusive part of the definition, however, sites of buildings and other structures, which are not situate in a town or village but form part of the "land" which is occupied or has been let for agricultural purposes, or for purposes subservient to agriculture, or for pasture, would constitute "land" within the meaning of the Act. So far as orchards and ghasnis are concerned, they would be "land" within the meaning of the Act, whether or not they satisfy the conditions prescribed in the main part of the definition. The question whether the suit land is "land" within the meaning of the Act will require determination against the aforesaid background.

After having considered the true scope of the definition of "land" within the meaning of Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, the Court, when it has to apply the same to ascertain as to whether a tenant could claim proprietary rights with respect to the land by him, observed as follows:

...For the purpose of determining whether the tenant can claim proprietary rights

in respect of the land held by him under the landowner, therefore, what has to be seen is whether such land as a whole is "land" within the meaning of the Act. In other words, what has to be seen is whether the entire piece or parcel of land held by a tenant under the landowner is covered by the definition given in Section 2(5) of the Act. In a case, therefore, where the purpose of letting is not ascertainable, but the land or a substantial part thereof is not occupied as the site of any building in a town or village and is occupied for agricultural purposes, or for purposes subservient thereto, or for pasture, or for any of the purposes set out in the inclusive part of the definition, the land would be regarded as one to which the provisions of Section 11(1) of the Act are applicable. Even if a small portion of such land is found to have been used by the tenant incidently for an ancillary or even for an alien purpose, his entitlement to claim proprietary rights in respect of whole land is not thereby affected and it would not be proper or permissible to dissect the tenancy and to confine the conferment of proprietary rights to that portion of the land of the tenancy held by him which is actually used for the stated purposes and to reject the claim qua that small portion which is incidently used for ancillary or even alien purposes....

(Emphasis supplied).

11. In view of what has been stated above, in order to determine as to whether the land is agricultural land as defined in the Act or not, what is required to be seen is the main and primary purpose for which it was or had been let out or taken. In case where the purpose of letting is ascertainable, the question has to be decided on the basis of main and primary purpose for which it was let out. In case the land was or had been let out for a purpose which cannot be said to be agricultural purpose or purpose subservient to agriculture, the same will not fall within the definition of "land" under the Act and in such a situation, the court will be precluded from considering the use of the land to which it has subsequently been put. A person should not be permitted by any action of his to take undue advantage of the situation by himself changing the main and primary purpose for which the land is let out. In other words, what is to be seen is the character and nature of the land and the purpose for which it had been let out, when such a purpose is ascertainable from the evidence or material on record and not the use of the property to which it has subsequently been put. But where the purpose of letting the same is not ascertainable from the evidence and material on record and the land, substantial part whereof, is not used or occupied as the site of any building in a town or village and is used or occupied for agricultural purpose, or for purpose subservient thereto then it will fall within the definition of "land". What are the purposes subservient to agriculture can be ascertained from the definition part as the same have been set out in the inclusive part of it. The words "is occupied" and "has been let" occurring in the definition of "land" in Sub-section (7) of Section 2 of the Act are indicative of two different situations. Firstly, when the purpose is ascertainable, that is the purpose of letting was agricultural or subservient to agriculture, then it is that purpose alone which would be seen but when the purpose is not ascertainable then it is the use to

which the property is found to be put which will be taken into consideration.

12. Present is the case, where, on the basis of evidence, it can be said that the purpose of letting the property is ascertainable. Ex.P-3 is the receipt book/copy, which contains various entries with respect to payment of rent. On May 23, 1934, the learned single Judge had permitted this receipt book to be taken on record and read in evidence. All the entries in the same from the first entry dated 20-4 1964 till the last entry dated 7-10-1970 with respect to the receipt of rent for the month of July, August and September, 1970 were ordered to be read as part of the evidence. The Defendants had, in fact, admitted the correctness of these entries. Most of the entries are found to have been signed by Francis D. Butt. All except the last, entries show that it was the rent for "West View Cottage", which was received. Last entry is made on the basis of Money Order coupon for a sum of Rs. 75 being the rent for the months of July, August and September, 1970 sent by Francis D. Butt and the coupon reads as under:

With reference to your letter dated 16-9-1970. I am sending you Rs. 75 as house rent for three months

(Emphasis supplied)

13. The caption of the receipt book in which all these entries/receipts are exhibited is "West View Cottage-Francis Butt". The evidence on record shows that the cottage was let out to Francis Butt in the year 1948 on a monthly rent of Rs. 25. There is no oral evidence produced by the parties as to what was the purpose of letting the premises but the purpose is ascertainable from the receipts aforementioned, which on the face of it show that the rent was being realised for "West View Cottage". The entries in the revenue record for the year 1962-63 also characterise the property as Gair Mumkin Kothi Nhata. The property is located within the municipal limits of Dalhousie and the same is a part of bigger estate known as "Bishop Lodge". It is not the case of the Defendants that they are agriculturists or that Francis Butt, to whom property was let was an agriculturist. It is also not their case that the property was let out for agricultural purposes or for purposes subservient to agriculture. The case, as made out by the Defendants, is that since the property is now being used since before the filing of the suit for agricultural purposes and purposes subservient thereto, therefore, the same should be held to be "land" as defined in the Act.

