

State Of Punjab vs Labh Singh And Anr on 2 August, 1985

Equivalent citations: 1985 AIR 1380, 1985 SCR SUPL. (2) 357, AIR 1985 SUPREME COURT 1380, 1985 UJ (SC) 887, 1985 PUNJ LJ 448, 1985 (4) SCC 52

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, R.B. Misra

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
LABH SINGH AND ANR.

DATE OF JUDGMENT 02/08/1985

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
MISRA, R.B. (J)

CITATION:
1985 AIR 1380 1985 SCR Supl. (2) 357
1985 SCC (4) 52 1985 SCALE (2) 128

ACT:
Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act 13 of 1955) as amended by the (Second Amendment) Act, 1956 sections 2(f), 32-A, 32-L and 32-M, scope of - Words and phrases - Construction of the word "transfer" in section 32-L - Whether redemption of mortgaged lands amount to transfer within the meaning of section 32-L.

HEADNOTE:
Labh Singh, respondent No.1 was the owner of certain agricultural lands in three villages situated in the district of Kapurthala, namely, village Karahal Nauabad, village Isherwa and village Brindpur measuring in all 32-8 standard acres. Of them an extent of 7-4 standard acres of land situated in village Brindpur had been mortgaged with possession by him in favour of One Lachman Singh of village Khara Dona before the Pepsu Tenancy and Agricultural Lands

Act, 1955 (Pepsu Act 13 of 1955) came into force. The mortgage was subsisting when Chapter IV-A was inserted by the (Second Amendment) Act, 1956 (Pepsu Act No.15 of 1956) by which sections 32-A to 32-N were introduced. Clause (f) of section 2 of the Act defines the expression "land owner". The explanation added to the said clause provided that in respect of land mortgaged with possession the mortgagee should be deemed to be the land owner. The permissible limit for the purpose of the Act was fixed at 30 standard acres of land by section 3 thereof. In view of the above, Labh Singh, being in possession of less than 30 standard acres, 7-4 standard acres being in possession of the mortgagee was treated as a small owner not liable to surrender any land as surplus land under the provisions of the Act. But on April 1, 1959, Labh Singh got back the possession of 7-4 standard acres of land by redeeming the mortgage. On redemption the total extent of land in his possession became 32-8 standard acres which was in excess of 30 standard acres which had been prescribed by the Act as the permissible limit.

On coming to know that Labh Singh had in his possession land in excess of the permissible limit, proceedings were started by the Revenue authorities to declare the surplus land in his hands

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and to take possession of the surplus area. The Collector directed Labh Singh to produce a list of Khasara Numbers to be surrendered as surplus land within a fortnight therefrom. Aggrieved by the order of the Collector, Labh Singh preferred an appeal before the Commissioner of Jullundur Division. That appeal was unsuccessful. A revision petition filed before the Financial Commissioner, Punjab against that order also failed. Labh Singh, thereafter, filed a writ petition before the High Court of Punjab and Haryana which was also dismissed. In the Letters Patent Appeal filed before the Division Bench of the High Court by Labh Singh it was held (i) that the acquisition made by Labh Singh of 7-4 standard acres of land on redemption amounted to a transfer within the meaning of that expression in section 32-L of the Act and that being so by virtue of sub-section 2 of that section the transfer by which Labh Singh had acquired interest in that land must be deemed to be null and void and therefore non-existent; and (ii) the transfer being non-existent there was no acquisition in the eye of law and consequently, the transfer had to be ignored and not to be taken into consideration. Hence the State appeal by special leave.

Allowing the appeal, the Court

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HELD: 1.1 Respondent No.1 Labh Singh was in possession of land in excess of the permissible limit after he redeemed the mortgage and he therefore became liable to surrender the surplus land, that is, 2-8 standard acres to the Government by virtue of section 32-A itself. Even though there was no

express machinery provided in the Act at the relevant time to deal with the cases of this type, the Court is not competent to refuse to give effect to the plain words of section 32-A. [365 G-H, 366 A]

1.2. The scheme of the Act is that no land owner or tenant can hold land in excess of the permissible limit and every such land owner or tenant holding land in excess of permissible limit is liable to surrender the surplus land whatever may be the time at which such surplus land is acquired and whatever may be the mode of acquisition. Chapter IV-A of the Act is intended to place a ceiling upon the holding of land for personal cultivation by a landowner or a tenant in excess of the permissible limit not merely on the date on which it came into force but even subsequently. [363 G-H, 364 A]

