CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

BHAGWAN SINGH AND OTHERS,—*Petitioners*.

versus

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

Civil Writ No. 2126 of 1964

1965

May, 14th

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 32-E—Amendment made by Act (XVI of 1962)—Effect of—Whether retrospective—Vested rights—Whether can be taken away by legislation—Land declared surplus before amendment but possession taken after the death of original landowner—Effect of—Allottee of the surplus area—Whether can be divested by heirs of landowner—Payment of first instalment of compensation by allottee—Whether confers indefeasible title on him.

Held, that according to the provisions of section 32-E of the Pepsu Tenancy and Agricultural Lands Act, 1955, as amended by Punjab Act XVI of 1962, the land which is declared to be surplus vests in the State only on the day on which its possession is taken and its owner dispossessed and if before that day the original landowner dies, the question of surplus area has to be determined with reference to the estate in the hands of the persons who succeed him as his heirs.

Held, that the clear effect of the amendment made by Punjab Act XVI of 1962 is that section 32-E as amended is deemed to have been in existence since 30th October, 1956 and the earlier provision contained in the corresponding section, which it replaces, must be deemed to have been non-existent. Accordingly the vesting of the surplus land in the State or the person to whom the surplus area is allotted under the Utilisation of Surplus Area Scheme must be held to have taken place only on the day the possession of that land is taken.

Held, that it is beyond controversy that the Legislature can even take away vested rights and the amendment of the statute can be given retrospective effect by the Legislature so as to affect such vested rights.

Held, that the mere fact that the allottees had paid one instalment as compensation due in respect of the land allotted to them does not give them title to the land. If the land never vested in the State, it could not be allotted to the petitioners and the payment of the first instalment of compensation assessed by the State in respect of the land cannot confer any title on the petitioners.

Case referred by the Hon'ble Mr. Justice Gurdev Singh, on the 24th December, 1964 *to a larger Bench for decision owing to an important question of law being involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice Gurdev Singh on the* 14*th May,* 1965.

Petition under Article 226 *of the Constitution of India praying that a writ of* certiorari *or any other appropriate writ, order or direction be issued quashing the order passed by respondent No.* 2.

RAM KARAN DASS BHANDARI, ADVOCATE, for the Petitioner.

BABU RAM AGGARWAL, ADVOCATE, for Respondents 3 to 7.

ORDER OF THE DIVISION BENCH

GURDEV SINGH, J.—Mangal Singh, husband of respondents Nos. 3 and 4, father of respondents Nos. 5 and 6, and grandfather of respondents Nos. 7 to 9, owned considerable agricultural land in village Laut, tehsil Nabha, district Patiala, out of which an area of 19.43 standard acres was declared as surplus under section 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No. 13 of 1955), hereinafter referred to as the Act, by an order of the Collector, Nabha, dated the 5th January, 1960. An appeal against that order preferred by Mangal Singh having been dismissed by the Commissioner, Patiala Division, on the 21st August, 1960, final statement of the surplus area in the prescribed form (Annexure P. 1), was published in the *Punjab Gazette* on the 23rd September, 1960, and in accordance with the provisions of section 32-E of the Act, the surplus area in the hands of Mangal Singh was deemed to have been acquired by the State for public purposes from that day extinguishing all rights, title and interest of Mangal Singh at that time. Subsequently, according to the Utilisation of Surplus Area Scheme framed by the State under section 32-J of the Act, this surplus land was allotted to the petitioners Bhagwan Singh and others being landless persons. Before Mangal Singh could be dispossessed of the surplus area he died on the 11th April, 1961. It was thereafter on the 15th June, 1961, that the possession of the surplus area was taken. Gurdev Singh, J.

Subsequently, respondents 3 to 9, being the heirs of Mangal Singh, applied to the Collector for reviewing the

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order under which the surplus area in the hands of Mangal Singh had been assessed and prayed for restoration of the possession of the surplus area to them on the plea that after the death of Mangal Singh, the entire land left by him vested in them and no part of it could be considered as surplus in their hands. Their application having been rejected by the Collector, respondents 3 to 9 went up in revision. Their petition was accepted by the Financial Commissioner Shri E. N. Mangat Rai, on the 11th February, 1964, who held that since possession of the land in dispute had been taken after the death of Mangal Singh, in view of the amendment of section 32-E of the Act effected by Act No. 16 of 1962, the land had not vested in the Government during the lifetime of Mangal Singh and his heirs having succeeded to it, there was in effect no surplus area. He, accordingly, remanded the case to the Collector, Nabha. with the following directions:—

> "(1) That he should verify finally in regard to the death of Mangal Singh, preceding the taking over of the possession by the State;
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> (2) If the verification at (1) above confirms this fact. make arrangements to release the land in question to the petitioners simultaneously making such arrangements as are possible to accommodate the tenants."

