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order as to costs in this Court, but the order as to costs in the Courts below will stand.

I allow the tenant three months' time to vacate the premises.

R. S.

CIVIL MISCELLANEOUS

Before Tek Chand and P. D. Sharma, JJ.

BHAGWAN KAUR,—*Petitioner.*

versus

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

Civil Writ 235 of 1961.

1962

Nov., 26th

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 32-B—Scope of—Landowner or tenant not holding any land under personal cultivation—Whether entitled to make application under—Inequities resulting from plain meaning of the statute—Whether can be ameliorated by Court—Interpretation of Statutes—Rules as to, when meaning is plain and unambiguous—Constitution of India (1950)—Art. 14—Whether infringed by two Acts on same subject *continuing in force in different parts of the State—States Reorganisation Act XXXVII of 1956)—S. 119—Object and effect of.*

Held, that a return under section 32-B of the Pepsu Tenancy and Agricultural Lands Act, 1955, has to be submitted within the prescribed period by a person who personally cultivates land whether he owns it as land-owner or holds it as a tenant. In other words, whether the person who submits the return happens to be a land-owner or a tenant of the land, he must be personally cultivating it. If such a person cultivates personally an area within the permissible limit, that is, up to 30 standard acres, he may not submit any return, but if he is personally cultivating a larger area over and above the permissible limit, then he is required to furnish to the Collector a return giving the required

particulars of all his land. The right to select a parcel or parcels of land which he desires to retain, is available to a person personally cultivating the land whether as a land-owner or as a tenant, but not to a person whose land is not being personally cultivated. The words "under his personal cultivation" govern both the land-owner and the tenant.

Held, that it is not within the province of the Court to ameliorate the hardship or distress caused to a party by the rigour of the law if the meaning of the statute is plain and unambiguous. This might be possible where the meaning of the statutory language is obscure. If it is possible to subject the language to two constructions, one of which does injustice and the other avoids injustice, then it becomes the duty of the Court to construe the Act in order to secure the ends of justice and for that purpose it may adopt an expansive or contractive construction. If, however, the language of the Act is clear and explicit, it must receive full effect regardless of the inequitable result which might follow. If adherance to the plain and natural meaning results in manifest injustice, the Courts cannot avoid it by assuming the role of legislatures. On considerations of inconvenience or hardship, Legislature's positive mandate cannot be disregarded by Courts, and they are not at liberty to depart from the literal meaning of the words and phrases used in the Act. If the unjust consequences cannot be avoided, the Court cannot refuse to give effect to such an interpretation by a process of *jus dare* when its function is only *jus dicere.* Moreover, the scope for construction is within a very narrow ambit when the language is not indefinite or ambiguous. The plain meaning, regardless of the outcome, cannot be by-passed, howsoever, regrettable the consequences may be. The clear language cannot be passed over in order to bring the statutory provisions in accord with what the Court may deem to be right or reasonable. A hardship can only be relieved by construing a provision liberally or literally if that is possible and not by misconstruing it. It is not open to the Judge to mould the statute, to suit his own notions of propriety or justice. Courts cannot invade the province of the Legislature by wielding legislative power; they must not attempt to re-write the Act. It is for the Legislature to step in and prevent unjust operation of the statute. Courts, when interpreting a statute, function

within a narrow groove. In their search for the ascertainment of the intention of the law-makers, the basic rule which they have laid down for themselves is that if the statute is clear, definite and involves no ambiguity, its plain meaning from bare reading suffice. Occasion for resort to intrinsic and extrinsic aids for construction arises only where the meaning of the language used admits of uncertainty or is suspectible of double meaning. If by reason of unintelligibility, equivocality, circumlocution, slovenly phraseology, or bad grammar, the legislative intent cannot readily be ascertained, Courts then turn for light to the pertinent canons of construction.

