

Karam Singh transfer. The capacities contemplated by Rule 21 are set out in Rules 13, 19 and 20 and in any case have to be analogous to them. The interpretation which I have placed on Rule 21 is in consonance with the scheme of the Act which has been enacted to compensate an individual for what he lost in Pakistan.

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Mahajan, J.

For the reasons given above, there is force in this petition. I allow the same and quash the orders of the Department clubbing together the personal claim of the petitioner and the claim to which he has succeeded by inheritance to his uncle. Both these claims should be separately processed. As the question has arisen for the first time, there will be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Harbans Singh, J.

MUNSHI SINGH,—*Petitioner.*

versus

THE SUB-DIVISIONAL MAGISTRATE, REWARI, AND ANOTHER,—*Respondents.*

Civil Writ No: 753 of 1962:

1963

Nov., 12th.

Punjab Security of Land Tenures Act (X of 1953)—S. 24-A—Carving out of surplus land by authorities without notice to the landlord—Whether ultra vires.

Held, that the carving out of a block by the authorities under the Punjab Security of Land Tenures Act, 1953 out of the consolidated block or blocks allotted to a land-owner after consolidation for purposes of declaring it as surplus without notice to the land-owner is *ultra vires*. The procedure to be followed in such a case is the same as is provided in section 24-A(1) of the Act.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus,

prohibition or any other appropriate writ, order or direction be issued directing the respondents not to utilize any area of the petitioner as surplus till he is allowed to select the same according to the changed circumstances having taken place after consolidation proceedings and further not to declare the area surplus.

PREM CHAND JAIN, ADVOCATE, for the Petitioner.

H. L. SONI, ADVOCATE, for the Respondent.

ORDER

HARBANS SINGH, J.—Some of the area of the Harbans Singh, petitioner, Munshi Singh, was declared surplus under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act). Before that area could be utilised, consolidation proceedings took place in the village, and in lieu of the entire area held by the petitioner, land was re-allotted to him. The authorities concerned carved out an area out of it. The petitioner's grievance, *inter alia*, as contained in paragraph 9 of the petition, was that after the consolidation proceedings, the petitioner was not asked to reserve or declare his area which he wanted to keep and that the land which now the petitioner wants to keep after consolidation proceedings is being declared as surplus. Another point urged was that after the consolidation proceedings, it was impossible to find out the area which was given in lieu of the original khasra numbers declared surplus. Paragraph 7 of the return filed was to the following effect:—

“After repartition separate blocks were carved out of the land which was declared surplus as stated against para 10 below.”

With regard to paragraph 9 of the petition, it was stated as follows:—

“The area of the petitioner had already been declared surplus on 22nd November, 1959.

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 another

The land which was given in lieu of land declared surplus is being utilised for the resettlement of tenants."

Harbans Singh,
 J.

As it was not clear whether separate blocks after re-partition, as alleged in paragraph 7 of the return, were, in fact, carved out by the consolidation department or not, I asked for clarification which has not been given in a proper form but is contained in a letter addressed by the Collector concerned to the Under-Secretary to Government, Punjab, Revenue Department. Paragraph 5 of this letter, however, makes it clear that during the consolidation operations, the consolidation department did not carve out separate blocks for the reserve and surplus area and it was the Circle Revenue Officer who carved out separate blocks of surplus area out of the holdings of the petitioner "with the help of consolidation records on 12th of December, 1961.....(list 'A' attached) and allotted it to the resettlers. Under section 24-A(ii) of the Punjab Security of Land Tenures Act, 1953, the Circle Revenue Officer * * * * is competent to separate the surplus area out of the land obtained by the petitioner after consolidation operations. List 'C' shows the area held by the petitioner."

From the above, two things are clear (1) that the carving out was done by the revenue authorities after consolidation block or blocks had been allotted to the petitioner in lieu of his entire land including the reserve and the surplus area, and (2) that it is not the position of the department that this carving out was done after any notice to the petitioner or after he was given an opportunity of being heard. Section 24-A of the Act deals with two eventualities. Sub-section (1) of this section deals with a case where more than one land-owners have joint lands and it is desired to separate the share of one of the land-owners, some of

whose area has been or is to be declared as surplus. In such case the competent officer may, "after summary enquiry and affording to the persons interested in such land an opportunity of being heard, separate his share of such land or part thereof in the land owned by him jointly with other land-owners." Sub-section (2) is to the following effect:—

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"Where, after the declaration of the surplus area of any person and before the utilisation thereof, his land has been subjected to the process of consolidation, the officers referred to in sub-section (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation."

It is sub-section (2) which is relevant to the present case. Here also, the land allotted to the land-owner after consolidation is joint, representing the land granted in lieu of the area which the land-owner is entitled to retain (reserve area) and the land which the Government is entitled to utilise as surplus area. Although sub-section (2) does not specifically mention as to the procedure to be followed in this case, it is obvious that the procedure must be the same as is envisaged in sub-section (1) of section 24-A. In this respect reference may be made to section 5-B of the Act. Under sub-section (1) of section 5-B a land-owner can select his permissible area and intimate the selection to the prescribed authority within the period specified in section 5-A. Under sub-section (2) of section 5-B if he fails to select his permissible area in accordance with sub-section (1), the prescribed authority may select the parcel or parcels of land which such person is entitled to retain under the provision of this Act provided that the prescribed authority shall not make the selection without giving the land-owner

Munshi Singh concerned an opportunity of being heard. Thus, even where there is no consolidation and the land-owner has failed to exercise his right of selection and the selection is made by the Collector himself, the Collector is bound to give an opportunity to the land-owner to be heard before he makes such a selection. *Afortiori*, therefore, if such a selection is to be made after the consolidation, the rules of natural justice demand that the same procedure should be followed. As already indicated, this is also obvious from the fact that while detailed procedure is prescribed in sub-section (1) of section 24-A, the procedure is not detailed in sub-section (2) of section 24-A, and obviously the intention of the legislature is that the same procedure, as is prescribed in sub-section (1), should also be followed in a case covered by sub-section (2). There being no suggestion on behalf of the department that any notice was given, the carving out of a block by the authorities concerned out of the consolidation block or blocks allotted to the petitioner after consolidation is *ultra vires*.

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In view of the above, therefore, this petition is accepted, the rule is made absolute and the impugned order is quashed. It would be open to the authorities concerned to follow the procedure laid down in section 24-A and then carve out a block of the surplus area. The petitioner will have his costs which are assessed at Rs. 100.

R.S.

REVISIONAL CRIMINAL

Before Shamsheer Bahadur, J.

OM PARKASH AND OTHERS,—Petitioners.

versus

THE STATE,—Respondent.

Criminal Revision No: 1284 of 1963:

1963

Nov., 12th.

Code of Criminal Procedure (Act V of 1898)—S. 173—
 Police report submitted under—Whether final—Further
 investigation by police and report—Whether cannot be