Vidya Vati v. The State of Punjab & Ors. [1968] 1 S.C.R. 646 followed.
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2.1 In the context in which the word "transfer" is used in section 32-L of the Act it cannot be construed of including within its scope the re-transfer of land which takes place on redemption. [364 H]

2.2 Even though the mortgagee is liable to re-transfer the land in favour of the mortgagor on redemption of the mortgage such re-transfer cannot be treated as equivalent to transfer contemplated under section 32-L of the Act. When a mortgagor mortgages the land with possession he does not cease to be its owner. The equity of redemption still vests in him and on redemption he gets back possession of the mortgaged land. The present case came within the mischief of section 32-A of the Act, which was all pervasive. [364 F-G, 365 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2033 of 1971.

K.C. Dua and S.K. Bagga for the Appellant.

R.K. Bhatt for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. Labh Singh, respondent No.1 herein, was the owner of certain agricultural lands in three villages situated in the district of Kapurthala, namely, village Karahal Nauabad, village Isherwa and village Brindpur measuring in all 32-8 standard acres. Of them an extent of 7-4 standard acres of land situated in village Brindpur had been mortgaged with possession by him in favour of one Lachman Singh of village Khera Dona before the Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act 13 of 1955) (hereinafter referred to as 'the Act') came into force. The mortgage was subsisting when Chapter IV-A was

inserted by the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 (Pepsu Act No. 15 of 1956) into the Act. Chapter IV-A of the Act which provided for the imposition of ceiling on land and acquisition and disposal of surplus area consisted of Sections 32-A to 32-NN. Section 32-A of the Act read as follows:

"32-A. Ceiling on land- (1) Notwithstanding anything to the contrary in any law, custom, usage or agreement, no person shall be entitled to own or hold as land owner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limit.

(2) For the purposes of computing the permissible limit under sub-section(1), the provisions of clauses (d) and (e) of sub-section (2) of section 3 shall not apply."

The permissible limit for the purposes of the Act was fixed at 30 standard acres of land by Section 3 thereof. Section 32-B of the Act provided that any person who on the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 owned or held as landowner or tenant land under his personal cultivation, which in the aggregate exceeded the permissible limit should within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance, 1958 furnish to the Collector a return giving the particulars of all his lands in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible limit which he desired to retain and the lands in respect of which he claimed exemption from the ceiling under the provisions of Chapter IV-A of the Act. It was further provided that such person should state in the return any transfer or other disposition of land made by him after 21st August, 1956 and where a person had furnished a return before the commencement of the Pepsu Tenancy and Agricultural lands (Amendment) Ordinance, 1958 he should within the aforesaid period intimate to the Collector any such transfer or other disposition of land made by him. Clause (f) of section 2 of the Act defined the expression 'landowner'. The explanation added to the said clause provided that in respect of land mortgaged with possession the mortgagee should be deemed to be the landowner. In view of the above definition the extent of 7-4 standard acres of land which was under mortgage with possession of the commencement of the Act was not to be included in the holding of Labh Singh for purposes of determining the surplus land in his hand but the mortgagee had to be treated as the landowner in respect of that land. Consequently, the remaining extent of land in the possession of Labh Singh being less than 30 standard acres he was treated as a small landowner not liable to surrender any land as surplus land under the provisions of the Act. But on April 1, 1959, Labh Singh got back the possession of 7-4 standard acres of land by redeeming the mortgage. On redemption the total extent of land in his possession became 32-8 standard acres which was in excess of 30 standard acres which had been prescribed by the Act as the permissible limit. Labh Singh did not file any return informing the authority concerned that his holding had exceeded the permissible limit. But on coming to know that Labh Singh had in his possession land in excess of the permissible limit, proceedings were started by the Revenue authorities to declare the surplus land in his hands and to take possession of the surplus area. The Collector by his order dated April 25, 1967 declared that 2-8 standard acres of land in the hands of Labh Singh was surplus area which he had to surrender. The Collector, however, did not impose any penalty on Labh Singh for not submitting his return in time

