
(2003) 02 P&H CK 0266

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14810 of 1992

Smt. Amrit Bir Kaur

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Constitution of India, 1950 — Article 19, 31A
Punjab Land Reforms Act, 1972 — Section 2, 3, 4, 5, 7

Citation : (2003) 135 PLR 296 : (2003) 3 RCR(Civil) 191

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : None, for the Appellant; H.S. Sran, Additional AG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present petition is to the order dated 29.11.1976 passed by the Collector Agrarian deciding the surplus area case of Shri Mohanjit Singh and for striking down Act No. 10 of 1973 i.e. Punjab Land Reforms Act, 1973 on the grounds mentioned in the petition.

2. The surplus area case of Mohanjit Singh landowner, the husband of the petitioner, was decided on 29.11.1976 under the provisions of Punjab Land Reforms Act, 1973 by clubbing the area of the petitioner with her husband Mohanjit Singh. The challenge in the present writ petition is to the legality of the Act as violative of her fundamental rights granting in Part 3 incorporated in the Constitution of India and being against the principles of natural justice, equity and fair play. It is alleged that a reading of the provisions of Sections 3(4)(10), 4, 5, 7, 8 and 9 particularly the definition of word family shows that it tends to discriminate between the major and minor, between male and female and between husband and wife. The validity of the Act is further challenged that the Act prohibits a person to make accretion to his assets in agricultural land whereas there is no such ceiling or prohibition on the accretion of interest as

such of a businessmen, shopkeepers, traders or the property owned and held by any company. It is, thus, discriminatory vis-a-vis agriculturists and other classes of the society.

3. The petitioner has alleged that the Financial Commissioner (Appeals) in ROR No. 828 of 1985-86 decided on 18.9.1992 has given a landmark judgment which is highly provoking and is also eye opener for the Legislature, the Executive and Judicial as well as to the Society at large. Copy of the order has been appended with the writ petition as Annexure P.2. It is pointed out that the learned Financial Commissioner has raised certain new grounds and questions which have never been considered by the Full Bench of this Court in a judgment reported as 1974 P L J 168 which has been reversed by the Hon''ble Supreme Court in a judgment reported as State of Punjab v. Sucha Singh 1977 P.L.J. 130. It is pointed out that the Act was neither viewed with the arguments and the points of view put forward by the Financial Commissioner nor the Supreme Court went into the legality of placing the enactment in Ninth Schedule. It is alleged that the Hon''ble Supreme Court did not examine the Full Bench on its own merits but decided the same by passing a short order on the basis of another judgment in respect of Maharashtra Agricultural Land (Ceiling on Holding) Act, 1961. It is further alleged that the writ petition (sic) different questions of law which were not considered by any of the Full Benches or by the Hon''ble Supreme Court to date.

4. The petitioner has alleged in the writ petition that the concept of family unit and clubbing together land held by each member of the family unit and applying the limitation or area in reference to the aggregation of such land are violative of Second proviso to Clause-I of Article 31-A of the Constitution of India. The petitioner has alleged that the very act of the State Legislature in putting the Punjab Land Reforms Act, 1972 in 9th Schedule is violative of the Part-III of the Constitution of India.

5. The said Act has been enacted as part of agrarian reforms. The family has been defined u/s 3(4) of the Act which reads as under:

(4) "family" in relation to a person means the person, the wife or husband, as the case may be, of such person and his or her minor children, other than a married minor daughter.

(10) "person" includes a company, family, association or other body of individuals whether incorporated or not, and any institution capable of holding property.

(13) "self-cultivation" means cultivation by a land-owner either personally or through any member of his family or through his brother, or through a servant or hired labour under the personal super-vision of the landowner or supervision of a member of his family, subject to the condition that the servant or hired labour is paid wages in cash or in kind or partly in cash and partly in kind but not as share of the produce."

The Hon''ble Supreme Court in a judgment reported as Dattatraya Govind

Mahajan and Others Vs. State of Maharashtra and Another, has upheld the provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 wherein family unit is laid down in Section 4(1) which provides:

"4(1) All land held by each member of a family unit, whether jointly or separately, shall for the purposes of determining the ceiling area of the family unit, be deemed to be held by the family unit."

That there is an explanation to this sub-section which explains a family unit to mean:

"(a) a person and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters; if any: or

(b) where any spouse is dead, the surviving spouse or spouses, and the minor sons and minor unmarried daughters; or

(c) where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses." Section 5, Sub-section (1) read with the First Schedule provides for different ceilings for different classes of lands in the various districts and talukas to the State and Sub-sections (2) and (3) lay down the method of computation of the ceiling area where different classes of lands are held by a person or a family unit. The Section 6 which is in the following terms :

"Where a family unit consists of members which exceed five in number, the family unit shall be entitled to hold land exceeding the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding shall not exceed twice the ceiling area, and in such case, in relation to the holding of such family unit, such area shall be deemed to be the ceiling area."

