

Here the plaintiff reversioner (the son of one of the daughters of the widow) is not shut out from asserting anything; assuming that the widow had only a life estate. Where the plaintiff asserts that he did not assent to the family arrangement, the principle applicable is, therefore, not estoppel. It is a rule underlying many branches of the law, which precludes a person who, with full knowledge of his rights, has once elected to assent to a transaction voidable at his instance and has thus elected not to exercise his right to avoid it, from going back on that and avoiding it at a later stage. Having made his election, he is bound by it."

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Under these circumstances, it is not possible to reverse the finding of the lower appellate Court.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this court.

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CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Shamsher Bahadur, JJ.

SAMPURAN SINGH,—*Petitioner.*

versus

THE STATE THROUGH PEPSU LAND COMMISSION,
CHANDIGARH AND ANOTHER,—*Respondents.*

Civil Writ No. 425 of 1962.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 32-D—"If claimed by the landowner"—Meaning of—Objections by the landowner to the draft statement

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prepared by the Collector claiming exemption under S. 32-K—Whether can be determined by Collector without seeking advice of the Pepsu Land Commission.

Held, that the words “if claimed by the landowner” occurring in section 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955, read in the context and background of the various provisions of the Act, leave no manner of doubt that the claim whether made by the landowner under section 32-B or by way of objections invited from him by the Collector when acting under section 32-C is on the same footing. Any other construction would render the information gathering task of the Collector with the ultimate objective of determining surplus areas and ceilings after allowing exemptions futile and ineffective. Not only has the Collector the statutory duty of determining the surplus area under section 32-C, but he is also to determine the question of exemption from ceiling and also the surplus area under sub-section (1) of section 32-D. The task of determining exemptions under sub-section (1) of section 32-D cannot legitimately be confined to cases where returns have been filed under section 32-B, Sub-Section (1) of section 32-D deals with all the contingencies provided in section 32-B, 32-BB and 32-C and without adding the words “under section 32-B” to the words “if claimed by the landowner” it is impossible to read into the words a meaning different from the one which they plainly purport to convey. It is not possible to read into sections 32-B and 32-D of the Act a meaning that the landowner who had failed to submit a return forfeited his claim for exemption for all time to come. If that were so, it would have been meaningless to empower the Collector under section 32-C to gather the information with the object of granting exemptions and determination of surplus areas. As the claim for exemption has to be determined only by the Pepsu Land Commission, the Collector is bound to seek the Commission’s advice and include it in the preparation of the final draft statement.

Case referred by Hon’ble Mr. Justice D. K. Mahajan to a larger Bench on 2nd May, 1963 for decision owing to the importance of questions of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon’ble Mr. Justice D. K. Mahajan and the Hon’ble Mr. Justice Shamsher Bahadur, on 6th December, 1963.

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 proceedings under Chapter 4 of the Pepsu Tenancy and Agricultural Lands Act for taking over the petitioner and his sons above the limit of 30 (thirty) standard acres, from them.

C. L. LAKHANPAL, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondents.

ORDER:

SHAMSHER BAHADUR, J.—This petition under Article 226 of the Constitution of India which has been placed for disposal before this Bench in consequence of the order of reference passed by Mahajan, J. on 2nd of May, 1963, raises the question of construction of the words “if claimed by the landowner” occurring in section 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called the Act).

**Shamsher
Bahadur, J.**

The undisputed facts leading to the reference as also the relevant provisions of the Act may first be briefly narrated. Sampuran Singh petitioner considering that his holding of 77 standard acres and 4 units of land in village Naurana of Bhatinda Tehsil had been partitioned between him and his two sons did not deem it necessary to submit to the Collector a return under section 32-D of the Act which requires any person owing or holding as landowner or tenant “land under his personal cultivation, which in the aggregate exceeds the permissible limit, to furnish a return” within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958, in a form which is prescribed and in which it has to be mentioned what parcel or parcels of land the landowner would select for himself within the permissible

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limit and what exemptions he claims from the ceiling. The ceiling itself is stated to be the permissible limit under section 32-A and a landowner or tenant under his personal cultivation is forbidden to own or hold an area in excess of it. The exemption from ceiling are specified in section 32-K and include, *inter-alia*, an item (iv) "efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production."

