
(1963) 05 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 425 of 1962

Sampuran Singh	Vs	APPELLANT
The State and Others		RESPONDENT

Date of Decision : 02-05-1963

Acts Referred:

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

Citation : (1963) 05 P&H CK 0071

Hon'ble Judges : Shamsheer Bahadur, J; D.K. Mahajan, J

Bench : Division Bench

Advocate : C.L. Lakhanpal, for the Appellant; H.S. Doabia, Additional Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J.—This is a petition under Article 226 of the Constitution and is directed against the order of the Pepsu Land Commission dated the 17th October, 1961, and of the Collector dated the 25th January, 1960. In order to appreciate the grievance of the petitioner, it will be necessary to set out the facts briefly.

2. According to him, the petitioner formed a joint Hindu family with his two sons. There was a partition between the father and the sons with the result that no area beyond the permissible limit was left with the father or with either of the sons. In this view of the matter, the petitioner did not file any return u/s 32-B of the Pepsu Tenancy and Agricultural Lands Act, 1955 (No. 13 of 1955) hereinafter referred to as the Act. The Collector proceeded to determine the area of the petitioner as surplus u/s 32-C on the ground that in the case of a joint Hindu family the family has to be treated as one unit and the partition has to be ignored. In the proceedings that were taken u/s 32-C, a claim was made u/s 82-K(1) (iv) for excluding 10 pukhta Bighas of land out of the permissible limit on the ground that it was an efficiently managed farm which satisfied the various requirements of clause (iv), sub-section (1) of section 32-K. The Collector refused to determine this matter. An appeal was taken to the Commissioner but

without success and a revision to the financial Commissioner was thrown out as incompetent. Having failed to achieve any redress, the petitioner moved the Pepsu Land Commission and asked them to advise the State Government with regard to the exemption claimed u/s 32-K. The Commission dismissed the application on the ground that it had no jurisdiction to entertain it. It is against this decision and against the decision of Collector and the authorities which have dismissed the appeal and the revision of the petitioner that the present petition is directed.

3. The contention of the petitioner is that as soon as he made the claim before the Collector in proceedings u/s 32-C with regard to an exemption u/s 32-K, the Collector was bound to seek the advice of the Commission. He even goes further and maintains that the Commission was bound, when approached, to tender its advice at the instance of the petitioner. Before, examining the validity of these contentions, it will be proper to go into the scheme of the Act pertaining to the ceiling on the land.

This matter is dealt with in Chapter IV-A of the Act. Section 32-A provides that no person can own or possess land more than the permissible limit. The permissible limit is 30 standard acres or 80 ordinary acres in the case of persons who are not displaced from West Pakistan but it is 40 standard acres or 100 ordinary acres in the case of displaced persons.

Section 32-B requires that any person, who on the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, owns or holds as landowner or tenant land under his personal cultivation, which in the aggregate exceeds the permissible limit, shall, within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958, furnish to the Collector a return giving the particulars of all his land in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible limit which he desires to retain and the lands in respect of which he claims exemption from the ceiling under the provisions of Chapter IV-A.

Section 32-BB provides for declarations supported by affidavits to be furnished by certain landowners and tenants. This declaration is required where the landowner holds land in more than one Patwar circle. In the case of such a landowner, if he fails to furnish the required declaration, sub-section (2) of section 32-BB provides a penalty that the Collector may direct all his holding, except 10 acres, to be surplus area, but this penalty does not take away his right to exemption permitted u/s 32-K.

Section 32-C provides for an eventuality where under section 32-B return has not been filed. Section 32-C is in these terms :

32-C. If any person owning or holding under his personal cultivation land in excess of the permissible limit fails to furnish the return and intimate his selection within the period prescribed u/s 3-B, the Collector may obtain the

information required to be shown in the return through such agency as he may deem fit and, subject to the provisions of sub-section (2) of section 32-BB, select the parcel or parcels of land which such person is entitled to retain under the provisions of this Act as also the surplus area of such person," and gives power to the Collector to collect information and subject to the provisions of sub-section (2) of section 32 BB, select the parcel or parcels of land which such person is entitled to retain under the provisions of this Act, and also the surplus area of such person. Here again the implication" is that the Collector has the power to cut down the permissible limit from 30 standard acres to 19 acres. So far as the present case is concerned, this has not been done.

