Pritam Singh Chahil vs State Of Punjab And Ors on 1 February, 1967

Equivalent citations: 1967 AIR 930, 1967 SCR (2) 536, AIR 1967 SUPREME COURT 930

Author: K. Subba Rao

Bench: K. Subba Rao, J.C. Shah, J.M. Shelat, Vishishtha Bhargava, G.K. Mitter

PETITIONER:
PRITAM SINGH CHAHIL

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT:
01/02/1967

BENCH:
RAO, K. SUBBA (CJ)
BENCH:
RAO, K. SUBBA (CJ)
SHAH, J.C.
SHELAT, J.M.
BHARGAVA, VISHISHTHA
MITTER, G.K.

CITATION:
1967 AIR 930 1967 SCR (2) 536
CITATOR INFO :
RF 1967 SC1776 (7)
RF 1972 SC2097 (6)
RF 1976 SC2316 (19)
D 1976 SC2363 (11)

ACT:
Pepsu Tenancy and Agricultural Lands Act, 1955, as amended by Act XV of 1956 and Act III of 1959, s. 32FF--Ceiling fixed on land under personal cultivation of landholder--Transfers to certain relations to be ignored for purpose of ceiling-Such relations enumerated by r. 23A framed under the Act by Government--Validity of s. 32FF-Whether suffers from excessive delegation-Right under Art. 31A, 2nd proviso, Constitution of India, whether affected.

HEADNOTE:
The petitioner owned certain land in the erstwhile State of Pepsu. After August 21, 1956 he transferred one half of the said land in favour of his wife. After this transfer the land remaining in the hands of the petitioner was less than the 'ceiling of 30 standard acres prescribed by the Pepsu Tenancy and Agricultural Lands Act, 1955 as amended by Act XV of 1956. However by s. 32FF introduced into the above Act by Art III of 1959 it was laid down that transfers of land after August 21, 1956 to certain relations (to be named by the State Government) were not to affect the right of the State Government under the Act to the surplus area to which it would be entitled but for such transfer or disposition. By r. 23A framed under the Act the State Government prescribed the relations. Relying upon s. 32FF and r. 23A the Special Collector, Chandigarh included in the total area held by the petitioner the land transferred by him in favour of his wife and served on him a draft statement holding that a certain extent of big land was surplus area. The petitioner filed a petition under Art. 32 of the Constitution challenging the Special Collector's order and the validity of the Act.
It was urged in support of the petition that : (i) By adding the land transferred to certain relations to the land held by a, person under his cultivation for the purpose of determining the ceiling and the surplus area s. 32FF of the Act. and r. 23 of the rules made thereunder contravened Art. 31A, 2nd proviso; (ii) The legislature without enumerating the relations or indicating some principles for ascertaining the relations abdicated its legislative function and delegated it to the State Government to prescribe the relations and therefore s. 32FF was void; (iii) The rules prescribed for fixing compensation for the land acquired were ultra vires because they did not take into account the current' value of the cronraised thereon; and the State therefore(was interfering with the petitioner's right to the land, unsupported by law,
HELD: (i) Section 32FF was enacted in order to prevent transfer of land to relations with a view to evading the provisions of the 1956 Act which imposed a ceiling on the land under the personal cultivation of the landholder. The Legislature certainly is competent to make such a law. The validity of such a provision may perhaps be questioned under certain circumstances on the ground that it is an unreasonable restriction within the meaning of Art. 19(2) of the Constitution. But that was not open to the petitioner as the amending Act giving retrospective operation relates to an 'estate. Therefore Art. 31A operates as a bar against raising any such
537

question. Section 32FF is therefore valid and as the land acquired in the present case was admittedly above the. ceiling, the second proviso to Art. 31 had no application. [541 A-D]

(ii)From the mere fact that the enumeration of relations for the purpose of s. 32FF is left to the State Government it cannot be said that the Legislature had abdicated its function. It has clearly laid down the policy and on the basis -of that policy enumeration can easily be worked out. The expression 'relation' is comprehensive and has a local significance. The relatives must be such as those in whose favour benami transactions are usually entered into or those whose benefit is indirectly the benefit of the transferor himself. It is such relations who are mentioned in r. 23A although the mention of sisters has been omitted by mistake. [541 EG]

(iii) The validity of the rules prescribed for fixing compensation could not be decided by the Court for want of relevant materials on the record. [545 HI

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 110 of 1966. Petition under Art. 32 of the Constitution of India for en- forcement of fundamental rights.

