

(1982) 03 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 86 of 1979

Surakshat Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 18-03-1982

Acts Referred:

Punjab Land Reforms Act, 1972 — Section 26, 26(1), 4, 4(2)
Punjab Land Reforms Rules, 1973 — Rule 10, 8, 9

Citation : AIR 1982 P&H 356

Hon'ble Judges : S.S. Sandhawalia, C.J;D.S. Tewatia, J

Bench : Division Bench

Judgement

D.S. Tewatia, J.—The questions of law that arise for consideration in these Letter Patent Appeals Nos. 80 to 88 of 1979 at the instance of the appellant landowners in the context of the enforcement of the Punjab Land Reforms Act, 1973, hereinafter referred to as the Act, can be formulated thus:

- (1) Whether Rules 8, 9 and 10 of the Punjab Land Reforms Rules, 1973, are beyond the rule-making power of the State Government?
- (2) Whether Rules 8, 9 and 10 of the Punjab Land Reforms Rules, 1973, do not carry out the purposes of the Rules and the Act for computing the permissible area in accordance with the Legislative mandate?
- (3) Whether insertion of Item No. 9 in Schedule "A" to the Punjab Land Reforms Rules, 1973, in the list of canals mentioning its projected intensity of 80 per cent is beyond the powers of the State Government?

The learned single Judge held that the said rules were not only within the rule making power of the State, but were also meaningfully relevant for carrying out the purposes of the Act, and also further held that the State Government was competent to insert item No. 9 in Schedule "A" pertaining to Shah Nahar and fixing its intensity at 80 per cent.

2. The relevant provisions of the Act and the Rules deserve noticing at the very outset. S. 4, which prescribes the permissible area of the landowner and is thus crucial in judging in particular as to whether the rules help in carrying out the purposes of the said provision, is in the following terms:--

"4. (1) Subject to the provisions of Section 5, no person shall own or, hold land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area;

(2) "Permissible area" shall mean in respect of-

(a) land under assured irrigation and capable of yielding at least two crops in a year (hereinafter in this Act referred to as the "first quality land"), seven hectares; or

(b) land under assured irrigation for only one crop in a year, eleven hectares; or

(c) barani land, 20.5 hectares; or

(d) land of other classes including banjar land, an area to be determined according to the prescribed scale with reference to the intensity of irrigation productivity and soil classification of such classes, having regard to the respective valuation and the permissible area of the classes of land mentioned at (a), (b) and (c) above, subject to the condition that the area so determined shall not exceed 21.8 hectares;

Provided that-

(i) where land consists of two or more classes, the permissible area shall be determined on the basis of relative valuation of such classes of land, subject to the condition that it does not exceed 21.8 hectares.;

xxx xxx

(6) For the purpose of valuation of land one and quarter hectares of banjar land shall be treated as equivalent in value to one hectares of barani land.

xxx xxx"

Section 7, which authorises the Collector to determine the permissible area of the landowners, reads:

"7. (1) On the basis of the information given in the declaration furnished u/s 5 or the information obtained u/s 6, as the case may be, and after making such inquiry as he may deem fit, the Collector shall, by an order, determine the permissible area and the surplus area of a landowner or a tenant as the case may be.

xxx xxx

Rules 7, 8, 9, 10 and 12 of the Punjab Land Reforms Rules, 1973, hereinafter referred to as the Rules, are in the following terms :

"7. On receipt of form A, the Collector shall, after satisfying himself as to the correctness of the entries made therein, and after giving an opportunity to the landowner, mortgagee with possession or tenant, as the case may be, of being heard and after making such enquiry as he may deem necessary by an order, determine the permissible area and the surplus area of a land owner or mortgagee with possession or the tenant as the case may be. A copy of such order shall be endorsed to the Circle Revenue Officer,

8. The valuation of different classes of land shall be as follows :

(i) Land under assured irrigation and capable of yielding at least two crops in a year--100 per cent.