on the ground that he being an illiterate person was not aware of the stringent provisions of the Act. Labh Singh was directed to produce a list of Khasra Nos. to be surrendered as surplus land within a fortnight therefrom. Aggrieved by the order of the Collector, Labh Singh preferred an appeal before the Commissioner of Jullundur Division. That appeal was unsuccessful. A revision petition filed before the Financial Commissioner, Punjab, against that order also failed. Labh Singh thereafter filed a writ petition before the High Court of Punjab and Haryana questioning the correctness of the order passed by the Financial Commissioner, Punjab, contending that the land which was under mortgage at the commencement of the Act and which was redeemed subsequently could not be taken into consideration for determining surplus area in the hands of the landowner. The learned Single Judge who heard the writ petition did not agree with the contention urged on behalf of Labh Singh and dismissed it. In the Letters Patent Appeal filed before the Division Bench of the High Court by Labh Singh against the judgment of the learned Single Judge it was held that the acquisition made by Labh Singh of 7-4 standard acres of land on redemption amounted to a transfer within the meaning of that expression in section 32-L of the Act and that being so by virtue of sub-section (2) of that section the transfer by which Labh Singh had acquired interest in that land must be deemed to be null and void and therefore non-existent. It was further held that the transfer being non-existent there was no acquisition in the eye of law. Consequently, the transfer had to be ignored and not to be taken into consideration. The Division Bench of the High Court which decided the appeal observed that the "so-called acquisition is hit by section 32-L of the Pepsu Act and is therefore non-existent in the eye of law being null and void, and does not have the effect of making Labh Singh the owner of an area exceeding the permissible limit." In that view of the matter the appeal was allowed and the orders passed by the Revenue authorities culminating in the order of Financial Commissioner and the order of the learned Single Judge were set aside. The High Court declined to consider the effect of section 32-M of the Act on the case.

This appeal by special leave is filed by the State of Punjab against the judgment of the Division Bench of the High Court in the Letters Patent Appeal.

In order to appreciate the contentions of the parties it is necessary to refer at this stage to sections 32-L and 32-M of the Act as they stood then. They read as follows:

"32-L. Ceiling on future acquisition of Land.- (1) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Papsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, 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 limit.

(2) Any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of sub-section (1), shall be null and void. 32-M. Ceiling on future acquisition by inheritance (1) If, after the commencement, of the Pepsu Tenancy Act and Agriculture lands (Second Amendment) Act, 1956, any person, whether as landowner or tenant, acquires by inheritance or by bequest or gift from a person to

whom he is an heir any land which with or without the lands already owned or held by him, exceeds in the aggregate the permissible limit, then he shall within the period prescribed furnish to the Collector a return in the manner specified in Section 32-B giving the particulars to all lands and selecting the land he desires to retain and if the land of such person is situated in more than one Patwar circle, he shall also furnish a declaration required by sub-section (1) of section 32-BB.

(1-A) If such person failed to furnish the declaration, the provisions of sub-sections (2) and (3) of section 32-BB shall apply.

(2) If he fails to furnish the return and select his land within the prescribed period, then the Collector may obtain the information and select the land for him in the manner specified in section 32-C. (3) The Collector shall then submit a statement to the State Government in the manner specified in section 32-D and issue a notification in the Official Gazette as required by that section. (4) The excess land shall then vest in the State Government in accordance with the provisions of section 32-E and compensation therefore, shall be payable in accordance with the provisions of this Chapter."

The learned counsel for the State Government relies on section 32-A of the Act which has been already extracted above in support of his contention that on redemption Labh Singh became the holder of agricultural land in excess of the permissible limit and was liable to surrender the surplus land which was over and above the permissible limit. The learned counsel on behalf of Labh Singh, however, urged that redemption being a transfer of land from the mortgagee to the mortgagor it was hit by section 32-L of the Act and was therefore void under sub-section (2) thereof. It being a void transaction could not be taken into consideration for purposes of determining the question whether Labh Singh was in possession of any land in excess of the permissible limit.

The case put forward on behalf of Labh Singh proceeds on the assumption that section 32-A (1) which provides that notwithstanding anything to the contrary in any law, custom, usage or agreement, no person shall be entitled to own or hold as land owner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limit operated only at the point of time when the said provision came into force and that it would not be applicable to lands acquired subsequently.

