or 10th class are more than 10 or above. The authorities are bound to enforce this policy of filling up the languages teachers only in the particular stream for which vacancies exist. Before any attempt is made to abolish any particular language teacher's post, data must be collected as to whether or not there exists at least 10 candidates, who are willing to learn the language. We cannot simply afford to neglect the treasure that ancient languages such as Sanskrit holds. Sanskrit cannot be allowed to wither by our own negligence. The culture of every nation is fostered through its language. It is the medium of language that is the carrier of a country's ethos. The State through the Director of Public Instructions shall circulate a definite mandate that a vacancy in Sanskrit teacher's post shall be filled up only by a trained, qualified Sanskrit teacher and even if new classes in Sanskrit are not opened, the existing one shall not be abolished without definite data in that regard. Appointments shall be so made that when a vacancy is caused in Sanskrit language post, it shall be directed to be is filled up by a trained teacher in the same language and there shall be no breach of this direction.

(4) The writ petition is disposed of as above.

P.S.Bajwa

Before K. Kannan, J.

SWARAN SINGH (DECEASED) THROUGH L.RS.,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

CWP No. 2792 of 1986

18th October, 2011

Constitution of India - Art.226/227 - Punjab Security of Land Tenures Act of 1953 - Ss. 2(3), 10, 10-A(b) & 18 - Punjab Land Reforms Act of 1972 - S. 15 - Punjab Utilization of Surplus Area Scheme of 1973- Rl.13 - Punjab Security of Land Tenures Rules - Rl.20-A - Tenant allotted land under Act of 1953 - Jamabandi entries stood in his name - Form K 6 issued to him - Tenant filed an application under S.18 of 1953 Act for proprietary rights - By that time, the Act of 1953, repealed by the Punjab Land Reforms Act,

1973 - Collector treated the above application as one filed under Rule 13 of the 1973 Scheme and allowed the same - Commissioner and Financial Commissioner confirmed decision of Collector - Orders challenged by land lord/original owner in writ petition - Petition dismissed, because landlord was already divested of the property - No fresh determination of permissible area can be done in respect of land which showed vested in State Govt.

Held, That once the property had been divested of the landowner and the property had also fallen into the hands of tenant by an allotment made under the Punjab Security of Land Tenures Act, either there could have been an application under Section 18 when such Act was in force or it would have been possible for the tenant to apply for sale under the Punjab Land Reforms Act of 1973 under Section 15 or still even a claim for transfer of property would have been perfectly tenable in terms of Rule 13 of the 1973 Scheme.

(Para 6)

Further held, That I would find that there is nothing wrong or inequitable in the Collector treating an application filed under Section 18 of the Punjab law of 1953 as an application filed under Rule 13. The Punjab law of 1953 itself had been repealed by the Punjab Land Reforms Act and when the petition had been filed in the year 1976, it could not have been filed under the Punjab law of 1953. The property had been treated as surplus and had vested in the Government and it is an exercise of such a right that the property had been transferred to the tenant under the Punjab law of 1953. A property that is within surplus area was certainly capable of being sold in favour of the tenant under the 1973 Scheme. The petitioner cannot reopen issues of what had already stood finalized. If only the property had not been divested and held by the landowner, it could have been possible to plead for a reappraisal on the basis of inheritance occurring during the pendency of proceedings. In this case, the transfer had taken effect even during the life time of the landowner and full divestiture of ownership had also taken place. The impugned orders are perfectly tenable in law and there is no scope for intervention in the writ petition.

(Para 7)

Ashwani Chopra, Senior Advocate, with Mr. Harminder Singh, Advocate, *for the petitioners.*

Anil Kumar Sharma, Additional Advocate General, Punjab.

S.C. Pathela, Advocate, for respondent No.3.

K.KANNAN, J.

(1) The landlord, who had been divested of his property under the Punjab Security of Land Tenures Act of 1953 (for short, the Act of 1953') in respect of holding in excess of the ceiling area prescribed under the Act challenged the order of the sale made in favour of the tenant. The proceedings before the authorities prescribed under the Punjab Land Reforms Act of 1972 came about on a petition filed by the 7th respondent in the amended writ petition, who was Rahmat Masih, who had applied for conferment of proprietary rights of the surplus land allotted to him under the Act of 1953. He claimed that the property had been allotted to him on 28.10.1962 and the entries in jamabandi also showed that it stood entered in his name. The landowner had not objected to the allotment and as far as he was concerned, the proceedings had become complete. It was only when the tenant had filed an application under Section 18 of the Act of 1953 for proprietary rights, the Collector found that the Act had already been repealed by the Punjab Land Reforms Act of 1973 but he still found that under the Land Reforms Act a petition for grant of proprietary rights was required to be filed within one year. The Collector, therefore, treated this as an application filed under Rule 13 of the Punjab Utilization of Surplus Area Scheme of 1973 (for short, the 1973 Scheme') and allowed him the benefit of proprietary rights.

