CIVIL MISCELLANEOUS

Before R. P. Khosla and P. D. Sharma, JJ.

HARCHAND SINGH,—*Petitioner*

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents*

Civil Writ No. 1341 of 1962.

1963

Nov., 11th.

Punjab Security of Land Tenures Act (X of 1953)—Sections (2), 10-A, 19-A and 19-B—Surplus area—How to be determined—Change in tenancies—Effect of.

Held, that the "surplus area" as defined in sub-section (5-A), of section 2 of the Punjab Security of Land Tenures Act, 1953, means the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C and includes the area in excess of the permissible area selected under section 19-B; but it is not to include a tenant's permissible area. The surplus area has to be determined on the date the Act came into force, i.e., 15th April, 1953 and the area in the cultivating possession of a tenant, if within the prescribed limits, has to be excluded from consideration. Section 10-A governs the disposition of land which was comprised in a surplus area at the commencement of the Act and not the land which was not surplus on that date or had become surplus after the coming into force of the Act. The latter case was evidently covered by sections 19-A and 19-B of the Act. Section 19-A bars the future acquisition of land in excess of permissible area after 30th July, 1958, and section 19-B deals with future acquisition of land by inheritance, etc., in excess of permissble area after the commencement of the Act and before 30th July, 1958. The mere change in tenancies will not attract the provisions of these sections

provided the area which the tenant comes to occupy thereby does not exceed the permissible area. By changing a tenancy a landlord also cannot be said to have acquired the land comprising the tenancy because the land belonged to him before and continued to belong to him after the change in the tenancy. It is not correct to say that on the abandonment of the tenancy by a tenant a landlord can be said to have acquired the land forming the tenancy nor that section 10-A of the Act bars the change of such tenancies also of the land even if it is not a part of surplus area after the coming into force of the Act.

Case referred by Hon'ble Mr. Justice P. D. Sharma, on 14th March, 1963 to a larger bench for an important question of law involved in the case and the case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice R. P. Khosla and Hon'ble Mr. Justice P. D. Sharma, on 27th November, 1963.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order, or direction be issued *quashing the illegal orders and directing respondent No. 2 to submit the records of the aforesaid proceedings to this Court with a view to enable it to scrutinize the legality of his action and holding that no area could be declared as surplus area in this case.*

D. N. AWASTHY AND RAJ KUMAR, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL AND S. C. SIBAL, ADVOCATE, for the Respondents.

ORDER

Sharma, J.

SHARMA, J.—This is a writ petition and the facts relevant for the disposal thereof are these: Harchand Singh petitioner owned 200 standard acres and 2 units of land situate in the revenue estates of Babain and Haripura, district Karnal. The Collector, Karnal on receipt of form D duly completed by the Patwari, Qanungo and the Circle Revenue Officer in regard to the above land issued a notice for 13th December, 1960, to the petitioner-owner to show cause against its correctness but before the petitioner could appear in

his Court on that day he passed on order (annexure 'A') declaring the entire land excepting 30 standard acres as surplus area. The petitioner when he appeared before him was advised to file a review application against the said order which he did in due course. The Collector on this review application (annexure 'B') in his order dated 1st February, 1961 (annexure 'C') observed:

> "From the Patwari of the Halqa, I have got prepared out a list of the persons who have been tenants since the year 1953. Out of them, most of the tenants had been cultivating the land from Kharif 1953 to 1956-57. Tulsi, son of Raman and Chambel Singh, son of Telu are the only such persons who have been tenants continuously from the year 1953 till now. Area measuring 24 *kanals* is entered in name of Shri Tulsi, son of Raman and area measuring 16 *kanals* is entered in the name of Shri Chambel Singh in the *khasra girdawari* papers. Hence, this review application is accepted to the extent that his area will of course be declared as surplus area but it will remain as non-resumable. The rights of the other tenants, who took up their residence after the year 1953, shall be kept in view at the time of the resettlement of tenants. According to the list of the surplus area attached the following area is declared as surplus:—

	S.A.U.
In Mauza Babain:	112-8½
In Mauza Haripura:	57-9½
Total ..	170-2.

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Form 'F' be issued accordingly."

Harchand Singh petitioner in this petition under Article 226 of the Constitution has prayed for quashing of the aforesaid order on the grounds as below:—

"(i) It proceeds on a complete mis-understanding of the expression "surplus area" as defined by section 2(5-a) of the Punjab security of Land Tenures Act, 1953;

(ii) It ignores the fact that areas under the cultivation of tenants not exceeding the tenants' permissible area cannot be included in the surplus area;

(iii) There is no warrant for distinguishing between tenants settled before or after a particular date;

(iv) It ignores the fact that these tenants are not new tenants but they are old tenants from generation to generation, a fact which is patent on the revenue records of the village;

(v) It ignores the fact that the area of Haripura is a part of the joint holding and, therefore, in considering the question of the history of possession of the various tenants the entire area in the ownership of all the three brothers could be considered. Thus some of the tenants who are now under the petitioner's brothers were tenants under the petitioner previously and others who were previously tenants under the petitioner are now tenants under his brothers; and

(vi) No opportunity was given to the petitioner before passing of the original order by respondent No. 2."

