

Gurdit Singh and others *v.* The State of Punjab and others
(Shamsher Bahadur, J.)

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and R. S. Narula, JJ.

GURDIT SINGH AND OTHERS,—*Petitioners.*

versus

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

Civil Writ No. 1371 of 1963.

September 27, 1966.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955 as amended by Act XVI of 1962)—S. 32 DD—Collector passing order on basis of Civil Court's decree granted before the enactment of S. 32 DD—Such order having the effect of diminishing surplus area—Special Collector setting aside the order of the Collector after enactment of section 32 DD—Order of the Special Collector—Whether amounts to review—Such order—Whether valid.

Collector passed an order on 28th March, 1961, on the basis of a Civil Courts decree obtained on 14th February, 1961, holding that there was no surplus area in the hands of the land-owner. The Act was amended on 20th July, 1962, and section 32 DD, enacted whereby decrees of Civil Courts diminishing surplus area were to be ignored. Section was made retrospective with effect from 30th October, 1956. Special Collector passed order on 20th May, 1963, declaring some land as surplus.

Held, that the Special Collector having been charged under the amending statute with the duty of ignoring the decree of the civil Court which had the effect of diminishing the surplus area in the hands of a person was bound to ignore it and also such orders as were based on it. The order of the Special Collector did not in substance amount to a review and was merely an order passed in consequence of the mandatory command of the legislature to ignore a decree which had the effect of diminishing surplus area. The decree which was the basis of the order of the Collector passed on 28th March, 1961, had to be ignored by the Special Collector, who could have acted *suo motu* in this matter to effectuate the provisions of clause (b) of section 32 DD of the amending Act.

Held also, that the decree of the Civil Court, which the Special Collector was bound to ignore under the statute, became non-existent in the eye of law after the enactment of section 32 DD of the Act. Such a decree which is to be ignored altogether is neither more nor less than a void decree being inoperative altogether and cannot provide a foundation for any right. Hence the order of the Special

Collector passed in consequence of the amending legislation and even if it is regarded as a review of the previous order is not invalid.

Case referred by the Hon'ble Mr. Justice R. S. Narula, on 26th July, 1966 to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by the Division Bench, consisting of the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula, on 27th September, 1966.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the orders of respondent No. 2, dated 20th May, 1963.

PURAN CHAND, ADVOCATE, for the Petitioners.

R. A. SAINI, ADVOCATE, FOR ADVOCATE-GENERAL, for the Respondents.

ORDER OF THE DIVISION BENCH

Shamsher Bahadur, J.—As stated by Narula J., in his order of reference, dated the 26th July, 1966, while Shri Gurdit Singh, the first petitioner, received nothing from his father Lal Singh who executed a will during his lifetime, Gurdev Singh and Sukhdev Singh, petitioners 2 and 3, respectively, sons of Gurdit Singh, got one-third of the testator's land, the remaining two-thirds going to the other descendants of the testator. Gurdit Singh, the first petitioner, on the plea that he wanted to obtain a licence for gun, however, managed to get the mutation of the land, bequeathed in favour of his sons, in his own favour in 1944. According to the position as it obtained in 1955, when the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called the Act) was enacted, Gurdit Singh, the first petitioner was shown to be the owner of the holding which before 1944 was shown in the names of petitioners 2 and 3. As is well known, Chapter IV-A of this Act was inserted by Pepsu Act No. 15 of 1956, on 30th of October, 1956, and under section 32-A of this Chapter a ceiling was placed on the holding of land in these words :—

“32-A(1) Notwithstanding anything to the contrary in any law, custom, usage or agreement, no person shall be entitled to own or hold as landowner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limit.”

The permissible limit, under sub-section (1) of section 3 of the Act, also introduced by Pepsu Act No. 15 of 1956 “means thirty

Gurdit Singh and others *v.* The State of Punjab and others
(Shamsher Bahadur, J.)

standard acres of land and where such thirty standard acres on being converted into ordinary acres exceed eighty acres, such eighty acres". Gurdev Singh and Sukhdev Singh, sons of the first petitioner, remained inactive about the change in mutation which had been entered in favour of their father in 1944. They were suddenly stirred into action in 1961 when a suit on their behalf was filed on 9th January, that year for a declaration to the effect that the land actually belonged to them and mutation No. 777 of 13-12-2001 Bk., equivalent to 1944 A.D., in favour of their father Gurdit Singh was void and inoperative as against their rights. Gurdit Singh (petitioner No. 1), being the only defendant, did not oppose the suit and the consent order of the Subordinate Judge, Mansa, of 14th February, 1961 (Annexure A), mentions *inter alia*:—

"According to the plaintiffs their grand-father Lal Singh left a will according to which his land had to be taken by his grandsons and on the basis of this mutation No. 444, dated 30th Phagan, 1996, was entered on the death of said Lal Singh in favour of the plaintiffs and other heirs. On 13th Chetar, 2001 Bk., however, during the minority of the plaintiffs, the defendant is alleged to have got the share of the plaintiffs in the land in dispute transferred in his own name Gurdit Singh defendant admitted the plaintiffs' suit to be correct in his "written statement filed on 17th January, 1961. His statement was recorded in Court".