K. P. Bhandari and R. Gopalakrishnan, for the petitioner. Gopal Singh and R. N. Sachthey, for respondents Nos.1 and 3. R. N. Sachthey, for respondent No. 2.

The Judgment of the Court was delivered by SubbaRao, C.J. This is a petition under Art. 32 of the Constitution of India for a declaration that the provisions of Sections 32A9 32D, 32E, 32FF and 32G of the Pepsu Tenancy and Agricultural Lands Act, 1955, as amended by Act XV of 1956, hereinafter called the Act, are illegal, ultra vires and unconstitutional and for a declaration that the provisions of Rule 28 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, hereinafter called the Rules, are illegal and void, and for restraining the respondents from dispossessing the petitioner from his land under the provi- sions thereof.

The facts may be briefly stated : The petitioner owned land measuring about 284 bighas situated in village Narinderpura. In the year 1956 he transferred one half of the said land in favour of his wife Shrimati Charanjeet Kaur. Excluding the land so transferred, the land remaining in the hands of the petitioner is admittedly below the ceiling prescribed under the Act. On October 30, 1956, Act XV of 1956 was passed by the Legislature of the Patiala and East Punjab Union. It amended the Pepsu Tenancy and Agricultural Lands Act, 1955. By the amendment Chapter 4-A was added to the earlier Act and also a ceiling was imposed on land under personal cultivation. The petitioner is admittedly in personal cultivation of his land, which, excluding that sold to his wife, is below the ceiling prescribed under the Act.

On January 14,:1959 the Punjab Legislature passed Pepsu Tenancy and Agricultural Land (Amendment) Act, 1959, (Act III of 1959). Under the said amending Act, no transfer or other disposition of land effected after August 21, 1956, except in favour of persons mentioned thereunder, shall affect the right of the State Government under the Act to the surplus area to which it would be entitled but for such transfer or disposition's Relying upon that section and including in the total area held by the petitioner the land transferred by him in favour of his wife the Special Collector, Chandigarh, on May 31, 1962, served a draft statement on the petitioner holding that certain extent of land was surplus area. The petitioner, questioning the order of the Collector on various grounds, filed this petition for the enforcement of his fundamental rights. The learned counsel for the petitioner raised before us the following three points : (1) The provisions of ss. 32A, 32D, 32E, 32FF, 32G and 32P of the Act are inconsistent with the second proviso to Art. 31A of the Constitution; (2) the provisions of s. 32FF, read with r. 23A of the Rules, amount to delegation of legislative. power-, and (3) the provisions of r. 28 of the Rules are inconsistent with the provisions of s. 32G of the Act and therefore Art. 31A is not a bar against the enforcement of the petitioner's fundamental right under Arts. 19, 13(2) and 14 of the Constitution. To appreciate the scope of the first question it is necessary to read the relevant provisions of the Acts and the Constitution. The second proviso to Art. 31-A of the Constitution reads:

> "Provided that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law ;for the time being in force . . . unless the law relating to the acquisition of such land..... provides for payment of compensation at a rate which shall not be less than the market value thereof."

Section 3 of Pepsu Tenancy and Agricultural Lands Act, 1955 as amended by Act XV of 1956 provides "Permissible limit for the purpose of this Act is thirty' standard acres of land and where such thirty standard acres on being converted into ordinary acres exceed eighty acres, such eighty acres Section 32-A provides " Notwithstanding anything to the contrary in any law custom, usage or agreement, no person shall be entitled to own or hold as landowner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limits."

Section 32-E provides "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 the landowner . . . . . which is not included within the permissible limits of the land owner, 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 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". Section 32FF inserted by the Punjab Act III of 1955 reads as under

> "Save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance held by a small landowner or not being a relation as prescribed of the person making the transfer or disposition of land, for consideration up to an area which with or without the area owned or held by him does not in aggregate exceed the permissible limit no transfer or other disposition of land effected after 21st August 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition".

Rule 23A of the Rules of Pepsu Tenancy and Agricultural Lands Rules, 1958 reads as under

> "For the purposes of s. 32FF of the Act, the prescribed relations shall be the wife or husband, male or female descendants and the descendants of such female, father, mother, father's or mother's sister, brother and his descendants, mother's brother and his descendants, wife's brother and sister's husband."

