

CIVIL MISCELLANEOUS
Before H. R. Khanna, J.
MAGHAR SINGH,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 1625 of 1962.

1964

August, 24th.

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—
Ss.3, 32-A and 32-MM—Consolidation of holdings operations starting
during the pendency of proceedings for declaration of surplus area—
Permissible area of landowner diminished as a result of consolidation
operations—Landowner—Whether entitled to have his permissible
area made up to 30 standard acres after consolidation of holdings.*

Held, that the perusal of the different provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955, goes to show that the occasion for the declaration of the surplus area would arise only if a land-owner holds land in excess of the permissible limit. Further, it is plain that it is only the area which is in excess of the permissible limit that can be declared to be surplus. In case the proceedings under the Act are still pending and in the meanwhile as a result of consolidation proceedings the total area, to which a landowner becomes entitled, is less than the area previously held by him, it is that new area which should be taken into consideration and not the area which was held by him before the consolidation. There is nothing in the Act which prohibits the Collector from taking into account the reduction brought about in the area held by a landowner by consolidation. The Act in question is a piece of legislation which results in expropriation and as such its provisions should be construed strictly, and unless a case falls within the express provisions of the Act the benefit must go in favour of the landowner. The entire scheme of the Act is that a landowner should not hold land beyond the permissible limit. If the consolidation results in the diminution of the area held by him before the proceedings under the Act are completed and finalized, there seems to be no valid reason as to why the diminution should be ignored and not taken into account.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other writ, order or direction be issued quashing the order of respondent No. 2, dated 30th July, 1962, and directing the respondents to restore to the petitioner at least 30 (thirty) standard acres of land which belonged to the petitioner and which the petitioner is entitled to hold as permissible area under the Pepsu Tenancy and Agricultural Lands Act.

HARBHAGWAN SINGH, ADVOCATE, for the Petitioner.

S. S. SODHI, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

ORDER

KHANNA, J.—Maghar Singh; petitioner, by means of this petition under Articles 226 and 227 of the Constitution of India, seeks to challenge the order dated 30th of July, 1962, of Collector, Mansa.

Khanna, J

The facts of this case lie within a narrow compass. The petitioner holds land measuring 33 standard acres and 13 units situated in village Matti, tahsil Mansa, district Bhatinda. As the aforesaid area was in excess of the permissible limit of 30 standard acres fixed by section 3 of the

Maghar Singh
v.
The State of
Punjab
and another
—
Khanna, J.

Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No. 13 of 1955)—hereinafter referred to as the Act, the Collector declared 3.13 standard acres of land as surplus in accordance with the provisions of Chapter IV-A of the Act. The petitioner was, accordingly, divested of the ownership of 3.13 standard acres of the land. During the pendency of the above proceedings under the Act, consolidation of holdings operations started in the village as a result of which the petitioner was left with only 28 standard acres of land out of his holdings. As, according to the petitioner, he was entitled to 30 standard acres of land which was the permissible limit out of his holdings, he filed an application before the Collector requesting him to restore the area of two standard acres. The Collector rejected that application as per order dated 30th of July, 1962. The petitioner by means of this petition has assailed that order on the ground that he is entitled to hold 30 standard acres of land.

The petition has been resisted by the respondents. It is averred that the surplus area was declared earlier than the finalization of the consolidation operations. The reduction in the holdings of the petitioner due to consolidation operations, according to the respondents, cannot affect the surplus area already declared by the Collector.

I have heard Mr. Harbhagwan Singh, on behalf of the petitioner and Mr. Sodhi on behalf of the respondents, and am of the view that the petitioner should succeed in the present petition. Sub-section (1) of section 3 of the Act fixes the permissible limit, except in the cases covered by the proviso with which we are not concerned, at 30 standard acres of land and where such 30 standard acres on being converted into ordinary acres exceed 80 acres, such 80 acres. Section 32-A of the Act provides that notwithstanding anything to the contrary in any law, custom, usage or agreement, no person shall be entitled to own or hold land as landowner or tenant under his personal cultivation within the State which exceeds in the aggregate the permissible limit. Section 32-D of the Act provides for the declaration of the surplus area, while Section 32-E makes provision for the vesting of the surplus area in the State Government. Sub-section (2) of Section 32-MM deals with the contingency when there is a consolidation of holdings, and reads as under:—

“(2) Where, after the declaration of the surplus area of any person and before the utilisation

thereof, his land has been subjected to the process of consolidation, the officers referred to in sub-section (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation."