Held, that Article 14 of the Constitution forbids class legislation but does not forbid reasonable classification for the purposes of legislation. The fact that two Acts on the same subject are in force in different parts of the Punjab State, one in the territories which formed Pepsu and the other in the territories forming the erstwhile Punjab State does not attract the provisions of Article 14 of the Constitution and does not make the Pepsu Act unconstitutional. The policy underlying section 119 of the States Reorganisation Act appears to be not to suddenly disturb the legal rights and obligations of people in the respective territories which were being merged in one State. The object was to keep the laws in force in the former Pepsu territory, even after reorganisation, unaltered on municipal considerations and for welfare of all classes in that area so as to avoid any sudden change in the life pattern of the people which may have been disturbing and made reorganisation somewhat a difficult task. The result has been territorial classification in the new Punjab State under which one set of laws have been allowed to remain in force in the former Pepsu State territory and another in the former Punjab State territory. The classification, in the background of circumstances, is both reasonable and conducive to the welfare of the people in both the territories which now form one State. Section 119 of the States Reorganisation Act, 1956, has made provision giving power to the appropriate Legislature to alter laws in due course of time so as to eliminate any hardship or discriminations. This in itself is a very reasonable provision helping to stabilise the new State in due time by future legislation by the appropriate Legislature.

Case referred by Hon'ble Mr. Justice Tek Crand, to a larger Bench for decision on 21st May, 1962, owing to the importance of the questions of law involved in the case. The case was finally decided by Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice P. D. Sharma on 26th November, 1962.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari or any other order or direction be issued quashing the orders of respondent No. 4, dated 6th December, 1960, whereby the four revision petitions of the petitioner were dismissed and the orders of the Collector, Nabha, dated 6th July, 1960, confirming the four orders of respondent No. 4, dated 31st May, 1960, conferring proprietary rights on respondents 5 to 15 over the lands comprising in their tenancies, were affirmed.

B. R. AGGARWAL AND SANTOSH KUMAR, ADVOCATES, for the petitioners.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND M. R. AGNIHOTRI, ADVOCATES, for the Respondents.

ORDER

TEK CHAND, J.—By my order, dated 21st May, 1962, I had referred this case for determination of the questions arising in it for disposal by a Division Bench. Tek Chand, J.

Shrimati Bhagwan Kaur, the petitioner, widow of Bakhtawar Singh, has moved this Court under Article 226 of the Constitution and has prayed for the issuance of an appropriate writ for quashing the respective orders passed by respondents Nos, 2, 3 and 4. Respondent No. 1 is the Punjab State, which has opposed this writ petition. Respondents Nos. 5 to 15 are the petitioner's tenants and their counsel has adopted the arguments addressed by the Additional Advocate-General. It is significant to mention that no part

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of this land was at the material time under the personal cultivation of the petitioner.

The petitioner is owner of land measuring 94 standard acres out of which 410 bighas is under the possession of respondents Nos. 5 to 15, who are cultivating the land as her tenants-at-will. This land is situated in Nabha tahsil to which the Pepsu Tenancy and Agricultural Lands Act, 1955, applies. The Punjab Security of Land Tenures Act (10 of 1953), extends to that area which formed part of the State of Punjab excluding the Pepsu territory which has recently been merged. The relevant provisions of the Pepsu Act, which have a bearing, may now be examined.

According to section 2(g) of the Act, the expression "to cultivate personally", with its grammatical variations and cognate expressions means to cultivate on one's own account "(i) by one's own labour, or (ii) by the labour of such of one's relatives as may be prescribed, or (iii) by servants or hired labour."

Section 3 defines "permissible limit" which means 30 standard acres of land, and where such 30 standard acres on being converted into ordinary acres exceed 80 acres, such 80 acres.

Section 5, which is important, is given below *in extenso*—

"5. Reservation of land for personal cultivation.—

(1) Subject to the provisions of this section, every landowner owning land exceeding thirty standard acres shall be entitled to select for personal cultivation from the land held by him in the State as a

landowner any parcel or parcels of land not exceeding in aggregate area the permissible limit and reserve such land for personal cultivation by intimating his selection in the prescribed form and manner to the Collector :

Provided that in making such selection, the landowner shall include to the extent of the permissible limit, all land which he held for personal cultivation immediately before the commencement of the President's Act.

(2) The right conferred by this section on a landowner to reserve land for personal cultivation shall cease if it is not exercised—

(a) within a period of one year from the commencement of the President's Act, where the landowner is a member of the Armed Forces of the Union; and

(b) within a period of six months from such commencement, in any other case."