Thus on the admission of the parties, the suit of the plaintiffs was decreed one month and five days after its institution on 9th January, 1961.

A few weeks later, the question of declaration of the surplus area of the land in the hands of the first petitioner was decided by the Collector, Bhatinda, on the basis of the decree passed by the Senior Subordinate Judge, Mansa, on 14th February, 1961. The proceedings for declaration of the surplus area had been pending since 1959, and presumably the civil suit was brought to strengthen the claim which was made by the first petitioner. In pursuance of the mutation of 2001 Bk. the holding in possession of Gurdit Singh measured 89.91 ordinary acres which on conversion amounted to 53.54 standard acres. Gurdit Singh's plea was that the land actually belonged to his son and produced the mutations and the decree of the Civil Court granted in favour of petitioners Nos. 2 and

I. L. R. Punjab and Haryana

3 on 14th of February, 1961. The Collector, in his order, dated the 28th March, 1961 (Annexure B), expressed the opinion that the first petitioner "by hook and crook managed not to follow the will of the deceased by pressing his wife to act as guardian of the minor sons and to transfer the land in his favour". On the basis that mutation No. 777 had been nullified by the decree of the Civil Court passed on 14th February, 1961, the Collector in his order of 28th of March, 1961, found in favour of the contention raised by the first petitioner and holding that petitioners Nos. 2 and 3 were the owners of the land entitled to share it equally, no area was found to be surplus in their hands. This should have been the end of the matter if the Act was not amended by Punjab Act 16 of 1962 on 20th July, 1962, whereby under clause (b) of section 32-DD inserted by the amending legislation "any judgment, decree or order of a Court or other authority, obtained after the commencement of that Act having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored". This provision of law was made retroactive to operate from 30th October, 1956. The revenue authorities were naturally alive to the situation created by the amending legislation introduced by Punjab Act No. 16 of 1962. The Collector, Agrarian Reforms, Bhatinda, on taking stock of the situation, re-examined the case of the petitioner Gurdit Singh and made reference to the Commissioner, Patiala Division, on 31st December, 1962, presumably under section 15 of the Punjab Land Revenue Act, seeking permission to review the previous order of the Collector made on 28th March, 1961. Under proviso (a) to section 15(1) a commissioner or a collector may review an order "he has not himself passed" after first obtaining the sanction of the Revenue Officer to whose control he is immediately subject. The Commissioner accorded the permission on 8th of January, 1963 and thereupon the Special Collector passed the impugned order (Annexure C), after giving the requisite opportunity to the first petitioner. At his own request, the first petitioner was granted repeated adjournments to produce evidence to show that the land actually belonged to his sons and not to him. On 17th May, 1963, to which date the case was adjourned on the previous hearing the first petitioner was to deposit the process fee of the witnesses summoned by him. As the evidence was not available on that date, the first petitioner was not permitted by the Special Collector further opportunity for leading evidence as it was thought that he wanted to prolong the proceedings. It was observed by the Special Collector in the impugned order that at the time of mutation No. 777 of 30th Chet,

Gurdit Singh and others *v.* The State of Punjab and others
(Shamsher Bahadur, J.)

2001 Bk., Gurdev Singh, the second petitioner, was described as major and Sukhdev Singh, the third petitioner, a minor, both represented by their mother, Nand Kaur as natural guardian. In the judgment of the Civil Court, both petitioners 2 and 3 were described as minors when mutation No. 777 was executed. According to the Special Collector:—

“This implies that the objector came in possession of the land in question long before 21st August, 1956, the base date in this case, and continued in possession of the same even before the decision of the Civil Court, dated 14th February, 1961. In this case the decision of the Civil Court is to be ignored in view of section 32-DD of the Pepsu Tenancy and Agricultural Lands Act, 1955, as amended from time to time.”

Land measuring 23.54 standard acres was declared surplus with the objector, the first petitioner before this Court, it having been held that the land as shown in the last mutation No. 777 was owned by him. It is this order of the Special Collector pronounced on 20th of May, 1963, which is the subject-matter of the present writ petition filed by Gurdit Singh and his sons to challenge its validity.