The Collector, not having received the return from the petitioner under section 32-B, proceeded to collect information for himself under section 32-C which deals with a case where the person concerned "fails to furnish the return and intimate his selection within the period prescribed" The Collector in such an event is entitled to obtain the information which is otherwise required to be furnish in the return under section 32-B through such agency as he deems fit. The Collector under section 32-C, on collection of this information, is empowered to select the parcels of land which such person is entitled to retain under the provisions of this Act as also the surplus area of this person subject to the provisions of sub-section (2) of section 32-BB.

Section 32-BB, is concerned primarily with landowners or tenants who are holding land in more than one *Patwar* circle. Sub-section (1) prescribes the period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958, for submission of the return by such persons. Sub-section (2) deals with defaulters who have not submitted the returns to the Collector under sub-section (1), and an authority not below the rank

of Collector has the power to specify any area in excess of ten standard acres to the surplus area. There are two proviso in sub-section (2) of Section 32-BB, the first one being that "(a) the lands of such landowner or tenant which have been exempted under section 32 K" are not to be affected. The second proviso need not be adverted to as it has no relevancy to the point in issue. There is, however, an overriding proviso to sub-section (2) saying that no order has to be made by the authority "without giving the person concerned an opportunity of being heard." The power to select the parcels of land under section 32-C given to the Collector, who acts according to the information gathered through his agency is thus trimmed in two important respects in consequence of the application of the provisions of sub-section (2) of section 32-BB, to section 32-C. Firstly, the exemption under section 32-K, will operate in spite of the authority of the Collector and secondly no order can be made without an opportunity being given to the person concerned of being heard.

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We now come to the provisions of section 32-D. On the basis of the information which the Collector has received under section 32-B, section 32-BB and section 32-C, "he shall prepare a draft statement in the manner prescribed showing, among other particulars, the total area of land owned or held by such a person, the specific parcels of land which the landowner may retain by way of his permissible limit or exemption from ceiling and also the surplus area." It is stated in sub-section (2) of section 32-D that "the draft statement shall include the advice of the Pepsu Land Commission appointed under section 32-P regarding the exemption from ceiling" and then occur the crucial words "if claimed by the landowner."

It is not disputed that the petitioner submitted objections to the Collector after he had proceeded to

Sampuran Singh take action under section 32-C. It was firstly pleaded
 v. in these objections raised by the petitioner that the
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 Shamsheer Bahadur, J. land had already been partitioned between him and his sons, and further, an exemption was claimed under clause (iv) of sub-section (1) of section 32-K in respect of ten bighas of land on account of its "being efficiently managed farm." It may be added that these objections had been submitted to the Collector after the petitioner had been served with a copy of the draft statement which under section 32-D had to be prepared on the basis of the information collected by him under section 32-C. The draft statement has to be submitted in all the three contingencies envisaged in sections 32-A, 32-BB and 32-C. The objections were decided by the order passed by the Collector, Bhatinda, on 25th of January, 1960. It was held by him that the petitioner himself being the landowner, the partition could not be taken into reckoning. It was further held that the exemption under section 32-K (1) (iv) could not be granted as the Naib Tehsildar, Agrarian, Bhatinda, reported after inspection of the spot that no heavy investments on the land had been made. The Collector was also influenced by the consideration that the petitioner had not filed the return which he was required to submit in Form VIIA under section 32-B. In the view of the Collector this default of the petitioner precluded him from claiming any benefit of exemption from ceiling. The petitioner thereafter filed an appeal to the Commissioner, Patiala Division, but this was, however, dismissed on 14th of June, 1960. A further petition for revision to the Financial Commissioner proved abortive. The draft statement was finalised by the Collector on 2nd of August, 1960. The petitioner then moved the Pepsu Land Commission which alone is competent to decide the question of exemptions under section 32-K of the Act on 15th of June, 1961. While holding that the Commission alone has the authority to adjudicate a claim for exemption,

it was of the view that the Collector not having referred the question the Commission had no jurisdiction to entertain it.