(2) The landlord found the application filed by the tenant as affording a scope for reopening the proceedings and sought for reappraisal of the land holding under the Land Reforms Act. His contention was that Rahmat Masih was not an 'ejected tenant' and a copy of Form K6 which was to be issued under Rule 20-A of the Punjab Security of Land Tenures Rules had not been issued to him. This was found to be factually incorrect by the Collector when the tenant produced a copy of Form K6 which had been issued to him. Finding that the property held by the tenant was 25 kanal 11 marlas or 0.82 hectares of Ist quality, he determined the property

at Rs.5,000/- per hectare and directed an amount of Rs.4,100/- as payable in nine half yearly installments of Rs.500/- each and that the last installment payable was Rs.100/-. The Collector's orders were passed on 14.11.1977. The appeal before the Commissioner and the revision before the Financial Commissioner also confirmed the decision of the Collector. These orders were challenged in the writ petition. During the pendency of the writ petition, the original owner had died and the legal representatives have been added.

(3) The learned senior counsel appearing on behalf of the petitioner has two contentions to make: (i) surplus area declared could not be stated to have been utilized by the Government and consequently, the death of the landowner that resulted in inheritance by the legal heirs required a fresh determination. According to him, the utilization could not be said to have been completed till all the formalities attended on allotment were complete. Even a qabuliyatnama had not been executed under the Rules in favour of the tenant; and (ii) the petition had been filed by the tenant after the Land Reforms Act had come into effect and in terms of Section 15, a demand for proprietary rights by a tenant could be made only within a period of one year and the petition filed under Section 18 under the Punjab Security of Land Tenures Act could not have been taken as a petition under Rule 13 of the 1973 Scheme.

(4) In support of the contention that the property could not have been said to be utilized and that it was possible to seek for a reassessment, the learned senior counsel for the petitioner relies on a judgment of the Hon'ble Supreme Court in **Financial Commissioner, Haryana and others *versus* Smt. Kela Devi and another (1),** dealing with the issue of the permissible area as defined under Section 2(3) of the Punjab Security of Land Tenures Act of 1953. The Hon'ble Supreme Court was dealing with the situation of when the landowner had died on 14.07.1965 after the property held by him had been declared as falling within surplus area by order issued on 25.11.1959. On the death of the landowner, two of the heirs made an application under Section 10-A(b) and 10- B of the Punjab law stating that the land had been inherited by them in equal shares and that no portion of the property could be treated as surplus area and reappraisal was necessary. The Collector dismissed that application on the

(1) 1980 PLJ 121

ground that surplus area declared in the landowner's life time had been allotted to other tenants and could not be excluded from the holding in the hands of the widow and mother. The question raised before the Hon'ble Supreme Court was whether a mere allotment of land to the tenants under Section 10-A(a) of the Act would amount to utilization of surplus area when the tenant had not taken possession under the allotment orders. The Court held that an allotment must be accompanied by a certificate of allotment taking a possession within the prescribed period and execution of qabuliyatnama or patta in respect of the land. I must point out immediately that the Hon'ble Supreme Court was not dealing with the situation of the property in the hands of the tenant. On the other hand, there had been "merely" an order of ejectment but no further formalities had taken effect. In this case on a matter of fact, Form K had been issued to the tenant and the khasra girdawari showed the tenant in possession of the property.

(5) The learned senior counsel also relies on a judgment of the Hon'ble Supreme Court in **Ujjagar Singh (dead) by L.Rs. *versus* The Collector Bhatinda and another (2),** that held that fresh steps for fixation of ceiling of landowner have to be taken in accordance with provisions of Punjab Land Reforms Act. If the lands declared as surplus under the Punjab law did not vest in the State Government and possession had not also been taken, the 5- member Bench of the Hon'ble Supreme Court held that fresh determination has to be made in respect of the area which landowner was entitled to hold along with his adult sons in the light of the Punjab Land Reforms Act. This decision also will not apply since we are dealing with the case of the property not having vested under the Punjab law of 1953. The property had been declared as surplus and also transferred to a tenant and form-K issued to the tenant. That I will hold again as a distinguishing feature from the point dealt with by the Hon'ble Supreme Court in ***Ujjagar Singh's case***. The counsel also relied on a Full Bench ruling of this Court in **Ranjit Ram *versus* The Financial Commissioner, Revenue, Punjab and others (3),** that held that in terms of the Punjab Land Reforms Act of 1973 that even though land is declared as surplus under the Punjab law of 1953 if the landowner had not been divested of the ownership of surplus area before the commencement of the Punjab Land Reforms Act, he was