Section 32-D provides for the submission of a statement to Government showing the total area owned by the landowner, the area which he may retain by way of his permissible area or exemption from ceiling and also the surplus area. The draft statement is also to include the advice of the Land Commissioner appointed u/s 32-P of the Act regarding the exemption from ceiling if claimed by the landowner. Any person who is aggrieved by the order of the Collector under subsection (2) of section 32-D can prefer an appeal to the State Government or an Officer authorised by the State Government in that behalf. The power of revision is with the State Government under sub-section (4), and sub-section (6) provides that the draft statement shall be final in terms of the order of the Collector or the State Government as the case may be or in terms of the advice of the Land Commission regarding exemption from ceiling claimed by the landowner, if any.

Chapter IV-B deals with the constitution of the Land Commission and the only provision in this Chapter is section 32-P. Sub-Section (1) deals with the constitution of the Commission. Subsection (2] deals with the tenure of the Chairman and the members of the Commission. Sub-section (3) deals with the remunerations and sub-section (4) which deals with its duties is in these terms :

32 P(4). Subject to the provisions of this Act and in accordance with any rules which may be made by the State Government in this behalf, it shall be the duty of the Commission to-

- (a) determine fair rents for the purposes of section 32-G;
- (b) determine the market value of any building, structure, tubewell under sub-section (4) of section 32-G;
- (c) advise the State Government with regard to exemption of lands from the ceiling in accordance with the provisions of section 32-K", Under sub-section (5), the advice tendered by the Commission is binding on the State Government and provides that no final statement shall be published in a case in which exemption is claimed u/s 32-K unless such advise is included therein.

4. The short question that arises for determination is: What is the significance of the words "exemption from ceiling if claimed by the landowner u/s 32 D(2)"? If

reference is made to section 32-D, it does require the landowner to make a claim with regard to exemption from ceiling under the provisions of this Chapter. Learned counsel for the petitioner contends that "if claimed by the landowner is an expression wide enough to include claim made at any time before the Collector because it is the collector who, in the first instance, has to consider the claim made u/s 32-D. If I were to accept the argument of the learned counsel for the petitioner then section 32-B would become redundant because it provides that a claim has to be made within one month from the specified date under that section, that is, the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958. This ordinance came into force on the 30th July, 1958. It is no doubt true that in the present case the claim u/s 32-K was made by the landowner when the Collector was determining the permissible area to be retained by the landowner u/s 32-C, and it is also of significance that before the Act was amended in 1962, as held by this Court, the Joint Hindu family could not be treated as one unit and in that state of law in view of the family partition, the petitioner was not required to submit his return u/s 32-B because he admittedly did not own land more than the permissible area. As in the case of determination of surplus area u/s 32-C, there seems to be no corresponding provision with regard to the determination of exemption u/s 32-K. The legislation is more or less in the nature of confiscatory legislation and the matter is not free from difficulty and would be arising frequently. It would, therefore, be proper that this petition is settled by a larger Bench because I am inclined to the view that the words "If claimed by the landowner" in section 32-D are wide enough to include a claim made at any time before the draft statement. This construction I am particularly adopting because wherever the Legislature wanted to restrict the right given by the previous section, that section was specifically mentioned in the restrictive provision. I, therefore, direct that the pipers of this case be laid before my Lord the Chief Justice for constituting a larger Bench to decide this matter.

ORDER OF THE DIVISION BENCH

Shamsher Bahadur, J.

(6th December, 1963) -This petition under Article 226 of the Constitution of India which has been placed for disposal before this Bench in consequence of the order of reference passed by Mahajan J. on 2nd of May, 1963, raises the question of construction of the words "if claimed by the landowner" occurring in section 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called the Act).

