
 CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

RANI JOGINDER PAL KANWAR AND OTHERS,—Petitioners

versus

THE STATE OF PUNJAB AND OTHERS.—Respondents

Civil Writ No. 1572 of 1967

May 23, 1969

Punjab Resumption of Jagirs Act (I of 1957)—Section 2(1)—Jagir—Meaning of—Maintenance given to family member of deceased Jagirdar—Such maintenance—Whether falls within definition of Jagir.

Held that the maintenance allowance given to the members of the family of a Jagirdar does not fall under any of the clauses mentioned in section 2(1) of the Punjab Resumption of Jagirs Act, 1957, and, therefore, cannot be termed as Jagir. In clauses (a) to (d), the assignment of the land revenue, the creation of an estate in land and the grant of money has to be made by or on behalf of the State Government. Under section 8 of the Punjab Jagirs Act, on the other hand, it is the Jagirdar who has to pay out of the Jagir money maintenance allowance, to the members of the family of the last or any previous holder of the Jagir. A Jagir is not intended to be split up into two portions, namely, between the Jagirdar and the maintenance holders. When a Jagirdar dies, his successor has to make provision for the dependants of the last or any previous holder of the Jagir. If the maintenance holders are Jagirdars in their own rights they are not entitled to any maintenance. (Para 7).

Petition under Article 226 of the Constitution of India praying that a writ of mandamus or prohibition or any other appropriate writ, order or direction be issued to the respondents not to act in accordance with the order of the Financial Commissioner, dated 31st October, 1966, intimated,—vide letter No. 350/JN/66/105, dated 11th November, 1966 concerning the rights of the petitioners resuming the Jagir interest on the death of Bhai Shub Sher Singh, which order being illegal be set aside and it be declared that the petitioners are entitled to the maintenance allowed to them under the Jagir, as dependants till their life-time and cannot be resumed earlier to that and they be paid the maintenance allowed with the arrears due according to law and it be further ordered in the alternative that Form 'B' prepared for the petitioners in 'B.1' 'B.2' and 'B.3' are not according to law and Acts. Certain amounts taken by them earlier to the resumption cannot be adjusted towards the compensation as those amounts will be due as their maintenance up to the 5th of August, 1958. In case of petitioner No. 1, the amount of Rs. 3,000 which was received for the maintenance before the Act i.e. for Kharif, 1957 cannot be adjusted from compensation, because the resumption would be, if it can be resumed, from 5th of August, 1958, and

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further praying that the respondents be ordered to pay compensation starting the first instalment from 5th August, 1958 or the ensuing financial year and not from the date of the final determination by the Financial Commissioner.

Y. P. GANDHI, ADVOCATE, for the Petitioners.

P. S. MANN, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB) AND C. J. S. BINDRA, ADVOCATE FOR ADVOCATE-GENERAL (HARYANA), for the Respondents.

JUDGMENT

PANDIT, J.—A short pedigree table given below will be helpful in understanding the facts of the case, which led to the filing of the present petition under Article 226 of the Constitution.

Bhai Shamsher Singh.

= Rani Joginder Pal Kanwar (widow)
(Petitioner No. 1).

= Sardarni Harchand Kaur (widow)
(Petitioner No. 2).

= Bibi Shubsher Kanwar (daughter)
(Petitioner No. 3).

Bhai Shub Sher Singh (died on 5th
August, 1958).

Bhai Kishen Sher Singh

(2) The dispute relates to a Jagir called the *Arnauli Jagir*, which was granted to the ancestors of this family long time back. This Jagir was held in the Districts of Patiala, Bhatinda, Sangrur, Ferozepur, Ambala and Karnal, and its value was Rs. 50,892 annually. The provisions of the Punjab Jagirs Act, 1941, hereinafter referred to as the 1941 Act, were applicable to this Jagir. According to sections 7 and 8 of the 1941 Act, whenever the question of succession to the Jagir opened, the Government used to approve the successor and directed him to make such provision out of the Jagir, as it might consider suitable, for the maintenance of the widow or widows (if any) and other members of the family (if any) of the last or any previous holder of the Jagir. On the death of Bhai Shamsher Singh, his two widows were thus getting a monthly maintenance allowance of Rs. 500 each and his daughter Rs. 100, out of the Jagir money, being his dependants. Bhai Shub Sher Singh, the successor of Bhai

