Munshi Ram & Ors vs Financial Commissioner, Haryana & Ors on 15 December, 1978

Equivalent citations: 1979 AIR 588, 1979 SCR (2) 846, AIR 1979 SUPREME COURT 588, 1979 SCC 471, (1979) 2 SCR 846 (SC), 1979 UJ(SC) 134, (1979) PUN LR 182, (1979) 1 SCWR 286, 1979 REVLR 256, (1979) 2 SCJ 146, (1979) CURLJ(CCR) 105

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, V.D. Tulzapurkar

PETITIONER:
MUNSHI RAM & ORS.

Vs.

RESPONDENT:
FINANCIAL COMMISSIONER, HARYANA & ORS.

DATE OF JUDGMENT15/12/1978

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
TULZAPURKAR, V.D.

CITATION:
1979 AIR 588 1979 SCR (2) 846
1979 SCC (1) 471

ACT:
Punjab Security of Lands Tenure Act, 1953- s. 2(3) scope of-"Permissible area" how computed-Appellants sons of a displaced person from Pakistan-S. 2(3) if applicable to heirs of a deceased displaced person-Banjar land if should be excluded in computing "permissible area".

HEADNOTE:
In relation to a land-owner or a tenant, the term "permissible area" as defined in s. 2(3) of the Punjab Security of Land Tenures Act, 1953 means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres such sixty acres, Clause (ii) (b) of the proviso enacts that if a

displaced person who has been allotted land in excess of thirty standard acres but less than fifty standard acres, the permissible area shall be equal to his allotted area. The Explanation states that for the purposes of determining the permissible area of a displaced person the provisions of proviso (ii) shall not apply to the heirs and successors of the displaced person to whom land is allotted.

The appellants' father, a displaced person, owned considerable agricultural land in West Pakistan. After his migration to India and subsequent death, in lieu of the land abandoned in Pakistan 124 standard acres were allotted in his name. Mutation of the property was sanctioned in favour of the appellants and permanent rights were conferred in their names.

Alleging that they were 'small land-owners' as defined in the Act, and that they required the land for self-cultivation they applied for ejectment of the respondent No. 2 who at that time was in possession of the land.

The Assistant Collector, rejected their request, their appeal to the Collector was dismissed and revision application to Commissioner and Financial Commissioner were also rejected.

In their writ petition under Art. 226 of the Constitution they contended that if the "permissible area" is computed under proviso (ii) to s. 2(3) of the Act, the holding of each of them would be below the permissible limit of thirty standard acres; that since the allotment was made in standard acres, the 'permissible area' of each of them would be 30 standard acres notwithstanding that on conversion into ordinary acres it exceeds sixty ordinary acres. A single Judge of the High Court dismissed their writ petition.

On appeal, the Full Bench of the High Court held that since the appellants were not displaced persons, the concession of an enhanced permissible area under proviso (ii) to s. 2(3) was not available to them and their permissible area would be sixty ordinary acres, each, and since the holding of each of them exceeded sixty ordinary acres they were not 'small land-owners' and so could not seek ejectment of the tenant.

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On further appeal to this Court it was contended, (1) that the words "such thirty standard acres" in the definition exclude conversion into ordinary acres where the area already held in standard acres falls below thirty standard acres; (2) that they were small land owners because each of them was holding only 24 standard acres and the Explanation to s. 2(3)had no application to them because the land was allotted to their father who was a displaced person; and (3) that while computing the "permissible area" uncultivated Banjar land which does not fall within the definition of "land" for the purposes of the 1953 Act had wrongly been included.

Rejecting contentions (1) and (2),

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HELD: 1. The language of s. 2(3) proclaims in no uncertain terms the legislative imperative that no land owner or tenant shall hold land exceeding 30 standard acres or 60 ordinary acres. The words "such thirty acres" occurring in the definition cannot be construed to limit the conversion into ordinary acres only to a case where the holding is thirty standard acres and not less. The concept of standard acre being "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" has been introduced in the definition of "permissible area" to emphasise the qualitative aspect of a landholding and the maximum limit of sixty acres delineates its quantitative aspect. [850 G, F]

2. The appellants were not displaced persons within the meaning of proviso (ii) to s. 2(3) . They were heirs of a displaced person who died after his migration of India. Therefore, proviso (ii) had no application to the appellants. The Explanation clearly excludes application of proviso (ii) to their case, which is fully covered by the substantive part of the definition of "permissible area" under which the maximum they could hold was sixty ordinary acres. At the material time, each of them was holding land in excess of the sixty ordinary acres and therefore, they were not 'small land owners.' [851 D-F]

Accepting the third contention and allowing the appeal and remitting the case to the Collector concerned. [852 F].

HELD that 3. (a) Banjar Qadim and Banjar Jadid cannot be taken into account while computing the surplus area under the Act because, not being occupied or let for agricultural purposes or purposes subservient to agriculture, it does not fall within the purview of 'land' under the Act. [852 B-C]

Nemi Chand Jain v. Financial Commissioner, Punjab, AIR 1964 Punj. 373; approved.

