Before Jawahar Lal Gupta, K.S. Kumaran & N.K. Agrawal, JJ

GURCHARAN SINGH,—*Appellant*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

L.P.A. 1199 of 1992

4th June, 1999

Constitution of India, 1950—Art. 14—Pepsu Tenancy and Agricultural Lands Act, 1955 (as inserted by Act No. 11 of 1968)—S. 51-A—Displaced persons (compensation & rehabilitation) Act, 1954—1968 amendment protecting lands granted for gallantry and by way of military award before 26th January, 1950 with retrospective effect—Such land immune from being declared surplus—Gallantry award holders of land falling in Pakistan granted land in lieu thereof under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954—S. 51-A exempts lands granted for gallantry before 26th January, 1950 from the operation of the Act—Original character of holding would not change either by migration or on account of consolidation proceedings—Such land given by way of compensation for the loss of land left behind in Pakistan—Appellant held entitled to restoration of land and its possession—Classification between persons who have acquired land by personal money or by inheritance and persons who have been granted land by performing acts of gallantry—Such classification is just & reasonable & intra vires of Article 14.

Held, that the obvious purpose in introducing Section 51-A was to exempt the lands granted for gallantry before 26th January, 1950 from the operation of the Act. The legislature wanted that the gallant man should not be deprived of the land given to him by way of reward for gallantry. It was with this objective that the provision was made operative with retrospective effect. It was specifically provided that Section 51-A "shall be deemed always to have been inserted". Obviously, the Legislature in the exercise of its plenary power had granted retrospective operation to the provision.

(Para 13)

Further held, that there is an obvious classification between the persons who have acquired land either with their own money or by inheritance on one hand and others who have got it by performing acts of gallantry. The classification has been made with the object of ensuring that the gallant soldiers or their progeny (to the extent provided for in the provision) are not deprived of the reward given to them in recognition of the act of gallantry. The classification is just & reasonable. It has a rational relationship with the object of rewarding the gallant soldiers. It meets with the requirements of Article 14 of the Constitution.

(Para 14)

Further, Can it be said that the landowner who had been given an award, shall not be entitled to the protection of Section 51-A as this provision does not find mention in the Consolidation of Holdings Act, 1954 ? In our opinion, the answer would be in the negative. The land allotted after consolidation is in lieu of the original holding. It is merely a substitute. Whatever protection was available in respect of the original land shall also be granted for the substitute.

(Para 18)

Further held, that the purpose of the Legislature in amending the Statute with retrospective effect was to grant complete protection to the soldiers who had shown gallantry during the war. If they have had to migrate, the protection does not cease to be available. In fact, on a perusal of the provisions of the 1954 Act, it is apparent that this Act had been enacted to "provide for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith". It is common knowledge that people who had migrated from what is now Pakistan, had left behind their properties. Similarly, those who had gone to Pakistan, had also left behind their properties. It was in view of this factual position that a decision to pay the compensation "to displaced person" had been taken. It was observed that it shall be "confined to the utilisation of the acquired evacuee property in India as well as any amount realised from Pakistan.....". Thus, the allotment in India under the provisions of the 1954 Act was in the nature of a compensation for the loss suffered by the people on account of migration. It was an effort to mitigate the hardship. In fact, the compensation was not equal to the loss. The land allotted on migration was less than the land which had been left behind by him in Pakistan. We think, with utmost respect that it would be unfair to deny the benefit of the provisions of the 1968 Act merely because the land in Budhlada had been allotted to the appellant by way of compensation for the

land left behind by him in Pakistan. It would introduce an artificial distinction between persons who were initially allotted land in what is now India and those who had been allotted land in what is now Pakistan.

(Para 23)

Further held, that we respectfully venture to think that the land allotted to the appellant's father on account of gallantry does not cease to be so merely because he had to shift to India and the present land has been given to him by way of compensation for the loss. The act of shifting was not voluntary. Imposition of any further loss shall be unjust.