6. The undisputed facts leading to the reference as also the relevant provisions of the Act may first be briefly narrated. Sampuran Singh petitioner considering that his holding of 77 standard acres and 4 units of land in village Naurana of Bhatinda telisil had been partitioned between him and his two sons did not deem it necessary to submit to the Collector any return u/s 32-B of the Act which requires any person owning or holding as landowner or tenant "land under his personal cultivation, which in the aggregate exceeds the permissible limit, to

furnish a return" within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) ordinance, 1958, in a form which is prescribed and in which it has to be mentioned what parcel or parcels of land of landowner would select for himself within the permissible limit and what exemptions he claims from the ceiling. The ceiling itself is stated to be the permissible limit u/s 32-A and a landowner or tenant under his personal cultivation is forbidden to own or hold an area in excess of it. The exemptions from ceiling are specified in section 32-K and include, inter alia, at item (iv) "efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production."

7. The Collector, not having received the return from the petitioner u/s 32-B, proceeded to collect information for himself u/s 32-C which deals with a case where the person concerned "fails to furnish the return and intimate his selection within the period prescribed.

The Collector in such an event is entitled to obtain the information which is otherwise required to be furnished in the return u/s 32-B through such agency as he deems fit. The Collector u/s 32-C, on collection of this information, is empowered to select the parcels of land which such person is entitled to retain under the provisions of this Act as also the surplus area of this person subject to the provisions of sub-section (2) of section 32-BB.

8. Section 32-BB is concerned primarily with landowners or tenants who are holding land in more than one Palmar circle. Sub section (1) prescribes the period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958, for submission of the return by such persons. Sub-section (2) deals with defaulters who have not submitted the returns to the Collector under sub-section (1), and an authority not below the rank of Collector has the power to specify any area in excess of ten standard acres to be a surplus area. There are two provisos in sub-section (2) of section 32-BB, the first one being that "(a) the lands of such landowner or tenant which have been exempted u/s 32-K" are not to be affected. The second proviso need not be adverted to as it has no relevancy to the point in issue. There is, however, an overriding proviso to sub section (2) saying that no order has to be made by the authority "without giving the person concerned an opportunity of being heard." The power to select the parcels of land u/s 32 C given to the Collector, who acts according to the information gathered through his agency is thus trimmed in two important respects in consequence of the application of the provisions of sub section (2) of section 32-BB to section 32-C.

Firstly the exemption u/s 32-K will operate in spite of the authority of the Collector and secondly no order can be made without an opportunity being given to the person concerned of being heard.

9. We now come to the provisions of section 32-D. On the basis of the

information which the Collector has received u/s 32-B, section 32-BB and section 32-C, "he shall prepare a draft statement in the manner prescribed showing, among other particulars, the total area of land owned or held by such a person, the specific parcels of land which the land owner may retain by way of his permissible limit or exemption from ceiling and also the surplus area." It is stated in sub-section (2) of section 32-D that "the draft statement shall include the advice of the Pepsu Land Commission appointed u/s 32-P regarding the exemption from ceiling" and then occur the crucial words "if claimed by the landowner."