Maghar Singh
v.
The State of
Punjab
and another

Khanna, J.

Perusal of the different provisions of the Act goes to show that the occasion for the declaration of the surplus area would arise only if a landowner holds land in excess of the permissible limit. Further, it is plain that it is only the area which is in excess of the permissible limit that can be declared to be surplus. In case the proceedings under the Act are still pending and in the meanwhile as a result of consolidation proceedings the total area, to which a landowner becomes entitled, is less than the area previously held by him, it is, in my opinion, that new area which should be taken into consideration and not the area which was held by him before the consolidation. There is nothing in the Act which prohibits the Collector from taking into account the reduction brought about in the area held by a landowner by consolidation. The Act in question is a piece of legislation which results in expropriation and as such its provisions should be construed strictly, and unless a case falls within the express provisions of the Act, the benefit must go in favour of the landowner. I may, in this context, refer to Maxwell on Interpretation of Statutes. Eleventh Edition, wherein it is observed on page 275 as under:—

"Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict construction in the sense before explained. It is a recognised rule that they should be interpreted if possible, so as to respect such rights. A statute under which a houseowner is being deprived of his rights to property should be construed strictly against the local authority."

The entire scheme of the Act is that a landowner should not hold land beyond the permissible limit. If the consolidation results in the diminution of the area held by him before the proceedings under the Act are completed and finalized, there seems to be no valid reason as to why the diminution should be ignored and not taken into account.

Maghar Singh
v.
The State of
Punjab
and another
—
Khanna, J.

Mr. Sodhi, on behalf of the respondents, has argued that the proceedings under the Act had been completed and were not pending when the consolidation of holdings operations took place. This contention cannot be accepted because in para 4 of the petition it was distinctly stated that it was during the pendency of the proceedings under the Act that consolidation of holdings operations started as a result of which the petitioner was left with only 28 standard acres of land out of his holdings. The allegation about the pendency of the proceedings under the Act was not denied in the written statement filed on behalf of the respondents. Reference has also been made by Mr. Sodhi to sub-section (2) of section 32-MM of the Act which has been reproduced above, and it is urged that the provisions of that sub-section would apply only before the utilization of the surplus area. This no doubt appears to be correct, but it would not affect the conclusion at which I have arrived at earlier. Sub-section (2) of Section 32-MM makes provision for the separation of the surplus area in case the land is subjected to the process of consolidation after the declaration of the surplus area and before the utilization thereof. The above sub-section would not, however, go to show that the Collector is to ignore the reduction in areas as a result of consolidation even though the reduction is made while the proceedings under the Act are pending.

Mr. Harbhagwan Singh has referred to the following observations of Harbans Singh, J., in *Bachan Singh and another v. The Financial Commissioner, Punjab, Chandigarh and others* (C.W. No. 1366 of 1962), decided on 4th of February, 1963:—

“The second point raised is that, after the S.D.O. had declared certain Khasra numbers as surplus, Consolidation proceedings took place in the village and the surplus land was put into the common pool, and in the land allotted on repartition, no particular portion can be said to represent the Khasra numbers declared surplus. Furthermore area allotted on repartition is less than the original holding.

In the return it is conceded in para 7 that any decrease in area shall affect the surplus pool. This

means that out of the land allotted on repartition, the petitioner shall be allowed to retain the permissible area and only the balance, if any, shall be treated and taken over by the State as surplus. This is as it should be. The natural corollary of this would be that the petitioner shall have the choice of the land, to the extent of the permissible area, which he would like to retain."

Maghar Singh
v.
The State of
Punjab
and another
—————
Khanna, J.

The above observations also lend support to the view which I have taken.

I, accordingly, accept the petition, quash the order dated 30th of July, 1962 of the Collector and direct that in declaring the surplus area of the petitioner the reduction brought about by consolidation in the area held by him should be taken into account. In the circumstances of the case. I make no order as to costs of the petition.

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B.R.T.