(Para 24)

Further held, that the protection of Section 51-A was available to the appellant. Thus, the land was wrongly declared surplus. That being so, even the utilisation and allotment to respondents Nos. 4 to 9 or their legal representatives was illegal. Consequently, the appellant shall be entitled to the restoration of the possession. The competent authority shall, however, consider the claim of respondents No. 4 to 9 for allotment of alternative land in accordance with law.

(Para 30)

Viney Mittal, Sr. Advocate with Arun Jain and Raman Walia, Advocates *for the appellant*

H.S. Sidhu, DAG, Punjab *for respondent* Nos. 1 to 3.

I.S. Vimal, Advocate *for respondent* Nos. 4 to 9.

JUDGMENT

Jawahar Lal Gupta, J.

(1) In April 1968, Section 51-A was inserted in the Pepsu Tenancy and Agricultural Lands Act. 1955 with retrospective effect. It was *inter alia* provided that "land.....granted for gallantry at any time before the 26th day of January 1950, to any member of the armed forces.....shall not be taken into account in computing the surplus area under this Act....." Dhanna Singh was granted land for gallantry in what is now a part of Pakistan. On partition, he had migrated to India. Would Dhanna Singh be not entitled to the protection of Section 51-A ? This is the primary question that arises for consideration in this Letters Patent Appeal. The sequence of events as relevant for the decision of this case may be briefly noticed.

(2) Dhanna Singh was allotted land by way of a military grant. On partition of the country, he had migrated to India. He was initially allotted 123.102 acres of land which was equal to 79.39 standard acres. Ultimately, he was found entitled to the allotment of 54. $3\frac{1}{4}$ standard acres of land. This land was allotted to him in what was then known as Village Budhlada, Tehsil Mansa. A finding in this behalf was given by the Chief Settlement Commissioner, Punjab,–*vide* order dated 5th March, 1964.

(3) The Pepsu Tenancy and Agricultural Lands Act was promulgated in the year 1955. Section 3 of the Act *inter alia* provided that the permissible limit shall mean "thirty standard acres of land....." Since Dhanna Singh had been allotted land in excess of this permissible limit, proceedings for determination of the surplus area were initiated. *Vide* order dated 28th March, 1961, 28.68 standard acres of land belonging to Dhanna Singh was declared surplus. This was an *ex parte* order. Dhanna Singh submitted objections. These were decided by the Collector, Bathinda,—*vide* order dated 9th June, 1961. The area which was included in the surplus pool was specified. On 5th March, 1962, the surplus land was allotted to respondent Nos. 4 to 9 in this appeal. *Vide* order dated 5th March, 1964 the entitlement of Dhanna Singh was found to be 54. $3\frac{1}{4}$ standard acres instead of 58. $\frac{3}{4}$ standard acres. Dhanna Singh filed a revision petition which was dismissed,—*vide* order dated 2nd March, 1967.

(4) On 16th April, 1968, the legislature promulgated Act No. 11 of 1968. Section 51-A was introduced. It was declared that this provision "shall be deemed always to have been inserted in the Act." By this provision, it was *inter alia* provided that "where any land is granted for gallantry at any time before the 26th day of January, 1950 to any member of the armed forces, whether maintained by the Central Government or by any Indian State, then, so long as such land or any portion thereof, as the case may be, has not passed from the original grantee into more than three successive hands by inheritance or bequest and is held by the grantee or any of such hands, such land or portion as the case may be, shall not be taken into account in computing the surplus area under this Act...."

(5) On 9th October, 1968, Dhanna Singh filed CWP No. 3213 of 1968 with the prayer that the order "dated 9th June, 1961 declaring 28.68 standards acres as surplus be set aside and the possession of the land be restored to the petitioner." On 9th December, 1968, Dhanna Singh passed away. His son Gurcharan

Singh filed a petition for being impleaded as the petitioner. *Vide* order dated 1st April, 1969, his request was allowed. He was impleaded as the petitioner. On 9th January, 1980, CWP No. 3213 of 1968 was allowed by a learned Single Judge of this court. It was held that "since the land in dispute was given to Dhanna Singh as a military grant as has been held by the Chief Settlement Commissioner, the provisions of the Act are not applicable to the land in dispute. Consequently, the order dated 9th June, 1961 passed by the Collector and the order dated 2nd March, 1967 passed by the Financial Commissioner, are illegal."

