

case that what was done in one appeal could enure for the benefit of another appeal unless the latter appeal can be deemed to be a continuation or a further stage of the appeal in which the legal representatives were brought on record? I am constrained to say that it is difficult to extend the principle of the decision of the Privy Council to the facts of this case.”

Punjab State

v.

Atma Singh

Pandit, J.

After discussing the various authorities, the learned Judge came to the conclusion that—

“Where two appeals are independently filed and arise out of the same suit and where one is filed by the plaintiff in the original suit and the other by the defendant and where the appeal by the defendant-appellant has abated as he has not added the legal representative of the deceased respondent in time, the defendant-appellant cannot claim the benefit of the fact that the legal representative of the deceased appellant in the appeal filed by the plaintiff-appellant has been added within time and, therefore, say that it should be taken that those legal representatives have also been added in place of the deceased respondent in his appeal. The analogy of an appeal and memorandum of cross-objections in the same appeal does not hold good in the present case and hence the abatement cannot be set aside.”

This appeal, consequently, abates and is dismissed. There will, however, be no order as to costs.

D. K. Mahajan, J.—I agree.

B. R. T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and Prem Chand Pandit, JJ.

GURU AMARJIT SINGH,—Petitioner

versus

PUNJAB STATE AND ANOTHER,—Respondents

Civil Writ No. 690 of 1961.

*Punjab Security of Land Tenures Act (X of 1953)—
Section 12(1)—“Customary rent”—Meaning of—Cash rent* May..

1962

25th.

fixed in a particular year—Whether can become customary rent for all times—Sections 9 and 14-A—Remedies open to landlord in case tenant refuses to pay rent suggested by landlord indicated.

Held, that the expression 'customary rent' mentioned in section 12(1) of the Punjab Security of Land Tenures Act, 1953, refers to the share of the crop of the land or the value thereof established by custom as payable by the tenants generally to the landlords in a village or a locality. No doubt the value of the produce of the land is always taken into consideration when fixing the cash rent, but the same cannot remain in force for all times to come, because the value of the produce of the land goes on varying from year to year. A cash rent fixed in 1908 cannot obviously be a reasonable rent in the year 1962, when the prices of the commodities have gone so high. Therefore, a cash rent fixed in any particular year cannot become the 'customary rent' as mentioned in section 12(1) of Punjab Act No. 10 of 1953. In the present case, even though the Manager of the Court of Wards had fixed a cash rent, which was being paid by the tenants from the year 1908 onwards, the same could not become the 'customary rent'. The landlord can get the rent enhanced, but the same cannot exceed one-third of the crop of the land or the value thereof.

Held, that the rent is fixed by an agreement between the landlord and the tenant-at-will and if the tenant is not agreeable to pay the rent suggested by the landlord in accordance with the provisions of section 12 of the Punjab Security of Land Tenures Act, 1953, the landlord can make an application to the Assistant Collector, as provided for in section 9(1)(vii) of Punjab Act No. 10 of 1953. If the tenant refuses to accept the rent suggested by the landlord and execute the agreement, he will be liable to ejectment and proceedings can then be taken under section 14-A(i) of this Act for this purpose. Further, the landlord can recover the arrears of rent on the basis of the enhanced rent, as provided in section 14-A(ii) of this Act and if the tenant does not pay the arrears, then the Assistant Collector is empowered to eject him summarily and put the landlord in possession of the land concerned. This apart, the landlord has got his remedies under the Punjab Tenancy Act, 1887, of filing a suit against the tenant for the recovery of the rent and for his ejectment under sections 42 and 45 of that Act.

Petition under Article 226 of the Constitution of India praying that an appropriate order or direction be issued declaring Act No. 6 of 1958 and Section 12 of Act 10 of 1953 as unconstitutional, ultra vires null and void.

F. C. MITTAL AND K. C. NAYAR, ADVOCATES, for the Petitioner.

N. L. SALOOJA, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

ORDER

PANDIT, J.—This is a petition by Guru Amarjit Singh against the Punjab State, respondent No. 1, and Tehsildar, Jullundur, respondent No. 2, under Article 226 of the Constitution, challenging the validity of section 3 and the Schedule of the Punjab Land Revenue (Special Charges) Act (Punjab Act 6 of 1958) and section 12 of the Punjab Security of Land Tenures Act (Punjab Act 10 of 1953). Pandit. J.