This time the present petitioners Bhagwan Singh and others felt aggrieved and they moved the Financial Commissioner for reviewing this order. Shri Saroop Krishan. before whom this review petition came up, endorsed the view that his predecessor, Shri E. N. Mangat Rai, had taken and refused to interfere. Having thus failed to obtain redress from the Revenue Authorities the petitioners Bhagwan Singh and others have approached this court under Article 226 of the Constitution for a writ of *certiorari* quashing the orders of the Financial Commissioners, dated the 11th February, 1964, and 28th July, 1964

The controversy before us lies within a narrow compass and the question for consideration is merely whether the amendment of section 32-E effected by Act No. 16 of 1962, which came into force on the 13th July, 1962, can operate retrospectively so as to divest the petitioners of

the rights which they had acquired in the land that had been found to be surplus in the hands of the late Mangal Singh. Section 32-E as originally enacted was in these words:—

"32-E. Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, and subject to the provisions of Chapter IV as from the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, then—

(a) in the case of the surplus area of a landowner or in the case of the surplus area of a tenant which is not included within the permissible limit of the landowner, such area shall be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of all persons in such land shall be extinguished, and such rights, title and interest shall vest in the State Government free from encumbrances created by any person; and

(b) in the case of the surplus area of a tenant which is included within the permissible limit of the landowner, the right and interest of the tenant in such area shall stand terminated.

Provided that, for the purposes of clause (a), where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government."

It is true that in accordance with this provision the rights and interests of Mangal Singh in the land, which was found to be surplus in his hands, stood extinguished from the date on which the final statement with regard to the surplus area was published in the Official Gazette, i.e., the 23rd September, 1960, and in accordance with that

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provision from that very day all rights, interests and title in that area had vested in the State. On this area being allotted to the petitioners under the Utilisation of Surplus Area Scheme, they obtained interest in this land and according to their allegation they had deposited in the Government Treasury the first instalment of the compensation due from them in respect of this land. Before the possession of this land could be taken by the State or by the petitioners, Mangal Singh died and it was after his death that the possession of this surplus area was taken on the 15th June, 1961, by the petitioners. If the matter had stood there, surely the petitioners could not be divested of this land except for breach of any of the conditions on which the land had been allotted to them, but the Legislature stepped in to remedy various defects that came to light in the working of the Act. Among the several provisions section 32-E was also amended by Punjab Act No. 16 of 1962, which came into force on the 13th July, 1962. The amended section 32-E provides—

> "32-E. Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, and subject to the provisions of Chapter IV after the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, then—
>
> (a) in the case of the surplus area of a landowner, or in the case of the surplus area of a tenant which is not included within the permissible limit of the landowner, such area shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose, and all rights, title and interest including the contingent interest, if any, recognised by any law, custom or usage for the time being in force of all persons in such land shall be extinguished, and such rights, title and interest shall vest in the State Government free from encumbrances created by any person; and
>
> (b) in the case of the surplus area of a tenant which is included within the permissible

limits of the landowner, the right and interest of the tenant in such area shall stand terminated:

Provided that, for the purposes of clause (a), where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government."

It has not been challenged before us, that according to this amended provision, the land which is declared to be surplus vests in the State only on the day on which its possession is taken and its owner dispossessed and if before that day, the original landowner has died, the question of surplus has to be determined with reference to the estate in the hands of the persons, who succeed him as his heirs. It is further not disputed before us that if the amended section 32-E applied, no part of the land held by Mangal Singh would be surplus in the hands of respondents Nos. 3 to 9, who are his heirs. On behalf of the petitioners it is, however, urged that the amendment effected in section 32-E of the Act by Act No. 16 of 1962 cannot be given retrospective effect so as to divest the petitioners of the land that had been allotted to them under the Utilisation of Surplus Area Scheme framed under section 32-E of the Act and of which they had only obtained possession before the amending Act came into force, but had also paid the first instalment of the compensation in accordance with the scheme under which the land had been allotted to them. In this connection it is urged that since the amendment in question affects vested rights of the petitioners, it cannot be given retrospective effect and in accordance with the well-known canons of Interpretation of Statutes, all amendments, except where they relate to procedural matters, must be held to be prospective and would not affect the cases that stood finally settled before the amending Act came into force. Reference in this connection is made to Beal's Cardinal Rules of Legal Interpretation (Third edition), page 464. Maxwell on Interpretation of Statutes (Eleventh Edition), page 215, Craies on Statute Law (Sixth Edition), page 368 and the decision of their Lordships of the Supreme Court in *Mahadeolal Kanodia* v. *The Administrator-General of West Bengal* (1), besides some authorities

(1) A.I.R. 1960 S.C. 936.

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of various High Courts bearing on the question of interpretation of statutes. It is needless to refer to the various authorities since the principles of interpretation applicable to such cases have been fully stated by their Lordships of the Supreme Court in *Mahadeolal Kanodia's case* (*supra*) where the effect of the amending legislation has been considered. The principles which, according to their Lordships of the Supreme Court, are well-established for interpretation of statutory amendments have thus been stated:

> "The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words or necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency, such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary, even by modification of the language used."