(b) The Assistant Collector should ascertain the extent of the Banjar Qadim and Banjar Jadid and Gair Mumkin area of the appellants at the relevant date and recompute their permissible area after excluding such areas. [852 G].

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 277 of 1969.

Appeal from the Judgment and Order dated 30-8-67 of the Punjab and Haryana High Court in L.P.A. No. 50/67.

Naunit Lal for the Appellants.

S. K. Bisaria for Respondent No. 2.

Appeal set down ex-parte for RR 1 and 3.

The Judgment of the Court was delivered by SARKARIA, J.-This appeal on certificate is directed against a Full Bench judgment of the High Court at Chandigarh, rendered on November 22, 1968 in Letters Patent Appeal No. 47 of 1967. It arises out of these facts:

> Bishan Das was a displaced person from West Pakistan, where he owned a considerable area of agricultural land. He died on April 11, 1948, after his migration to India, leaving behind his five sons, who are the appellants before us.
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> After Bishan Das's death, the Rehabilitation Department allotted 124 standard acres and 1/4 unit of evacuee land in his (Bishan Das) name on August 26, 1949. Permanent rights in regard to this allotted land were conferred by the Managing Officer on behalf of the President of India under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, in the names of the sons of Bishan Das on January 2, 1956. Prior to it, a mutation was allowed by the Rehabilitation Authorities on February 17, 1953 in favour of the appellants, herein, showing each of them entitled to 24 standard acres and 13 units of land.
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> Ram Dhan, respondent 2, was in possession of the land as a tenant. The appellants applied under Section 9(1) (i) of the Punjab Security of Lands Tenure Act, 1953 (hereinafter called the Act) for his ejectment on the ground that each of them is a 'small land-owner' as defined in Section 2(2) of the Act; and that they require the land for self-cultivation.
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> The Assistant Collector, Hissar, rejected their application. Their appeal was dismissed by the Collector, on January 4, 1965. Their Revision was rejected by the Commissioner of Ambala Division on October 26, 1965. Their further Revision to the Financial Commissioner, also, met the same fate on May 17, 1966.
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> The appellants then moved the High Court by a writ petition under Articles 226 and 227 of the Constitution, alleging that the aforesaid orders of the Assistant Collector, Commissioner and the Financial Commissioner, were illegal, without jurisdiction and ultra vires the provisions of the Act and the rules made thereunder. Their contention was that the land had been allotted to them in lieu of the land abandoned by their father, Bishan Das, in Pakistan, and consequently, the permissible area of each of them is to be computed under Proviso
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> (ii) to Section 2(3) of the Act, and so computed, the holding of each of the five would be well below the permissible limit of 30 standard acres prescribed thereunder. It was further contended that since the allotment was made in standard acres, and not in ordinary acres, the 'permissible area' of each of the appellants would be 30

> standard acres, notwithstanding the fact that on conversion into ordinary acres, it exceeds 60 ordinary acres. On these grounds, the appellants claimed that each of them is a 'small land-owner' and as such, entitled to move for eviction of the tenant under Section 9(1) (i) of the Act.

The learned Single Judge of the High Court dismissed the writ petition.

Munshi Ram and his four brothers filed Letters Patent Appeal, which was eventually heard by a Full Bench. The Bench held that since the appellants were not 'displaced persons' within the meaning of the East Punjab Displaced Persons (Land Resettlement) Act, 1949, the concession of an enhanced permissible area under Proviso (ii) to sub-section (3) of Section 2 of the Act was not available to them, and their permissible area would be 60 ordinary acres, each; that since the holding of each of the appellants exceeds that limit, they are not 'small land-owners', and as such, were not competent to seek ejectment of the tenant. With this reasoning, the Full Bench dismissed the appeal.

Before considering the contentions canvassed, let us have a look at the definition of 'permissible area' in Section 2(3) of the Act. This definition reads as under :

> " 'Permissible area' in relation to a landowner or a tenant, means (thirty standard acres) and where such thirty standard acres on being converted into ordinary acres exceeds sixty acres such sixty acres; Provided that-
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> (i) .....
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> (ii) for a displaced person-
>
> (a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred acres, as the case may be;
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> (b) who has been allotted land in excess of thirty standard acres, but less than fifty standard acres, the permissible area shall be equal to his allotted area;
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> (c) who has been allotted land less than thirty standard acres the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition.

Explanation.- For the purposes of determining the permissible area of a displaced person, the provisions of proviso (ii) shall not apply to the heirs and successors of the displaced person to whom land is allotted."

The first contention of Mr. Naunit Lal is that the words "such thirty standards acres" in the substantive part of the definition clearly exclude conversion into ordinary cases, where the area held in standard acres falls below 30 standard acres. In short, the point sought to be made out is that the definition ensure an irreducible minimum of 30 standard acres to a land holder.

The contention does not stand a close examination. The flaw in the proposition propounded by the counsel is that it takes into account only one aspect of the definition while ignoring the other.