(2) 1996 PLJ 505
(3) 1981 PLJ 259

entitled to hold the permissible area for his family. The Full Bench was again dealing with the situation where possession had not been taken over by the State Government till the commencement of the Punjab Land Reforms Act. None of the above decision will, therefore, apply to the facts of this case.

(6) It must be noticed that the landowner himself was not applying for redetermination of property or making any objection regarding the allotment of the property in the year 1962 in favour of the tenant. The objection from the landowner is brought at a time when the tenant was applying for sale of the proprietary rights. Once the property had been divested of the landowner and the property had also fallen into the hands of tenant by an allotment made under the Punjab Security of Land Tenures Act, either there could have been an application under Section 18 when such Act was in force or it would have been possible for the tenant to apply for sale under the Punjab Land Reforms Act of 1973 under Section 15 or still even a claim for transfer of property would have been perfectly tenable in terms of Rule 13 of the 1973 Scheme. Rule 13 reads as follows:-

> "**13. Conferment of proprietary rights on tenants allotted surplus land under the Punjab law -** A tenant resettled on the surplus area of a landowner in accordance with the provisions of the Punjab Law and the rules framed thereunder at any time before the commencement of the Act shall be deemed to have been allotted land in accordance with the provisions of this scheme:
>
> Provided that the provisions of this paragraph shall not be applicable where the tenant is deemed to have become the owner in accordance with clause (b) of subsection (4) of section 18 of the Punjab Law before the commencement of the scheme.

(7) I would find that there is nothing wrong or inequitable in the Collector treating an application filed under Section 18 of the Punjab law of 1953 as an application filed under Rule 13. The Punjab law of 1953 itself had been repealed by the Punjab Land Reforms Act and when the petition had been filed in the year 1976, it could not have been filed under the Punjab law of 1953. The property had been treated as surplus and had vested in the Government and it is an exercise of such a right that the property had been transferred to the tenant under the Punjab law of 1953.

A property that is within surplus area was certainly capable of being sold in favour of the tenant under the 1973 Scheme. The petitioner cannot reopen issues of what had already stood finalized. If only the property had not been divested and held by the landowner, it could have been possible to plead for a reappraisal on the basis of inheritance occurring during the pendency of proceedings. In this case, the transfer had taken effect even during the life time of the landowner and full divestiture of ownership had also taken place. The impugned orders are perfectly tenable in law and there is no scope for intervention in the writ petition. The writ petition is dismissed.

P.S.Bajwa

Before Ranjan Gogoi, CJ & Surya Kant, J.

ARADHANA DRINKS & BEVERAGES PVT. LTD.,—*Petitioner*

versus

STATE OF PUNJAB & ORS.,—*Respondents*

CWP No.17226 of 2009

11th November, 2011

Constitution of India, 1950 - Art. 243(W)(X), 246, 276, List-II, III of 7th Schedule - Chennai City Municipal Corporation Act, 1919 - S.326-A to 326-J - Punjab Municipal Corporation Act, 1976 - Ss.123 & 399(1)(H)(16) - Chennai City Municipal Corporation (Licensing of Hoarding and Levy and Collection of Advertisement Tax) Rules, 2003 - Companies Act, 1956 - Local Government/ Municipal Corporation (Control of Advertisement) Bye Laws, 2003 - Madras City Municipal Corporation Act, 1919 - S.129(A) - Punjab Municipal Corporation Act, 1976 - S.90(1) (2), 90(1) (d) 122 to 126, 122(1), 123(1), 399(1)(H)16), 401, 405 - Petitioner company had erected/fixed 'Dealer Boards' on various shops and premises within the jurisdiction of Municipal Corporation, Ludhiana - Municipal Corporation vide notice dt.11.8.09 advised petitioner to deposit advertisement tax -Clarification sought from Municipal Corporation regarding details of notification, types of advertisements covered etc. - Reply received vide letter dated 1.9.90 - writ filed seeking declaration