(ii) Land under assured irrigation for only one crop in a year--63. 6 per cent.

(iii) Barani land--34 per cent.

(iv) Sailab, Bet Sailab, Dakar, Roali, Bhud, Chhamb, Thur, Sem, Kallar and Banjar Jadid, not falling under sub-clauses (i), (ii) and (iii)--34 per cent.

(v) Banjar--27 per cent.

9. (1) Where land is command for irrigation by a perennial canal the area of such land shall be multiplied by half of the irrigation intensity ratio specified against such a canal in Schedule "A". The figure thus arrived at shall be treated as the land under assured irrigation and capable of yielding at least two crops in a year and the remaining area of such land shall be treated as Barani land.

(2) Where land is commanded for irrigation by a non-perennial canal, the area of such land shall be multiplied by the irrigation intensity ratio specified against such a canal in Scheduled "A". The figure thus arrived at shall be treated as the land under assured irrigation for one crop in a year and the remaining area of such land shall be treated as Barani land;

(3) Where land is commanded for irrigation by a tubewell owned by the Government, the area of such land shall be multiplied by half the irrigation intensity ratio specified against such a tubewell in Schedule "A". The figure thus arrived at shall be treated as the land under assured irrigation and capable of yielding at least two crops in a year and the remaining area of such land shall be treated as Barani land.

(4) Where land is irrigated by water drawn from a privately owned tubewell, pumping set, open or bore, the land under assured irrigation and capable of yielding at least two crops in a year shall be according to the norms specified in Schedule "B". The remaining area shall be treated as Barani land.

(5) Where irrigation by canal water or Government owned tubewell is supplemented by water drawn from a privately owned tubewell, pumping set, open well or bore, the area determined in accordance with the provisions of Schedule "B" shall also be taken into consideration for the purpose of this rule.

(6) Where a tubewell, a pumping set, an open well or a bore has been installed on or before the appointed day in the land described in the Jamabandi prepared immediately before that day as Banjar Jadid or Banjar Qadim, the land determined in accordance with the provisions of Schedule "B" shall be treated as land under assured irrigation and capable of yielding at least two crops in a year or land under assured irrigation for only one crop in a year depending on whether according to the Khasra-Girdawari record of the year 1970 at least two crops were raised on this land or only one crop was raised.

10. For the purpose of proviso (i) of clause (d) of sub-section (2) of S. 4, the land owned or held by a person shall be valued according to the relative valuation of various classes of land as given in Rules 8 and 9 and the whole of the land shall be converted into the first quality land. After it is so valued and converted, the land in excess of seven hectares of first quality land shall be treated as surplus area. The figure arrived at on the basis of total valuation of all the classes of land shall be treated as land of the class referred to in clause (a) of sub-section (2) of S. 4 and the permissible area and the surplus area shall be determined accordingly.

Illustration.

xxx xxx 12. For the purpose of these rules, the relevant revenue record for determining whether the land is irrigated or unirrigated shall be the entries in Khasra Girdwari record for the year 1970 :

Provided that when the land is acquired by a person on or after the appointed day, in any manner, other than by inheritance, bequest or gift from a person to whom he is an heir, the relevant revenue record for the aforesaid purpose shall be the Khasra Girdwari record prepared immediately before such acquisition."

The determination of the permissible area of a landowner involves, in the first instance, the finding out as to how much land of a given category a land owner is possessed of and it is in this area that formulation of the principles and objective criteria can usefully be left to the Government as the delegate of the legislature if the legislature, expressly or by necessary implication, had delegated the performance of the said task to the authority indicated in the Act.

3. Section 26(1) is the relevant provision, which envisages delegation of authority to the State Government to make rules for carrying out the purposes of the Act, and is in the following terms :

"26. (1) The State Government may, by notification in the official gazette, make rules for carrying out the purposes of this Act.