The scheme of the Act is that no land owner or tenant can hold land in excess of the permissible limit and every such landowner or tenant holding land in excess of permissible limit is liable to surrender the surplus land whatever may be the time at which such surplus land is acquired and whatever may be the mode of acquisition. Chapter IV-A of the Act is intended to place a ceiling upon the holding of land for personal cultivation by a land owner or a tenant in excess of the permissible limit not merely on the date on which it came into force but even subsequently. In *Vidya Vati v. The State of Punjab & Ors.* [1968] 1 S.C.R. 646, in which the Act came up for consideration Shah, J. observed thus at page 650:

"Viewed in the light of that scheme, also, it is impossible to construe s. 32-A as being operative only at the point of time at which the Amending Act incorporating Ch.IV-A was brought into force, for the words of the section contain no limitation, and the scheme of the Act indicates no such implication. It is true that under s. 32-B every person who owns or holds as land owner or tenant land under his personal cultivation exceeding the permissible limit at the commencement of the Act is required to make a return in respect of his holding. but this is enacted with a view to provide machinery for effectuating the provisions imposing the ceiling on land held at the date on commencement: it does not even indirectly suggest that s. 32-A is limited in its operation to the point of time at which the Act is brought into force and is spent thereafter. Failure on the part of the Legislature to deal with cases in which at the date on which the Act was brought into force, the owner or holder of land was not cultivating the land because he was not in cultivatory possession thereof but was resorted to his possession during the subsistence of the Act, cannot also be used to limit the operation of s. 32-A(1) only to the point of time at which the Act was brought into force. In our judgment the ban imposed by s. 32-A operates whenever he is found to own or hold land in personal cultivation exceeding the permissible limit."

Moreover even though the mortgagee is liable to re- transfer the land in favour of the mortgagor on redemption of the mortgage such re-transfer cannot be treated as equivalent to transfer contemplated under section 32-L of the Act. When a mortgagor mortgages the land with possession he does not cease to be its owner. The equity of redemption still vests in him and on redemption he gets back possession of the mortgaged land. In the context in which the word 'transfer' is used in section 32-L of the Act it cannot be construed as including within its scope the re-transfer of land which takes place on redemption. The Division Bench did not appreciate that its decision had the effect of defeating the purpose and object of the ceiling law. The present case came within the mischief of section 32-A of the Act which was all pervasive. The Division Bench of the High Court did not consider the effect of section 32-A of the Act and also the decision of this Court in Vidya Vati's case (supra) referred to above. In that case the Court while referring to section 32-L and section 32-M observed thus at page 649:

"The entire argument is raised on an assumption that s.32 A (1) operates only at the date on which the Act was brought into operation; that argument, in our Judgment is contrary to the plain terms of sec. 32-A (1). It is true that ss. 32-L and 32-M expressly deal with certain classes of acquisitions after the date of the commencement of the Act, but on that account no restriction may be imposed upon the connotation of the expression "no person shall be entitled to own or hold" occurring in s. 32-A of commencement and has no operation in the future. It may be noticed that s. 32-L renders all subsequent acquisitions as a result of which the holding of a person of land under his personal cultivation exceeds thirty acres "null and void"

and s. 32-M which deals substantially with involuntary acquisitions (such as acquisitions by inheritance or bequest) sets out the machinery for making declarations and the manner in which the

land in personal cultivation in excess of the ceiling will be dealt with. By an appropriate drafting device, it may have been possible to detail of these provisions into the other sections, but if in the interest of clarity certain specific cases are separately dealt with, an intention to restrict the operation of the general provision contained in s. 32-A (1) cannot be implied."

It may be added here that section 32-M of the Act has since been amended making it applicable to other kinds of acquisitions also.

Admittedly Labh Singh was in possession of land in excess of the permissible limit after he redeemed the mortgage and he therefore became liable to surrender the surplus land, that is, 2-8 standard acres to the Government by virtue of section 32-A itself. Even though there was no express machinery provided in the Act at the relevant time to deal with cases of this type, the Court is not competent to refuse to give effect to the plain words of section 32-A as observed in Vidya Vati's case (supra). The judgment of the Division Bench of the High Court is liable to be set aside and it is accordingly set aside. The decisions of the learned Single Judge, Financial Commissioner and other Revenue authorities are restored. The authorities under the Act shall now proceed to take possession of the extent of 2-8 standard acres of land from Labh Singh but before doing so they are directed to give an opportunity to Labh Singh by issuing notice to him to exercise his option as regards the parcel or parcels of land equivalent of 2-8 standard acres which he proposes to surrender. If he exercise his option in that regard within one month from the date of such notice the Revenue authorities shall take only those lands offered by him. If he falls to do so the authorities concerned themselves may proceed to take possession of the surplus land in accordance with law.

This appeal is accordingly allowed. There shall, however, be no order as to costs.

S.R.

Appeal allowed.