

## CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

SODAGAR SINGH AND OTHERS,—*Petitioners*

*versus*

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

Civil Writ No. 294 of 1962.

1963

Oct., 24th.

*Punjab Security of Land Tenures Act (X of 1953)—Ss. 10-A(b) and 10-B—Landowner dying during the pendency of appeal against the declaration of surplus area—Land not yet utilised but in possession of heirs of the deceased landowner—Whether can be declared surplus.*

*Held*, that where the landowner dies during the pendency of his appeal against the declaration of his land as surplus area, the land cannot be declared as surplus as his heirs have succeeded to it by inheritance. In the case of devolution of land by inheritance, Section 10-A(b) of the Punjab Security of Land Tenures Act, 1953 exempts it from being taken into consideration while determining the surplus area. Section 10-B of the Act, which makes an exception in cases of inheritance, applies only in case the land has been utilised. If the land has not been utilised and is still in the possession of the heirs, section 10-B will not apply.

*Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the orders of respondents No. 2 to 4, dated 19th September, 1961, 24th January, 1961 and 29th September, 1960, respectively.*

T. S. MANGAT, ADVOCATE, for the Petitioners.

S. M. SIKRI, ADVOCATE-GENERAL, for the Respondents.

## ORDER

Mahajan, J.

MAHAJAN, J.—This petition under Article 226 of the Constitution raises an interesting question and arises out of the following facts:

Maghar Singh was the owner of the land. In the proceedings taken under the Punjab Security of Land Tenures Act for determination of the surplus area held by him, the Collector declared 45 Standard Acres 7¼ Units to be surplus. Against this order an appeal was preferred by Maghar Singh and during the pendency of the appeal, Maghar Singh died and his three sons and one daughter, who are his heirs by inheritance, were impleaded in the appeal. Before the Commissioner they raised the contention that by reason of the death of Maghar Singh, the land having come to them by inheritance and their respective shares being less than the permissible area, could not be declared surplus in the altered circumstances. This contention did not prevail with the Commissioner with the result that he dismissed the appeal. A revision to the Financial Commissioner also met with no success.

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It may be mentioned that before the Financial Commissioner, the sons and the daughter raised the only contention that the land in question was awarded to their father for gallantry and, therefore, is exempt from consideration under section 19-D of the Punjab Security of Land Tenures Act. This contention was negatived by the Financial Commissioner and the revision petition was dismissed.

In the grounds of appeal before the Commissioner, however, they had taken the ground which was rejected by him, namely, that the death of Maghar Singh had altered the entire situation and, therefore, no area could be declared surplus in view of the provisions of section 6 of the Act. The present petition is directed against the orders of the Collector, the Commissioner and the Financial Commissioner.

The contention advanced before me is that in view of Section 10-A(b) and 10-B of the Punjab

Sodagar Singh and others Security of Land Tenures Act, which are in these terms:—

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“S. 10-A (b) Notwithstanding anything contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance no transfer or other disposition of land which is comprised in a surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).

S. 10-B. Where succession has opened after the surplus area or any part thereof has been utilised under clause (a) of section 10-A the saving specified in favour of an heir by inheritance under clause (b) of that section shall not apply in respect of the area so utilised.”

On the death of Maghar Singh during the pendency of the appeal no surplus area could be declared because the sons and the daughter had succeeded to the property by inheritance on the death of Maghar Singh and if the property devolves by inheritance, Section 10-A(b) exempts it from being taken into consideration while determining the surplus area. Section 10-B, which makes an exception in cases of inheritance makes it only in case the land has been utilised. In the present case the land has not been utilised because the petitioners are still in possession of the same. If these provisions are read together, there is no manner of doubt that the petitioners' contention is correct. It is, therefore, clear that the Collector, the Commissioner and the Financial Commissioner were in error in not giving effect to the petitioners' contention, though, of course, that contention was not advanced before the Financial Commissioner.

It could not be advanced before the Collector in view of the fact that Maghar Singh was alive at that time and only on his death the provisions of sections 10-A (b) and 10-B of the Act came into operation and thus the land in question could not be declared surplus.

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Mr. Sikri, learned Advocate-General, has brought to my notice the fact that in the petition it is alleged that they formed a Joint Hindu Family and, therefore, if that contention is accepted that they form a Joint Hindu Family, then section 10-A (b) will not come into play, because by the recent amendment, the Joint Hindu Family has to be treated as a unit. It may be mentioned that this plea has been taken in the alternative and a petitioner cannot be deprived of his legal rights by pleading an alternative case, as well. Moreover, it is well settled that in Jats the institution of a Joint Hindu Family does not exist.

For the reasons given above, this petition is allowed, the orders of the Collector, the Commissioner and the Financial Commissioner declaring 45 Standard Acres 7 $\frac{1}{2}$  Units of the area surplus is quashed. In view of the fact that the matter was not agitated before the Financial Commissioner, there will be no order as to costs.

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R.S.

CRIMINAL MISCELLANEOUS

*Before Shamsheer Bahadur, J.*

JAWAHAR SINGH AND OTHERS,—*Petitioners.*

*versus*

THE STATE,—*Respondent.*

**Criminal Miscellaneous No: 996 of 1963:**

*Code of Criminal Procedure (V of 1898)—Ss. 107 and 151—Proceedings under—Whether can be quashed where the occasion which gave rise to the apprehension of breach of peace no longer exists.*

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Oct., 25th