Shamsher Singh, was alive, when the Punjab Government enacted the Punjab Resumption of Jagirs Act, 1957, hereinafter called the 1957 Act, which came into force on 14th of November, 1957. Section 3 of 1957 Act stated that notwithstanding anything to the contrary contained in any law or usage, any grant, settlement, sanad or other instrument, or any decree or order of any Court or authority, all Jagirs would, on and from the commencement of that Act, be extinguished and stand resumed in the name of the State Government. There was, however, a proviso added to that section which said—

“Provided that a military Jagir granted at any time before the 4th day of August, 1914, shall enure for the life of the person who is a Jagirdar immediately before such commencement and shall stand extinguished and resumed on his death.”

(3) Bhai Shub Sher Singh died on 5th August, 1958. Thereafter, on 10th April, 1963, Bhai Kishen Sher Singh made an application to the Government for a declaration that the Jagir held by him was a military Jagir and not resumable under section 3 of the 1957 Act. On 31st of October, 1966, after giving a personal hearing to the applicant, the Government decided that the Jagir held by Shub Sher Singh was a military Jagir, with the result that it could not be resumed under section 3 of the 1957 Act. On 11th of November, 1966, the Deputy Secretary to Government, Punjab, Revenue Department, wrote to the Deputy Commissioner, Karnal, that as Bhai Kishen Sher Singh, the applicant, was not the Jagirdar (holder of the Jagir) at the commencement of the 1957 Act, the Jagir would be payable only up to the 5th August, 1958, when the then holder Bhai Shub Sher Singh died and thereafter the Jagir would stand extinguished and resumed. The compensation would, however, be paid in accordance with the provisions of the 1957 Act. It was further mentioned in that letter that the Jagir compensation or Jagir money already paid to the applicant and the maintenance holders or any other Government dues standing against them should be adjusted before the compensation was paid for the resumption of the Jagir. It appears that this order of the Government was conveyed to Bhai Kishen Sher Singh somewhere in December, 1966. That led to the filing of the present writ petition in August, 1967, by the two widows and daughter of Bhai Shamsher Singh, challenging the legality of the order dated 11th November, 1966, passed by the Government.

(4) The first argument of the learned counsel was that the petitioners were granted maintenance out of the Jagir money on Bhai

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Shamsher Singh's death in 1918. They went on receiving the maintenance allowance to the extent of Rs. 13,200 annually and the balance of Rs. 37,692 was being taken by Bhai Shub Sher Singh. On the latter's death, on 5th August, 1958, under the proviso to section 3 of the 1957 Act, it is only the Jagir money, which was being received by Bhai Shub Sher Singh, that could be resumed by the Government and not the amount that was being given to the petitioners. According to the learned counsel, the petitioners were also the holders of a part of the Jagir and, therefore, they were also Jagirdars within the meaning of that word under section 2(2) of the 1957 Act. The petitioners were entitled to get the allowance till their death. The Government was, therefore, wrong in resuming their maintenance amount as well.

(5) It is common ground that the *Arnauli* Jagir was a military Jagir and it was granted before 4th August, 1914. Under the proviso to section 3 of the 1957 Act, it was to enure for the life of the person who was a Jagirdar immediately before the commencement of the 1957 Act, that is, 14th November, 1957, and was to stand extinguished and resumed on his death. Bhai Shub Sher Singh was the Jagirdar immediately before 14th November, 1957, and as he died on 5th August, 1958, the Jagir, consequently, stood extinguished and resumed on his death. The maintenance allowance that was being paid to the petitioners was out of the Jagir money and that amount itself could not be called a Jagir. The Jagir was one entity. The amount of maintenance was a sort of encumbrance or a charge thereon. If the Jagir itself was resumed, the other encumbrances will go with it. Under section 7 of the 1941 Act, it was the Government which had to decide about the rule of descent, in respect of succession to any Jagir, which had to prevail in the family of Jagirdars. Under section 8 of the 1941 Act, whenever the question of succession to a particular Jagir arose, the Government had to approve and accept the successor to the Jagir and under sub-section (b) of the same section, it had to ask the said successor to make such provision out of the Jagir, as it might consider suitable for the maintenance of the widow or widows (if any) and other members of the family (if any) of the last or any previous holder of the Jagir. It was under that provision that on Bhai Shamsher Singh's death, the Government, while approving Bhai Shub Sher Singh as his successor, fixed the maintenance allowance of the petitioners which had to be paid out of the Jagir money. On the coming into force of the 1957 Act, under section 3 thereof, all Jagirs were to be extinguished and stand

