LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and H. R. Khanna, J.

BHAGIRATH AND ANOTHER,—Appellants.

versus

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

Letters Patent Appeal No. 48 of 1963.

Punjab Security of Land Tenures Act (X of 1953) as amended by Punjab Secretary of Land Tenures (Amendment and Validation) Act (XIV of 1962)—S. 19 E—Whether valid.

1964

December, 10th

Held, that section 19E was introduced in the Punjab Security of Land Tenures Act, 1953, by the Punjab Security of Land Tenures (Amendment and Validation) Act, XIV of 1962, with the object of counteracting the decision of a Division Bench of this Court in *Jagan Nath and others* v. *The State of Punjab and others* (1), and was made retrospective so as to date from the commencement of the Act X of 1953. This section 19-E is perfectly valid as it applies to Hindu undivided families and to all members of such families without giving any artificial definition to the word "family" which would result in manifest injustice or discrimination.

(1) I.L.R. (1962) 1 Punjab 811 = 1962 P.L.R. 22.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice Shamsher Bahadur passed in Civil Writ No. 644 of 1962 on 20th December, 1962.

R. S. MONGIA, ADVOCATE, for the Appellant.

ABNASHA, SINGH ADVICATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

JUDGMENT

FALSHAW, C. J.—This is an appeal filed under clause 10 of the Letters Patent against the order of a Single Judge dismissing a petition filed under Article 226 of the Constitution. Falshaw, C.J.

The petitioners were the three sons of Kishan Lal respondent with whom they formed a joint Hindu family, and they challenged an order passed by the Collector, Surplus Area, Sirsa, Hissar District, by which an area of 164 *bighas* 7 *biswas* was taken into account in computing the surplus area in the hands of Kishan Lal under the provisions of the Punjab Security of Land Tenures Act of 1953. The petitioners' case was that by a consent decree passed by a Civil Court on the 17th of June, 1958, this area of land had become their property in spite of the fact that section 10-A(c) of the Act provides that for the purposes of determining the surplus area of any person under this section any judgment, decree or order of a Court or other authority obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored. This provision in the Act was inserted by an amending Act in 1962, but its very terms show that it was made retrospective so as to date from the commencement of the Act.

The other point raised in the writ petition was the validity of the amending Act itself by which a new section 19-E was also introduced in the Act of 1953 with the object of counteracting the decision of a Division Bench of this Court in *Jagan Nath* v. *The State of Punjab* (1). In that decision, to which I was a party it was held that a member of a joint Hindu family owning land with other members could insist that for purposes of deciding the question of surplus area his share in the joint land alone

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should be considered and he be entitled to prove the extent of his share by all legal evidence not confined merely to the entry in the record-of-rights, and further that when land which was joint family property happened to be partitioned, no interest passed from one owner to another and it was neither a transfer nor such disposition as is mentioned in section 10-A or section 16 of the Act.

Before the amending Act of 1962 it may be stated that there was no reference in the Act to the position of a Hindu joint family, and this omission was remedied by the new section 19-E which reads—

> "Notwithstanding anything contained in this Act or in any other law for the time being in force—
>
> (a) where, immediately before the commencement of this Act, a landowner and his descendants constitute a Hindu undivided family, the land owned by such family shall, for the purposes of this Act, be deemed to be the land of that landowner and no descendant shall, as member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right; and
>
> (b) a partition of land owned by a Hindu undivided family referred to in clause (a) shall be deemed to be disposition of land for the purposes of sections 10-A and 16."

The validity of the amending Act was upheld by Mehar Singh, and Shamsher Bahadur JJ., in the case of *Bhagat Gobind Singh* v. *Punjab State and others* (2), and it was on the basis of this decision that the learned Single Judge dismissed the present writ petition.

When this appeal was originally heard, reliance was placed on the decision of the Supreme Court in *A. P. Krishnaswami Naidu and several others* against *the State of Madras* which, before the full report became available, was rumoured to have virtually overruled the decision of this Court in *Gobind Singh's case*, and on the strength of

(2) I.L.R. (1963) 1 Punj. 500 = 1963, P.L.R. 105.

this rumour a large number of writ petitions raising the question of the position of Hindu undivided family *vis-a-vis* the Punjab and cognate Pepsu Acts had been admitted. A selection of half a dozen or so of these writ petitions was accordingly ordered to be put up for hearing along with this appeal in order to give an opportunity to a number of counsel to advance arguments in support of the contention that the decision of this Court had been impliedly overruled by the decision of the Supreme Court, but only counsel on behalf of the appellants in the Letters Patent Appeal has chosen to appear.

The reason for this is not far to seek, since a mere perusal of the judgment, now reported as *Krishnaswami* v. *State of Madras* (3), shows without any doubt that it does not affect the decision of this Court in any way. In that case six petitions had been filed in the Supreme Court under Article 32 of the Constitution challenging the constitutionality of the Madras Land Reforms (Fixation of Ceiling of Land) Act 58 of 1961. The primary object of this Act, as is apparent from the scheme set out in the judgment, is similar to that of the Punjab and Pepsu Acts, namely, to place a ceiling on the holding of any landowner, the ceiling fixed, 30 standard acres, being the same as in our Acts. The practical implementation of this, however, was somewhat different, since apparently any area declared surplus was to be acquired by the Madras State Government on payment of compensation. The Act was struck down on two grounds with one of which, the method of computation of the amount of compensation to be paid, we are not concerned at all. The other ground was that a somewhat artificial definition of a 'family' infringed the provisions of Article 14 of the Constitution. Section 3(14) of the Act contained the following definition of 'family':—

> "'family' in relation to a person means the person, the wife or husband, as the case may be, of such person and his or her—
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> (i) minor sons and unmarried daughters; and
>
> (ii) minor grandsons and unmarried grand-daughters in the male line, whose father and mother are dead."

(3) A.I.R. 1964 S.C. 1515.

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Before the learned Judges of the Supreme Court reliance was placed on the fact that in *the case of K. Kunhikoman* v. *State of Kerala* (4), certain provisions in a similar Act, the Kerala Agrarian Relations Act of 1961, were struck down because of an artificial definition of 'family'. Section 5(1) of the Madras Act provided that the ceiling of every family as defined above consisting of not more than five members should be 30 standard acres with an addition of 5 standard acres for every additional member of a family. It will be seen that major sons were altogether excluded as members of a family by the definition, and the inequitable consequences of this in practice have been set out in detail. The conclusion was reached that discrimination was writ large on the consequences that follow from section 5(1) and it was held that section 5(1) was violative of the fundamental right provided by Article 14 of the Constitution, and since Chapter II, of which this section was a part, provided the method of determining the surplus area, the whole Chapter must be held to be invalid.

It is thus clear that the whole basis of the decision of the Supreme Court on this part of the case which was before it was an artificial definition applicable to Hindu families which would result in manifest injustice whereas there is no such artificial definition in the Punjab Act, and section 19-E applies to Hindu undivided families and to all members of such families. I would accordingly dismiss the appeal leaving the parties to bear their own costs. The writ petitions which were put up for hearing along with it may go to a Single Judge in case any other points arise in them.

Khanna, J.

H. R. KHANNA, J.—I agree.

B.R.T.