

These observations fully apply to the facts of the present case. We are, therefore, clearly of the view that the third contention of the learned counsel has merit and must succeed.

So far as the fourth contention is concerned, reference may be made to our decision in *Jage Ram, etc. v. The State of Haryana, etc.* (2), and what we have said therein, equally applies here. Therefore, this contention is accepted.

For the reasons recorded above, we allow the petition and quash the impugned notice. The petitioners will have their costs in this Court, which are assessed at Rs. 200.

GURDEV SINGH, J.—I agree.

R. N. M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

BHAJAN LAL AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS.—*Respondents.*

Civil Writ No. 339 of 1964

March 21, 1968.

Punjab Security of Land Tenures Act (X of 1953), Ss. 10-A and 18—Word 'Other Authority' in section 10-A(c)—Meaning of—Order of authority under section 18—Whether can be ignored under section 10-A—Words 'Other disposition' in S. 10-A(b)—Meaning of—Whether includes involuntary transfer—In cases of conflict between Ss. 10-A and 18—Which one to prevail.

Held, that the 'other authority' in clause (c) of section 10-A of the Punjab Security of Land Tenures Act, 1953 cannot be the Assistant Collector, the Collector or the Commissioner while exercising their jurisdiction under other provisions of the same Act including section 18. The 'other authority' in this clause refers to the authorities other than those under the Act, as authorities under the Act cannot be expected to ignore an order under the Act itself including an order

(2) C.W. 1376 of 1967 decided on 12th March, 1968.

Bhajan Lal, etc. v. State of Punjab, etc. (Narula, J.)

under section 18(2) in favour of a tenant, who might have actually purchased a part of the landowner's holding and might have become the owner of the land by the operation of the provisions of clause (b) of sub-section (4) of section 18 of the Act.

Held, that the authorities under the Act cannot ignore the sales effected under section 18 by attempting to knock at the bottom of the orders under section 18 by holding that the decrees of the civil court declaring the petitioners as tenants were collusive. That would have appropriately been the function of an authority sitting in appeal against the orders under section 18. In co-ordinate proceedings under section 10-A, an order under section 18 cannot be set aside or treated as non-existent.

Held, that the sales under section 18 cannot also be ignored by operation of clause (b) of section 10-A of the Act, as these would not be covered by the expression 'other disposition' even if they are not treated as transfers, because each of the two expressions, that is, 'transfer' or 'other disposition' in the context in which they are used in clause (b) of section 10-A, refer to only 'voluntary' transfers or dispositions and not to 'involuntary' ones. If these were not so, a landowner having a holding of forty standard acres may be deprived of thirty standard acres out of the same by attachment and sale thereof in execution of a genuine decree and whole of the remaining ten standard acres will have to be declared as surplus area leaving nothing with him. The legislature has never intended such results to follow from the operation of section 10-A(b).

Held, that the tenants having become the owners by operation of section 18(4)(b) of the Act, after having paid the first instalment of the amount due from them in terms of the orders under section 18, could not be divested of their rights of ownership in the land in question by any order in proceedings other than those against the orders of the Assistant Collector. The non-obstante clause; with which section 18 starts clearly shows that in case of a conflict between the provisions of section 10-A and section 18, it is the latter provision which must over-ride the former. There is however no conflict between the two provisions and they occupy entirely separate fields.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, or any other writ, order or direction be issued quashing the order of the Financial Commissioner, dated 24th September, 1963.

JAI KISHAN KHOSLA, ADVOCATE, for the Petitioners.

GOPAL SINGH, ADVOCATE-GENERAL (Pb.) WITH V. K. BHANDARI, ADVOCATE, for the Respondents.

ORDER

NARULA, J.—The two questions which call for decision in this case are :

- (i) Whether the expressions 'transfer' or 'other disposition' occurring in clause (b) of section 10-A of the Punjab

Security of Land Tenures Act (X of 1953), hereinafter called the Act, include an 'involuntary' transfer or only 'voluntary' transfers or dispositions; and

- (ii) whether the expression 'other authority' in clause (c) of section 10-A of the Act does or does not include an 'authority' under the Act itself, which might have passed an order under section 18 of the Act allowing a tenant to purchase part of the holdings of the landowner ?

The brief facts which have given rise to the above-said two questions are these. By three different orders (Annexures 'A' to 'C' to the writ petition), dated May 12, 1961, the three petitioners were allowed to purchase about sixty standard acres out of the holding of Chuni Lal, respondent No. 5. The tenants paid the first instalment of the amount directed to be recovered from them as the purchase-money and thus became owners of the respective portions of the land permitted to be purchased by them. No appeal was preferred by any one against any of the orders of the Assistant Collector, dated May 12, 1961, and the said orders became final.

Subsequently, by order dated June 27, 1961 (Annexure 'D'), the Collector declared 69 standard acres and 12½ units of the holding of Chuni Lal as his surplus area comprising mainly the sixty standard acres or so of the land which had been purchased by the petitioners under section 18. This was done in spite of the fact that the involuntary sales under section 18 were brought to the notice of the Collector and even copies of the respective orders under section 18 were produced before him. The learned Collector ignored those sales with the following observations—

"The copies of the orders have been produced by the landowner and placed on the file. The purchase has been allowed as a result of the correction of Khasra Girdawari entries effected in compliance with the decrees of the civil Court. The decrees of the civil Court appear to be collusive with the result that the transfers are ineffective and cannot be taken into consideration."