As rightly observed by the High Court, in devising this formula for computing the permissible area, the Legislature was concerned to put limits on the holdings of land both in its qualitative and quantitative aspects.

The concept of 'standard acre', being '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', has been introduced in the definition of 'permissible area' to emphasise the qualitative aspect of a land-holding, and the maximum limit of 60 ordinary acres delineates its quantitative aspect.

The language of sub-section (3) of Section 2 is plain and unambiguous. It proclaims in no uncertain terms, the legislative imperative that no land-owner or tenant shall hold land exceeding 30 standard acres or 60 ordinary acres. By no stretch of imagination, therefore, the words "such thirty acres" occurring in the definition can be construed to limit the conversion into ordinary acres only to a case where the holding is 30 'standard acres', and not less.

Mr. Naunit Lal next contended that since the land was allotted in the name of Bishan Das deceased, who was a displaced person, the EXPLANATION will not be attracted, with the result that the per-

missible area of each of his five sons would be 30 standard acres in accordance with Clause (c) of Proviso (ii) of sub- section (3) of Section 2. Since each of them was holding only about 24 standard acres, they were small land-owners.

The argument rests on the fallacy that the land was allotted to a 'displaced person'. The true position is that it was allotted to the sons of Bishan Das, who were not 'displaced persons' within the contemplation of the aforesaid Proviso (ii). Section 2(11) of the Act says:

> "Displaced person" has the meaning assigned to it in the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949). According to the definition of the term in East Punjab Act XXXVI of 1949, a 'displaced person' means "a landholder in the territories now comprised in the Province of Punjab in Pakistan or a person of the Punjab extraction who holds land in the (West Pakistan) and who has since the 1st day of March 1947, abandoned or has been made to abandon his land in the said territories on account of civil disturbances or the fear of such disturbances, or the partition of the country." Now, the sons of Bishan Das never owned or abandoned any land in West Pakistan. Evidently, they were not 'displaced persons' within the meaning of Proviso (ii) to Section 2(3). They are merely "heirs of a displaced person" who died after his migration to India. Proviso (ii) therefore, does not apply to the case of the appellants who, and not their father, were the persons to whom the land in dispute has been allotted. The EXPLANATION appended to Section 2(3), therefore, clearly excludes the application of Proviso (ii), to their case. Their case is fully covered by the substantive part of the definition of 'permissible

area' according to which the maximum which they could hold is 60 ordinary acres. Each of them was holding, at the material date, in excess of that area and as such, they were not 'small land-owners'.

The last contention of Mr. Naunit Lal is that in computing the 'permissible area' of each of the appellants, the Collector had illegally and wrongfully included uncultivated area of Banjar Jadid, Banjar Qadim and Gair Mumkin land as on April 15, 1953, and had also through some oversight, failed to allow deduction for the dimunition in their holdings resulting from consolidation. The argument is that Banjar land does not fall within the definition of 'Land' for the purpose of Punjab Security of Land Tenures Act, 1953. In support of this contention, reference has been made to several decisions of the High Court at Chandigarh.

According to sub-section (8) of Section 2 of the Act, "Land" shall have the same meaning as is assigned to it in the Punjab Tenancy Act, 1887. Section 2(c) of that Act defines 'Land' to mean "land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land".

In Nemi Chand Jain v. Financial Commissioner, Punjab(1), H. R. Khanna, J. speaking for a Division Bench of the High Court, held that Banjar Qadim and Banjar Jadid land cannot be taken into account while computing the surplus area, under the Act, because not being occupied or let for agricultural purposes or purposes subservient to agriculture, it does not fall within the purview of 'Land' under the Act. This ruling has been consistently followed by the High Court in its subsequent decisions, some of which are reported as Sadhu Ram v. Punjab State(2), Amolak Rai v. Financial Commissioner, Planning, Punjab(3) and Jaggu v. Punjab State(4) and Jiwan Singh v. State of Punjab(5).

In our opinion, this view taken by the High Court proceeds on a correct interpretation of the statutory provisions as it stood at the relevant time.

Learned counsel for the tenant-respondent also, does not question the soundness of this view. He, however, does not accept the particulars of the areas of Banjar and Gair Mumkin Land supplied by Mr. Naunit Lal, in the form of a Goshwara.

We will, therefore, while upholding the view taken by the High Court in regard to the interpretation and application of Section 2(3) Proviso (ii) of the Act, allow this appeal and set aside the decision of the High Court and the impugned orders of the Assistant Collector, Collector, and the Commissioner and remit the case to the Collector concerned of Hissar District with the direction that he should ascertain the extent of the Banjar Qadim and Banjar Jadid and Gair Mumkin land of the appellants-allottees at the relevant date and recompute their permissible area after excluding such Banjar and Gair Mumkin land; then dispose of the applications of the appellants under Section 9(1)(i) afresh. In the circumstances of the case, there will be no order as to costs.

N.V.K. Appeal allowed.