6. The Hon^{ble} Supreme Court in the judgment supra upheld the constitutional validity of the Act holding that even if the Act insofar as it induces artificial concept of a family unit and fixes ceiling on holding of agricultural land by such family unit, is violative of the second proviso to Clause (1) of the Article 31-A, it is protected by Article 31 B by reason of its inclusion in the Ninth Schedule. It may be noticed that the Full Bench judgment of this court reported as AIR 1974 Punjab 162 was considered along-with the civil appeals pertaining to Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 and the judgment of the Full Bench was reversed, vide a judgment of the same date. It was found that the provisions introducing the concept of a family unit and clubbing together lands held by each member of the family unit and applying the limitation of ceiling area in reference to aggregating of such land are not violative of Second proviso of Clause (1) of Article 31A of the Constitution of India. It was further held that even if they were violative of second proviso to Clause (1) of Article 31A they are protected by Article 31B of the Constitution of India. It will be beneficial to reproduce the following:

"The relevant provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 are in fact almost identical with the impugned provisions of the Punjab Land Reforms Act, 1972. While dealing with the constitutional validity of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1962 in Civil Appeals Nos. 132-1164 of 1976, we have pointed out in a judgment delivered today that these provisions introducing the concept of a family unit and clubbing together lands held by each member of the family unit and applying the limitation of ceiling area in reference to the aggregation of such lands are not violative of the second proviso to Clause (1) of Article 31A and even if they were, they are protected by Article 31B. The reasoning which has prevailed with us for sustaining the validity of the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 must apply equally in the present cases arising under the Punjab Land Reforms Act, 1972 and we must hold that the impugned provisions of the Punjab Land Reforms Act, 1972 are not in conflict with the second proviso to Clause (1) of Article 31-A and in any event they are protected from invalidation under Article 31-B."

Subsequently, the Constitutional Bench of Hon"ble Supreme Court in a Judgment reported as *Seth Nand Lal and Anr. v. State of Haryana* and Ors. 1980 P.L.J. 470 while considering the constitutional validity of Haryana Ceiling on Land Holdings Act, 1972 wherein its validity was challenged on the ground that it enacts an artificial definition of family which does not conform to any kind of natural families prevalent in the State like a Hindu Undivided Family known to Hindu Law or any family under Muslim Law etc. and that a double standard has been adopted in Section 4 in the matter of providing ceiling which leads to gross inequalities and as such these provisions are violative of Article 14 of the Constitution.

7. It was found that the said Act is piece of agrarian reform that squarely falls within Article 31-A of the Constitution, and therefore, the provisions would be immune from attack based on Articles 14, 19 and 31 of the Constitution of India. On behalf of the State ample material has been produced in the said case justifying the adoption of artificial definition of family and double standard for fixing the ceiling to negate the violation of Article 14. After considering the various reports including the report of committee on panel of Land Reforms under Planning Commissioner, extracts from a note prepared in the Land Reforms Division of the Planning Commissioner, extracts from Second Five year Plan it was found that the State had applied its mind seriously to the question whether the family should be adopted as a unit instead of an individual for applying ceiling on land holdings and what should be the size of the family and why artificial definition of the family should be adopted and why double standard of adoption one for the primary unit of the family and another in respect of a separate unit when living with the family was felt necessary. Ultimately, it was concluded that the material furnished on behalf of the State Government by way of jurisdiction for adopting an artificial definition of family and a double standard for fixing ceiling is sufficient to repel the attack on these provisions under Article

14. The Hon''ble Supreme Court also negated challenge to the requirement of furnishing declaration by the husband or in his absence by the wife or in the absence of both by the guardian of minor children on the ground that if husband were the selector of land which he desires to retain as the permissible area and gives away his wife's land as surplus, he will do so at his peril for in the land so retained as permissible tea, he and his wife shall have a share in the same proportion in which they owned or held their lands before the selection of their permissible area.:

8. Thus, the Hon''ble Supreme Court found that there is no question of any discrimination resulting to the wife from the selection being given to the husband u/s 9(4)(c) of the act. Consequently, the Supreme Court found that the provisions of Haryana Act in respect of the family unit is not discriminatory and violative of Article 14 of the Constitution of India.

9. The principal challenge of the petitioner was in respect of artificial definition given to family which has been negated by the Supreme Court in the judgment referred to above. Even subsequently, pan materia definition of family in the Haryana Act has been upheld. Therefore, we find no merit in the present petition. The Punjab Land Reforms Act extinguishes the rights of the land holder as a measure of agrarian reforms, therefore, the validity of the said Act cannot be challenged on the ground that it is inconsistent with, or takes away any of the rights conferred by Article 19 of the Constitution. The said Act has been included in the Ninth Schedule entry 78 as well.

10. Even if the petitioner has other ground to challenge the legality of the Act, the same cannot be permitted to be raised for the reason that the Act is included in the Ninth Schedule as well as for the reason that validity of the Act having been upheld by the Hon''ble Supreme Court it is not open for this court to entertain any other argument. All arguments to challenge the legality of the Act are deemed to have been raised and rejected while allowing the appeal of the State in the aforesaid judgment.

11. The Hon''ble Supreme Court has considered the nature of binding precedents of law declared by Supreme Court and held that the judgment of the Supreme Court cannot be by-passed on the ground that the same point had not been considered. In *Suganthi Suresh Kumar Vs. Jagdeeshan*, it has been so held:

"9. It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India. It is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by this court in *Anil Kumar Neotia and Others Vs. Union of India (UOI) and Others*, that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court."

In view of above, we find no merit in the writ petition. The same is dismissed.

Sd/- S.S. Nijjar.J.