10. It is not disputed that the petitioner submitted objections to the Collector after he had proceeded to take action u/s 32-C. It was firstly pleaded in these objections raised by the petitioner that the land had already been partitioned between him and his sons, and further, an exemption was claimed under clause (iv) of sub-section (1) of section 32-K in respect of ten bighas of land on account of its "being efficiently managed farm." It may be added that these objections had been submitted to the Collector after the petitioner had been served with a copy of the draft statement which u/s 32-D had to be prepared on the basis of the information collected by him u/s 32-C. The draft statement has to be submitted in all the three contingencies envisaged in sections 32-B, 32-BB and 32 G. The objections were decided by the order passed by the Collector, Bhatinda, on 25th of January, 1960. It was held by him that the petitioner himself being the landowner, the partition could not be taken into reckoning. It was further held that the exemption u/s 32-K (1) (iv) could not be granted as the Naib Tehsildar, Agrarain, Bhatinda, reported after inspection of the spot that no heavy investments on the land had been made. The Collector was also influenced by the consideration that the petitioner had not filed the return which he was enquired to submit in Form VIIA u/s 32-B. In the view of the Collector this default of the petitioner precluded him from claiming any benefit of exemption from ceiling. The petitioner thereafter filed an appeal to the Commissioner, Patiala Division, but this was, however, dismissed on 14th of June, 1960. A further petition for revision to the Financial Commissioner proved abortive. The draft statement was finalised by the Collector on 2nd of August, 1960. The petitioner then moved the Pepsu Land Commission which alone is competent to decide the question of exemptions u/s 32-K of the Act on 15th of June, 1961. While holding that the Commission alone has the authority to adjudicate a claim for exemption, it was of the view that the Collector not having referred the question the Commission had no jurisdiction to entertain it.

11. There are two questions which call for our determination; the first being whether the Collector could reject the claim for exemption which was pressed by way of objections to the draft statement prepared by him u/s 32-D, and the second one relates to the competence of the Pepsu Land Commission to adjudicate upon the claim for exemption when its advice had not been sought under sub section (6) of section 32-D. Sub-section (6) of section 32-D says that the draft statement shall be finalised in terms of the order" of the Collector or the State

Government, as the case may be, or in terms of the advice of the Pepsu Land Commission regarding exemptions from the ceiling claimed by the landowner

and no person shall then be entitled to question it in any Court or before any authority".

12. The provisions of sections 32-B, 32-BB and 32-C, when read together, make it clear that the person making default in filing the return is still entitled to have it determined whether he is entitled to claim any exemptions u/s 32 K. The provisions of section 32-C, under which the Collector is empowered to act, make a reference to section 32-BB and the provisos of its sub-section (2) lay down that the failure to furnish a return does not affect the right of the landowner to claim exemptions u/s 32-K and he must be afforded an opportunity before an order is passed. These provisions have to be kept in view when the Collector has to prepare a draft statement on the basis of information collected u/s 32-C. The Collector himself invited objections to the draft statement and the petitioner made a claim for exemptions. According to section 32-K, the limit of ceiling as prescribed in section 32-A will not apply to "efficiently managed farms" as laid down in clause (iv) of sub section (1) of section 32 K. It is incumbent on the Collector under sub-section (2) of section 32-D to include in the draft statement the advice of the Pepsu Land Commission "regarding the exemption from ceiling if claimed by the landowner." The contention of the learned Advocate-General is that the petitioner not having made a claim for exemption in the return prescribed u/s 32-B is barred and precluded from doing so for all time to come. Can such a conclusion be spelled out from the words "if claimed by the landowner." ? Section 32-D is comprehensive and deals with situations where a person-

(i) has filed a return u/s 32 B,

(ii) who, having lands in more than one Patwar circle, has failed to file a return, and

(iii) not having filed a return, the Collector himself has gathered the information which was required to be given by him in the form prescribed u/s 32-B. It is of importance to note that even in the draft statement which was prepared as a result of information collected u/s 32-C, objections have been invited from the landowner. In this particular case, objections were filed by the petitioner and exemption was claimed. How can the words "if claimed by the landowner" in such a situation be restricted to the claim which has been submitted in the prescribed form u/s 32-B ? it is very pertinent to observe that the Collector himself took the view that he was bound to investigate into the claim for exemption made by the petitioner in as much as he obtained a report from the Naib Tehsildar Agrarian. So far as the Collector proceeded to make his own investigation into the claim for exemption, he was clearly acting beyond the powers vested in him. The claim for exemption can be investigated only by the Pepsu Land Commission which has been appointed u/s 32-P of the Act and under subsection (4) it is provided that :

.. it shall be the duty of the Commission to -

(a) x x

(b) x x

(c) advise the State Government with regard to exemption of lands from the ceiling in accordance with the provisions of section 32-K.