The President's Act, referred to in sub-section (2), above, was passed on 3rd December, 1953, and the last date for reservation by a landowner of land for personal cultivation under subsection (2)(b) would thus be 3rd June, 1954. It may be mentioned that the petitioner did not select any area for her personal cultivation under section 5 and consequently the right conferred by this Section on the landowner to reserve land for personal cultivation has ceased as it has not been

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exercised within the period mentioned in sub-section (2). As no indication was given to the Collector, expressing her wish to reserve the land, none was reserved.

On the other hand, the tenants applied to the prescribed authority, tehsil Nabha, under section 22 of the Pepsu Act for acquisition of proprietary rights. The prescribed authority after notice to the petitioner allowed the tenants' applications on 31st May, 1960. Different sets of tenants had made applications in this case, and, therefore, four similarly worded orders were passed. Copies of these orders have been placed on the record as annexures A, B, C and D. The petitioner challenged these orders in appeal but she was unsuccessful before the Collector (*vide* annexures E, F, G and H). The matter was then taken up in revision before the Financial Commissioner, where too her contention did not prevail (*vide* annexure L). In this writ petition she desires the reversal of the above-mentioned orders passed by the Financial Commissioner, the Collector and the prescribed authority, respondents Nos. 2, 3 and 4.

The Pepsu Tenancy and Agricultural Lands (2nd Amendment) Act (15 of 1956), which came into force on 30th October, 1956, inserted Chapter IV-A, containing sections 32-B to 32-NN. According to the preamble of the Pepsu Tenancy and Agricultural Lands Act (13 of 1955), it was passed "to amend and consolidate the law, relating to tenancies of the agricultural lands and to provide for certain measures of land reforms". By section 12 of the Pepsu Act 15 of 1956, two new chapters, IV-A and IV-B, were inserted. As indicated by the heading, Chapter IV-A provides for "ceiling on land and acquisition and disposal of surplus area". Section 32-A, provides that 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. This prohibition, as is clear from the language, covers the case of both the landowner and the tenant.

Section 32-B, which is pivotal for purposes of the dispute that has arisen in this case, runs as under:—

> "*32-B. Returns by persons having land in excess of the ceiling.*—Any person who, on the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, owns or holds as landowner or tenant land under his personal cultivation, which in the aggregate exceeds the permissible limit, shall, within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958, furnish to the Collector, a return giving the particulars of all his land in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible limit which he desires to retain and the lands in respect of which he claims exemption from the ceiling under the provisions of this Chapter:
>
> Provided that such person shall state in the return any transfer or other disposition of land made by him after the 21st August, 1956, and where a person has furnished a return before the commencement of the Pepsu Tenancy and

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Agricultural Lands (Amendment) Ordinance, 1958, he shall within the aforesaid period intimate to the Collector any such transfer or other disposition of land made by him."

The limit of one month mentioned in the first paragraph of section 32-B, expired on 30th August, 1958. The dispute in the main is confined to the scope of section 32-B. In this case, the landowner had filed return to the Collector under section 32-B, requesting that she should be allowed to retain her land equal to the permissible limit.

The question which has been disposed of by the Financial Commissioner and which is being raised before us is, whether such an application is maintainable at the instance of a landowner who did not own any land which was under her personal cultivation. In other words, the issue is whether the scope of section 32-B, is restricted to filing of returns by persons who own or hold as land-owner or tenant land under personal cultivation, or, can landowners or tenants owning or holding land which is not under personal cultivation, file such returns. The argument which found favour with the learned Financial Commissioner was that the petitioner could not take any benefit under section 32-B, as no part of her land was under personal cultivation.

The scheme of the Act appears to be that Chapter II governs reservation of land for personal cultivation. Under section 5 the right is given to every landowner who owns land exceeding 30 standard acres, to select for personal cultivation, from the land held by him in the State as a landowner, any parcel or parcels of land not exceeding in the aggregate area, the permissible limit. The reservation is for personal cultivation

