matter which could easily be decided by the Executing Court, because it was covered by section 47 of the Code of Civil Procedure and related to the execution, discharge and satsifaction of the decree. By determining this matter, the Executing Court was not going behind the decree, because, in law the decree-holder is entitled to the possession of the land mentioned in the sale-deed. In case during the consolidation proceedings, certain other *khasra* numbers are allotted to the judgment-debtor in lieu of this land, the decree-holder would be entitled to get possession of the same.

In view of what I have said above, I would accept this appeal, set aside the decree of the lower appellate Court and restore that of the Executing Court. In the circumstnaces of this case, however, I will leave the parties to bear their own costs throughout.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

HARCHARAN SINGH,—*Petitioner.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Writ No. 702 of 1961.

1963

Feb., 12th

Punjab Security of Land Tenures Act (X of 1953)—S. 2(3)—Permissible area—Whether to be calculated in standard acres or ordinary acres.

Held, that sub-clause (a) of clause (ii) of the proviso to sub-section (3) of section 2 of the Punjab Security of Land Tenures Act, 1953, means that if the holding is in terms of standard acres which would be taken into account

in computing the surplus area and it is only when the standard acreage has not been computed that the holding may be reckoned in terms of ordinary acres.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari or mandamus or any other appropriate writ, order or direction be issued quashing the orders of the Collector and the Commissioner, dated the 12th October, 1960 and 20th December, 1960, respectively.

B. S. JAWANDA, ADVOCATE, for the Petitioner.

TEJINDER SINGH DOABIA, ADVOCATE, *for* H. S. DOABIA ADDL. ADVOCATE-GENERRAL, *for the Respondents.*

ORDER

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—The only point which has been urged in this petition is that the Collector Karnal had no warrant to review his previous order varying to the petitioner's detriment the declared surplus area from about four ordinary acres to twenty standard acres.

In the order passed on 26th of May, 1960 (Annexure A), it was stated by the Collector that Harcharan Singh owned 70 standard acres and 12 units equivalent to 104 acres, 2 *kanals* and 15 *marlas* of land on 15th of April, 1953. Being a displaced person the permissible area allowed to him under clause (a) of sub-section (3) of section 2 of the Punjab Security of Land Tenures Act, 1953, is "fifty standard acres or one hundred ordinary acres, as the case may be". Calculating the holding in ordinary acres the surplus area declared by the Collector in this order was 4 acres, 2 *kanals* and 15 *marlas*. Subsequently, in his order of 12th of October, 1960, the Collector took into reckoning the standard acres of the land owned by the petitioner and on this calculation it was found that 20 standard acres and 12 units of his land was surplus.

In my opinion, the Collector in the second order has construed the statutory provision correctly. 'Permissible area' in sub-section (3) of section 2 of the Act has been defined as under:—

> "(3) 'Permissible area' in relation to a land-owner or a tenant, means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres:—
>
> Provided that—
>
> (i) * * * *
>
> (ii) for a displaced person—
>
> (a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case may be."

I take sub-clause (a) of clause (ii) of the proviso to mean that if the holding is in terms of standard acres it shall be the land in standard acres which would be taken into account in computing the surplus area and it is only when the standard acreage has not been computed that the holding may be reckoned in terms of ordinary acres. It seems that the allotment in favour of the petitioner was made in terms of standard acres and it is the standard acreage which should be taken into account. The words "as the case may be" in the end of sub-clause (a) of clause (ii) of the proviso provide a key to the intention of the legislature. When the acreage is in terms of standard acres this will govern the calculation of permissible area.

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It may be, as in this case, that the equivalent in ordinary acreage of standard acres is also mentioned in the order of the Collector, but this would not entitle the petitioner to choose the standard of acreage most suitable to him. Standard acreage is mentioned first and ordinary acreage later in sub-clause (a) of clause (ii) of the proviso.

It is true that this particular reasoning is not mentioned in the order of review. All that is stated in the subsequent order is that the petitioner had made no reservation and the excess of 20 standard acres and 12 units over the permissible area of 50 standard acres has been declared surplus. The total holding has been taken to be 70 standard acres and 12 units. The appellate order of the Commissioner passed on 20th of December, 1960, affirming the order in review passed by the Collector makes a special mention of the fact that the petitioner had not been able to produce any documentary evidence to show that the original allotment was made in terms of ordinary acreage. Even now the petitioner is not able to substantiate that he was allotted land in terms of ordinary acres. The first order of the Collector of the 26th of May, 1960, on the other hand, mentions that the petitioner was allotted 70 standard acres and 12 units/104 acres, 2 *kanals* and 15 *marlas*.

Mr. Jawanda further submits that section 82 of the Punjab Tenancy Act dealing with "review by revenue officers" makes it clear that the order of review by the Collector should have been sanctioned in the first instance by the Commissioner. In the first place, this point was never taken before Mr. K. L. Budhiraja, Commissioner, who decided the appeal on 20th of December, 1960. Secondly, the written statement shows that both the orders

of the Collector were passed by one and the same officer. Proviso (a) to sub-section (1) of section 82 of the Punjab Tenancy Act says that "when a Commissioner or Collector thinks it necessary to review any order *which he has not himself passed*, and when a Revenue-officer of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue-officer to whose control he is immediately subject". It is the case of the respondent-State that the Collector reviewed his own earlier order and clearly this is not a case in which sanction of the higher authority was necessary. It is only when the Revenue-officer below the rank of the Collector passes an order of review that he has first to obtain the sanction of the superior authority. In any event, this is a point of academic importance only as the Commissioner who is the next superior authority in the hierarchy has himself approved the order of the Collector in the exercise of his appellate jurisdiction.

In my view, there is no illegality in the impugned orders and the petitioner at any rate has suffered no injustice. In this view of the matter, this petition must fail and is dismissed with costs.

B.R.T.

20945HC—1000—4-6-63—C., P. & S., Punjab, Chandigarh.