13. That the exemption was claimed by the petitioner u/s 32-K does not admit of any dispute though this was done only when he was asked to file objections to the draft statement. It cannot cease to be a claim of the landowner merely because the original return had not been filed. Once an objection is invited, it stands to reason that it has to be examined.

14. It is true that the Pepsu Land Commission has the duty to give its advice to the State Government. An advice is not given suo motu but has to be sought. No advice was sought from the Commission but it is impossible to infer therefrom that the Collector himself can substitute his own advice or authority for that of the Pepsu Land Commission.

15. To conclude on this aspect of the case, the words "if claimed by the landowner" occurring in section 32-D, read in the context and background of the various provisions of the Act, leave no manner of doubt that the claim whether made by the landowner u/s 32-B or by way of objections invited from him by the Collector when acting u/s 32-C is on the same footing. Any other construction would render the information gathering task of the Collector with the ultimate objective of determining surplus areas and ceilings after allowing exemptions futile and ineffective. Not only has the Collector the statutory duty of determining the surplus area u/s 32-G but he is also to determine the question of exemption from ceiling and also the surplus area under sub-section (1) of section 32-D, 1 he task of determining exemptions under sub-section (1) of section 32-D cannot legitimately be confined to cases where returns have been; filed u/s 32-B, Sub-Section (1) of section 32-D deals with all the contingencies provided in sections 32-B, 32-BB and 32-C arid without adding the words "under section 32-B" to the words "if claimed by the landowner" it is impossible to read into the words meaning different from the one which they plainly purport to convey. As stated in Maxwell on Interpretation of Statutes (I962 edition) page 12 :

It is but a corollary to the general rule of literal construction that nothing is to be added to or to be taken from statute, unless there are similar adequate grounds to justify the inference that the legislature intended something which it omitted to express.

Words may no doubt be inserted in or added to a statute in order to effectuate the legislative intent. We cannot, however, read into sections 32-B and 32-D a meaning that the landowner who had failed to submit a return forfeited his claim for exemption for all time to come. If that were so, it would have been meaningless to empower the Collector u/s 32-C to gather the information with

the object of granting exemptions and determination of surplus areas. As stated in Sutherland Statutory Construction, Volume 2 (1948 edition) at pages 454, 455:

The Courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a co-ordinate branch of the Government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however, desirable they may be, then for judicial tribunals to transcend the just limits of their constitutional powers.

16. Mr. Doabia contends that if a claim for exemption has to be entertained even when a person has made a default u/s 32-B, persons can disobey the mandatory requirements of section 32-B with impunity. Possibly, it may lead to such a result but the full investigation which it is the duty of the Collector to make in order to obtain the information which should have been furnished u/s 32-B makes it imperative to entertain the claim for exemption as well. The words "if claimed by the landowner" would be lost of all meaning and content if the contention of Mr. Doabia is permitted to prevail specially as it would be impossible to determine surplus area without adjudicating the claim for exemption preferred by the petitioner and actually entertained by the Collector. The claim for exemption has to be determined only by the Pepsu Land Commission. It seems to us to - be an inescapable conclusion from the provisions of the Act to which reference has been. made in detail that the Collector is bound to include the advice of the Pepsu Land Commission in the preparation of the final draft statement. This advice the Collector should now seek to obtain from the Pepsu Land Commission.

17. In the view which we have taken of this matter, it is needless to examine the question whether the Pepsu Land Commission should have gone into the claim for exemption which has been directly made before it by the petitioner. Prima facie, the role of the Pepsu Land Commission is advisory and the Collector, is bound to have the benefit of the opinion of the Commission and this has to be annexed with the draft statement.

18. The petition would, therefore, be allowed and the Collector directed to seek the advice of the Pepsu Land Commission with regard to the exemptions claimed by the petitioner in accordance with law. There would be no order as to costs.

D.K. Mahajan, J.

19. I agree.