The gist of the said provisions may be stated thus: No person shall be entitled to own or hold as landowner or tenant land under his personal cultivation exceeding the Permissible limit, that is, thirty standard acres. Any land in excess of the permissible limit vests in the State. Under Act III of 1959, the Act was amended and for the purposes of ascertaining the surplus land, the land transferred after August 21, 1956, in favour of the persons mentioned in r. 23A was added to his. land and if the total thereof was above the permissible area, the surplus would vest in the State Government. To put it differently, the said transfer is ignored and the surplus area is ascertained. In the instant case if the transfer by the petitioner in favour of his wife is not ignored, the petitioner's land would be within the permissible area. But if ignored it would be above that area. Admittedly also under the provisions of the Act, compensation payable in respect of the surplus area is not its market value but that ascertained 1 in the manner prescribed by the Act and the Rules made thereunder. Under the second proviso to Art. 31A of the Constitution. if the State acquires any portion ,of land which is within the ceiling limits, it shall pay compensation at a rate which shall not be less than the market value thereof."

Learned counsel for the petitioner contends that s. 32FF, inserted by Punjab Act III of 1959 , where under land validly transferred after August 21, 1956, is added to the transferor's land for the purposes of ascertaining the ceiling offends the second proviso to Art. 31A. It is argued that while under the said second proviso a person is entitled to market value in respect of the land below the ceiling acquired from him, s 2FF by a fiction statutorily raises the ceiling. The answer to the question raised depends upon the constitutional validity of s. 32FF of the Act. It is not disputed that the Parliament can make an Act in respect of the matters within its purview either prospectively or retrospectively. It is a well known legislative device to put an earlier date in order to prevent the evasion of an impending statute. It appears that on August 13, 1956, the Pepsu Tenancy and Agricultural Second Amendment Bill, 1956 was published in Pepsu Gazette Extraordinary fixing the permissible limits of a landholder and introducing some provisions against the eviction of tenant in possession of lands above the said limits. The statement of objects and reasons reads thus "The necessity for introducing certain agrarian reforms particularly with a view to Protecting the tenants

against eviction and fixing for allottees a higher limit for reservation of land for personal cultivation was being felt for some time past. This bill seeks to achieve the object by amending the Pepsu Tenancy and Agricultural Lands Act, 1955."

The proposal to introduce the said bill must have caused apprehension in the minds of the landowners that they would lose the lands above the permissible area and naturally they must have transferred their lands in favour of their relatives. Section 32FF was added to frustrate such devices and to make the enforcement of the Act really effective. Under the said section such a transfer made after August 21, 1956, shall not affect the rights of the State Government under the Act to the surplus area to which it would be entitled but for such transfer. Between the transferor and the transferee the transfer would be good, but it would not be effective against the State Government. That is to I say for ascertaining the surplus area the land transferred would It included in the transferor's land. Out of the total extent, the land above the ceiling, that is the permissible limit, would be the surplus land. The Legislature certainly is competent to make such a law. The validity of such a provision may perhaps be questioned under certain circumstances on the ground that it is.an unreasonable restriction within the meaning of Art. 19(2) of the Constitution. But that is not open to the petitioner as the amending Act giving retrospective operation relates to an "estate'. Therefore, Art. 31A operates as a bar against raising any such question. We, therefore, hold that s. 32FF is valid and as the Ian, I acquired is admittedly above the ceiling, the second proviso to art 31A has no application. The second point also has no merits. Under s. 32FF of the Act, transfers in favour of relations prescribed have to be ignored. The contention is that the Legislature without enumerating the relations or indicating some principles for ascertaining the relations abdicated its legislative function and delegated it to the State Government to prescribe the relations and, therefore, the said section is void. From the mere fact that the 'enumeration of the relations is left to the State Government, we cannot say that the Legislature has abdicated its function. It has clearly laid down the policy and on the basis of that policy enumeration of the relations can easily be worked out. The expression 'relation' is comprehensive and has a local significance The relatives must be such as those in whose favour benami transactions are usually entered into, or those whose benefit is indirectly the benefit of the transferor himself. The fact that under r. 23A comparatively distant relations are mentioned but the sister is omitted, is relied upon to prove the indefiniteness of the policy laid down in the Act. But a perusal of r. 23A shows that all relations are mentioned, but, by some mistake, sister is omitted. We, therefore, reject this contention.

