

Ran Singh v. The State of Punjab, etc. (Bains, J.)

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the right to continue the petition and to urge all contentions which the deceased could have urged except such as were personal to him survived to his legal representatives who were, therefore, rightly substituted for him. All the same they could not be allowed to raise the contention which was personal to Chaman Lal and which on his death was not open to them that the landlady did not *bona fide* require the building in dispute for her own occupation.

(5) As the petitioners cannot be allowed to resist the claim of the landlady in so far as the ground of the building in dispute being required by her *bona fide* for her own occupation is concerned, the orders of the two Courts below must be and are upheld, the petition being dismissed but with no order as to costs.

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CIVIL MISCELLANEOUS

Before A. S. Bains, J.

RAN SINGH—*Petitioner.*

*versus*

THE STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ No. 1005 of 1967.

May 13, 1975.

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 3(1), 32-A, 32-BB and 32-E—Constitution of India 1950—Articles 14 and 31 (2-B)—Section 32-BB—Whether ultra vires Article 14 and whether runs counter to sections 3, 32-A and 32-E—Article 31 (2-B)—Whether protects such provision.*

*Held* that from a reading of section 32-BB of the Pepsu Tenancy and Agricultural Lands Act 1955, it is clear that the Collector Agrarian Reforms has been given arbitrary and unbridled powers in the matter. No guideline is provided. It is left to the arbitrary will of the Collector that if a landowner or tenant fails to furnish the declaration supported by an affidavit as required by sub-section (1) of section 32-BB, the prescribed authority can direct that the whole or part of that land of such owner or tenant in excess of 10

standard acres shall be deemed to be the surplus area of such landowner or tenant. It is evident that in this situation very wide, arbitrary and unlimited powers have been given to the prescribed authority. It is the sole discretion of the prescribed authority which may declare only one *bigha* of land as surplus area of one particular landowner and may declare even 20 standard acres of land as surplus area of another landowner. There are no rules or guidelines for the prescribed authority to come to a rational and logical conclusion in such cases. Thus section 32-BB offends Article 14 of the Constitution of India 1950.

(Para 4)

*Held* that from a reading of sections 3, 32-A and 32-E of the Act, it is clear that a landowner shall be entitled to retain an area of 30 standard acres with him which is his permissible area under the Act. But under sub-section (2) of section 32-BB of the Act, permissible area can be reduced even to 10 standard acres which goes contrary to the provisions of sections 3, 32-A and 32-E of the Act. The main purpose to pass this Act was to provide measures for land reforms relating to the tenancies of agricultural lands. Before the passing of the Act, there was no limit to the ownership rights of any particular landowner, who may own even thousand acres of land. In order to create peaceful conditions and to do justice to the landless labour and to eliminate big landlords that this Act was passed and the permissible area of the landowner was limited to the maximum of 30 standard acres. It was not the intention of the Legislature to further reduce the permissible limit to 10 standard acres as provided under sub-section (2) of section 32-BB of the Act. Thus section 32-BB runs counter to the provisions of sections 3, 32-A and 32-E of the Act.

(Para 8)

*Held* that sub-section (2) of section 32-BB of the Act is not saved by Article 31(2-B) of the Constitution. This Act is not included in the Ninth Schedule of the Constitution and for this reason also it is not immune from challenge. Thus Article 31(2-B) does not protect section 32-BB of the Act from being challenged as *ultra vires* Article 14 of the Constitution.

(Para 11)

*Petition under Articles 226/227 of the Constitution of India praying that the orders of respondents No. 2 and 3 dated 9th April, 1963 and 15th January, 1960, respectively, by which 13.88 standard acres of land has been declared as surplus, be set aside and dispossession of the petitioner be stayed during the pendency of the writ petition in the High Court.*

*Tirath Singh, Advocate, for the Petitioner.*

*J. S. Wasu, Advocate-General (Punjab), (S. K. Sayal, Advocate with him), for the Respondents.*

Ran Singh v. The State of Punjab, etc., (Bains, J.)

### JUDGMENT

BAINS, J.—(1) This petition has arisen out of the surplus area proceedings of the petitioner. The Collector had declared 13.88 standard acres of land of the petitioner as surplus on 15th January, 1960 (Annexure 'A'). While declaring the surplus area, the Collector also penalised the petitioner to the extent of 5 standard acres for not complying with section 32-BB of the Pepsu Tenancy and Agricultural Lands Act (hereinafter called the 'Act') which enjoined him to file proper forms etc. Consequently, 5 standard acres of petitioner's permissible area was included in his surplus area and he was left only with 25 standard acres of land. Dissatisfied by the order of the Collector, the petitioner filed a revision petition before the Financial Commissioner, who dismissed the same, *vide* order 9th April, 1963 (Annexure 'B'). It is against the orders of the Collector (copy Annexure 'A') and the Financial Commissioner (copy Annexure 'B') that the present petition has been filed.