(2) xxx xxx"

One of the points, that was canvassed before us with some persistence by Mr. Bhandari, was that the Rules could be framed only in order to give effect to the mandate given in clause (d) of sub-section (2) of S. 4 of the Act with regard to

the land mentioned in clause (d) and such rules, therefore, could have no application to the determining of permissible area under cls. (a), (b) and (c) of sub-section (2) of S. 4.

4. Whether the rules, which have been impugned help in carrying out the purposes of cls. (a), (b) and (c) of sub-section (2) of S. 4 or not would be a matter distinct from the proposition whether application of these rules could be limited to the carrying out of the purposes of clause (d) of sub-section (2) of S. 4 only.

5. Perusal of S. 26 of the Act would disclose that the legislature has authorised the State Government to make rules for carrying out the purposes of the Act.

6. The primary purpose of the Act is to have the permissible and surplus area of a landowner determined which, in turn, is made dependent upon the determination of classes and categories of land that a landowner is possessed of. Therefore, the State Government is competent to frame such rules as may help in identifying the various categories of land fixing the comparative values thereof. Whether the impugned rules framed by the State Government in this regard are helpful in that regard is a matter that shall be presently examined.

7. Perusal of S. 4 would show that the legislature has classified the land of a landowner, firstly, with reference to the fact as to whether irrigation facility of an assured nature is available to the given land for one crop or two crops or not at all and, secondly, with reference to the quality of land. While land falling under cls. (a), (b) and (c) of sub-section (2) of S. 4 of the Act has been distinctly identified with reference to first criterion, the land falling under clause (d) of sub-section (2) of S. 4 of the Act is identified as a distinct category with reference to the second criterion.

8. While examining the quality of land falling under S. 4(2)(a) and (b) of the Act, the question arises as to what do we mean by a land capable of raising one crop or two crops. Can one say that if a given acre of land, which is capable of yielding only a few kilograms of a given crop sown therein twice a year even when the going is good, that is, when the assured irrigation is available round the year and factors such as natural calamities or other things, which may diminish the yield or may tend to destroy the crop have not interfered with the yield, would fall in the category of land envisaged in S. 4(2)(a)? In other words, if the quality of the soil is such that it is capable of yielding only so much, then can one say that such a land with assured irrigation round the year would fall under clause (a) and be treated as of the best quality or if the assured irrigation facility is for only one crop, then it would fall under clause (b) and thus be adjudged of the second best quality. Apparently, this could not have been the intention of the legislature and, therefore, in using the expression "capable of yielding one crop or two crops in a year" under cls. (a) and (b) of sub-section (2) of S. 4 of the Act, the legislature must have meant "capable of giving normal yield", which a normal land should be capable of yielding with the aid or

irrigation, other factors that may diminish or increase the yield, for the moment, being kept out of reckoning.

9. The land falling under clause (d) of sub-section (2) of S. 4 of the Act when read with sub-rules (iv) and (v) of R. 8 of the Rules, would be Sailab, Bet Sailab, Dakar, Rosli, Bhud, Chhamb, Thur, Sem, Kallar, Banjar Jadid and Banjar.

10. "Banjar Land" as defined in S. 3(2) of the Act means "land which has remained uncultivated for a continuous period of not less than four years immediately preceding the date on which the question whether such land is Banjar or not arises". It carries valuation of 27 per cent, as per sub-rule (iv) of R. 8. Barani land is a land which is not commanded by irrigation source of any kind except rain. It carries 34 per cent valuation as per R. 8(iii). The land excepting Banjar land which falls under Ss. 4(2)(d) of the Act also carries a valuation of 34 per cent, irrespective of the fact as to whether such type of land is commanded or not by irrigation source of the kind envisaged for the land falling under clause (2)(a) and clause (2)(b). That means that the legislature did not intend to treat every quality of land, which is assured of irrigation for one crop or two crops, as land falling under S. 4(2)(a) and (b) respectively. Hence, on the parity of reasoning, the land falling under cls. (a) and (b) would be of a quality other than the one which is mentioned in clause (d) of sub-section (2) of S. 4 of the Act, that is, if the land is one which answers to the description of the land mentioned in clause (d), read with sub-rules (iv) and (v) of R. 8 of the Rules, then even though it is commanded by an irrigation source capable of supplying water for one crop or for two crops, the land would not fall under cls. (a) or (b), as the case may be, and would be treated as falling under clause (d) of sub-section (2) of S. 4 of the Act.

