

142 and any order passed by the Commission under sub-section (1) or (2) is appealable to the High Court under sub-section (3) of section 142. The order passed by the Commission under section 124(2) is not contemplated by sub-section (1) of section 142 and is not appealable under sub-section (3) of section 142 of the Act. An order under sub-section (2) of section 124 is only regarding payment of the sum due from any gurdwara and does not relate to misfeasance or malfeasance, etc. I, therefore, find that no appeal is competent against an order passed under section 124(2) of the Act.

4. Faced with this situation, it is prayed that the appeal be treated as a revision or a petition under Article 226 or 227 of the Constitution of India. No revision is provided against an order passed by the Commission under section 124(2) and this being the position the present appeal cannot be treated as a revision. So far as constitutional remedies are concerned, they are entirely different from an appeal and a petition for appeal cannot, therefore, be treated as a petition under Article 226 and 227 of the Constitution of India.

5. For the reasons stated above, this appeal is dismissed as not maintainable. Considering the circumstances the parties are left to bear their own costs.

B. S. G.

LETTERS PATENT APPEAL

Before D. K. Mahajan and H. R. Sodhi, JJ;

RANIAN AND ANOTHER,—Appellants.

versus.

HON. LT. SEWA SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 851 of 1970.

September 21, 1971.

Punjab Security of Land Tenures Act (X of 1953 as amended by Act XII of 1968)—Section 19-D and 19-DD—Grant of land for distinguished services in the Army—Such grant—Whether for gallantry within the meaning of Sections 19-D and 19-DD.

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Held, that it depends on the facts and circumstances of each case as to whether a grant of land for service in the Army is for gallantry or not. The mere fact that grant is awarded as a grant for distinguished services or for gallantry would not be conclusive as to its true nature. The statute does not say that in order to ascertain whether the grant is for gallantry, the Sanad is conclusive. It is the sum total of the facts leading to the grant which have to be seen. Where deeds of heroism and bravery of an Army officer are described in the certificate granted to him as well as in the Army despatched sent from the war front, then even though in the Sanad the grant of land is described for distinguished services, such services cannot be taken as something distinct or independent of his gallantry or heroism. (Para 9.)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice C. G. Suri, passed in Civil Writ No. 100 of 1970 on 2nd November, 1970.

Ram Rang and R. D. Talwar, Advocates, for the appellants.

Naginder Singh, Advocate, for the respondent.

JUDGMENT

Judgment of this Court was delivered by:—

MAHAJAN, J.—(1) This is an appeal under Clause 10 of the Letters Patent. The only question that has been agitated is, that an award for distinguished services does not mean an award for gallantry. The burden of the argument is that an award for distinguished services is not an award for gallantry.

(2) The facts are simple. The respondent is a retired military officer. He served in the Indian Army from the year 1904 to 1932. For his services during the First World War from 1914 to 1919, he was granted two squares of land in the District of Montgomery in 1920 A.D. The District of Montgomery is now in West Pakistan as a result of partition of India in 1947. After the partition, the respondent migrated to what is now India. In lieu of those two squares of land, he was allotted 59 acres and 12 units of land in Tehsil Samrala, District Ludhiana. During the consolidation of holdings, the area increased to 70 standard acres and $3\frac{1}{4}$ units. In view of the provisions of the Punjab Security of Land Tenures Act, 1953 (Act No. 10 of 1953), the respondent's permissible area could not exceed 50 standard acres. Thus, an area measuring 20 standard and $3\frac{1}{4}$ units was

declared surplus by the Collector, Ludhiana, by his order, dated 2nd November, 1959. There is no mention in this order that any exemption was claimed by the petitioner under section 19-D of the Act. According to section 19-D, the Security of Land Tenures Act does not apply to lands granted to any members of the Armed Forces of the Union for gallantry. Like a straightforward army officer, the respondent voluntarily offered to surrender 20 standard acres and $3\frac{1}{4}$ units of his land as surplus. Section 19-D fell for consideration in *Gian Singh v. The State of Punjab* (1), and it was observed therein:—

“Where the grant for gallantry was made before the enforcement of the Constitution, held, the land could not be said to have been granted to any member of the Armed Forces of the Union as the Union of India came into existence after the enforcement of the Constitution on 26th January, 1950. Pre-Constitution grants made for gallantry are not exempt from the provisions of the Punjab Security of Land Tenures Act.”

As this view did not carry out the intention of the Legislature, an Ordinance was promulgated, the same being Ordinance No. 9 of 1967. By this Ordinance, section 19-DD was inserted in the Act. Later on, this Ordinance was replaced by the Punjab Security of Land Tenures (Amendment) Act, 1968 (Punjab Act No. 12 of 1968). Section 19-DD, as it stands, is in the following terms:—

“19-DD. 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 18 :

Provided that where such land or portion has passed into more than three such hands and the person holding such

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land or portion, immediately before the 3rd 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 lifetime of such person."

(3) It was further provided in section 2 of the Amendment Act that section 19-DD shall be, and shall be deemed always to have been, inserted in the Act.

(4) In view of these provisions, the respondent made an application, dated 5th November, 1967 to the Collector, Ludhiana, claiming exemption from the provisions of the Act. His case before the Collector was that two squares of land granted to him were for gallantry in the First World War and, therefore, this land fell outside the purview of the Punjab Security of Land Tenures Act and no part of the land of the petitioner could be declared surplus. The Collector dismissed the petitioner's application on the short ground that when originally his land was declared surplus no such claim was made. The further appeal and a revision by the respondent also failed. The respondent then took up the matter to the Financial Commissioner in revision. The Financial Commissioner also dismissed the petition. However, the Financial Commissioner took the view that there was nothing on the record to show that the two squares of land of the petitioner had been granted for gallantry. He ruled that the "distinguished services of a soldier fighting on the active front were something different from or independent of that soldier's deed of heroism or gallantry." It was further held that the amendment of the Act in 1967/1968 did not improve the position of the petitioner's case.