The next argument covers a wider fiel 1. It may be put thus. The Act provided for acquisition after paying compensation in the manner prescribed. But the Rules prescribing the fixation of compensation are ultra vires the Act and, therefore, they are not valid rules in that regard. Fixation of compensation is an integral part of acquisition. There cannot be an acquisition under the Act without payment of compensation. With the result there is no valid law enabling the State to acquire the lands of the petitioner. The petitioner is not questioning the law of acquisition on the ground that it infringes the fundamental right under Art. 19, 14 or 31, but complains that the State is infringing his fundamental right under Art. 19 without any valid law to support its action. So stated there is considerable force in the argument. But the whole edifice would be brought down if the Rules prescribing the compensation are valid, for, in that event, the petitioner's fundamental rights are infringed under the law of acquisition and by Of Art. 31-A he cannot question the validity of the

law on the ground that it infringes the three fundamental rights mentioned therein. At this stage the argument advanced by learned counsel for the respondents that the decision of this Court in The State of Bihar v. Maharajadhiraja Sir Kameshivar Singh of Darbhanga(1) concludes the matter against the petitioner on the question raised by him may be noticed. In that case one of the contentions raised was that the Bihar Land Reforms Act, 1950 (XXX of 1950) and other Acts were ultra vires the Constitution for want of legislative competency, as law made under Entry 36 of List II of the Seventh Schedule to the Constitution should provide for compensation and as the Acts did not provide for compensation, they were void. This argument was built upon the contention that under Entry 36 of List II of the Seventh Schedule only a law of acquisition could be made that the existence of a' public purpose and an obligation to pay compensation are the necessary concomittants of compulsory acquisition of private property, and that, therefore, the term "acquisition" must be construed as importing, by necessary implication, the two conditions aforesaid. This Court held that the expression "

> acquisition" in Entry 36 of List II did not take in the concept of compensation and, therefore, the Acts could not be said to be bad for want of legislative competence. Be that as it may, this judgment has no real bearing on the question raised before us. The point taken is quite a different', one. namely, the Legislature made a law of acquisition providing for fixation of compensation in the manner prescribed and that the rules prescribing the said manner are ultra vires the statute, and therefore, the State is interfering with the petitioner's right unsupporte 1 by law.
>
> To appreciate the argument it will be necessary to consider the relevant provisions of the Act and the Rules made thereunder. Under s. 32-G of the Act, "where any land is acquired under s. 32E, there shall be paid compensensation which shall be determined by the Collector or any other Officer in the manner and in accordance with the principles hereirnafter set out." One of the principles is that in respect of land other than banjar land for the first 25 standard acres of land the compensation payable is 12 times the (1) [1952] S.C.R. 889.

fair rent. Under the proviso the compensation in no case can be less than 90 times the land revenue (including the rates and cesses) payable for the land or two hundred rupees per acre, whichever is less. Under sub-s. (2) of s. 32G, the Collector or the officer authorised by the State Government shall prepare a compensation statement in the form and manner prescribed. Under r. 28 of the Rules the mode of determination of fair rent an, 1 classification of soils are given. The relevant provisions of the $aid rule on which such reliance is placed in support of the argument reads Rule 28. Determination of fair rent and classification of soils (1) Fair rents shall be determined by the Commission for each assessment circle as recognised at the last Settlement.

(2) In determining fair rents, the Commission shall,-

(1.) follow the principles laid down in rules 1 to 12 of the Land Revenue Rules, 1929, which shall be applicable mutatis mutandis and subject to the amendment that the average yield per acre of any crop given and The last Settlement Report shall be adopted; and (2) take into account such other

factors, not being inconsistent with the provisions of the Act and these rules, as it may consider necessary.

(3) The Commission shall, as far as possible, adhere to the classification of soils as adopted at the last Settlement, and where it feels that owing to any circumstance which may have developed since the last Settlement, reclassification of soils in any area has become necessary, it shall, while reclassifying soils, in view the principle that -classification should be as simple as possible and be based on broad differences of a fairly permanent character which affects in a marked degree the economic rental of the land."