It has been urged by Mr. Puran Chand, the learned counsel for the petitioners, that the Special Collector had no authority to review the earlier decision (Annexure B), passed by the Collector, Bhatinda, on 28th of March, 1961. It is further contended by him that all that section 32-DD enjoins is that the decree of Civil Court “shall be ignored”. Although this provision of law is retrospective, the Collector, Bhatinda, who had passed his order on 28th of March, 1961, did not have the decree of the Civil Court before him and there was no occasion for him to ignore it. It is further canvassed by the learned counsel that the case does not fall within clause (b) of section 32-DD as the surplus area had already been determined by a competent authority who did not find at that time that the effect of any decree was to diminish the area of Gurdit Singh which could have been declared as a surplus area.

Before dealing with these submissions, it is necessary to notice two other ancillary points. The petitioner not having availed of the statutory remedies of an appeal or revision under the Act against the order of the Special Collector, it is urged on behalf of the State

I. L. R. Punjab and Haryana

that the grant of discretionary relief to the petitioner should be withheld in these proceedings under *certiorari*. As observed by Narula, J., in the order of reference, this objection is bereft of substance as the Commissioner before whom the petitioner should have gone in appeal has himself granted permission to the Special Collector to review the previous order. The other one relates to the failure of the Special Collector to issue notices to petitioners 2 and 3 when he reopened the proceedings after the enactment of Punjab Act No. 16 of 1962. It is to be observed that the Special Collector was proceeding on the basis that the land was owned exclusively by Gurdit Singh, the first petitioner, under mutation No. 777 and there was no necessity in such a situation to call upon petitioners 2 and 3 to show cause by the decree of the Civil Court on which the previous order of the Collector of 28th of March, 1961, was based should not be ignored.

Adverting now to the main contentions of the petitioners' counsel, the situation broadly speaking with which the Special Collector was confronted was that the decree of the Civil Court passed by the Subordinate Judge, Mansa, had the effect of changing the ownership of land from the hands of Gurdit Singh to those of his sons. If the land had continued to remain under the ownership of Gurdit Singh, there would have been a surplus area while the ownership of the land in the hands of his sons yielded no surplus area at all. Clearly, the effect of the decree was to diminish the area of land in the hands of Gurdit Singh whose case was being dealt with by the Collector and the Special Collector. Under clause (b) of section 32-DD of the Act, such a judgment, or order of a Court "shall be ignored" and this provision has to take effect from 30th October, 1956. Thus, on 28th of March, 1961, when the Collector disposed of the matter on the basis of the decree of the Civil Court passed on 14th of February, 1961, the deeming provision giving retrospective operation to clause (b) of section 32-DD empowered or indeed enjoined him to ignore the decree altogether. Though the order when passed by the Collector on 28th March, 1961, was not invalid, the passage of Amending Punjab Act No. 16 of 1962 on 20th of July, 1962, made it clearly an order which could not be sustained under the amending statute.

It cannot be controverted that if the decree was treated as void altogether the order passed by the Collector on 28th of March, 1961, could well be described as a nullity. It is urged on behalf of the petitioner that the words "shall be ignored", however, do not impart

Gurdit Singh and others *v.* The State of Punjab and others
(Shamsher Bahadur, J.)

such a connotation to the decree of a civil Court; all that was made mandatory being to ignore a certain decree or order of the Court. . I think it is a mere refinement to suggest that while the earlier order of the Collector became contrary to law as a result of amending legislation, it was not in substance rendered void. Such a construction being contrary to the apparent tenor and intendment of the amending legislation, would destroy the effect of the retrospective operation which the legislature assiduously emphasised. It is to be remembered that the Act has been in force since 1955. The ceiling was introduced for the first time on 30th October, 1956. It was obviously to avoid widespread evasion of the law regarding surplus areas that the provision made in clause (b) of section 32-DD was inserted in Punjab Act No. 16 of 1962. The context of events in this particular case makes it abundantly clear that the decree of the civil Court was actually obtained during the course of proceedings before the Collector and its primary object was to save the land from being declared surplus in the hands of the first petitioner. Though in the impugned order of the Special Collector it was stated that he was reviewing the previous order of the Collector of 28th March, 1961, after permission of the Commissioner had been obtained for this purpose, yet in the operative portion of this order it was merely declared that 23.54 standard acres was surplus in the hands of the objector, that is to say, the first petitioner, and the Special Collector adjourned the case for making the draft statement accordingly. The Special Collector did not say in the operative portion of the order that the area was being declared surplus in supersession of the previous order of the Collector or on a review of it. The Special Collector, in my view, having been charged under the amending statute with the duty of ignoring the decree of the civil Court which had the effect of diminishing the surplus area in the hands of a person was bound to ignore it and also such orders as were based on it. Looked in this perspective, the impugned order of the Special Collector did not in substance amount to a review and was merely an order passed in consequence of the mandatory command of the legislature to ignore a decree which had the effect of diminishing surplus area. The decree which was the basis of the order of the Collector passed on 28th March, 1961, had to be ignored by the Special Collector who could have acted *suo motu* in this matter to effectuate the provisions of clause (b) of section 32-DD of the amending Act.