and it is done by intimating one's selection in the prescribed form and manner to the Collector. This right is exercisable within a stated period as provided in sub-section (2) of section 5, and if it is not exercised within that period, the right to reserve land for personal cultivation shall cease. In this case, this was not done and, therefore, no question of notifying such a land by the Collector under section 6 for personal cultivation arose. Before Chapter IV-A was inserted by Pepsu Act 15 of 1956, which came into force on 30th October, 1956, the person who had not selected any area for personal cultivation from the land held by him under section 5, still continued to be the owner of the land, which was being cultivated by his tenants. But such a person could no longer exercise his right to evict tenants from the permissible area which otherwise was permissible on compliance with the provisions of section 5. Chapter IV-A introduced changes of a far reaching character. A ceiling on land was imposed which a person might own or hold. By section 32-A, no person is entitled to own or hold as landowner or tenant, land under his personal cultivation within the (Pepsu) State which exceeds in the aggregate the permissible limit. Section 32-B requires a person who owns or holds as landowner or tenant land under his personal cultivation, which in the aggregate exceeds the permissible limit, to furnish to the Collector a return giving the particulars of all his lands in the prescribed form stating therein his selection of the area not exceeding in the aggregate the permissible limit which he desires to retain. This provision also requires him to indicate the land in respect of which he claims exemption from ceiling. In this case, we are not concerned with exemption from ceiling on land as indicated in section 32-K.

Learned counsel for the petitioner wants us to read section 32-B in a manner which confines the

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requirement of personal cultivation to the case of a person holding land as tenant. The suggestion is that a person, who owns as landowner land exceeding in the aggregate the permissible limit can submit his returns as provided in the section even if there is no land under his personal cultivation. According to Mr. Babu Ram Aggarwal, the condition of personal cultivation applies to the case of a person who holds as tenant, and not to a person owning it. The language of the section does not admit of such a construction. A return under section 32-B has to be submitted within the prescribed period by a person who personally cultivates land whether he owns it as landowner or holds it as a tenant. In other words, whether the person who submits the return happens to be a landowner or a tenant of the land, he must be personally cultivating it. If such a person cultivates personally an area within the permissible limit, that is, up to 30 standard acres, he may not submit any return, but if he is personally cultivating a larger area over and above the pemissible limit, then he is required to furnish to the Collector a return giving the required particulars of all his land. The right to select a parcel or parcels of land which he desires to retain, is available to a person personally cultivating the land whether as a landowner or as a tenant, but not to a person whose land is not being personally cultivated. Therefore, a person like the petitioner whose entire land is being cultivated by her tenants cannot avail herself of the provisions of section 32-B. The Act lays down a qualification for a person who is allowed to exercise his selection of the land which is desired to be retained and that is, that such a person must be owning or holding land "under his personal cultivation". These words govern both the landowner and the tenant. The language of section 32-B is plain and does not suffer from any ambiguity.

The right for exercising the reservation under section 5 was six months from the commencement of the President's Act, Act 8 of 1953, which was passed on 3rd December, 1953, the last date thus being 3rd June, 1954, except in the case of a land-owner who is a member of the Armed Forces of the Union who could exercise the right up to 3rd December, 1954. This period was allowed by the petitioner to expire. Under section 32-B, the last date for filing the return is within a month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958, which came into force on 30th July, 1958. The last date in this case would be 30th August, 1958, subject to the proviso, that the landowner or the tenant, who files the return owned or held land under his personal cultivation. A person like the petitioner who gets her land cultivated through tenants could not get the benefit of this provision.

Learned counsel for the petitioner has focussed our attention on a number of inequities which would attend on strict interpretation of sections 5 and 32-B. According to his contention, the rigorous enforcement of the provisions according to *litera legis* makes the Act confiscatory, and maintains, that such drastic consequences could not have been intended by the Legislature. It is said, in the first place, that owner of less than 30 standard acres is not touched at all whether he cultivates the land himself or through tenants or lets it lie fallow. The adverse consequences follow only if his area exceeds 30 standard acres. If he does not cultivate the land personally then under the Act he stands to lose his land. The right to reservation of land under section 5 is restricted to land selected for personal cultivation. Section 32-B, as has already been noticed, contemplates a

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return being submitted by a person with respect to the land "under his personal cultivation". No other person is entitled to submit the return under this provision and, therefore, is not entitled to retain for himself any piece of land. The entire land thus becomes surplus area. I am not, however, taking into consideration the case of persons seeking exemption from ceiling under section 32-K. The surplus area on vestment in the State Government meant to be distributed among the landless according to "Utilisation of Surplus Area Scheme", which has been framed by the Governor of Punjab in accordance with the provisions of section 32-J. In a case like the present, the petitioner who is owner of 94 standard acres will lose her entire land and she cannot retain for herself even a square inch.

