(1969) 05 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1745 of 1964

Tara Singh APPELLANT

Vs

The Financial Commissioner, Punjab and others RESPONDENT

Date of Decision : 30-05-1969

Acts Referred:
Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 32NN

Citation : (1969) 05 P&H CK 0049

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Advocate : K.R. Mahajan, for the Appellant; B.S. Dhillon, Advocate General, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Gurdev Singh, J.—The Special Collector (I) Punjab by his order, dated 21st June, 1963 declared 19.21/2 Standard Acres of land belonging to the petitioner Tara Singh of village Burj Baghelsinghwala, district Sangrur as surplus. This order having been upheld in appeal, the petitioner went up in revision to the Financial Commissioner before whom it was complained that in evaluating the land the provision contained in section 32 NN of the Pepsu Tenancy and Agricultural Lands Act (hereinafter called the Act) had been ignored in as much as the valuation had been made not with reference to the condition of the land as it was on 30th October, 1956, but on the basis of the last jamabandi, and that Banjar Qadim and Ghair-mumkin land has not been left out of consideration while assessing the surplus area. The learned Financial Commissioner found that though in accordance with the provisions of section 32-NN of the Act the condition of land as it stood immediately before 30th October, 1956, had to be taken into account, the material placed on record by the petitioner did not indicate that the condition of land as stated in the last jamabandi had changed and it was different on the relevant date, 30th October, 1956. With regard to the second contention, he pointed out that in accordance with the specific provision contained in section 32-

NN of the Act the Ghair-mumkin land had to be included in the definition of "land" and the record disclosed that Ghair-mumkin land had not been taken into account by the authorities in computing the permissible area of the petitioner. Being still dissatisfied, the petitioner has approached this Court under Articles 226 and 227 of the Constitution for quashing the order of the Special Collector, which has been upheld in appeal and revision under the Act.

2. Though several grounds were taken in the petition for attacking the validity of the impugned orders, at the hearing before me, Mr. K.K. Mahajan, appearing for the petitioner, has confined his case to the following contentions:

(i) that in assessing the surplus area the Collector had acted in violation of section 32-NN of the Act, which provides that in evaluating the land for converting it in to Standard Acres, the Collector has to look to its kind immediately before 30th October, 1956 and the determination of the surplus area on the basis of the jamabandi prepared much earlier to that date is illegal;

(2) that the valuation of the land had not been correctly made as the report of the Qanungo, dated 8th February, 1962, which was submitted in obedience to the order of the Collector (Agrarian) dated 25th October, 1961, showed that a few Khasra numbers were banjar at the spot, had been ignored, and

(3) that the sons of the petitioner who formed joint Hindu family could not be denied their independent right to hold 30 Standard Acres of land, and section 32-KK of the Act is unconstitutional being hit by Article 14 of the Constitution. 3 So far as the last contention is concerned, Mr. K.R. Mahajan as fairly conceded that the matter is now concluded by the decision of their Lordships of the Supreme Court in Inder Singh v. The State of Punjab AIR 1967 S.C. 177 wherein the constitutional validity of section 32-KK has been upheld.

4. In support of the first two contentions, Mr. Mahajan relied upon section 32-NN and urges that for evaluating the land held by a person and determining surplus area, the Collector has to look to its kind immediately before 30th October, 1956, and the evaluation on the basis of the Jamabandi prepared much earlier is not in consonance with law. This contention is well-founded. The language of section 32-NN is clear and leaves no doubt that the condition of the land as it stood immediately before 30th October, 1 956, has to be taken into account, and the Explanation to rule 5 of the Pepsu Tenancy and Agricultural Rules, 1958 which provides that "for the purpose of determining the class of any land the entries in the latest Jamabandi of such land shall be conclusive, "is not in consonance with section 32-NN of the Act. Accordingly, the valuation of the land on the basis of the latest Jamabandi prepared much earlier than 30th October, 1956, treating it as a conclusive evidence of the condition of land, is not in accordance with law especially when the order shows that the Special Collector had ignored the provision of section 32-NN, which specifically requires him to determine the condition of land as it was immediately before 30th October, 1956. This is the view which was taken by P.C. Pandit J. in Maghar Singh v. The Punjab State

(1967) 69 P.L.R. 944 where his Lordships observed:

It is undisputed that the valuation entirely depends on the kind of the land and if the quality of the land has either decreased or increased since the preparation of the latest jamabandi, the basis for its evaluation should be its kind immediately before the 30th of October, 1956 and not its class recorded in the latest Jamabandi.

