

(1970) 02 SC CK 0056
In the Supreme Court Of India
Case No : Civil Appeal No. 1159 Of 1966

Smt. Bhagwan Kaur

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 13-02-1970

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1971) 3 SCC 826

Hon'ble Judges : Vishishtha Bhargava, J; S. M. Sikri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.M. SIKRI, J.-Our groups of tenants of the appellant, who is a landowner, filed separate applications under S. 22 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act XIII of 1955) thereafter referred to as the Act-for the grant of proprietary rights in respect of lands being cultivated by them. These applications were made sometime in May, 1960. On May 31/05/1960, the prescribed authority-Tehsildar Nabha- passed four orders granting the applications of the tenants on payment of 90 times the land revenue. We may mention that one group was constituted by Sundur, Ganga Ram, Ram Partap, Gurdial Singh and Dalip, sons of Kishan Singh.

2. The appellant filed four appeals to the Collector, Nabha Sub-Division. It was urged in these appeals that the prescribed authority had not allowed time to the appellant to file copies of the reservation forms which the appellant is alleged to have submitted, but the Collector held that no copy of the reservation form had been presented to the prescribed authority. Other points were also raised but apparently not seriously pressed.

3. The appellant then filed four revisions before the Commissioner who forwarded them to the Financial Commissioner for disposal. The Financial Commissioner by four orders, dated December 6, 1960, dismissed the revisions. The Financial

Commissioner observed :

"IT is admitted that the petitioner owns more than the permissible limit of land, and that she has failed to exercise her right of reservation provided by S. 5. The tenants are, therefore, prima facie, entitled to acquire proprietary rights in their tenancy under S. 22, read with S. 20 and 7-A of the Pepsu Tenancy and Agricultural Lands Act, 1955. The only objection to the acquisition raised by the petitioner's counsel is that the landowner had filed a return to the Collector under S. 32-B of the Act, and consequently should be allowed to retain her land equal to the permissible limit. This argument is understandable because that S. benefits landowners and tenants who held land under their personal cultivation in excess of the permissible limit. In that event landowners and tenants could select 30 acres from their selfcultivation but is under the cultivation of the tenants themselves. This being so. the petitioner cannot derive any benefits from S. 32-B. Having failed to reserve the land within the prescribed period she has no option but to acquiesce in the acquisition of the proprietary rights by her tenants. The result, unfortunately, will be that the landowner will be deprived of all her land, including the permissible limit allowed to a landowner, but this result cannot be avoided in the case of landowners who have failed to exercise their right of reservation within the prescribed period."

4. The appellant then filed a petition under Article 226 of the Constitution in the High court of Punjab impugning all the 12 orders mentioned above. The High court, although impressed by the inequity of the legislation, felt powerless and dismissed the petition. The appellant having obtained certificate of fitness from the High" court, the appeal is now before us.

5. The learned counsel for the respondent, Sardar Kartar Singh Chawla, raised a preliminary objection that the appeal had abated because Ram Partap, one of the tenants in one of the groups of tenants, mentioned above, had died on 1/03/1965. It was only on 25/07/1966, that application was made to the High court for setting aside the abatement. This application was dismissed by the the High court on 20/03/1967. The High court (Narula, J.) held that the application was barred by time as it was not accompanied by application under S. 5 of the Limitation Act. This order has become final because no appeal to the Supreme court was filed against the order. It is clear that the appeal insofar as it deals with the group of tenants of which Ram Pratap was a member has abated. But Mr. Chawla says that the whole appeal has abated because only one petition under Article 226 was filed. We are unable to appreciate how the fact that one petition was filed is relevant to the determination of the question of abatement. The other groups of tenants held separate lands, they had separate rights and they had been granted proprietary rights in separate lands and on separate terms. We are unable to hold that the whole appeal has abated.

6. In order to appreciate the merits of the case it is necessary to set out the relevant statutory provisions. The Pepsu Tenancy and Agricultural Lands Act, 1955, was enacted to amend and consolidate the law relating to tenancies of

agricultural lands and to provide for certain measures of land reforms. S. 3 defines the expression "permissible limit" to mean, in brief, "thirty standard acres of land and where such thirty acres on being converted into ordinary acres exceed eighty acres, such eighty acres". S. 5 provides for reservation of land for personal cultivation in the following terms:

"5(1) Subject to the-provisions of this section, every landowner owning land exceeding thirty standard acres shall be entitled to select for personal cultivation from the land held by him in the state as a landowner any parcel or parcels of land not exceeding in aggregate area the permissible limit and reserve such land for personal cultivation by intimating his selection in the prescribed form and manner to the Collector:

Provided that in making such selection, the landowner shall include to the extent of the permissible limit, all land which he held for personal cultivation immediately before the commencement of the President's Act.

2. The right conferred by this S. on a landowner to reserve land for personal cultivation shall cease if it is not exercised,

(A) within a period of one year from the commencement of the President's Act, where the landowner is a member of the Armed Forces of the Union; and

(B) within a period of six months from such commencement, in any other case."

The expression "President's Act" is defined to mean the Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953 (President's Act 8 of 1953).