It has, however, been very strenuously pressed before us by the counsel for the petitioner that the Special Collector having himself

described the impugned order to have been passed in review, it is hit by the rule laid down by the Full Bench of this Court in *Deep Chand and another v. Additional Director, Consolidation of Holdings, Punjab, and another* (1). It is true that according to this authority, a previously order cannot be reviewed because it was erroneous or unjust. However, it is to be noted that the Full Bench excepted from the purview of this ruling orders which are void and in effect *non est factum*. On a parity of reasoning, it can be said that the decree of the Civil Court which the Special Collector was bound to ignore under the statute becomes non-existent in the eye of law. Such a decree which is to be ignored altogether is neither more nor less than a void decree being inoperative altogether and cannot provide a foundation for the asserted right of the petitioner.

We are, therefore, of the view that the order of the Special Collector was passed in consequence of the amending legislation and even if it is regarded as a review of the previous order, it is not covered by the rule laid down by the Full Bench of this Court in *Deep Chand's* case.

Mr. Saini, the learned counsel for the respondent, has sought support for this conclusion in a Division Bench authority of this Court in *Bhagwan Singh and others v. State of Punjab and others* (2) of Gurdev Singh, J., and myself. In that case, Mangal Singh's land had been declared to be surplus under the provisions of the Act before it was amended by Act No. 16 of 1962, and the defendants had been settled on this area as tenants. According to one of the amending provisions of Act No. 16 of 1962, which like clause (b) of section 32-DD was made retrospective, the land which is declared to be surplus could vest in the State only on a date when its possession was taken and the owner dispossessed. Mangal Singh had died before the amended legislation and it was held that since the possession of the land had been taken after the death of Mangal Singh, the land could not be declared surplus in Mangal Singh's hands and when it came into the hands of his successors, no surplus was left. There is an undoubted similarity of situation in *Bhagwan Singh's* case and the present one, the relevant provisions in both cases having been made to apply retrospectively.

(1) I.L.R. (1964) 1 Punj. 665 (F.B.)=1964 P.L.R. 318.

(2) I.L.R. (1966) 1 Punj. 152=1965 P.L.R. 1016.

Gurdit Singh and others *v.* The State of Punjab and others
(Shamsher Bahadur, J.)

Support for the validity of the order passed by the Collector, Bhatinda, on 28th of March, 1961, is also sought by Mr. Puran Chand, for the petitioners, from a recent decision of the Supreme Court in *State of Madhya Pradesh v. Haji Hasan Dada* (3) where it was ruled that the integrity of an order passed by an Assistant Commissioner appointed under the law has to be sustained until it itself is set aside in appeal or modified in revision application under the statutory provisions, even though his order is subsequently found to be contrary to law by a decision of a competent Court given in another case. This authority of the Supreme Court is distinguishable for the reason that in the amended legislation with which we are concerned it has been unequivocally declared that the effect of the decree is to be ignored altogether with retrospective effect. The authority which declared the decision of an Assistant Commissioner to be bad did not and could not tend to give retrospective operation to other similar decisions made by co-ordinate authorities. The decision of a lower tribunal may be upset by the final Court of appeal many years later. Such a reversal cannot be implied to mean that similar decisions given by other authorities become *ipso facto* ineffective or inoperative. The same principle is reiterated in the decision of Pandit, J., in *Karam Chand Thapar and Brothers v. State of Punjab and others* (4), it having been held that the previous assessment made by the Assessing Authority, which became final under the Act "did not become without jurisdiction by the decision of the Supreme Court". It is quite true to say that an assessment order has to be upset by an appropriate order before it can be held to be ineffectual or inoperative. In the case we are dealing with, Court decrees have been virtually declared to be null and void with retrospective effect.

In the result, this petition fails and is dismissed. In the circumstances, we make no order as to costs.

R. S. NARULA, J.—I agree with the order proposed by my learned brother, Shamsher Bahadur, J.

K. S. K.

(3) A.I.R. 1966 S.C. 905.

(4) 1965 P.L.R. 1185.