Another serious inequity to which our attention has been drawn is that the qualification under section 32-B of owning or holding land under one's personal cultivation refers to the date of the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, which came into force on 30th October, 1956. It is said that if through no fault of the owner or tenant, as the case may be, such a person has not been able to personally cultivate his land for Kharif crop of 1956—and this may even happen by reason of some calamity, personal disablement, e.g., disease, injury, or incarceration or by act of God. *vis major*, e.g., floods or drought—and thus has failed to have under personal cultivation land on 30th October, 1956, no previous or subsequent personal cultivation can stave off the disastrous consequences; and the inexorable course of law resulting in complete divestment cannot be avoided. In other words, a person who personally cultivated his land only on one day, that is, on 30th October, 1956, escapes the exproprietory consequences. Such a person might

have allowed his land to remain entirely uncultivated either before 30th October, 1956, or subsequent to that date, he can, nevertheless, keep the land for himself. Conversely, a good husbandman cultivating the land with his own hands both before and after the date of the commencement of the Act, though not on the relevant date, on strict interpretation, stands to forfeit it. This result logically follows from the words "on the commencement" occurring in section 32-B; and, *ex vi termini,* they do not take into account acts of personal cultivation, either prior or subsequent to the commencement of the Act. In short, a person who has been personally cultivating his land throughout in the past, and also in the future, but has not done so on the date of commencement of the Act, forfeits the land completely, and yet a person who has subjected his land to personal cultivation only on the date of commencement, and neither before nor afterwards, retains the land. The qualification under section 32-B thus, need be possessed on the determining date only which is 30th October, 1956, in order to avert divestment; but later on the land might, with impunity, be left untilled and unsown without any fear of any evil consequences. The continuity of personal cultivation for a stated period to qualify oneself for retaining the land is not being insisted upon by the statute, and this can be productive of grave incongruity and unmitigated inequity. The law permits of no *locus poenitentiae.* There is no room for such a possibility as is contemplated in section 32-K(vi) where a landowner on giving an undertaking to the Collector that he would personally cultivate the land can avert the drastic consequences of total deprivation.

If the purpose of the Act was to achieve optimum cultivation of the land, the provisions of the Act fall short of securing the attainment of such an object. The Act does not make it incumbent upon

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the landowner or landholder to cultivate the land either personally or through tenants. The Act does not insist upon any cultivation. Alternatively, if the intention of the Act was only to provide surplus area for the landless, then in this case the law has gone to the extreme length of compelling a landowner like the petitioner—who owns over 400 bighas—to become completely landless, her only fault being that on the commencement of the Act she did not personally cultivate her land. The result in a case like the present is extremely iniquitous. Further, if the object of the framers was to remove inequality by bringing down disparity to 30 standard acres, the accomplishment in this case has transcended all expectations. Not only her surplus area, but all her land, every inch that she ever owned, would go to relieve the want of the landless; and in this process law leaves her landless. While being made to supply the needs of others, the rigour of law has made her absolutely needy.

Whether such an eventuality was within the contemplation of the law-makers, it cannot be gathered from the preamble to the principal Act or to the amending Acts. According to the statement of Objects and Reasons attached to the Pepsu Tenancy and Agricultural Lands (Second Amendment) Bill, 1956, this measure has been brought because "the necessity for introducing certain agrarian reforms, particularly with a view to protecting the tenants against eviction and fixing for allottees a higher limit for reservation of land for personal cultivation was being felt for some time past." The Bill presumbly seeks to achieve the object by amending the principal Act. The expression "certain agrarian reforms" is nebulous — perhaps inserted advisedly— and no attempt has been made to clarify, explain or define it. If the object of introducing what are styled "certain agrarian reforms" was to expropriate a landowner

in the circumstances of the petitioner, then section 32-B has achieved its object. If, however, the phrase "certain agrarian reforms" means, securing the utmost cultivation of land or reducing disparity to the minimum, then in this case, and in other similar cases, either of the purposes has remained unaccomplished. Instead of removing disparity, the process has been reversed, whereby the petitioner has not only been relieved of her surplus area but of her entire land. Whether this is tantamount to agrarian reforms, is not for the Courts to opine. All that the Courts can say is that the compelling logic of law has achieved this result whether it was intended or not.