resumed in the name of the State Government from the commencement of that Act. Under the proviso to that section, a military Jagir granted any time before 4th August, 1914, however, was to enure for the life of the person who was a Jagirdar immediately before 14th November, 1957 (the date of the commencement of 1957 Act) and had to stand extinguished and resumed on his death. Under section 5 of the 1957 Act, in consideration of the extinguishment and resumption of the Jagir, the Government had to pay compensation to the Jagirdar or his successor and the method of calculating the compensation was mentioned therein. In the case of a military Jagir, the Jagirdar could, before 15th May, 1961, claim compensation in lieu of the continuance of the Jagir for his life and where the Jagirdar made such a claim, the Jagir would be deemed to be extinguished and resumed on the date on which such claim was made. The amount of compensation had to be paid in cash either in one lump sum or in such number of instalments not exceeding 20 as the State Government might prescribe. Where the amount of compensation was to be paid in instalments, interest at the rate of 2 per cent per annum was payable thereon to the person entitled to receive the amount. Section 6 of the 1957 Act deals with the procedure for the payment of the compensation, while section 7 talks of the apportionment of compensation. The latter section reads—

“Where in pursuance of the requirement of section 8 of the Punjab Jagirs Act, 1941, the successor to a Jagir has made suitable provision out of the jagir for the maintenance of the widow or widows and other members of the family of the last or any previous holder of the jagir, the Collector, the Commissioner or Financial Commissioner, as the case may be, shall while passing an order under sub-section (3) or sub-section (5) of section (6), apportion the amount of compensation for payment among the jagirdar and such widow or widows and other members of the family.”

(6) Under this section, the amount of compensation for the Jagir, which was resumed, was to be apportioned among the Jagirdar and the widow or widows and other members of the family. After the resumption of *Arnauli* Jagir, on the death of Bhai Shub Sher Singh on 5th August, 1958, the amount of compensation payable by the Government for the said Jagir had to be determined. Out of the said compensation, under section 7 of the 1957 Act, the petitioners would be entitled to a part of it and the balance would go to the Jagirdar. The contention of the petitioners would be correct only if

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it could be held that the maintenance allowance given to the petitioners was itself a Jagir. The word Jagir is defined in section 2(1) of 1957 Act. On 5th of August, 1958, when the Jagir stood extinguished and resumed, that definition read as under:—

“In this Act, unless the context otherwise requires (1) “Jagir” means—

- (a) any assignment of land revenue made by or on behalf of the State Government; or
- (b) any estate in land created or affirmed by or on behalf of the State Government carrying with it the right of collecting land revenue or receiving any portion of the land revenue ; or
- (c) any grant of money made or continued by or on behalf of the State Government which purports to be or is expressed to be payable out of the land revenue; or
- (d) any grant of money including anything payable on the part of the State Government in respect of any right, privilege, perquisite or office; and includes any such grant or assignment existing in favour of Cis-Sutlej Jagirdars but does not include—
 - (i) any grant of money (whether or not payable out of the land revenue) made on behalf of the State Government for the relief of political sufferers or their dependants after the 15th August, 1947; or
 - (ii) any pension as defined in clause (17) of Article 366 of the Constitution of India; or
 - (iii) any military jagir; or
 - (iv) any grant made in favour of a religious or charitable institution, but does not include a grant made for such a purpose to an individual;”.

