

Appellate Civil

LETTERS PATENT APPEAL

Before Harbans Singh and S. S. Sandhawalia, JJ.

THE FINANCIAL COMMISSIONER, HARYANA, AND OTHERS,—Appellants.

versus

SANT SINGH,—Respondent.

Letters Patent Appeal No. 553 of 1968.

October 9, 1969

Punjab Security of Land Tenures Act (X of 1953)—Sections 2(5) and 27—Punjab Security of Land Tenures Rules (1953)—Rule 2—Valuation statement of Karnal District appended thereto—Whether ultra vires section 2(5) of the Act.

Held, that valuation statement of Karnal District appended to Rule 2 of Punjab Security of Land Tenures Rules, 1953, is not *ultra vires* section 2(5) of Punjab Security of Land Tenures Act. Although the Sailab and Barani lands have not been separately categorised in the valuation statement, yet that by itself is no ground for holding that Sailab land is inferior to Barani land. The fact that Sailab land has been separately categorised in the adjoining districts is also no ground for coming to this conclusion, because Barani and Sailab lands in these districts are of more or less the same valuation (Para 9).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment, dated 23rd of July, 1968, passed by Hon'ble Mr. Justice Ranjit Singh Sarkaria, in Civil Writ No. 270 of 1964.

P. S. DAULTA AND G. S. VIRK, ADVOCATES, for the appellants.

KULDIP SINGH AND M. S. JAIN, ADVOCATES for the respondent.

JUDGMENT.

HARBANS SINGH, J.—The Punjab Security of Land Tenures Act (hereinafter referred to as the Act) provides the measure of the permissible area which can be retained by a landowner and the balance of the area in excess of the permissible area so prescribed has to be declared as surplus and can be utilized for settling displaced tenants or landless tenants. In case of allotment to the displaced persons, the

permissible area allotted to them by the Rehabilitation Department should not be in excess of 50 Standard Acres. Section 2(5) of the Act defines Standard Acre as follows :—

“(5) ‘Standard acre’ means a measure of area convertible into ordinary acres of any class of land according to the prescribed scale with reference to the quantity of yield and quality of soil.”

Rule 2 of the Rules made under the Act provides as under :—

“2. *Conversion of ordinary acres into standard acres.*—The equivalent, in standard acres, of one ordinary acre of any class of land in any assessment circle, shall be determined by dividing by 16, the valuation shown in Annexure ‘A’ to these rules for such class of land in the said assessment circle.”

Annexure ‘A’ attached to the Rules gives the valuation statement in respect of different circles of various districts. The classification of land is shown differently in different districts and valuations also differ for each class in different assessment circles. So far as District of Karnal is concerned, the land has been classified as follows:—

“Chahi and Abi, Chahi, Nehri, Nehri non-perennial or other Nehri and Nehri Inundation and unirrigated.”

The valuation for unirrigated land is shown as 9.

(2) Sant Singh Nalwa, a displaced person was allotted land which in terms of standard acres, as calculated by the Rehabilitation Department, came to 63 standard acres and $8\frac{1}{4}$ units in village Marghain, and another area of 19 standard acres and $5\frac{1}{4}$ units in Garden Colony in Jundla. The area of the Garden Colony was left out of consideration for the purpose of declaring the surplus area, but out of the remaining land in village Marghain, 50 standard acres were left as his permissible area, while the balance of 13 standard acres and odd units were declared as surplus. Sant Singh Nalwa went in appeal to the higher authorities against this order of the Collector, dated 13th of January, 1963. His main grievance was that out of the land allotted to him, 294 Bighas and 18 Biswas were Sailab, “which land was flooded by river Jamuna every year, being only

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about a mile from the bed of the river Jamuna and consequently was an inferior type of land and has been wrongly equated with the Barani land and valued as unirrigated area." It was urged that whereas in Annexure 'A' relating to other districts, "Sailab" has been separately classified and given a valuation, 'Sailab' has not been shown as a separate category as regards Karnal district. Sant Singh Nalwa, having failed before the Commissioner as well as the Financial Commissioner, filed a petition under Articles 226 and 227 of the Constitution of India (Civil Writ 270 of 1964), challenging the *vires* of Annexure 'A' to rule 2 relating to Karnal District.