There are two questions which call for our determination; the first being whether the Collector could reject the claim for exemption which was pressed by way of objections to the draft statement prepared by him under section 32-D, and the second one relates to the competence of the Pepsu Land Commission to adjudicate upon the claim for exemption when its advice had not been sought under sub-section (6) of section 32-D. Sub-section (6) of section 32-D says that the draft statement shall be finalised in terms of the order "of the Collector or the State Government, as the case may be, or in terms of the advice of the Pepsu Land Commission regarding exemptions from the ceiling claimed by the landowner, and no person shall then be entitled to question it in any Court or before any authority."

The provisions of sections 32-B, 32-BB and 32-C, when read together, make it clear that the person making default in filling the return is still entitled to have it determined whether he is entitled to claim any exemptions under section 32-K. The provisions of section 32-C, under which the Collector is empowered to act, make a reference to section 32-BB and the provisions of its sub-section (2) lay down that the failure to furnish a return does not affect the right of the landowner to claim exemptions under section 32-K and he must be afforded an opportunity before an order is passed. These provisions have to be kept in view when the Collector has to prepare a draft statement on the basis of information collected under section 32-C. The Collector himself invited objections to the draft statement and the petitioner made a claim for exemptions. According to section 32-K, the limit of

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ceiling as prescribed in section 32-A will not apply to “efficiently managed farms” as laid down in clause (iv) of sub-section (1) of section 32-K. It is incumbent on the Collector under sub-section (2) of section 32-D to include in the draft statement the advice of the Pepsu Land Commission” regarding the exemption from ceiling if claimed by the landowner.” The contention of the learned Advocate-General is that the petitioner not having made a claim for exemption in the return prescribed under section 32-B is barred and precluded from doing so far all time to come. Can such a conclusion be spelled out from the words “if claimed by the landowner.” ? Section 32-D is comprehensive and deals with situations where a person—

- (i) has filed a return under section 32-B,
- (ii) who, having lands in more than one Patwar circle, has failed to file a return, and
- (iii) not having filed a return, the Collector himself has gathered the information which was required to be given by him in the form prescribed under section 32-B.

It is of importance of note that even in the draft statement which was prepared as a result of information collected under section 32-C, objections have been invited from the landowner. In this particular case, objections were filed by the petitioner and exemption was claimed. How can the words “if claimed by the landowner” in such a situation be restricted to the claim which has been submitted in the prescribed form under section 32-B ? It is very pertinent to observe that the Collector himself took the view that he was bound to investigate into the claim for exemption made by the petitioner inasmuch as he obtained a report from the Naib Tehsildar Agrarian. So far as the Collector proceeded to make his own investigation into the claim for exemption,

he was clearly acting beyond the powers vested in him. The claim for exemption can be investigated only by the Pepsu Land Commission which has been appointed under section 32-P of the Act and under sub-section (4) it is provided that:—

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“* * * it shall be the duty of the Commission to—

(a) * * * * *

(b) * * * * *

(c) advise the State Government with regard to exemption of lands from the ceiling in accordance with the provisions of section 32-K”.

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That the exemption was claimed by the petitioner under section 32-K does not admit of any dispute though this was done only when he was asked to file objections to the draft statement. It cannot cease to be a claim of the landowner merely because the original return had not been filed. Once an objection is invited, it stands to reason that it has to be examined.

It is true that the Pepsu Land Commission has the duty to give its advice to the State Government. An advice is not given suo motu but has to be sought. No advice was sought from the Commission but it is impossible to infer therefrom that the Collector can substitute his own advice or authority for that of the Pepsu Land Commission.