The question, however, is whether in view of the iniquity suffered in consequence of the operation of the Act, can this Court ameliorate its hardship? This might be possible where the meaning of the statutory language is obscure. If it is possible to subject the language to two constructions, one of which does injustice and the other avoid injustice, then it becomes the duty of the Court to construe the Act in order to secure the ends of justice and for that purpose it may adopt an expansive or contractive construction. If, however, the language of the Act is clear and explicit, it must receive full effect regardless of the inequitable result which might follow. If adherence to the plain and natural meaning results in manifest injustice, the Courts cannot avoid it by assuming the role of legislators. On considerations of inconvenience or hardship, Legislature's positive mandate cannot be disregarded by Courts, and they are not at liberty to depart from the literal meaning of the words and phrases used in the Act. If the unjust consequences cannot be avoided, the Court cannot refuse to give effect to such an interpretation by a process of *jus dare* when its function is only *jus dicere*. Moreover, the scope for construction is within a very

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narrow ambit when the language is not indefinite or ambiguous. The plain meaning, regardless of the outcome, cannot be by-passed howsoever, regrettable the consequences may be. In this case the petitioner cannot be succoured by adopting a construction which, according to all canons of interpretation, is unsustainable. The clear language cannot be passed over in order to bring the statutory provisions in accord with what the Court may deem to be right or reasonable. A hardship can only be relieved by construing a provision liberally or literally if that is possible and not by misconstruing it. It is not open to the Judge to mould the statute to suit his own notions of propriety or justice. Courts cannot invade the province of the Legislature by wielding legislative power; they must not attempt to re-write the Act. It is for the Legislature to step in and prevent unjust operation of the statute. Court when interpreting a statute, function within a narrow groove. In their search for the ascertainment of the intention of the law-makers, the basic rule which they have laid down for themselves is that if the statute is clear, definite and involves no ambiguity, its plain meaning from bare reading suffice. Occasion for resort to intrinsic and extrinsic aids for construction arises only where the meaning of the language used admits of uncertainty or is susceptible of double meaning. If by reason of unintelligibility, equivocality, circumlocution, solvenly phraseology or bad grammar, the legislative intent cannot readily be ascertained, Courts then turn for light to the pertinent canons of construction. *Verba legis* have precedence over the *sententia legis.* As observed by Lamar J., of the Supreme Court of the United States—

> "Words are the common signs that mankind make use of to declare their intention to one another; and when the words of a

man express his meaning plainly, distinctly and perfectly, we have no occasion to have recourse to any other means of interpretation."

Earlier, the same Judge said:—

"To get at the thought or meaning expressed in a statute, a contract or a Constitution, the first resort, in all cases, is to the natural signification of the words, in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning, which involves no absurdity nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, must be accepted, and neither the Courts nor the Legislature have the right to add to it or take from it." (*vide The Board of County Commissioners of the County of Lake* v. *Frank W. Rollins* (1).

This case, no doubt, furnishes a glaring illustration of iniquity which, perhaps, was not contemplated or anticipated by the legislative draftsmen. It is difficult to conceive that an eventuality resulting in complete expropriation of an owner who had omitted to make any reservation for personal cultivation, was within the purpose of the Act and was intended by the Legislature. It is difficult to believe that in the case of such an owner, as the petitioner, the contemplated compensation could be deemed to serve the equities, for a divestment in *invitum* is hardly a satisfactory *quid pro quo*.

(1) 130 U.S. 662.

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The result, therefore, is that in consequence of the rigour of the law, the petitioner is placed in a sorry plight, but it is not within the province of this Court to relieve her distress. This Court can only draw the attention of the Legislature to consider the advisability of amending the particular provisions and to remove the lacunae in the law, assuming the omission was undesigned and not purposive.

The next question in this case is whether the provisions of Article 14 of the Constitution are attracted. According to the contention of the petitioner's learned counsel, the Pepsu Act infringes Article 14, in so far as the principle of equality before law, and of equal protection of law, within the same territory, is being contravened.