7. Ch. III of the Act deals with the general rights of tenancy. S. 7 provides that no tenancy shall be terminated except in accordance with the provisions of the Act or except on certain grounds. S. 7-A(1) reads:

7-A(1) Subject to the provisions of Ss. (2) and (3) a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 may be terminated on the following grounds in addition to the grounds specified in S. 7, namely-

(A) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Ch. II ;

(B) that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit :

Provided that no tenant shall be ejected under this sub-section-

(I) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(II) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres until he is allotted by the State

government alternative land of equivalent value in standard acres."

CHAPTER IV deals with the acquisition of proprietary rights by tenants, and S. 20 defines the expression "tenant" as follows :

"20. In this Chapter, the expression "tenant" means a tenant as defined in clause (k) of S. 2, who is not liable to be ejected-

(A) under clauses (a) and (b) of Ss. (1) of S. 7-A ; or

(B) under clauses (a) and (b) of Ss. (2) of S. 7-A:

Provided that this definition shall not apply to a tenant who is to be allotted by the State government land under the proviso to Ss. (1) of S. 7-A."

S. 22 reads:

"22(1) Subject to the other provisions contained in this Act, a tenant shall be entitled to acquire from his landowner in respect of the land comprising his tenancy the right, title and interest of the landowner in such land (hereinafter referred to as the "proprietary rights") in the manner and subject to the conditions hereinafter provided.

2. Every tenant intending to acquire proprietary rights shall make an application in writing to the prescribed authority in the prescribed manner, containing the following particulars, namely

(A) the area and location of the land in respect of which the application is made ;

(B) the name of the landowner from whom proprietary rights are to be acquired;

(C) such other particulars as may be prescribed.

3. The right conferred upon a tenant to acquire proprietary rights in respect of any land under this S. may, if such tenant has sublet the land be exercised by the sub-tenant to the exclusion of the tenant."

8. No objection was raised before the Tehsildar, the Collector or the Financial Commissioner that the respondents were not tenants within the definition in S. 20. During the course of discussion it, however, appeared that the inequity which has been noticed by the High court may perhaps be obviated by giving close attention to the definition of the word "tenant" and applying it to S. 22. If this definition is applied it would appear that not only a tenant who held land which had been reserved by the landowner for his personal cultivation but also a tenant of a landowner who owns 30 standard acres or less of land and the land falls within his permissible limit, would be debarred from making an application under S. 22. It may be, though we do not decide the point in this case, that a landowner who has not reserved under S. 5, may at one stage after some tenants have exercised option under S. 22 fall within the description in S. 7-A(1) (b) of the Act. But, as we have said, this point was taken before the revenue authorities and it is too late now to allow the point to be raised because if this

point was allowed to be raised various questions will have to be decided in order to finally decide the case. It would have to be decided if this interpretation was accepted as to at what stage landowner started falling under S. 7-A(1)(b). It may also be that this argument might be refuted on the ground that the tenants when they made the applications did fall within the definition under S. 20 as at that time the landowner owned more than 30 standard acres.

9. Be that as it may, we have to decide the case on the points taken before the revenue authorities and the High court. The main point that was urged before the High court was that the provisions of Ch. IV-A, which was inserted into the Act by Pepsu Act XV of 1956, somehow helped the appellant. S. 32-A provides that no person shall be entitled to own or hold as landowner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limit, and further that for the purpose computing the permissible limit the provisions of clauses (d) and (e) of Ss. (2) of S. 3 shall not apply. Clause (d) of Ss. (2) of S. 3 deals with the case when a landowner died within a period of six months from the commencement of the President's Act, and clause (e) thereof stipulates that "any transfer of land made by the land-owner after the commencement of the President's Act and clause (e) thereof stipulates that "any transfer of land made by the landowner after the commencement of the President's Act shall be disregarded."

10. S. 32-B of Ch. IV-A provides for returns by persons having land in excess of the ceiling in the following terms :

"32-B. 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 Land (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 this Chapter.....(Proviso omitted).

11. It is the case of the appellant that she filed a return under S. 32-B. According to the respondents she was not entitled to file a return because she did not own or hold as landowner or tenant land under her personal cultivation which in the aggregate exceeded the permissible limit. The High court held that S. 32-B applies only to a landowner owning or holding land under his personal cultivation which in the aggregate exceeds the permissible limit, and repelled the contention that the words "under his personal cultivation" applied only to a tenant and not to a landowner.

12. It seems to us that although this interpretation leads to some hardship on some persons this is the correct meaning, and accordingly the appellant cannot

take advantage of S. 32-B and the subsequent provisions in Ch. IV-A. If Ch. IV-A is out of the way then it is difficult to hold that S. 22 does not apply. S. 22 clearly enables the respondents to put in applications to acquire proprietary rights as it was not contested that they were tenants within the definition of the word in S. 20.

13. The learned counsel for the appellant further urges that the Act is hit by Article 14 of the Constitution. This point is not open for any further discussion because this court has held that this Act is protected by Article 31-A of the Constitution and cannot be challenged on the ground that it violates Article 14. (See *Pritam Singh Chahil v. The State of Punjab*; and *Inder Singh v. State of Punjab*).

14. In the result the appeal fails and is dismissed. In the circumstances there will be no order as to costs.