5. It may, however, be pointed out that in the case with which Pandit J. was dealing, it was admitted on behalf of the State that the land had been evaluated with reference to its condition as it was on 21st August, 1956 and not immediately before 30th October, 1956. Furthermore, the Khasra Girdawaris for the years 1955 to 1963 were produced before the authorities which show that the condition of land as recorded in the latest jamabandi was not correct.

6. Recently this decision has been followed by H.R. Sedhi J. in Dalip Singh v. The Financial Commissioner, Punjab, Chandigarh 1969 L.L.T. 24 observing as follows:

The language of section 32-NN makes clear beyond any manner of doubt that for evaluating the land of any person at any time under the Act, it is the date of the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, which is to be taken into consideration. In the instant case there was no justification for the Collector to have determined the surplus area on the 5th January, 1960, by taking into account the Jamabandi of 1951-52 when Jamabandi of 1955-56 was available, if the case was to be decided on the basis of Jamabandi''s alone. The observations of P.C. Pandit J. in Maghar Singh v. The Punjab State with which I am in respectful agreement, are to the effect that whatever be the position of Jamabandis, the valuation of the land immediately before the commencement of the Act has to be taken notice of in determining surplus area.

7. Thus, the correct position for valuation of the land seems to be that in determining the surplus area the authorities have taken into account its condition as it was immediately before 30th October, 1956, and not at any antecedent or subsequent time, and the provision contained in the Explanation to rule 5 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, that the entries in the Jamabudis shall be taken as conclusive, is in excess of the statue and it cannot confer any right on the authorities to treat the evidence furnished by the latest Jamabandi as conclusive.

8. This, however, does not end the controversy that has arisen in this case. The statement of Jaw as given above with regard to the interpretation of section 32 NN does not warrant the contention, which has been raised on behalf of the petitioner by Mr. Mahajan that in assessing surplus art a and acting u/s 32-NN, the latest Jamabandi if it had been prepared sometime before 30th October, 1956, is not at all to be taken into account and is of no value. In ascertaining the various facts with regard to the land, including its kind, the authorities cannot be expected nor are they required, to go from field to field; and to ascertain at the

spot what its actual condition was just before 30th October, 1956. In fact, most often than not the question of determination of surplus area has arisen after 30th October, 1956. If that is so, it is obvious that spot inspection by the authorities by going to the lands concerned after 30th October, 1956 will be of no use as on that inspection the authorities will find the condition of the land as it is on the day of the inspection and it will not be possible for them to ascertain in what condition the land was just before October, 1956. In that situation, the best evidence with regard to the condition of the land would be that which is recorded in the revenue papers. If the Jamabandi is there, that will be a valuable piece of evidence as u/s 44 of the Land Revenue Act a statutory presumption of correctness attaches to the entries contained therein. If the Jamabandi is old and does not embody the correct position with regard to the nature of the land as it is immediately before 30th October, 1956, then the Khasra Girdawaris may be of some assistance. Though they do not carry presumption of truth, but all the same they are relevant pieces of evidence for the purpose of the enquiry. In the Explanation to rule 5, to which reference has been made, it has been provided that the evidence furnished by the latest Jamabandi is conclusive. This was apparently with a view to prevent scramble for obtaining alterations in the revenue records, which, it is a notorious fact can feasible changed with the assistance of unscrupulous and corrupt officials, especially Patwaris, and Qanungos. The amendme it affected by the introduction of section 32-NN appears to have been necessitated by the fact that where in some areas the latest Jamabandis were quite old and because of the recent development in Agriculture and other factors they did not correctly represent the condition of the land, to avoid hardship to the land-owner the conclusiveness attached to the Jamabandi was taken away. The effect of this amendment is to enable the land owner concerned to rebut the presumption attaching to the entries in the Jamabandi and to show that the latest Jamabandi not represent the correct position of the land as it was immediately before 30th October, 1956. I am not prepared to accede to the contention that by introduction of section 32-NN the legislature intended to exclude the Jamabandi entirely from consideration in determining the quality of land etc., while assessing the surplus area, or to take away the statutory presumption of correctness which attaches to such revenue records u/s 44 of the Land Revenue Act. In this view of the matter, I am of the opinion that the latest Jamabandi is a valuable piece of evidence and the entries contained therein must be presumed to be true and given effect to unless they, are proved to be otherwise. The extent of the presumption that attaches to entries from the records of rights and annual records, including the Jamabandis is stated in section 44 of the Land Revenue Act in these words:

An entry made in a record of rights in accordance with the law for the time being in force or in an annual record in accordance with the provisions of this chapter and the rules thereunder shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

9. The concluding words of this section are significant. They lay down that the

presumption of correctness attaches to such entries and they have to be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. Thus, where the assessment of surplus area is made on the basis of the last Jamabandi without there being anything to indicate that in the interval between preparation of that Jamabandi and 30th October, 1956, the condition of the land had changed the valuation made cannot be considered to be illegal merely on that account. When valuation is made on the basis of the last Jamabandi, it is open to the land-owner concerned to contend before the authorities concerned or to satisfy them that the entries contained in the Jamabandi did not correctly represent the state of affairs as it existed immediately before 30th October, 1956, by producing the necessary material or evidence.

10. The scheme of the Act itself lends support to this view. u/s 32-B any person who owns or holds as landowner of tenant land under his personal cultivation which in the aggregate exceeds the permissible limit is required to 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 section 32-A of Act. The prescribed returns are those contained in froms 7-A and B. After these returns are furnished and information required by section 32-B obtained by the Collector, draft statement is required to be prepared by the Collector. A copy of this statement is to be served on the person or persons concerned who are afforded 30 days time to file objections. It is after hearing such objections that the final orders are passed by the Collector. Sub-section 32-D of the Act provides that any person aggrieved by an order of the Collector under sub-section (2) may, within thirty days of the order, prefer an appeal to the State Government or an officer authorized by the State Government in this behalf. It is thus apparent that before the Collector passes an order determining surplus area, the land-owner concerned has ample opportunity to place before him material to show the nature of the land held by him, and if it is different from that recorded in the Jamabandi, to assert the same and to adduce evidence in support of it. Obviously if no evidence is adduced by the land owner, and he accepts the correctness of the entries contained in the last Jamabandi, which carry presumption of truth for the period it remains in force, obviously the determination of the surplus area on the basis of that Jamabandi cannot be considered illegal as that would be the only reliable evidence on which the authorities can be expected to determine the surplus area.

11. If the contention raised on behalf of the petitioner that the Jamabandi are not to be looked into at all, is accepted it will lead to choose, and the entire work of assessing the surplus area would become unending, leaving room for corruption at various stages. In the instant case, though the surplus area has been determined on the basis of the latest Jamabandi, the petitioner did make an attempt to show that the condition of the land had since changed, but as is

apparent from the order of the Financial Commissioner rejecting the revision petition, the material placed by him on the record did not relate to any period immediately before 30th October, 1956, but to the year 1961-1962. Obviously, the condition of the land as it was in the year 1961-62 could not form the basis of assessment of surplus area, and even presuming the reports of the Girdawri and the Patwari made in the year 1962 to be correct, there is nothing to indicate that the condition of the petitioner''s land immediately before 30th October, 1956, was in way different from that stated in the latest Jamabandi.

12. Even if we assume that the respondent authorities had committed a legal error in assessing the surplus area without reference to its condition as it was immediately before 30th October, 1956, that alone would not entitle the petitioner to obtain relief under Article 226 of the Constitution from this Court. The jurisdiction vesting in this Court under this provision of the Constitution is intended not to correct merely errors of fact or procedure or law but to safeguard the interest of the citizens and to further the ends of justice. Where the impugned order is not shown to have inflicted any injustice or hardship on the petitioner and substantial justice has been done between the parties, even if that order suffers from any illegality the Court would refuse to interfere. I am, accordingly, of the opinion that no ground has been made out to presuade me to interfere with the impugned orders of the respondent authorities. The petition is, accordingly, dismissed. In the circumstances of the case, I would, however, leave the parties to bear their own costs.