(6) About three months later, on 17th April, 1980, Pola Singh and others who are respondent Nos. 4 to 9 in this appeal, filed CWP No. 1287 of 1980. They prayed for a declaration that the decision dated 9th January, 1980 in CWP No. 3213 of 1968 shall not be binding on them as they had not been impleaded as parties in the said writ petition. It was further prayed that the authorities be directed to redetermine the surplus area of Gurcharan Singh. This writ petition was allowed *inter alia* with the following observations:—

> "In view of what has been said above, this writ petiton is allowed. It is held that the petitioners are not bound by the decision rendered in Civil Writ Petition No. 3213 of 1968 decided on 9th January, 1980 and in compliance of the same they cannot be dispossessed from the land in dispute. If permissible, the question as to whether the land could be declared surplus or not may be determined in any proceedings that may be competent under the law by respondent No. 4 and if such a course is open, the question as to whether on account of retrospective operation of Section 51-A of the Act, respondent No. 4 is entitled to ask for setting aside of the orders declaring the land surplus or that the petitioners have acquired an indefeasible right which cannot be taken away even by retrospective amendment shall be gone into. There shall be no order as to costs."

(7) Aggrieved by the judgment, the landlord Gurcharan Singh son of Dhanna Singh has filed the present Letters Patent Appeal.

(8) Mr. Viney Mittal, learned counsel for the appellant contended that the learned Single Judge could not have annulled the earlier judgment. It was also contended that respondent Nos. 4 to 9 were not necessary parties. Still further, it was submitted that Section 51-A having been brought on the Statute Book with retrospective effect, the land which had been given to Dhanna Singh by way of a military grant could not have been taken into consideration while deciding the case with regard to the declaration of surplus area.

(9) On the other hand Mr. I.S. Vimal and Mr. H. S. Sidhu, learned counsel for the respondents contended that the tenants were necessary parties. It was claimed that no land had been allotted to the appellant's father in Village Budhlada by way of an award for gallantry. In fact the land had been allotted under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The protection of Section 51-A is not available in respect of the land allotted under the 1954 Act. Firm reliance in support of the claim was placed on the decision in *Shri Sailen Krishna Majumdar* vs. *Malik Labhu Masih (deceased) and others* (1). Learned counsel also submitted that the case may be decided on the hypothesis that CWP No. 3213 of 1968 is being heard for the first time and that the present respondents had been impleaded as parties.

(10) After hearing counsel for the parties, we find that the primary question that arises for consideration is—Can the appellant be denied the protection of Section 51-A on the ground that the land held by him in Budhlada was allotted to him under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 ?

(11) The admitted position is that the appellant's father had been allotted land in an area which now falls in Pakistan. It was in lieu of that land that the appellant had been allotted land in village Budhlada. Mr. Mittal contended that the land in Budhlada is only a substitute for the land which had been allotted to the appellant's father by way of a military grant in what now forms Pakistan. This land having been allotted in lieu of the original holding is fully qualified for the benefit contemplated under the statute. On the other hand, Mr. Vimal contended that the present allotment is only

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referable to the provisions of the 1954 Act. In respect of this property, the protection of Section 51-A is not available. Is it so ?

(12) Indisputably, the military grant was a reward for an act of gallantry. Once a soldier was found to have performed a gallant act, he could have been allotted land anywhere in the country. In the pre-partition days, a person hailing from Peshawar would have been normally allotted land in a nearby area. Another person belonging to Punjab would have in all likelihood been accommodated in one of the districts of that State. The location of the land does not appear to be of any consequence.