(5) The respondent was dissatisfied with the order of the Revenue authorities and preferred a petition under Articles 226 and 227 of the Constitution of India to this Court. This petition came up for hearing before a learned Single Judge, who allowed the same and quashed the order of the Financial Commissioner and also the previous orders rejecting the respondent's application on the basis of sections 19-D and 19-DD. The learned Single Judge came to the conclusion that the approach to the case of the respondent "both on questions of law and fact was erroneous, if not altogether perverse or perfunctory." The learned Judge held that there could be no estoppel against a statute. It did not matter that the respondent

had not claimed the benefit of section 19-D earlier and only claimed it when the controversy as to that provision was set at rest by the addition of section 19-DD. On the merits, the learned Single Judge went into the case minutely and came to the conclusion that the two squares of land had been granted to the respondent for gallantry.

(6) The appellants, who are the tenants who have been settled on the surplus area, have filed the present appeal.

(7) A preliminary objection has been raised by the learned counsel for the respondent on the basis of the decision in *Jagdev Singh v. The State of Punjab* (2), namely that persons who are settled on the surplus land have no *locus standi* to question whether a particular area of land should or should not be declared as surplus. This decision does support this contention and it is maintained that the appeal filed by the appellants would not be competent. However, in the present case the appellants were impleaded as respondents in the writ petition and being parties to the order in the writ petition, it is extremely doubtful if the right of appeal under Clause 10 of the Letter Patent is taken away from them. The decision referred to above merely laid down the proposition that before the revenue authorities, in view of the provisions of the Punjab Security of Land Tenures Act, a person who is settled on surplus area has no right to question the determination of that area. This is a matter between the Collector and the landowner.

(8) So far as the question that the respondent is estopped from claiming the benefit of section 19-D, read with section 19-DD, is concerned, the matter can admit of no two opinions. In the first place, there can be no estoppel against a statute but it can be legitimately argued that if a statute confers any benefit on a party, it is open to a party to give up that benefit unless the giving up of that benefit is contrary to public policy. In the instant case, it cannot be said that the benefit of section 19-D was deliberately given up by the respondent. As already pointed out, the view taken before the enactment of section 19-DD was that the provisions of section 19-D did not apply to pre-Constitution grants. In view of this legal interpretation which was clarified by enactment of section 19-DD, it is extremely doubtful that there was any relinquishment of right by f

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respondent. In any event, if an erroneous admission is made, it is open to a party to withdraw that admission. The voluntary surrender of land by the respondent can be nothing more than admission which he later on withdrew after the enactment of section 19-DD. We see no reason to accede to the contention that the respondent is estopped by reason of his earlier conduct from claiming the benefit of section 19-D.

(9) This brings us to the real controversy in the matter, as to whether a grant for distinguished services necessarily cannot be a grant for gallantry. In our opinion, it will depend on the facts and the circumstances of each case as to whether a grant is for gallantry or not, the mere fact that grant is awarded as a grant for distinguished services or for gallantry would not be conclusive as to its true nature. The statute does not say that in order to ascertain whether the grant is for gallantry, the Sanad is conclusive. It is the sum total of the facts leading to the grant which have to be seen. The learned Single Judge minutely went into those facts and came to the conclusion that the grant in question was a grant for gallantry. We entirely agree with this conclusion. It is for this reason that we have thought fit to reproduce the relevant part of the learned Single Judge's decision bearing on the question instead of covering the ground all over again. The relevant portion of the decision reads thus:—

“There can hardly be any doubt that the petitioner was awarded two squares of land in 1920 for gallantry at the active front though the words used in the Sanad (Annexure ‘C’) are that the grant of land has been made in token and in recognition of petitioner's distinguished services during the Great War of 1914—1919.

Annexures ‘A’ and ‘B’ both, dated 1st March, 1919 show that the petitioner's name was mentioned in despatches received from the front on 24th August, 1916 and 10th April, 1917. In both these despatches, gallantry and distinguished services of the petitioner in the field have been mentioned as meaning almost the same thing. Annexure ‘D’ is then a certificate issued by the Army Department on 2nd September, 1919 over the signatures of a Major-General saying that the petitioner was awarded the Indian Order of Merit of the second class for his conspicuous gallantry and coolness in action on 1st February, 1917 in Mesopotamia.

His deeds of heroism and bravery have been described in this certificate in the following words:—

‘In the attack on the enemy’s position, finding that nearly all the British officers were casualties, he rallied the men in the enemy’s Front Line exposing himself most fearlessly. After the withdrawal he brought in wounded men both by daylight and after dark. He has been brought to notice for conspicuous gallantry on a previous occasion.’

(10) The grant of two squares of land followed within a year or so of these despatches and certificates. A soldier fighting on the active front can earn distinction in no other imaginable manner except by such deeds of heroism, bravery or gallantry. In the despatches, the gallantry and distinguished services of the petitioner have been used in one breath as meaning the same thing. It would, therefore, be doing violence to the plain meaning of the language if we were to believe that in petitioner’s case distinguished services were something distinct or independent of his gallantry or heroism.”

(11) We entirely agree with these findings.

(12) For the reasons recorded above, this appeal fails and is dismissed with costs.

K. S. K.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

SATWANT SINGH,—*Petitioner.*

versus.

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

Letters Patent Appeal No. 428 of 1970.

September 21, 1971.

Punjab State Electricity Board Service of Engineers (Civil) Recruitment Regulations (1965)—Regulation 15(1), Proviso fourthly—Whether ultra vires Article 14, Constitution of India.