(3) The learned single Judge referred to para 259 of Sir James M. Douie, Punjab Settlement Manual, 4th Edition, wherein the classification of land is mentioned as below :—

- (a) *Barani*—dependent on rainfall;
- (b) *Sailab*—flooded or kept permanently moist by rivers ;
- (c) *Abi*—watered by lift from tanks, *Jhils*, or streams. This term is also applicable to land watered from springs;
- (d) *Nahri*—irrigated from canals.....
- (e) *Chahi*—watered from well

The learned author then went on to say as follows :—

"The first two classes fall under the general head of 'unirrigated', and the last three under that of 'irrigated' land."

Paragraph 454, which deals with the diversity of Sailab, particularly mentions how Sailab land at one place may be inferior quality than the Sailab land at another place. This paragraph runs as follows:—

"The treatment of Sailab land in assessment in different parts of the province must, therefore, be very diverse. Along the upper reaches of the Jamuna, where the rainfall is copious and the river deposit sandy, flooded land has been rated much below and dependent only on the rainfall."

The learned single Judge felt that although both Sailab and Barani lands may be categorised broadly as unirrigated land, yet the Sailab

and Barani lands belong to the species widely differing in yield. Learned Judge observed as follows :—

“While unirrigated land may be the genus, Sailab land is a species widely differing in yield as well as in quality from the other species of unirrigated land viz., Barani land.”

The learned Judge then went on to observe as follows :—

“Even out of the species of Sailab land, the land of this area in Tehsil Karnal near the Jamuna, has to be rated far below the Sailab land of other areas. Nothing could be more arbitrary than to equate, in this District, Sailab land with unirrigated land dependent only on rainfall. Conversely, the omission to place it in a class separate from Barani unirrigated land of Karnal District, amounts to a callous disregard of the criteria laid down in Section 2(5) of the Act.”

In coming to this conclusion, the learned single Judge relied on *Waryam Singh v. The Collector (Agrarian Reforms), Sangrur and others*, (1), as well as on the observations of the Supreme Court in *Shivdev Singh and others v. The State of Punjab and another*, (2). In view of the above, valuation statement (Annexure ‘A’) appended to Rule 2, of 1953 Rules relating to Karnal District, in so far as it did not specify rates for evaluating Sailab land as a distinct class was held to be *ultra vires* the Act. The State Government, feeling aggrieved by this decision, filed this Letters Patent Appeal.

(4) It was not denied that Sailab and Barani lands form two different species of the irrigated land. The argument on behalf of the State, however, was that all that is required under Rule 2 is that taking into consideration the quantity of the produce and the quality of the land, its valuation is to be fixed vis a-vis a standard acre whose valuation is taken to be 16. The learned counsel consequently argued that where the authorities concerned after taking into consideration both these matters come to a conclusion that Barani

(1) I.L.R. (1964) 1 Pb. 767—1963 P.L.J. 135.

(2) A.I.R. 1963 S.C. 365.

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as well Sailab lands should be assigned the same value, it is not necessary to categorise them separately and give their valuation.

(5) His main contention was that the land revenue is fixed at the time of the settlement after taking into consideration a number of matters, which, *inter alia*, have a bearing on the quality of the land and the quantity of the produce and for this purpose, Tehsils are split up into different assessment circles and consequently the quantum of land revenue, which is assessed on a particular type of land, would be a good criterion for fixing the valuation under Rule 2 as well. He mainly relied on the Division Bench decision of this Court in *Jagir Singh and others v. The State of Punjab and others*, (3), wherein Annexure 'A' to Rule 2 of the Rules was considered and held to be *intra vires* the Act. Mr. Justice Dulat, speaking for the Bench, relying upon paragraph 331, observed as follows :—

“It is thus clear that the formation of an assessment circle necessarily takes into consideration the various factors mentioned by the learned author and those include the nature of soil and its quality apart from various other factors affecting the yield. The circumstance, therefore, that in the Annexure the State of Punjab has been split up into assessment circles, as determined at the time of the Settlement, is highly significant and leaves no doubt that the nature and the quality of the soil inherent in the formation of an assessment circle have been taken into consideration for valuing the land for purposes of its conversion into standard acres.”