By Act No. 11 of 1968, the Legislature provided as under :—

"After section 51, the following section shall be and shall be deemed always to have been inserted, namely:—

51-A. Exemption of lands granted for gallantry before 26th January, 1950—Notwithstanding anything contained in this Act, where any land is granted for gallantry at any time before the 26th day of January 1950 to any member of the armed forces, whether maintained by the Central Government or by any Indian State, then, so long as such land or any portion thereof, as the case may be, has not passed from the original grantee into more than three successive hands by inheritance or bequest, and is held by the grantee or any of such hands, such land or portion, as the case may be, shall not be taken into account in computing the surplus area under this Act, nor shall any tenant of such land or portion have the right to purchase it under Section 22.

Provided that where such land or portion has passed into more than three such hands and the person holding such land or portion, immediately before the 3rd of August, 1967, is a person to whom it has passed by inheritance or bequest, the exemption under this section shall apply to such land or portion thereof, as the case may be during the life-time of such person."

(13) The obvious purpose in introducing the provision was to exempt the lands granted for gallantry before 26th January, 1950 from the operation of the Act. The legislature wanted that the gallant

man should not be deprived of the land given to him by way of reward for gallantry. It was with this objective that the provision was made operative with retrospective effect. It was specifically provided that Section 51-A "shall be deemed always to have been inserted." Obviously, the Legislature in the exercise of its plenary power had granted retrospective operation to the provision.

(14) It deserves notice at the threshold that the provision recognises the basic distinction between hereditary landlords and soldiers who have been rewarded for gallantry. There is an obvious classification between the persons who have acquired land either with their own money or by inheritance on one hand and others who have got it by performing acts of gallantry. The classification has been made with the object of ensuring that the gallant soldiers or their progeny (to the extent provided for in the provision) are not deprived of the reward given to them in recognition of the act of gallantry. The classification is just and reasonable. It has a rational relationship with the object of rewarding the gallant soldiers. It meets with the requirements of Article 14 of the Constitution. We are happy to note that even a suggestion of challenge to the validity of this provision was not made at the hearing.

(15) A perusal of the above provision shows that it begins with a non-obstante clause. It operates despite the other provisions of the Statute. It applies in all cases where "any land is granted for gallantry at any time before the 26th day of January, 1950". Thus, all grants given before the declaration of India as a Republic are protected under this provision. Still further, the benefit of this provision is available to a "member of the armed force" irrespective of the fact whether the force was "maintained by the Central Government or by any Indian State." This benefit is not only admissible to the "original grantee" but also to three more "successive hands" who may get it "by inheritance or bequest". Still further, even if the land has gone to a person beyond three hands prior to 3rd August, 1967, the benefit of exemption shall be available to him for the "life time of such person".

(16) On a perusal of the provision, we find that it is very widely worded. It is intended to confer benefit on the original grantee and his three successors / beneficiaries.

(17) Despite the language of the provision, it has been contended by Mr. Vimal that the benefit shall not be permissible to a person like the appellant or even his father when land is allotted

on their migration to India. If this contention is accepted, the obvious result would be that the persons who were initially allotted land by way of military grant prior to 26th January, 1950 in what is now a part of Pakistan shall not be entitled to the benefit of Section 51-A while others whose act of gallantry though of a much lesser degree would continue to get the benefit merely because they were initially allotted land in what is now called India. It would surely lead to anomalous results. Such a result is not warranted by the plain language of the provision.

(18) Still further, it is known that consolidation proceedings had been held throughout the State. The land of different land owners was put in a common pool. Thereafter, it was allotted to them in, as far as possible, single units. However, the land allotted after consolidation of holdings was very often not the same as was originally held by the land owners. Can it be said that the land owner who had been given an award, shall not be entitled to the protection of Section 51-A as this provision does not find mention in the Consolidation of Holdings Act, 1954? In our opinion, the answer would be in the negative. The land allotted after consolidation is in lieu of the original holding. It is merely a substitute. Whatever protection was available in respect of the original land shall also be granted for the substitute.