11. If a landowner's holding comprises of land wholly of one category or the other, then of course no difficulty arises in computing the permissible area, but where the holding of a landowner is a mixed bag comprising of various categories of land, then it becomes necessary to know the comparative value of each category of land so that one category of land can be converted into the other category of land, Rule 8, therefore, which fixed the comparative value of all the categories of land, was intended to facilitate the said task and, therefore, clearly subserves the purposes of the Act. Hence, its formulation is clearly within the competence of the State Government by virtue of the provisions of S. 26 of the Act.

12. Mr. Bhandari, learned counsel for the appellant, argued that sub-rules (1) and (2) of R. 9, as formulated, usurped the jurisdiction of the Collector that he exercised u/s 7 of the Act in determining the permissible and surplus areas of a landowner insofar as the assessment of the area of land falling under cls. (a) and (b) of sub-section (2) of S. 4 of the Act with the landowner is concerned, in that the Collector shall have to hold the area as derived with the aid of formulae given in sub-rr. (1) and (2) of R. 9 as the area falling under cls. (a) and (b) of sub-section (2) of S. 4 of the Act.

13. We do not think there is any merit in this contention, in view of the interpretation that we have put on the provisions of cls. (a), (b) and (d) of sub-section (2) of S. 4 of the Act, for we have held that only the land with character and quality other than the one mentioned in clause (d) of sub-section (2) of S. 4 of the Act would be taken into consideration when applying the formulae mentioned in sub-rr. (1) and (2) or R. 9 of the Rules. Hence, the Collector shall have to objectively identify the nature and character of the land and if he finds that the nature and character of a given area of a landowner is distinct from the one mentioned in clause (d) of sub-section (2) of S. 4 and identified by sub-rr. (iv) and (v) of R. 8, then he would have to see as to whether such area is commanded by a perennial canal or non-perennial canal. Such of the area as is commanded by a perennial canal, multiplied by the intensity of the canal according to the formula given in clause (a), would determine the area that would be deemed to be assured to irrigation and capable of raising two crops, and in the case of non-perennial canal the area would be deemed to be an area assured of irrigation and capable of raising one crop, as would be shown when considering these sub-rules of R. 9 hereinafter.

14. So far as R. 9(1) of the Rules is concerned, it is clearly intended to subserve the purpose of clause (a) of sub-section (2) of S. 4 of the Act in that the expression "assured" used in clauses (a) and (b) was intended to emphasise the fact that it was not enough that irrigation facility was available for one crop or two crops, but the same should also be sufficient to the need of the crop, that is, if a given crop needs eight watering, then water from the given source should be available for all the eight watering, assuming that the entire holding is under the given crop. To determine the same in a precise manner regarding every crop and every holding with reference to the source of irrigation may not be always feasible, hence the rule-making authority has devised, under sub-rule (1) of R. 9 a formula which appears to make sufficient allowance for variations in that regard and treats the area so arrived at out of the total holding as the area of "A" quality capable of assured irrigation for growing two normal crops therein and the rest to be treated as Barani, even though the same fell within the command of the given source or irrigation. Hence, it would be seen that sub-rule (1) of R. 9 clearly subserves the purpose of clause (a) of sub-section (2) of S. 4 and is, therefore, valid being clearly within the competence of the State Government to make the same.

