

to invoke the assistance of that provision. If that were not so, the legislature would have used the word "held, holds or has" in place of the word "owns". The counsel has referred to my judgment in *Natha Singh and others v. The Financial Commissioner, Revenue Punjab* (1), wherein it was held by me that expression "landowner owning land" in sub-section (1) of section 5 of the Pepsu Tenancy and Agricultural Lands Act is used only to denote that class of persons who are entitled to select land for personal cultivation, and that the term "landowner" has to be given the extended meaning contained in section 2(f) of the Act. I fail to understand how that judgment can help the petitioners in this case as the phraseology of sub-section (1) of section 5 is entirely different from the expression used in clause (b) of Section 7-A(1).

The only other point which has been mentioned in the writ petition but has not been seriously pressed by the learned counsel for the petitioners relates to the jurisdiction of the Financial Commissioner to entertain the revision petition. I think Mr. Ajit Singh has rightly abstained from pressing this point. It is obvious that in view of section 39(3) of the Pepsu Tenancy and Agricultural Lands Act, 1955 read with section 84 of the Punjab Tenancy Act, the Financial Commissioner did have jurisdiction to revise the order.

No other point has been argued in this case.

For the foregoing reasons, this writ petition fails and is dismissed, but with no order as to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

BADAN SINGH,—*Petitioner*

versus

THE STATE AND OTHERS,—*Respondents*

Civil Writ No. 2644 of 1964.

May 19, 1967.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 26—Mortgagee of a right-holder—Whether entitled to interfere in the allotment of taks as between the right-holders.

(1) 1966 Revenue Rulings L.L.T. 207.

Badan Singh v. The State, etc. (Mahajan, J.)

Held, that so far as the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is concerned, a mortgagee has no right to interfere in the allotment of *taks* as between the owners. His only right is under section 26 of the Act and that right is that his mortgage charge will go on to the *tak* that is allotted to the right-holder on whose land he is the mortgagee. If his charge has not been properly fixed on the land according to section 26, he has a right to move the authorities in that behalf. But he has no right to call in question the order of the authorities fixing the *taks* in between the right-holders of withdrawing one *tak* from one right-holder and giving it to the other right-holder.

Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued, quashing the order of the Assistant Director, dated the 15th February, 1962 and that of the Director, dated the 16th July, 1964.

BALDEV SINGH JAWANDA, ADVOCATE, for the Petitioner.

B. S. WASU, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB) AND S. P. GOYAL, ADVOCATE, for the Respondents.

ORDER

MAHAJAN, J.—This is a petition under Articles 226 and 227 of the Constitution of India by a mortgagee of a right-holder calling in question the order of the Assistant Director, Consolidation of Holdings, allowing the appeal of one Gajjan Singh against the right-holder under section 21(4) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act No. 50 of 1948),

The petitioner was the mortgagee of Thakar Singh of 10½ *bighas* of land. In consolidation Thakar Singh was allotted certain *killa* numbers. Gajjan Singh's plea was that the land which had been allotted to Thakar Singh should have been allotted to him. This plea prevailed with the Settlement Officer in appeal and the allotment of Thakar Singh was refixed and relief was granted to Gajjan Singh. The sole grievance of the mortgagee is that he was not heard by the Settlement Officer when an order was passed whereby the owner's *tak* was shifted and consequently his mortgage was also shifted from the land which had been originally allotted to the owner. His further grievance is that he moved the Director under section 42 of the Act and the Director rejected his application on the

ground that it did not lie. So far as the Act is concerned, a mortgagee has no right to interfere in the allotment of *taks* as between the owners. His only right is under section 26 of the Act and that is that his mortgage charge will go on to the *tak* that is allotted to the right-holder on whose land he is the mortgagee. If his charge has not been properly fixed on the land according to section 26, he has a right to move the authorities in that behalf. But he has no right to call in question the order of the authorities fixing the *taks* in between the right-holders or withdrawing one *tak* from one right-holder and giving it to the other right-holder. In the present petition the petitioner's only grievance is that the *tak* allotted to this right-holder should have been withdrawn only after notice to him. This contention is ill-founded. He has no *locus standi* in the matter.

For the reasons recorded above the petition fails and is dismissed. There will, however, be no orders as to costs.

B.R.T.