According to him none of his tenants on the date of the order was in cultivation of area more than the permissible limits.

The Punjab State and the Collector, the two respondents, in their written statement admitted that 200 standard acres and 2 units of land stood in the petitioner's name as landowner in the revenue records on 15th April, 1953, when the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act) came into force, that position of the land as stood on that date was to be taken into account while declaring the surplus area of the landowner, and that there were only two tenants who continuously had been shown in cultivating possession of 40 *kanals* of land which also was declared as surplus but classified as non-resumable.

The case initially was fixed for hearing before me when I felt that the points for determination involved therein might arise frequently in other cases and those were likely to affect a large number of individuals all over the State of Punjab. Therefore, it was suggested that the same should be laid for an authoritative pronouncement before a larger Bench. This is how it has come up before us.

The learned counsel for the petitioner urged that the Collector while determining the petitioner's surplus area should not have excluded the tenant's permissible area from consideration as it stood on the 15th April, 1953, the date on which the Act came into force and that he had omitted to do so and thus failed to follow the express provision of law. He also maintained

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that under section 10-A of the Act no transfer or other disposition of land which was comprised in surplus area at the commencement of this Act could affect the utilization thereof by the State Government or any Officer empowered by it in this behalf for the resettlement of tenants ejected, or to be ejected under clause (i) of sub-section (1) of section 9, but this could not be said of the land not included in the surplus area. In his opinion the landowner's dealings with the land which had not been declared as surplus area were governed by sections 19-A and 19-B of the Act and since the change of tenancies did not attract the provisions of these two sections, the Collector could not have declared his land as surplus area because of the change in tenancy only as none of his tenants either on 15th April, 1953, or the date of the order was in cultivating possession of the land more than the permissible area. In support of his contention he referred to sub-sections (3), (4), (5-A) of section 2, section 10-A, Section 19-A and section 19-B of the Act, the relevant portions thereof run as:—

[*His Lordship read the sections and continued*:] According to the definition of the term "surplus area" as given in the Act, it means the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C and includes the area in excess of the permissible area selected under section 19-B; but it is not to include a tenant's permissible area. There can be no doubt that in the instant case the surplus area was to be determined on the date the Act came into force, *i.e.*, 15th April, 1953, and further that the area in the cultivating possession of a tenant, if within the prescribed limit, was also to be excluded from consideration.

Section 10-A governs the disposition of land which was comprised in a surplus area at the commencement of the Act and not the land which was not surplus on that date or had become surplus after the coming into force of the Act. The latter case was evidently covered by sections 19-A and 19-B of the Act. Section 19-A bars the future acquisition of land in excess of permissible area after 30th July, 1958, and section 19-B deals with future acquisition of land by inheritance etc. in excess of permissible area after the commencement of the Act and before 30th July, 1958. It is not clear from the impugned order whether the change in the tenancy in the present case came about from 15th April 1953, to 29th July, 1958, or from 30th July, 1958, onwards. Therefore, the effect of both these sections on the said change in tenancy has to be considered. Section 19-A provides that no person, whether as landowner or tenant, shall acquire or possess by transfer, exchange, lease, agreement or settlement any land which with or without the land already owned or held by him, shall in the aggregate exceed the permissible area. Similarly section 19-B lays down that subject to the provisions of section 10-A, if any person has acquired by transfer, exchange, lease, agreement or settlement any land, or if, after such commencement any person acquires in any other manner any land which, with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, then he shall, within the period prescribed, furnish to the Collector.....It will thus be seen that the mere change in tenancies will not attract the provisions of these sections provided the area which the tenant comes to occupy thereby does not exceed the permissible area. By changing a tenancy a landlord also cannot be said to have acquired the land comprising the tenancy because the land belonged to him before and continued to belong to him after the change in the tenancy. The term "acquire" has not been defin-

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ed in the Act and so we have to accept its dictionary meaning as, "To make property one's own. To gain permanently. It is regularly applied to a permanent acquisition." (Bouvier's Law Dictionary and Concise Encyclopaedia, Eighth Edition, Volume I, page 114). We are, therefore, not in agreement with the learned counsel for the respondents when he says that on the abandonment of the tenancy by a tenant a landlord can be said to have acquired the land forming the tenancy. The learned counsel for the respondents further maintained that section 10-A of the Act bars the change of such tenancies also of the land even if it is not a part of surplus area after the coming into force of the Act. His argument cannot be accepted in view of the plain language of section 10-A which makes no mention of the land owned or held by a landlord or tenant which is not part of surplus area. The learned Collector in his impugned order has gone beyond the provision of law and the error committed by him therein is patent on the record and as such it has to be quashed.

In the result we allow the petition and direct that an appropriate writ or order should be issued restraining the respondents from giving effect to the impugned order. The petitioner shall get costs of these proceedings from the respondents.

R. P. Khosla, J.

R.P. KHOSLA, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

CHIRANJI LAL AND OTHERS,—*Petitioners*

versus

HIRA LAL,—*Respondent*

Civil Revision No. 90 of 1963.

1963

Nov., 22nd.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(i) and 13—Tenant—Whether includes a sub-tenant put in possession with consent of landlord—Tender of arrears of rent by such sub-tenant—Whether valid.