(2) Earlier to the present petition, the petitioner had filed writ petition No. 2066 of 1963; but as the vires of section 32-BB of the Act were not specifically challenged by him, the same was dismissed as withdrawn by this Court with the following observation :—

“The learned counsel for the petitioner states that by inadvertance he has failed to mention material facts and make proper prayer. He prays that this petition may be dismissed as withdrawn. He will file a fresh petition, if so advised. I accordingly dismiss this petition as withdrawn with no order as to costs.”

(3) In the present petition, only the vires of section 32-BB of the Act have been challenged. No other point is urged. Section 32-BB of the Act is in the following terms :—

“32-BB. *Declarations supported by affidavits to be furnished by certain landowners and tenants.*

(1) Every landowner or tenant required to furnish a return under section 32-B, whose land is situated in more than one Patwar circle, shall furnish to the Collector within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958, a declaration supported by an

affidavit in respect of the lands owned or held by him in such form and manner as may be prescribed.

(2) If a landowner or tenant fails to furnish the declaration supported by an affidavit as required by sub-section (1), the prescribed authority not below the rank of Collector may, by order, direct that the whole or part of the land of such landowner or tenant, in excess of ten standard acres, to be specified by such authority shall be deemed to be the surplus area of such landowner or tenant, and thereupon such area shall be included by the Collector as the surplus area of such landowner or tenant in the statement to be prepared in respect of him under section 32-D :

Provided that nothing herein shall affect—

- (a) the lands of such landowner or tenant which have been exempted under section 32-K; or
- (b) the right of such person to any compensation in respect of such surplus area to which he may be entitled under this Act :

Provided further that no such order shall be made without giving the person concerned \* \* \* an opportunity of being heard.

(3) Where a landowner or tenant, who is required to furnish a declaration under sub-section (1), fails so to do, the Collector may in respect of him obtain the information required to be shown in the declaration through such agency as he may deem fit.”

(4) From the reading of this section, it is clear that the Collector Agrarian Reforms has been given arbitrary and unbridled powers in the matter. No guideline is provided. It is left to the arbitrary will of the Collector that if a landowner or tenant fails to furnish the declaration supported by an affidavit as required by sub-section (1) of section 32-BB, the prescribed authority can direct that the whole or part of that land of such owner or tenant in excess of 10 standard acres shall be deemed to be the surplus area of such landowner or tenant. It is evident that in this situation very wide, arbitrary and unlimited powers have been given to the prescribed authority. It is

Ran Singh v. The State of Punjab, etc. (Bains, J.)

the sole discretion of the prescribed authority which may declare only one *bigha* of land as surplus area of one particular landowner and may declare even 20 standard acres of land as surplus area of another landowner. Admittedly, there are no rules or guidelines for the prescribed authority to come to a rational and logical conclusion in such cases. Section 3(1) of the Act defines 'permissible limit' as under :—

“3. *Permissible limit* :

- (1) 'Permissible limit' for the purposes of this Act means thirty standard acres of land, and where such thirty standard acres on being converted into ordinary acres exceed eighty acres, such eighty acres :

(Provided that in the case of an allottee,—

- (a) who has been allotted land exceeding forty standard acres, the permissible limit shall be forty standard acres and where such forty standard acres on being converted into ordinary acres exceed one hundred acres, such one hundred acres; and
- (b) who has been allotted land exceeding thirty standard acres but not exceeding forty standard acres, the permissible limit shall be equal to the area of land allotted to him.

*Explanation.*—For the purposes of determining the permissible limit of an allottee, the provisions of the proviso shall not apply to the heirs and successors of the allottee to whom land is allotted.”

(5) From the above provision, it is clear that if any landowner owns more than the permissible area, i.e. 30 standard acres, the excess area can only be declared as surplus. Section 32-A of the Act deals with ceiling on land which is in the following terms :—

“32-A. *Ceiling on land* :

- (1) Notwithstanding anything to the contrary in any law, custom, usage or agreement, 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.

- (2) For the purposes of computing the permissible limit under sub-section (1), the provisions of clauses (d) and (e) of sub-section (2) of section 3 shall not apply.”