The matters referred to in the paragraph noted above are as follows :—

“Soil, rainfall, depth of water, climate, and the character of the cultivators, to which may be added the action of Government as an excavator of canals—produce notable variations in the agriculture of the different tracts. The amount of irrigation, the high or low style of farming, the crops sown and the certainty of their yielding a harvest, nearly everything in fact on which the amount of revenue which land can pay depends, spring from these causes.....

If after weighing the matters referred to above the Settlement Officer can break up the country with which he is dealing into more or less homogeneous blocks, the estate in each of which have, with many individual peculiarities, a strong general likeness as regards the chief factors affecting the value of land, his own task in devising a fair assessment will be much assisted.....Such blocks or groups of villages are known as assessment circles."

In this very case, the decision of Mr. Justice Mahajan, in *Waryam Singh's case* (1) (*supra*), was distinguished on the ground that in that case Chahi-Niayin and Chahi-Khalis were in fact two distinct and different kinds of lands which varied in their yield and were at the same time differently assessed for purposes of land revenue, but their valuation was fixed at the same figure and were treated as one group and for that reason to that extent, the schedule was held to be invalid. The argument was that where the land revenue is the same for two classes of land, *prima facie*, their valuation can also be taken to be the same in terms of standard units. There was no material on the record in support of the contention raised by the learned counsel for the State that the land revenue assessed for Barani land was the same as on Sailab land. Time having been given, affidavit has been filed on behalf of the State that the land revenue of the Sailab land in the relevant assessment circle, is at par with the unirrigated Barani land and that as per paragraph 254 of the Punjab Settlement Manual, Sailab land and unirrigated land constituted the same category and for that reason in Karnal District in Annexure 'A' to Rule 2, both kinds of lands are clubbed together as one category.

(6) Another affidavit was, however, put in on behalf of the respondent Sant Singh Nalwa saying that in the settlement, which took place as far back as 1904—1909, the land revenue per Bigha was the same for all classes of lands in this Chak including Chahi, Chahi Mustar, Barani and Sailab.

(7) Arguments were heard once again in view of these two affidavits and the learned counsel for the State conceded that the land revenue was the same not only for Barani and Sailab lands, but also for Chahi and Banjar Jadid. It was further conceded that in view of the above, the mere fact that Barani and Sailab lands were assessed to the same land revenue, will give us no clue as to whether

both were of equal value in terms of standard acres taking into consideration the quality of the land and the quantity of the produce as is to be done under section 2(5) of the Act. He consequently relied on his alternative argument, namely, that for the purposes of valuation under the Punjab Security of Land Tenures Act, the same matters have to be taken into consideration as was done at the time of allotment of land after partition of the country by the Rehabilitation Department. He could not substantiate his argument by giving us the valuation of various classes of lands as taken by the Rehabilitation Department at the time of allotment, but he argued that the Rehabilitation Department had allotted to the respondent 83 standard acres and $8\frac{1}{2}$ units and only 13 standard acres and $8\frac{1}{2}$ units have been declared as surplus and that this was a clear indication of the fact that the valuation in Annexure 'A' is the same as was taken by the Rehabilitation Department.

(8) On referring to S. Tarlok Singh's Land Resettlement Manual and the tables given therein, we find that in fact Annexure 'A' is virtually a copy of the valuations fixed therein and so far as Karnal District is concerned, the land was divided into Chahi and Abi, Chahi, Nehri, Nehri non-perennial or other Nehri and Nehri Inundation and unirrigated. The valuation given to these various kinds of lands is exactly the same as given in Annexure 'A'. For the district of Ambala, Barani and Sailab lands are shown separately and similarly in district of Rohtak, Barani and Sailab lands are shown differently and the values given to Barani and Sailab lands in Annexure 'A' for these two districts are also the same as given in the Land Settlement Manual. It is, therefore, obvious that when the allotment of land was made to the respondent, he was given both Barani and Sailab lands at the same valuation and it was urged that if in declaring the surplus area, he is allowed to retain 50 standard acres and the balance is declared surplus on the same valuation and he was given a right to make the selection of either keeping Barani or Sailab land with him or any portion thereof, there is in fact no injustice done.