To conclude on this aspect of the case, the words “if claimed by the landowner” occurring in section 32-D, read in the context and background of the various provisions of the Act, leave no manner of doubt that the claim whether made by the landowner under

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section 32-B or by way of objections invited from him by the Collector when acting under section 32-C is on the same footing. Any other construction would render the information gathering task of the Collector with the ultimate objective of determining surplus areas and ceilings after allowing exemptions, futile and ineffective. Not only has the Collector the statutory duty of determining the surplus area under section 32-C but he is also to determine the question of exemption from ceiling and also the surplus area under sub-section (1) of section 32-D. The task of determining exemptions under sub-section (1) of section 32-D cannot legitimately be confined to cases where returns have been filed under section 32-B, Sub-section (1) of section 32-D deals with all the contingencies provided in sections 32-D, 32-BB and 32-C and without adding the words "under section 32-B" to the words "if claimed by the landowner" it is impossible to read into the words a meaning different from the one which they plainly purport to convey. As stated in Maxwell on Interpretation of Statutes (1962 edition) page 12:—

"It is but a corollary to the general rule of literal construction that nothing is to be added to or to be taken from a statute, unless there are similar adequate grounds to justify the inference that the legislature intended something which is omitted to express."

Words may no doubt be inserted in or added to a statute in order to effectuate the legislative intent. We cannot, however, read into sections 32-B and 32-D a meaning that the landowner who had failed to submit a return forfeited his claim for exemption for all time to come. If that were so, it would have been meaningless to empower the Collector under section 32-C to gather the information with the object of

granting exemptions and determination of surplus areas. As stated in Sutherland Statutory Construction, Volume 2 (1943 edition) at page 454-455:—

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“The Courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a co-ordinate branch of the government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however, desirable they may be, than for judicial tribunals to transcend the just limits of their constitutional powers.”

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Mr. Doabia contends that if a claim for exemption has to be entertained even when a person has made a default under section 32-B, persons can disobey the mandatory requirements of section 32-B with impunity. Possibly, it may lead to such a result but the full investigation which it is the duty of the Collector to make in order to obtain the information which should have been furnished under section 32-B makes it imperative to entertain the claim for exemption as well. The words “if claimed by the landowner” would be lost of all meaning and content if the contention of Mr. Doabia is permitted to prevail specially as it would be impossible to determine surplus area without adjudicating the claim for exemption preferred by the petitioner and actually entertained by the Collector. The claim for exemption has to be determined only by the Pepsu Land Commission. It seems to us to be an inescapable conclusion from the provisions of the Act to which reference has been made in detail that the Collector is bound to include the advice of the Pepsu Land Commission in the preparation of the final draft statement. This advice the Collector should

Sampuran Singh now seek to obtain from the Pepsu Land Commission.
v.
 The State In the view which we have taken of this matter,
 through Pepsu it is needless to examine the question whether the
 Land Commis- Pepsu Land Commission should have gone into the
 sion, Chandigarh claim for exemption which has been directly made
 and another before it by the petitioner. *Prima facie*, the role of
 Shamsher the Pepsu Land Commission is advisory and the Col-
 Bahadur, J. lector is bound to have the benefit of the opinion of
 the Commission and this has to be annexed with the
 draft statement.

The petition would, therefore, be allowed and the Collector directed to seek the advice of the Pepsu Land Commission with regard to the exemptions claimed by the petitioner in accordance with law. There would be no order as to costs.

Mahajan, J. D. K. MAHAJAN, J.—I agree.

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LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Harbans Singh, J.

THE STATE OF PUNJAB AND OTHERS,—Appellants.

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GURCHARAN SINGH AND OTHERS,—Respondents

Letters Patent Appeal No. 293 of 1960.

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*Motor Vehicles Act (IV of 1939)—Ss. 64 and 64A—
 Punjb Motor Vehicles Rules (1940)—Rule 4.37A (i)—
 Secretary to Government, Punjab, Transport Department,
 constituted Revising Authority—Minister-in-charge, Trans-
 port Department—Whether can exercise power of revision—
 S. 61—Order allowing transfer of permit—Whether appeal-
 able—Revision against such order—To whom lies—Letters
 Patent—Clause X—Tribunal whose order is quashed—
 Whether competent to file appeal under.*