The petitioner is a big land-owner and possesses landed property in villages Kartarpur, Dhirpur, Shivdaspur, Ramsinghpura, Chak Ramsinghpura, Meer Chhota and Dayalpur in district Jullundur. The total area owned by him is 34,522 *kanals* 2 *marlas*. The major portion of the land, that is, 27,768 *kanals* 17 *marlas* is in village Kartarpur alone. According to the petitioner, the land in the other villages, except Kartarpur, is with the tenants. In Kartarpur, 18,496 *kanals* is with tenants, 7,604 *kanals* and 5 *marlas* is *banjar*, 929 *kanals* and 7 *marlas* is under an orchard and the remaining land is under a farm made by the petitioner. The estate of the petitioner had been under the management of the Court of Wards from 1908 to 1922 and from 1928 to 1952. During this period, the rent payable by the tenants used to be fixed by the Manager of the Court of Wards, who was under the control of the Deputy Commissioner, Jullundur. The rent fixed by the Manager was in cash and at very low rates. According to the petitioner, this rent was fixed somewhere in 1908 and the same was being paid up till today. This rent was much below one-third of the normal produce of the land and the same, according to

Guru Amarjit
Singh
v.
Punjab State
and another

Pandit, J.

him, could not be raised in view of the provisions of section 12 of Punjab Act No. 10 of 1953. In 1954 another Act called the Punjab Land Revenue (Surcharge) Act (Act 36 of 1954) was enacted, by virtue of which a surcharge on the land revenue was levied with effect from the *rabi* harvest of the agricultural year 1953-54. In 1958, the Punjab Land Revenue (Special Charges) Act (Punjab Act 6 of 1958) was passed. Under this Act, a landowner, who was liable to pay more than Rs. 50 as land revenue, which included the surcharge leviable under Punjab Act 36 of 1954, had to pay a special charge, according to the Schedule given in this Act. The petitioner who used to pay land revenue exceeding Rs. 1,000 annually, was covered by clause (e) of this Schedule. In addition to the land revenue, the surcharge and the special charge, the petitioner had to pay local rates. According to the petitioner, the total demand of the Government from *rabi* 1958 to *rabi* 1960, regarding all these villages was Rs. 65,573.39 nP., while his income was Rs. 38,480.96 nP. The result was that he was being put to a loss of Rs. 27,092.43 nP., as shown in annexure 'D' of his petition. The petitioner had been paying the land revenue, the local rates and the surcharge regularly and had no grievance so far as these dues were concerned. On 21st December, 1960 respondent No. 2, exercising powers under Punjab Act No. 6 of 1958, made a demand of Rs. 49,031.98 nP., on account of special charge from *rabi* 1958 to 1960 from the petitioner and the revenue authorities were threatening to recover this amount as arrears of land revenue by coercive methods. According to the petitioner, he was not entitled to receive even one-third of the produce of the land as rent from his tenants, as they had been paying him much less before the enactment of section 12 of Punjab Act No. 10 of 1953, but, on the other hand, he was being forced to pay the special charge. This has led to the filing of the present petition.

The Punjab State has filed a written statement, in which it is mentioned that the estate in question remained under the Court of Wards from 1908 to 1923 and again from 1929 to 1951. The rent was fixed by the Manager of the Court of Wards and if the petitioner

was not satisfied with the performance of the duties by the Manager, he could make a representation to the authorities concerned. Moreover, the estate was finally released from the superintendence of the Court of Wards, with effect from 24th June, 1961. If the petitioner was not satisfied with the quantum of rent, which remained in force during the Court of Wards period, he could apply for the enhancement of the same before the revenue authorities, as there was no restriction imposed on him. The written statement further shows that the figures given by the petitioner regarding the loss in all the villages, except Kartarpur, were substantially correct. As regards Kartarpur, since a part of the land there was under self-cultivation of the petitioner and part of it was under an orchard, the income from the land, as given by the petitioner, was denied for want of knowledge and the Punjab State gave its own figures regarding the same, which showed that the loss from Kartarpur land was considerably less than what was stated in the petition. It was also asserted in the return that section 12 of Punjab Act No. 10 of 1953 and section 3 and the Schedule of Punjab Act No. 6 of 1958, which run as under, were perfectly valid—

Guru Amarjit
Singh
v.
Punjab State
and another
Pandit J.

“Section 12(1) Notwithstanding anything contained in the Punjab Tenancy Act, 1887 (Act XVII of 1887), or in any agreement or usage or any decree or order of a Court, the maximum rent payable by a tenant for any land held by him as such shall not exceed one-third of the crop of such land or the value thereof as determined in the prescribed manner, and where the customary rent is less than one-third, the maximum rent shall be such customary rent. In computing the maximum rent payable by a tenant, such portion of the rent, if any, as represents the consideration for services or facilities provided by the landowner in relation to the land shall not be taken into account.”

“Section 3 of Punjab Act No. 6 of 1958.—With effect from the rabi harvest of the agricultural year 1957-58 or, where this Act comes

Guru Amarjit
Singh
v.
Punjab State
and another
—
Pandit, J.

into force in any area by notification issued under sub-section (3) of section 1, with effect from such harvest as the State Government may, by notification, direct, and notwithstanding anything to the contrary contained in the Punjab Land Revenue Act, 1887 (Act No. XVII of 1887), every landowner who pays land revenue in excess of fifty rupees, shall be liable to pay a special charge thereon in accordance with the rates specified in the Schedule.”