(9) Apart from that it was urged that even according to Douie's Settlement Manual, on which reliance was placed by the learned single Judge, Sailab land in the upper reaches of Jamuna was inferior than the land lower down. So far as the State of Punjab before its reorganisation was concerned Ambala, Karnal and Rohtak Districts were the only districts, parts of which lay on the

right bank of Jamuna. The relevant parts of Ambala, Karnal and Rohtak Districts are now in Haryana. It was urged that whereas in district Ambala, Sailab land is valued at 9 Annas, Barani land is valued at 10 Annas, in district of Rohtak Sailab land is valued at a higher figure than the Barani land. In Sonapat Tehsil of Rohtak District, Barani land is valued at 10 Annas, whereas Sailab land is valued at 12 Annas, though inferior quality of Barani land, namely, Hud is valued at 7 Annas. This shows that although in Ambala District, Sailab land was considered inferior to Barani land, in Rohtak District, it was considered as superior to Barani land. In the Karnal District, which falls in the middle of these two districts, in Annexure 'A' as well as in the valuation placed by the Rehabilitation Department, Sailab land is treated to be at par with Barani land. This is as it should be, because as we go lower down the reaches of Jamuna, the Sailab land, as stated by Douie, goes on improving. This argument seems to be plausible, but it is hardly necessary to go into these matters because apart from showing that Sailab land is different in quality than Barani land, the respondent, who was the writ-petitioner before the learned single Judge, must go further and show that the Sailab land is inferior to the Barani land in this Tehsil and that for that reason he has suffered for both being evaluated at the same price. About this, it was conceded that there is no material apart from the observations in the Douie's Settlement Manual, referred to above, and the fact that Sailab land, which forms nearly 10 per cent of the total area in this Tehsil, being nearly 58,000 acres out of a total of little over five lakhs acres, has not been separately categorised. Even if we are of the opinion that it would have been better for the Department to show Sailab land as a separate category particularly when it formed a considerable part of the land in the Tehsil, yet that by itself would be no ground for our holding that Sailab land is inferior and for that reason the petitioner-respondent has suffered an injury. The fact that Sailab land has been separately categorised in the two adjoining districts is also no ground for coming to this conclusion because, as discussed above, the valuation given to the Sailab land in the two adjoining districts taken with the observations in Douie's Settlement Manual are going to indicate that the valuation of Barani and Sailab lands are of more or less the same valuation.

(10) In view of the above discussion, we feel that Annexure 'A' to rule 2 relating to Karnal District cannot be said to be *ultra vires* the Act. This appeal is, therefore, accepted and the petition dismissed,

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but in the peculiar circumstances of the case, there will be no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

K. S. K.

REVISIONAL CIVIL

Before D. K. Mahajan, J.

GURCHARAN SINGH,—Petitioner

versus

DEVKI NANDAN AND ANOTHER,—Respondents

Civil Revision No. 266 of 1969

October 10, 1969

East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(i)—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 29—'Rent'—Meaning of—Sum payable by an allottee of evacuee property to the Custodian—Whether amounts to rent—Transfer of evacuee property in possession of an allottee—Relationship of landlord and tenant between the allottee and the transferee—Whether created—Allottee in arrears of rent on the date of transfer—Arrears not cleared within sixty days of the transfer—Section 29—Whether applicable to such allottee.

Held, that the expression 'rent' as used in the East Punjab Urban Rent Restriction Act, 1949, means the payment by a tenant to a landlord. In other words, 'rent' has a technical meaning and although this expression has been loosely used some time in the case of a licensee, yet it does not connote compensation for use and occupation paid by a licensee to his licensor. (Para 4)

Held, that amount payable by an allottee of evacuee property to the Custodian cannot be termed as rent because the allottee is not the tenant of the Custodian, but is merely a licensee. The crux of the matter is that only that person is a tenant who is liable to pay 'rent' to the landlord and not a sum of money for use and occupation. (Para 4)