It is beyond controversy that the Legislature can even take away vested rights and the amendment of the statute can be given retrospective effect by the Legislature so as to affect such vested rights. This has been reiterated by their Lordships of the Supreme Court in the recent case of *Mst.*

Rafiquennessa and Mohammad Wahedulla v. *Lal Bahadur Chetri and others* (2), in these words:

"It is not disputed by him (Mr. Chatterjee), that the legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties, but the argument is that unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. These principles are unexceptionable and, as a matter of law, no objection can be taken to them. Mr. Chatterjee has relied upon the well-known observations made by Wright J., in *Re. Athlummney; Ex parte Wilson* (3), when the learned Judge said that it is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. He added that there was one exception to that rule, namely, that where enactments merely affect procedure and do not extend to rights of action, they have been held to apply to existing rights. In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, we ought to add that retrospective operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur."

(2) A.I.R. 1964 S.C. 1511.
(3) (1898) 2 Q.B. 547.

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Coming to the Punjab Act No. 16 of 1962, by which section 32-E of the Pepsu Tenancy and Agricultural Lands Act, 1955, has been amended, we find that the Legislature has itself provided in sub-section (2) of section 1 of the amending Act (16 of 1962), that the amended section 32-E "be deemed to have come into force on 30th day of October, 1956". Section 32-E, as it existed before the amendment of the year 1962, was introduced in the Pepsu Tenancy and Agricultural Lands Act, 1955, by Pepsu Act No. 15 of 1956 which was published in the *Pepsu Gazette* on 30th October, 1956. The clear effect of the amendment is that section 32-E as amended is deemed to have been in existence since 30th October, 1956 and the earlier provision contained in the corresponding section, which it replaces, must be deemed to have been non-existent. Accordingly the vesting of the surplus land in the State or the person to whom the surplus area is allotted under the Utilisation of Surplus Area Scheme must be held to have taken place only on the day the possession of that land is taken. Since in the instant case the possession was taken after the death of Mangal Singh, it is obvious that the land had not vested in the State during Mangal Singh's lifetime and before its possession could be taken by the State the entire land owned by Mangal Singh, including the area that had been declared surplus, had vested in his heirs, respondents Nos. 3 to 9. The question whether any part of the land held by them was surplus has to be decided with reference to the respondents' individual holdings. In that view of the matter the land, not having vested in the State Government during the lifetime of Mangal Singh, could not be allotted to the petitioners and accordingly the Financial Commissioner was correct in directing that the land be restored to the heirs of Mangal Singh.

It is true that by this legislative action the petitioners have been deprived of the land which they had been allotted by the State Government to settle the landless tenants, yet to mitigate the hardship the Financial Commissioner has directed that some other area be allotted to them. In these circumstances, even on equity the petitioners can have no grievance. The mere fact that they had paid one instalment as compensation due in respect of the land allotted to them does not give them title to the land. If the land never vested in the State, it could not

be allotted to the petitioners and the payment of the first instalment of compensation assessed by the State in respect of the land cannot confer any title on the petitioners.

I thus find no force in this petition and would dismiss the same with costs.

Gurdev Singh, J.

SHAMSHER BAHADUR, J.— I agree.

Shamsher Bahadur, J.

R.S.

REVISIONAL CIVIL

Before Mehar Singh, J.

JAMNA DEVI,—*Petitioner*

versus

GHIAS-UD-DIN AHMED KHAN AND OTHERS,—*Respondents*

Civil Revision No. 17-D of 1965.

1965

May, 18th

Evacuee Interest (Separation) Act (LXIV of 1951)—S. 20(2)—Mortgage suit stayed pending proceedings under S. 20—Whether revived after proceedings before the competent authority are terminated.

Held, that sub-section (2) of section 20 of the Evacuee Interest (Separation) Act, 1951, provides that all suits and proceedings pending before a Civil or Revenue Court at the commencement of the Act, in so far as they relate to any claim filed before a Competent Officer under section 7, are to be stayed, but that stay is only 'during the pendency of any such proceeding under this Act, it is obvious, therefore, that the stay made operative by sub-section (2) of section 20 ceases as soon as the proceedings under the Act cease to be pending. No formal application for the revival of the suit is necessary. An application can, however, be made to the Court to inform it that the stay operative under sub-section (2) of section 20 has ceased to exist and the suit is available for further trial. On being so informed the trial Court has no option but to recall the suit to its file and then proceed to dispose it of on merits, even if it has only to pass a final decree.

Revision petition under section 115 C.P.C. against the order of Shri D. R. Khanna, Sub-Judge 1st Class, Delhi, dated 16th September, 1964, refusing to revive the suit of the plaintiff-petitioner in respect of her claim for the balance of the mortgage amount due from the respondents.

S. L. SETHI AND J. K. SETH, ADVOCATES, for the Petitioner.

T. C. B. M. LAL, ADVOCATE, for the Respondents.