[His Lordship reproduced the Schedule and continued:]

Learned counsel for the petitioner has challenged the validity of the above provisions on the ground that the amount payable by his client towards the land revenue, local rates, surcharge and special charge exceeded the income of the land, with the result that the entire landed property of the petitioner was being virtually appropriated without payment of any compensation. Under section 12 of Punjab Act, No. 10 of 1953, the petitioner could not recover even one-third of the crop or the value thereof because, according to the learned counsel, the customary rent of this estate varied from Re. 0-4-0 to Re. 1 per *kanal* of *barani* land and Rs. 2 to Rs. 3 per *kanal* of the *chahi* land and the same was being paid by the tenants from 1908 onwards, when this property was under the management of the Court of Wards. Learned counsel, however, conceded that if his client could get rent up to one-third of the crop or the value thereof, then the amount of the land revenue, local rates, surcharge and special charge would not exceed the income of the land and in that case the impugned provisions could not be challenged.

After hearing the learned counsel for the parties, I am of the view that the petitioner seems to be under a mistaken belief that the cash rent fixed by the Manager of the Court of Wards in 1908, and which was being paid by the tenants from that date, had

become the customary rent as mentioned in section 12(1) of Punjab Act No. 10 of 1953. A bare reading of this provision would show that the expression 'customary rent' mentioned in this section refers to the share of the crop of the land or the value thereof established by custom as payable by the tenants generally to the landlords in a village or a locality. No doubt the value of the produce of the land is always taken into consideration when fixing the cash rent, but the same cannot remain in force for all times to come, because the value of the produce of the land goes on varying from year to year. A cash rent fixed in 1908 cannot obviously be a reasonable rent in the year 1962, when the prices of the commodities have gone so high. Therefore, a cash rent fixed in any particular year cannot become the 'customary rent' as mentioned in section 12(1) of Punjab Act No. 10 of 1953. In the present case, even though the Manager of the Court of Wards had fixed a cash rent, which was being paid by the tenants from the year 1908 onwards, the same could not become the 'customary rent', as held above. The landlord can get the rent enhanced, but the same cannot exceed one-third of the crop of the land or the value thereof.

Learned counsel for the petitioner then submitted that there was no provision in Punjab Act No. 10 of 1953 or in the Punjab Tenancy Act (Act No. 16 of 1887) for the enhancement of the rent payable by a tenant-at-will. Rent is fixed by the agreement between the landlord and the tenant-at-will and if the tenant is not agreeable to pay the rent suggested by the landlord in accordance with the provisions of section 12 of Punjab Act No. 10 of 1953, then the landlord can make an application to the Assistant Collector, as provided for in section 9(1)(vii) of Punjab Act No. 10 of 1953. If the tenant refuses to accept the rent suggested by the landlord and execute the agreement, then he will be liable to ejection and proceedings can then be taken under section 14-A(i) of this Act for this purpose. Further, the landlord can recover the arrears of rent on the basis of the enhanced rent, as provided in section 14-A(ii) of this Act and if the tenant does not pay the arrears, then the Assistant Collector is empowered to eject him summarily and put

Guru Amarjit
Singh
v.
Punjab State
and another

Pandit J.

Guru Amarjit Singh v. State of Punjab and another
 Pandit, J.

the landlord in possession of the land concerned. This apart, the landlord has got his remedies under the Punjab Tenancy Act, 1987, of filing a suit against the tenant for the recovery of the rent and for his ejection under sections 42 and 45 of that Act.

From the above, it would be clear that the landlord in the present case can get the rent enhanced up to one-third of the crop or the value thereof. The learned counsel, as already mentioned above, had conceded that if, in the present case, the rent could be enhanced to the limit prescribed in section 12(1) of Punjab Act No. 10 of 1953, then the impugned provisions were valid.

In view of what I have said about, this petition fails and is dismissed. In the circumstances of the case, however, I will leave the parties to bear their own costs in this Court.

S.S. Daulat J.

S. S. DULAT, J.—I agree.

B.R.T.

APPELLATE CRIMINAL

Before D. Falshaw, C. J. and Inder Dev Dua, J.

THE STATE.—Appellant

versus

AMAR SINGH.—Respondent.

Criminal Appeal No. 697 of 1961.

1962
 May, 28th

Punjab Excise Act (I of 1914)—Ss. 61, 71 and 75—Offence under S. 61—Whether can be taken cognizance of on the report of an Excise Officer—Code of Criminal Procedure (V of 1898)—S. 173 (1)—Separate report under—Whether necessary.

Held, that under section 75 of the Punjab Excise Act, 1914, cognizance of an offence under section 61 of the Act can be taken by the magistrate, *inter alia*, on the report of an excise officer. Hence a report under section 71 made by a Police Officer who is invested with the powers of an excise officer falls within the purview of section 75 of the Act. No separate report under section 173(1) Code of Criminal Procedure is necessary.