The territory which formed Pepsu State merged with the territory of Punjab on 1st November, 1956, when new Punjab State was formed under section 11 of the States Reorganisation Act (37 of 1956). Section 119 of the States Reorganisation Act, 1956, provides for the continuance of the old laws in force in former Pepsu State and also of the old laws in force in former Punjab State even after the merger of the two States. It is, however, open to the appropriate Legislature to legislate for the whole State on the basis of a uniform system of laws when it considers reasonable. Section 119 runs thus—

> "119.—*Territorial extent of laws.*—The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by

a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

The Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, have certain distinctive features. Under section 5-A of the Punjab Act, every land-owner or tenant who owns or holds land in excess of the permissible area is required to furnish within a given period, a declaration supported by an affidavit in respect of the lands owned or held by him in a prescribed form. Under section 5-B, such a person is enabled to select his permissible area and intimate the selection to the prescribed authority specified in section 5-A. If he fails to do so, the prescribed authority may, subject to the provisions of section 5-C, select the parcel or parcels of land which such a person is entitled to retain. Section 5-C, prescribes penalty for failure to furnish declaration as required by section 5-A. The prescribed authority, in that event, may by order direct that the whole or part of the land of such a land-owner or tenant in excess of ten standard acres to be specified by such an authority, shall be deemed to be the surplus area of such a land-owner or tenant and shall be utilized by the State Government for the purpose mentioned in section 10-A, that is, for the resettlement of tenants ejected or to be ejected under section 9. Now, the distinction between the Punjab Act and the Pepsu Act is that under section 32-B of the Pepsu Act, a land-owner who has no land under his personal cultivation may not be able to keep with him any area, not even to the extent of the permissible limit. On the other hand, in the case of those lands which are governed by the Punjab Act, the land-owner or tenant becomes liable to be deprived of an area in excess

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of ten standard acres. He thus retains at least ten standard acres, whereas the owner in Pepsu stands to be dispossessed of his entire land. On the basis of this difference, it is said that there is no reasonable classification between one land-owner and another in the new Punjab State. Reference was made to a number of decisions of the High Courts in the States where similar merger had taken place.

In two Rajasthan cases, a seemingly different view was taken, but in view of their own peculiar facts those cases are distinguishable as they deal with a totally different situation. In *Manohar Singh Ji* v. *State of Rajathan* (2), an element of inequality was introduced as between the Jagirdars of one part of Rajasthan and those of the other parts after integration. In the circumstances existing in Rajasthan, the discrimination was without justification. This judgment when challenged on appeal before the Supreme Court was upheld (*vide State of Rajasthan* v. *Manohar Singh Ji,* (3).

It was observed by the Supreme Court—

> "It is not denied that when the State of Rajasthan was formed in April and May, 1949, the Jagirdars of only part of the present State of Rajasthan could not collect their rents while Jagirdars in other areas which were covered by Jaipur, Bikaner, Jaisalmer and Jodhpur and Matsya Union were under no such disability.
>
> It appears that in the former State of Rajasthan provisions regarding the management by Government of Jagirs and the

(2) A.I.R. 1953 Raj. 22.
(3) A.I.R. 1954 S.C. 297.

right to collect rents already existed whereas there was no such provision in the former States of Jaipur, Bikaner, Jaisalmer and Jodhpur and Matsya Union, but when the integration took place in April and May, 1949, the discrimination exhibited itself not by virtue of anything inherent in the impugned Ordinances but by reason of the fact that Jagirdars of one part of the present State of Rajasthan were already subjected to a disability in the matter of management of their Jagirs while the other parts were wholly unaffected.

This discrimination, however, undesireable, was not open to any exception until the Constitution came into force on January 26, 1950.

* * * * *

Such an obvious discrimination can be supported only on the ground that it was based upon a reasonable classification. It is now well-settled by the decision of this Court that a proper classification must always bear a reasonable and just relation to the things in respect of which it is proposed. Judged by this criterion it seems to us that the discrimination is based on no classification at all and is manifestly unreasonable and arbitrary. The classification might have been justified if the State had shown that it was based upon a substantial distinction, namely, that the Jagirdars of the area subjected to the disability were in some way different to those of the other area of Rajasthan who were not similarly situated."