14. PW-1, Sister Roselin Koikara, President of the Plaintiff-society, PW-2 Mother Mary, Mother Superior, Sacred Heart School, Dalhousie and PW 3, Sister Aquino, Incharge Boys Hostel, Sacred Heart School, Dalhousie, have stated that it was the "West View Cottage", which was given on rent and there is a vacant land adjacent thereto. PW-3 stated that a part of the compound of the Cottage was being used by Francis Butt as small kitchen garden but he was not cultivating any ground or any part of the vacant land. He had planted about 7/8 apple trees on the land, after cutting the forest trees and at that stage an objection was raised by the Plaintiff and he was prevented from cutting any further forest trees.

Merely because the land located within Municipal limits which consisted of residential building with out-houses attached thereto and vacant compound with forest trees there on and was let out as such and where the purpose of letting the same was not agriculture or subservient to agriculture and later on by afflux of time the occupant by his own action had changed the nature of the property by occasionally using a part thereof to agricultural purposes, such a person cannot be permitted to take advantage of the situation and of his own wrongs by urging that because now the nature of the land has been changed and the same is being used for agricultural purposes or purposes subservient thereto, therefore, the same should be held to be "land" within the definition of the Act. It is a case where the purpose of letting is ascertainable, that is, residential purpose and not agricultural or purpose subservient thereto. It is pertinent to mention here that the Defendants, after the decree had been passed by the learned single Judge, had rightly given up their claim for the possession of the main Kothi and this can only be for the reason that the same was not let out to Francis Butt for the agricultural purpose. As such, the contention of the Appellants that the property is "land" under the Act or that their predecessor, namely, Francis Butt was "tenant" within the meaning of the words as defined in the Act has no force.

15. Peter Butt came in occupation of the property after the death of Mrs. Tearsa Butt, who in her turn occupied the same on the death of her husband. Peter Butt has not shown himself to be related to Francis Butt and as such had nor right to inherit the alleged rights. As neither the property has been held to be land and the Defendants or their predecessor as tenant, as defined in the Act, therefore, there is no question of the applicability of Section 104 of the Act. His possession was that of a trespasser and, therefore, the Appellants have no right, title or interest therein and cannot be given the status of tenants.

16. The further submission of the learned Counsel for the Appellants was that as the land was capable of being used for agriculture, therefore, it should be considered "land" within the meaning of the Act and the nature of possession of Perer Butt be held to be that of a tenant as defined in the Act. In support of this submission, the learned Counsel placed reliance upon a decision of the Orissa High Court in Paramananda Das and Another Vs. Sankar Rath, The question which came up for consideration in that case was whether the provisions of Section 31(1) of the Orissa Tenancy Act would apply to the transfer of land involved in that case notwithstanding any provisions of Section 34 of the Transfer of Property Act and on the basis of peculiar facts of that case, it was held that "land" though lying unused but capable of being used for raising crops, vegetables etc and also when the same is used as site for the farmers' residences should be held to be agricultural land. The ratio of the said decision has no bearing to the facts situation herein, where the purpose of letting, as held, was ascertainable, namely, non-agricultural. Moreover, it is not the nature of the land but the purpose of the letting which should be the determining factor as to whether the property is or is not "land" as defined in the Act. Property

though capable of being used for agricultural purposes or for purposes subservient to agriculture will not be covered by the definition of land, if it has not been let for such purposes. Considering the expression "agricultural land" Federal Court in *Megh Raj v. Allaha Rakha* AIR 1942 FC 27 made observations that the general character of the land and not the use to which it might be put at a particular point of time would be one of the factors in deciding whether the piece of land is agricultural land or not.

17. The learned Counsel for the Appellant by placing reliance upon a decision of Punjab and Haryana High Court in *Lakhmi Das and Ors. v. The Punjab State and ors.* 1977 P LJ 464, further contended that "land" will not cease to be land even if it is not cultivated by the tenant and only land which is not put to agricultural use would still be land if it is put to a use subservient to agriculture or for pasture and by applying the ratio to the present case even if part of the land was lying vacant but out-houses etc. were being used for a purpose which is a purpose subservient to agriculture, the property has to be held to be falling within the definition of "land" as defined in the Act. After having perused the judgment cited, we are of the opinion that this decision will too is of no help for the Appellants. In the cited case, property had been let out for agricultural purpose and the question before the learned Judges of the Division Bench was that if such a land is not cultivated by the tenant whether it would cease to be land or that any land which had been let out for agricultural purpose and it not put to use as such but subservient to agriculture or for pasture whether the same would still be land or not. The Bench observed as under:

.....The entries in the Jamabandi show that the land was in possession of the occupancy tenants on a fixed rate of rent which necessarily means that it has been let out for agricultural purposes. The definition of the word "land" does not lay down that if the land is not cultivated by the tenant it would cease to be land. Furthermore, any land which is not put to agricultural purposes would still be land within the meaning of the said definition if it is put to a use subservient to agriculture or for pasture.....

We are fortified in our view, by this decision as well, which we have taken above.

18. No other point was urged or pressed before us.

19. For the foregoing reasons, in our opinion, there is no merit in this appeal and it is accordingly dismissed. The judgment and decree passed by the learned Single Judge is confirmed.