(6) From the reading of this section, it is clear that no person shall be entitled to own or hold as landowner or tenant area within the State which exceeds more than the permissible area. This is the outer limit which is provided under sections 3 and 32-A of the Act. Section 32-E of the Act which deals with the vesting of the surplus area in the State Government is reproduced as under :—

*“32-E. Vesting of surplus area in the State Government.—*

Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, and subject to the provisions of Chapter IV after the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, then—

- (a) in the case of the surplus area of a landowner, or in the case of the surplus area of a tenant which is not included within the permissible limit of the landowner, such area shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of all persons in such land shall be extinguished, and such rights, title and interest shall vest in the State Government free from encumbrances created by any person; and
- (b) in the case of the surplus area of a tenant which is included within the permissible limits of the landowner, the right and interest of the tenant in such area shall stand terminated :

Provided that, for the purposes of clause (a), where any land falling within the surplus area is mortgaged with possession, only the mortgage rights shall vest in the State Government.”

- (7) The reading of this section shows that the surplus area which is not included within the permissible limits of the landowner shall

Ran Singh v. The State of Punjab, etc. (Bains, J.)

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vest in the State Government from the date of its taking possession and where any surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State.

(8) From the reading of section 3, 32-A and 32-E of the Act, it is clear that the landowner shall be entitled to retain an area of 30 standard acres with him which is his permissible area under the Act. But under sub-section (2) of section 32-BB of the Act, permissible area can be reduced even to 10 standard acres which goes contrary to the provisions of sections 3, 32-A and 32-E of the Act. The main purpose to pass this Act was to provide measures for land reforms relating to the tenancies of agricultural lands. Before the passing of the Act, there was no limit to the ownership rights of any particular landowner, who may own even thousand acres of land. It is a matter of common knowledge that there were landowners owning thousands of acres of land; but there were also landless persons who were treated just like serfs by those landowners. As such there was a great struggle between the landless tenants and the big landowners and there was no security to the tenants as they could be ejected from the land at the sweet will of the landowners. In order to create peaceful conditions and to do justice to the landless labour and to eliminate big landlords that this Act was passed and the permissible area of the landowner was limited to the maximum of 30 standard acres. It was not the intention of the Legislature to further reduce the permissible limit to 10 standard acres as provided under sub-section (2) of section 32-BB of the Act.

(9) Mr. Syal, learned counsel for the State, has contended that the provision of sub-section (2) of section 32-BB of the Act are *intra vires* and are protected by Article 31 (2-B) of the Constitution and cannot be challenged. In support of his contention, he has placed reliance on a Full Bench authority of this Court in *Pritam Singh and others v. State of Punjab and others* (1). In para 9 of this authority, it is observed as under :—

“However, it is not necessary to probe into this matter any further because Article 31-A of the Constitution of India clearly saves the provisions of the Act which are impugned before us. As already stated, the attack on the provisions of the Act is on the basis that the provisions of

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(1) A.I.R. 1967 Pb. 198.

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Articles 14 and 19 of the Constitution of India have been violated.”

(10) In this Full Bench case, the present provision was not challenged. The Supreme Court in *His Holiness Kesavananda Bharti Sripadagalvaru and others v. State of Kerala and another* (2) has observed as under :—

“Courts have the power to question such a law if (i) the amount fixed is illusory, or (ii) if the principles, if any are stated, for determining the amount are wholly irrelevant for fixation of the amount; or (iii) if the power of compulsory acquisition or requisition is exercised for a collateral purpose; or (iv) if the law of compulsory acquisition or requisition offends the principles of Constitution other than the one which is expressly excepted under Article 31(2-B) introduced by section 2(b) of the 25th Amendment Act namely Article 19(1) (f); or (v) if the law is in the nature of a fraud on the Constitution.”

(11) I, therefore, hold that sub-section (2) of section 32-BB is not saved by Article 31(2-B) of the Constitution. Admittedly, this Act is not included in the Ninth Schedule of the Constitution and for this reason also it is not immune from challenge. I have already observed that this provision of the Act is highly arbitrary and no guiding principle has been laid down for the prescribed authority and it is only left to the arbitrary discretion of the prescribed authority to declare any area from one *marla* to twenty standard acres as surplus of any particular landowner. The provision offends Article 14 of the Constitution. It also offends sections 3 and 32-A of the Act itself.

(12) In this view of the matter, this petition is allowed, the impugned orders of the Collector (Annexure 'A') and the Financial Commissioner (Annexure 'B') are quashed and the case is remanded to the Collector for fresh determination of the surplus area of the petitioner in accordance with law after allowing him to retain 30 standard acres as his permissible area.

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(2) A.I.R. 1973 S.C. 1461.