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The next Rajasthan case is *Birdichand* v. *State of Rajasthan* (4), which proceeds on similar lines as the former case. In *Sheokaransingh* v. *Daulatram* (5), the facts were entirely distinguishable. It was held that the rule of Damdupat which was in force only in certain areas of the State of Rajasthan, in so far as it dealt with a matter of interest, was a question of civil law and it was not in the nature of personal law peculiar to the Hindus and, therefore, it was hit by Article 14. The reasoning of the learned Judges of the Rajasthan High Court in that case cannot be borrowed in supporting the petitioner's contention in this case.

The reasoning in *Desai Nagardas* v. *Jagsi Bhikra* (6), is also distinguishable. In that case, the money-lenders of the former Bhavnagar State were hit as the particular Act discriminated against them *vis-a-vis* the money-lenders of the rest of the State. The peculiar circumstances which led to the passing of section 119 of the States Reorganisation Act distinguish the instant cases of Rajasthan and Saurashtra High Courts and the latter cannot be relied upon for invoking the protection of Article 14 in this case.

The policy underlying section 119 of the States Reorganisation Act, appears to be not to suddenly disturb the legal rights and obligations of people in the respective territories which were being merged in one State. In a decision of a Division Bench of this Court in *Nathu Ram* v. *Sampat Kumar*, L.P.A. No. 259/1958, decided on 4th August, 1959, it was held that Article 14 had not been infringed by the co-existence of two sets of Acts applicable in the respective territories of

(4) A.I.R. 1958 Raj. 26.
(5) A.I.R. 1955 Raj. 201 (F.B.)
(6) A.I.R. 1953 Saur. 58.

former Pepsu State and Punjab State, prior to merger. The Division Bench observed—

> "The Parliament has, while legislating in regard to the reorganisation of States and either merging one State into another or adding part of the territory of one State to another, or combining two States to form one State, provided that old existing laws in the respective territories of the States dealt with in reorganisation, prior to reorganisation shall continue in force in such territories until altered by apropriate Legislature. The object of this as pointed out by a Division Bench of this Court in Messrs. *Tilakram Rambaksh of Lehragaga* v. *the Bank of Patiala,* Civil Writ No. 133 of 1957, decided on March 6, 1959, was that the Parliament considered it wise not to make a sudden alteration in the existing laws applicable to former Pepsu Territory and that in order to make the merger as smooth as possible. In other words, the object was to keep the laws in force in the former Pepsu territory, even after reorganisation, unaltered on municipal considerations and for welfare of all classes in that area so as to avoid any sudden change in the life pattern of the people which may have been disturbing and made reorganisation somewhat a difficult task. The result has been territorial classification in the new Punjab State under which one set of laws have been allowed to remain in force in the former Pepsu State territory and another in the former Punjab State territory. The classification, in

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the background of circumstances, is both reasonable and conducive to the welfare of the people in both the territories which now form one State. Section 119 of the States Reorganisation Act, 1956, has made provision giving power to the appropriate Legislature to alter laws in due course of time so as to eliminate any hardships or discriminations. This in itself is a very reasonable provision helping to stabilise the new State in due time by future legislation by the appropriate Legislature."

The above observations hold equally good in the instant case.

The scope of Article 14 was explained by the Supreme Court in *Bidi Supply Co.* v. *Union of India* (7), in the folowing words—

"It is now well-established that while Article 14, forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations

(7) A.I.R. 1956 S.C. 479 (482).

or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

In view of the above discussion, Article 14 cannot be pressed into service on behalf of the petitioner with a view to strike down the Pepsu Act.

The result, therefore, is that the petition fails and is dismissed. In the circumstances of this case, resulting in great hardship to the petitioner, the parties are left to bear their own costs.

P. D. SHARMA, J.—I agree.

Sharma, J.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

SHAKUNTLA BAWA,—*Petitioner.*

versus

RAM PARKASH AND OTHERS,—*Respondents.*

Civil Revision No. 309 of 1962

1962

Nov., 30th

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)(v)—"Occupation" Meaning of—Tenant not residing in the house but visiting occasionally—Furniture present in the house and tenant willing to pay rent—Whether constitute occupation.

Held, that "occupation" means occupation in the sense of actual user as is clear from the words of section 13(2)(v)