15. Sub-rule (2) of R 9 of the Rules is intended by the rule-making authority, as would be presently demonstrated, to subserve the purpose of clause (b) of sub-section (2) of S. 4 of the Act. Explaining the above by an illustration, let us assume that one landowner owns 100 hectares of land, which was of a kind falling under clause (b) of sub-section (2) of S. 4 of the Act and commanded for irrigation by a non-perennial canal of 100 per cent irrigation intensity, then his area, which would answer the description of the category of land mentioned in clause (b) of sub-section (2) of S. 4 would be : $100 \times 100 = 100$ hectares.

16. This 100 hectares of land, when converted in terms of first quality land, comes to : $100 \times 63.6 / 100 = 63.6$ hectares.

17. When regard is had to the mutual ratio of permissible area fixed for land falling under cls. (a) and (b), it works out to be 7 : 11 hectares, that is, 100 hectares of the category of land falling under clause (b) is equal to 63.6 hectares of land falling under clause (a). The same ratio works out, as already shown above when formula mentioned in sub-rule (2) of r. 9 is applied. Hence, sub-rule (2) of R. 9 is also clearly valid and within the competence of the State Government.

18. As far as R. 10 of the Rules is concerned, it merely provides that if a landowner owns land of various categories, then, with the aid of Rr. 8 and 9. the value of all the categories of land, other than the category falling under clause (a) of sub-section (2) of S. 4 of the Act, shall be expressed in terms of the value of the land falling under clause (a) of sub-section (2) of S. 4 of the Act and then permissible area and surplus shall be determined accordingly. For example, a landowner owns 2 hectares of "A" category of land and 100 hectares of Banjar land and if he wishes to retain his entire "A" quality land, then his 100 hectares of Banjar land shall be converted into "A" quality land with the aid of valuation fixed by R. 8 and to this 2 hectares of "A" category would be added and then out of the total area so arrived at, 7 hectares would be declared as permissible area and the rest as surplus. However, if he was to select his entire permissible area from his 100 hectares of Banjar land, then R. 10 would have no application, for in that case by virtue of clause (d), he would be given by way of permissible area only 21.8 hectares out of 100 hectares and the rest of the Banjar land along with 2 hectares of "A" category of land would, be declared surplus with him. As would be seen from the above, R. 10 is useful and meaningful in carrying out the purposes of clause (d) of sub-section (2) of S. 4 of the Act.

19. Now coming to the addition of "Shah Nahar" as Item No. 9 in Sch. "A" to the Rules with assessed irrigation intensify of 80 per cent, the point raised on behalf of the appellant is that if irrigation intensity of perennial canal like Bhakra canal is assessed at 62 per cent, how is it that irrigation intensity of a non-perennial canal is assessed at 80 per cent, when, admittedly, there are no headworks for the purpose of measuring the irrigation intensity of "Shah Nahar".

20. In the written statement filed on behalf of the respondents, the stand taken is that "Shah Nahar" project was completed before the enforcement of the Act and that its projected intensity was 80 per cent. It was averred that for the purpose of either judging or fixing irrigation intensity of a given canal, it is not necessary that there should be headworks on the given canal.

21. The learned counsel for the appellant, however, has not been able to show in any manner whatsoever that the irrigation intensity of "Shah Nahar" could not be 80 per cent. So we must take it that the irrigation intensity of "Shah Nahar" has been correctly fixed by the Government--it being a technical matter and the

Government having the assistance of technical experts on its command. Therefore, the insertion of Item No. 9 in Schedule "A" to the Rules is clearly within the competence of the State Government.

22. In view of the interpretation that we have put upon Section 4 of the Act. Rr. 8, 9 and 10 of the Rules are intra vires the provisions of the Act and, therefore, clearly valid.

23. For the reasons aforementioned, finding no merit in these appeals (L. P. As. Nos. 80 to 88 of 1979) we dismiss the same, but with no order as to costs.

S.S. Sandhawalia, C.J.

24. I agree.

25. Appeals dismissed.