(19) However, Mr. Vimal vehemently contended that the benefit was not admissible. He placed reliance on the decision of their Lordships of the Supreme Court in *Majumdar's case* (supra). Their Lordships were considering the provisions of Section 19-DD which was inserted by Punjab Act 12 of 1968 in the Punjab Security of Land Tenures Act, 1953. Their Lordships were pleased to observe as under :—

> "We are referrred to the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It is an Act to provide for the payment of compensation and rehabilitation grants to displaced persons and for matter connected therewith. We have not been shown in it any provision to the effect that any land given as compensation to a displaced person for loss of gallantry award land may imbibe the convenant of exemption available under Section 19-DD of the Act. We are consequently of the view that there is no basis for holding that the exemption in respect of the gallantry award land will be available in respect of the land given under the Displaced Persons (Compensation

and Rehabilitation) Act, 1954 as compensation for the loss thereof. We find no infirmity in the High Court judgment on this count.

Equity is being claimed by both the parties. Under the circumstances we have no other alternative but to let the loss lie where it falls. As the *maxim is, in acquali jure, melior* set *conditio possi lentis*'. Where the equities are equal, the law shall prevail. The respondent's right to purchase must, therefore, prevail."

(20) On behalf of the respondents, it was contended that these observations relate to the peculiar facts of the case. It was pointed out that the appellant had been granted land posthumously. The tenant had been cultivating the land for a long time. He was a sitting tenant. In Majumdar's case, the decision of the revenue authorities had been challenged by the tenant before the High Court through CWP No. 1158 of 1963. *Vide* order dated August 30, 1966, the claim of the tenant had been accepted. After the acceptance of the claim, the landlord had filed a civil suit on July 3, 1970. He had *inter alia* claimed that "the orders passed by the Assistant Collector as also of High Court were nullity and the respondent (the tenant) was consequently liable to be ejected." The suit as well as the appeal filed by the landlord had been dismissed. Even the second appeal had been dismissed by High Court. It was in the context of this factual position that their Lordships had made the above quoted observations.

(21) With utmost respect, we think that the claim made on behalf of the appellant is correct. Since the High Court had decided the matter against the landlord in the year 1966 and the order was sought to be challenged after the lapse of almost four years as being a nullity, the courts had refused to interfere. Otherwise, on the interpretation of the provision, their Lordships were pleased to observe as under :-

"From the language of this section and from the fact that the date of the award of the grant of the land for gallantry having been before the 26th day of January 1950 so long as such land or, any portion thereof, as the case may be, had not passed from the original grantee into more than three successive hands by inheritance or bequest and was held by the grantee, or any of such hands, such land or portion, as the case may be, should not be taken into account

in computing the surplus area under the Act, nor shall any tenant of such land or portion have the right to purchase it under Section 18."

(22) The above observations clearly show that the protection of Section 19-DD was held to be available even when the land had passed into three successive hands by inheritance or bequest. In the present case, we find that the land has come from Dhanna Singh to the appellant. It is as yet in the first hand. The protection of Section 51-A should be available to him.

(23) Besides the above we find that the purpose of the Legislature in amending the Statute with retrospective effect was to grant complete protection to the soldiers who had shown gallantry during the war. If they have had to migrate, the protection does not cease to be available. In fact, on a perusal of the provisions of the 1954 Act, it is apparent that this Act had been enacted to "provide for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith." It is common knowledge that people who had migrated from what is now Pakistan, had left behind their properties. Similarly, those who had gone to Pakistan, had also left behind their properties. It was in view of this factual position that a decision to pay the compensation "to displaced persons" had been taken. It was observed that it shall be "confined to the utilisation of the acquired evacuee property in India as well as any amount realised from Pakistan....." Thus, the allotment in India under the provisions of the 1954 Act was in the nature of a compensation for the loss suffered by the people on account of migration. It was an effort to mitigate the hardship. In fact, the compensation was not equal to the loss. The land allotted on migration was less than the land which had been left behind by him in Pakistan. We think, with utmost respect that it would be unfair to deny the benefit of the provisions of the 1968 Act merely because the land in Budhlada had been allotted to the appellant by way of compensation for the land left behind by him in Pakistan. It would introduce an artificial distinction between persons who were initially allotted land in what is now India and those who had been allotted land in what is now Pakistan.