The tenants as well as the landowner went up in appeal against the above-mentioned order of the Collector. The Commissioner, Jullundur Division, in exercise of his appellate jurisdiction, heard

both the appeals and dismissed them by his common order, dated October 22, 1962 (Annexure 'E') by taking the view that "all transfers, whether by decree/order of any Court/authority made after the commencement of the Punjab Security of Land Tenures Act, 1953, are to be ignored for the purpose of assessment of surplus area,—vide section 10-A of the Act". The only other ground raised before the appellate authority was that no notice of the proceedings for declaration of surplus area had been issued to the tenants. The said ground was repelled by the Commissioner. Not satisfied with the orders of the Commissioner, the tenants as well as the landowner went up in revision to the Financial Commissioner, who by his order, dated September 24, 1963 (Annexure 'F') dismissed them. After exhausting all the remedies under the Act, the petitioners have come to this Court for quashing all the impugned orders for declaration of the surplus area of respondent No. 5 comprising the land purchased by the petitioners, that is; for setting aside orders of the Collector, dated June 27, 1961, (Annexure 'D'), of the Commissioner; dated October 22; 1962; (Annexure 'E') and of the Financial Commissioner, dated September 24, 1963 (Annexure 'F').

What appears to have weighed with the Commissioner is that clause (c) of section 10-A of the Act enjoins on the authorities under the Act a duty to ignore, for the purposes of determining the surplus area of the landowner, the orders of the Assistant Collector under section 18 of the Act (Annexures 'A' to 'C'), on the ground that those are orders of some 'other authority', though not of a Court. The above-said basis of the impugned orders in this respect is contrary to the decision of a Division Bench of this Court in *Amar Singh v. State of Punjab and another* (1), wherein it was held that the 'other authority' in clause (c) of section 10-A of the Act cannot be the Assistant Collector, the Collector or the Commissioner while exercising their jurisdiction under other provisions of the same Act including section 18. It was held by the Bench that the 'other authority' in clause (c) of section 10-A refers to the authorities other than those under the Act, as authorities under the Act cannot be expected to ignore an order under the Act itself including an order under section 18(2) in favour of a tenant, who might have actually purchased a part of the landowner's holdings and might have become the owner of the land by the operation of the provisions of clause (b) of sub-section (4) of section 18 of the Act.

(1) I.L.R. (1967) 2 Punj. 120—1967 P.L.R. 484:

Following the abovesaid Division Bench judgment of this Court I hold that there is an error apparent on the face of the order of the Commissioner in the above-mentioned respect. The order of the Financial Commissioner upholding the appellate order must also fall with it.

Nor could the authorities under the Act think of ignoring the sales effected under section 18 by attempting to knock at the bottom of the orders under section 18 by holding that the decrees of the civil Court declaring the petitioners as tenants were collusive. That would have appropriately been the function of an authority sitting in appeal against the orders under section 18. In co-ordinate proceedings under section 10-A, an order under section 18 could not be set aside or treated as non-existent.

I also do not find any force in the contention of the learned Advocate-General for the State of Punjab to the effect that the sales under section 18 had to be ignored by operation of clause (b) of section 10-A of the Act, as these would be covered by the expression 'other disposition' even if they are not treated as transfers, because each of the two expressions, that is, 'transfer' or 'other disposition' in the context in which they are used in clause (b) of section 10-A, in my opinion, refer to only 'voluntary' transfers or dispositions and not to 'involuntary' ones. If these were not so, a landowner having a holding of forty standard acres may be deprived of thirty standard acres out of the same by attachment and sale thereof in execution of a genuine decree and whole of the remaining ten standard acres will have to be declared as surplus area leaving nothing with him. I do not think the legislature has ever intended such results to follow from the operation of section 10-A(b). I would, therefore, answer the first question posed in the opening part of this judgment also in favour of the petitioners.

It has been held by another Bench of this Court (Mehtar Singh, C.J. and Grover, J.), in *Jot Ram v. The Financial Commissioner, Revenue, Punjab*, (2), that after a tenant has complied with the order of purchase, made by an appropriate authority under section 18 of the Act, and has made payment in the terms of the order in accordance with the provisions of section 18(4)(b) of the Act, he

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is deemed to have become owner of the same and that once he becomes an owner, anything happening after that date cannot divest him of the ownership of the land. That being the situation, the petitioners having admittedly become the owners by operation of section 18(4)(b) of the Act, after having paid the first instalment of the amount due from them in terms of the orders under section 18, could not be divested of their rights of ownership in the land in question by any order in proceedings other than those against the orders of the Assistant Collector. The *non obstante* clause, with which section 18 starts, clearly shows that in case of a conflict between the provisions of section 10-A and section 18, it is the latter provision which must over-ride the former. I am inclined to think that there is no conflict between the two provisions and they occupy entirely separate fields, but even if there was a conflict, I would, keeping in view the objects of the Act, resolve it by giving over-riding effect to the provisions of section 18.

For the foregoing reasons, this writ petition is allowed and the impugned orders of the Collector, the Commissioner and the Financial Commissioner, in so far as they have included the land purchased by the petitioners in the surplus area of respondent No. 5, are set aside and quashed. In the circumstances of the case, there is no order as to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

THE KHALSA COLLEGE, AMRITSAR,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1829 of 1964

March 29th, 1968.

Punjab University Act (VII of 1947)—S. 31—Punjab University Calendar Volume I, Part E Chapter III(A) Rules 9, 10, 15, and 17—Constitution of India (1950) Article 30—Rule 9—Whether management bound to retain a teacher in service