Under rr. 1 to 12 of the Land Revenue Assessment Rules, 1929, the following procedure is prescribed: ',An estimate of net assets shall be framed on the basis of rents in kind paid by tenants at will prevailing in, the estate or group of estates under consideration. That estimate is made by taking into consideration the relevant factors mentioned in sub-r. (2) of r. 1, namely, (a) the average, acreage of each crop on each class of land for which it is proposed to frame separate rates; (b) the average yield per acre of each crop so grown for which rent is taken by division of produce; (c) the average price obtainable by agriculturists for each of the crops referred to under clause (b); and (d) the actual share of -the gross produce received by landowners in the case of crops which are divided and the rent payable on zabti crops. The land is classified under different categories depending upon whether they are cultivated or uncultivated lands. The prices to be adopted in the estimate shall be the average of the prices which are likely to be obtained for their crops by the agriculturists during the coming settlement and other relevant Considerations. In estimating the average -yield of different crops on different classes of land in an estate or a group of estates, the Revenue Officer shall be guided by the results of certain relevant factors mentioned in r. 5 of the Land Revenue Assessment Rules. After an estimate is made of the annual gross product of an estate or group of estates, an estimate shall be made of the annual value of the produce of the land-owner or of his net assets. This method by which the estimate of the money value of the net assets of an estate; or a group of estates shall be made is adopted for ascertaining the fair rent under the Act, subject to the modification that the average yield per acre of any crop given in the last settlement report shall be adopted. It is said that the last Settlement, in Pepsu area took place 50 years ago; that is to say, the average yield per acre fixed by the said last Settlement Report shall be substituted for r. 5 of the Land Revenue Assessment Rules, 1929. It is argued that if the average yield of each crop is taken not as it is now but as it was 50 years ago it is not possible to arrive at the fair rent under the -Act, as there may be phenomenal raise in the yield of each crop during this long period and, therefore, the rules providing for the estimate of fair rent on such artificial basis are ultra vires the statute. In estimating the net assets of an estate the aforesaid four factors will have to be taken into consideration, i.e the class of land, the average acreage of each crop, the average yeild per acre of each crop, the average price and the actual share of the land-owner. During these 50 years there may be changes in the fertility of the land, in the character of the land, in the average yield per acre and also in the price and in the actual share of the land-owner. So far as the price and the average acreage of each crop are concerned, the date of acquisition is the determining factor under the rules. In regard to the fertility of the soil, the Commission is authorized under the rules to 'reclassify the lands on the basis of broad difference,-, of fairly permanent character which affect in a marked degree the economic rental of the lands that is to say if in the last Settlement it was a barani land,

the Commission may say, having regard to the changed circumstances, that it is a sailab land or abi land. If a land is differently classified, the yield taken for determining the fair rent will be that of the higher classified land. But as regards the yield from different categories of land, there is nothing on the record to show why the rules accepted the average yield per acre of any crop given in the last Settlement Report. Though it is theoretically possible that, improvement in seeds and the use of chemical fertilisers may have increased the yield of a particular crop per acre, there is nothing on record to show that in Pepsu there is any such abnormal increase in the yield per acre in respect of any particular crop. The fact that the average yield of the last Settlement-' Report is adopted prima facie indicates there has been no such increase in yield in respect of any particular crop. The petitioner does not say in his affidavit that there is any such increase. Irk sub-para (a) of para 18 of the petition he says "In order to determine the fair rent. the average yield of the land in question should be adopted as the basis. it is submitted that the yield of the land is recorded at the conclusion of every crop in the Khasra Girdawari by the Village Patwari and the same is checked by the Assistant Collector."

In sub-para (b) thereof he adds "That the provisions of rule 28 of the rules are inconsistent with the provisions of Section 32G of the Act. The provisions of rule 28 provide that the Commission shall adhere to the classification of the soil as adopted at the last Settlement. It is submitted that the last Settlement took place in erstwhile Patiala State about 50 years back. The village Narinderpura was part of Patiala State at that time,. The provisions of rule 28 accordingly run contrary to the letter and spirit of the provisions of section 32G of the Act. The classification of the land should be taken on the date the land is acquired under the Act."

it will be seen from the said two sub-paragraphs of para 18 of the affidavit of the petitioner that his complaint is that the classification of the soil is that which obtained 50 years ago and that the yield can be ascertained from Khasra Girdawari. But there is no allegation that the yield of the land in respect of any crop per acre has so increased that it will be unreasonable to take the yield recorded in the last Settlement as the criterion for arriving at the fair rent. So far as the classification is concerned, as we have pointed out earlier, r. 3 of the Rules enjoins the Commission to reclassify, the lands, if owing to supervening circumstances there is change in the category of the land. On the record, as placed before us, without an allegation that there is an increase in the yield per acre in regard to A particular crop, it is not possible for us to hold that the relevant rules are ultra vires the Act. It may be that in some other case where specific allegations are made in that regard and established, the validity of the Rules may have to be considered. We, therefore, hold that on the facts placed before us we cannot hold that the Rules are ultra vires the Act. If so, it follows that the petitioner's land is being acquired under a law of acquisition and that the petitioner is precluded, by reason of Art. 31A Of the Constitution, from questioning the validity of the Act or the Rules made thereunder on the ground that his fundamental right under Art. 19, 14 or 31 of the Constitution is infringed. In this view, no other question arises for consideration. In the result, the petition is dismissed but, in the circumstances, without costs.

G.C. Petition dismissed.