(24) In our view, the original character of the holding does not change by the mere operation of law unless a specific provision is made to that effect or such an intention is made manifest. To

illustrate: in *Gurbachan Singh and others* vs. *Puran Singh and others*, (2), it was *inter alia* held that "where land has been consolidated and in lieu of ancestral land and non-ancestral land, a consolidated area is given to a proprietor then such of the portion of the consolidated area which corresponds to the area of land which was ancestral will be ancestral land." Thus, the original identity of land was not lost by the act of consolidation. We respectfully venture to think that the land allotted to the appellant's father on account of gallantry does not cease to be so merely because he had to shift to India and the present land has been given to him by way of compensation for the loss. The act of shifting was not voluntary. Imposition of any further loss shall be unjust.

(25) Another fact which deserves mention is that the decision of the High Court in CWP No. 3123 of 1968 was not challenged by the State of Punjab and the other respondents. It has attained finality. As a result of that decision, the State Government and its officers were bound to restore the land which had been declared surplus to the appellant. If the contention raised on behalf of the respondent Nos. 4 to 9 is accepted, there would be two contradictory orders. By the first decision, the State of Punjab would be bound to treat the declaration of surplus as having been quashed. Resultanly, the appellant shall be entitled to the restoration of his possession. By the second order which has been passed by the learned Single Judge, the rights of respondent Nos. 4 to 9 can't be affected. The State and its officers shall face a dilemma. Such was not the position in Majumdar's case (supra).

(26) In view of the above, we hold that in the peculiar circumstances of this case, the decision in Majumdar's case (supra) is of no help to the respondents. We also hold that it was wrongly declared that 28.68 acres of land belonging to the appellant was surplus. In fact, by the order passed by the Chief Settlement Commissioner on 5th March, 1964, the allotment had been reduced to 54.3—3/4 standard acres. The authorities have wrongly proceeded on the assumption that the appellant had been allotted more than 58 acres.

(27) Mr. Vimal contended that the respondents had paid compensation for the land. They have been in possession for the

(2) A.I.R. 1961 S.C. 1263

last more than 30 years. They should not be disturbed. On the other hand, Mr. Mittal, counsel for the appellant submitted that the respondents had wrongly continued in possession of the land and had derived substantial income. They had no claim to the land.

(28) Indisputably, the authorities had declared that 28.68 acres of land belonging to the appellant was surplus. It was given to respondent Nos. 4 to 9. In fact, even if it is assumed that the protection of Section 51-A was not available, only 24. $3\frac{3}{4}$ acres of land could have been declared surplus. Still further, the respondents had paid an amount of Rs. 13882.53 by way of compensation to the landowner. Having paid this small amount, they have remained in possession of a large area of land for a period of more than 30 years. The appellant was deprived of the use and occupation of the land for all this period. The amount of Rs. 13882.53 given to him is a very small compensation for the actual loss. As against this, respondent Nos. 4 to 9 are entitled to the allotment of land out of the surplus pool. Their rights will be determined by the competent authority in accordance with law. However, they can have no claim to the land of the appellant.

(29) It is undoubtedly correct that the question as to whether or not respondent Nos. 4 to 9 were necessary parties in the writ petition filed by the appellant had been raised by the counsel. However, the case having been considered on merits and not on the basis of only the earlier decision, we do not think that this question is of any relevance now.

(30) In view of the above, we answer the question as posed at the outset in favour of the appellant. It is held that the protection of section 51-A was available to him. Thus, the land was wrongly declared surplus. That being so, even its utilisation and allotment to respondent Nos. 4 to 9 or their legal representatives was illegal. Consequently, the appellant shall be entitled to the restoration of the possession. The competent authority shall, however, consider the claim of respondent Nos. 4 to 9 for allotment of alternative land in accordance with law.

(31) The Letters Patent Appeal is, accordingly, allowed. No costs.

I.N.R