(7) Learned counsel for the petitioners was unable to show that the maintenance allowance given could under any of the clauses mentioned in section 2(1) above, be termed as Jagir. It will be seen that in clauses (a) to (d), the assignment of the land revenue, the creation of an estate in land and the grant of money had to be made

by or on behalf of the State Government. Under section 8 of 1941 Act, on the other hand, it was the Jagirdar, who had to pay out of the Jagir money maintenance allowance, to the members of the family of the last or any previous holder of the Jagir. A Jagir was not intended to be split up into two portions, namely, between the Jagirdar and the maintenance holders. When a Jagirdar died, his successor had to make provision for the dependants of the last or any previous holder of the Jagir. If the maintenance holders were Jagirdars in their own rights, they would not be entitled to any maintenance. In section 5 of the 1957 Act, it is nowhere stated that the maintenance holders will continue getting their maintenance till their death. That section talks of one consolidated compensation in consideration of the extinguishment and resumption of the Jagir.

(8) Under all these circumstances, I would hold that there is no force in the first contention raised by the petitioners.

(9) Learned counsel then submitted that if his first argument failed, the first instalment of the compensation amount due to the petitioners would be payable to them on the date on which the first financial year after the resumption of the Jagir ended, that is, 1st April, 1959, the Jagir having been resumed on 5th August, 1958, on the death of Bhai Shub Sher Singh. Reliance for this submission was placed on a Bench decision of this Court in *State of Punjab v. Bhai Fateh Jang Singh* (1).

(10) There is merit in this point and it was so conceded by the learned counsel for the respondents.

(11) Learned counsel also submitted that while making the deductions of the amounts already paid to the petitioners at the time when the compensation amount was to be paid to them, it should be kept in mind by the authorities that the petitioners were entitled to the maintenance allowance *already* fixed up to 5th August, 1958, the date on which the Jagir was resumed, and anything paid to them above that could be adjusted at the time of the payment of the compensation amount.

(12) There is substance in this point as well and the learned counsel for the respondents also have no objection to this being done.

(13) Lastly, it was contended by the petitioners that the Government be directed to pay the instalments due to them up-to-date

(1) L.P.A. 121 of 1966 decided on 6th January, 1969.

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together with interest at the rate of 2 per cent, as mentioned in section 5(3) of the 1957 Act, within two months from today.

(14) No objection is raised by the learned counsel for the respondents to this submission of the petitioners and I order accordingly.

No other point was argued before me.

I would like to make it clear that the impugned order passed by the Government on 11th November, 1966, resuming the *Arnauli Jagir* with effect from 5th August, 1958, is *not* quashed.

(15) In view of what I have said above, the writ petition succeeds to the limited extent mentioned above. I would, however, leave the parties to bear their own costs in this Court.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

GENL. SHIVDEV SINGH, AND ANOTHER,—*Petitioners.*

Versus

THE PRESCRIBED AUTHORITY (ASSISTANT COLLECTOR FIRST GRADE), BHATINDA AND OTHERS,—*Respondents.*

Civil Writ No. 2333 of 1967

May 26, 1969

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 2(m) and 26—Punjab Tenancy Act (XVI of 1887)—Section 4(10)—Punjab Land Revenue (Surcharge) Act (XXXVI of 1954)—Section 2—Punjab Land Revenue (Special Charges) Act (VI of 1958)—Section 2(a)—Word “land revenue” used in section 26—Whether includes surcharge and special charges—Compensation payable by a tenant under the section—Whether to include such surcharge and special charges.

Held, that the definition of “land revenue” as given in section 2(m) of the Pepsu Tenancy and Agricultural Lands Act, 1953 read with section 4(10) of the Punjab Tenancy Act, 1887 includes the surcharge levied under the Punjab Land Revenue (Surcharge) Act, 1954 and the Punjab Land Revenue (Special Charges) Act, 1958, as it is not confined only to the land revenue assessable under the Punjab Land Revenue Act, 1887. According to section 2 of 1954 Act, every landowner who pays land revenue in excess of ten rupees