Supreme Court of India
State Of Haryana Etc vs Sampuran Singh Etc on 3 September, 1975
Equivalent citations: 1975 AIR 1952, 1976 SCR (1) 626
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
STATE OF HARYANA ETC.

Vs.

RESPONDENT:
SAMPURAN SINGH ETC.

DATE OF JUDGMENT03/09/1975

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
GUPTA, A.C.
FAZALALI, SYED MURTAZA

CITATION:
1975 AIR 1952 1976 SCR (1) 626
1975 SCC (2) 810

ACT:
Construction of Statutes-Interpretation of land reform statutes or agrarian laws-Construction to promote the general purpose of the act-Punjab Security of Land Tenures Act, 1953-Section 10A and 19B-Validity of the Transfers reducing surplus lands.

HEADNOTE:
The respondents were small land owners within the meaning of Punjab Securrity of' Land Tenures Act, 1953. The respondents, later on inherited certain lands which together with the lands already held by them exceeded the ceiling area. The respondents, therefore, ceased to be small land-owners. The respondents thereafter divested themselves of the excess lands by executing gift deed, mortgage with possession and pursuant to decrees passed in favour of their near relations. The Collector after investigating into the matter declared the lands in excess of the ceiling area as surplus lands and ignored the subsequent transfers. An appeal filed by the respondents was rejected by the Commissioner. Respondents Revision Applications to the Financial Commissioner were also rejected.

The respondents thereafter filed Writ Petitions in the

High Court. The High Court allowed the Writ Petitions holding that section 19B read with section 10A did not affect the transfers made by the respondents. According to High Court the transfers affected during the period prescribed for filing returns are valid since they were consistent with the scheme of' the act which requires that no one should hold land in excess of permissible limits.

Section 2(2) of the Act defines small land owner as a person owning less than certain area of land. Permissible area is defined limiting the maximum permissible extent a person may hold land. So long as a person does not hold lands in excess of permissible area he is a small land holder. He can evict his tenants from the holding and be in actual enjoyment as provided by the Act. If any person has lands beyond the permissible area he becomes a large land owner and he has to surrender the excess land after choosing the best area he desires to keep. Such excess land goes to the surplus pool which is distributed for the rehabilitation of ejected tenants and landless persons. The Act was amended by inserting section 10A and Section 19B with retrospective effect. Section 10A provides that for the purpose of determining the surplus area of any person any judgment, decree or order of a Court or authority contained after the commencement of the Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored.

Section 19B provides that if after the commencement, of the Act any person whether as land owner or tenant acquires by inheritance or by bequest or gift from a person to whom he is an heir or if any person after the commencement of the Act acquires in any other manner any land and which with or without the lands already owned or. held by him exceeds in the aggregate the permissible area such a person is required to file a return with the Collector in the prescribed form giving the necessary particulars and selecting the land not exceeding the permissible area which he desires to retain. The section further provides that the surplus land in excess of the permissible area would be distributed among the tenants who are evicted or landless persons.

On an appeal by certificate under Article 133(1)(c) in one appeal and in an appeal by Special Leave in another allowing the appeals held

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1. Land reform is so strategic that special constitutional concern has been shown for this programme. The State naturally enacted the Act whereby ceiling on land ownership was set. surplus lands were taken over for settling ejected tenants and others. If constitutionally envisioned socio-economic revolution is

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not to be a paper tiger, agrarian lands have to be meaningfully enacted, interpreted and executed and the Court is not the anti-hero of the Drama of limping land reform.

The decision of this Court in Amar Singh's case A.I.R. 1974 SC 994, 996 followed. [628 B-C 631 A]

2. It is settled law that Courts should favour an interpretation that promotes the general purpose of an Act rather than one that does not. [634-E]

3. The agrarian reform laws with special constitutional status, as it were warrant interpretative skills which, will stiffle the evasive attempts, specialty by way of gifts and bequests and suspect transfers. [635 C-D]

4. The profound concern of the law to preserve the surplus stock is manifest from the obligation cast by section 19B to declare and deliver excess lands. The agrarian policy is equitable ownership and the reform philosophy is redistributive justice, the rural goal being small peasant proprietorship. What difference does it make as to how you came by a large holding from the standpoint above outline ? The thrust of section 19B is that even if the source of the excess area is inheritance. bequest or gift the capacity to own is conditioned by the permissible limit. Section 10A does not militate against the mandate of section 19B. Section 19B had to be enacted because the High Court took the view that the area which became surplus subsequent to the commencement of the Act was not hit by the ceiling and land acquired by an heir by inheritance is saved from utilisation by the State. [633H-634A-C]

5. The reasoning of the High Court that the scheme of the Act was that no one should held land in excess of the permissible area and since after the transfers the land held by the respondent was within permissible limits there was no frustration of the policy of the law is repugnant to the basic scheme because the Surplus pool would be adversely affected if gifts and other transfers which would skim off surplus were to be allowed. A legislation which has provided for ignoring decrees diminishing surplus lands and has otherwise prevented the escape of excess area by voluntary transfers cannot conceivably be intended to permit inherited excesses. [634-F-G]

6. The further reasoning of the High Court that since section 19B gives to the owner who by inheritance comes to own an excess area. a certain time for making a declaration, that during this period land owner can effect transfers, is obviously absurd. What is intended to give some time to the heir to ascertain the assets he has inherited, make the choice of his reserved area which he likes to keep and make the necessary declaration. The processual facility cannot be converted into an opportunity to prevert and thwart the substantive object of the law. After all courts faced with special case situations, have creatively to interpret legislation [634 H; 635 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 123 of 1969 and 2023 of 1972.

From the Judgment and order dated the 25th October 1967 of the Punjab and Haryana High Court in Civil Writ No. 525 of 1966 and Civil Appeal No. 2023 of 1972.

Appeal by Special Leave from the order dated the 20th May, 1970 of the Punjab and Haryana High Court in L.P.A. No. 231 of 1970.

Naunit Lal and R. N. Sachthey for the Appellant in both the appeals.

N. N. Goswamy and Arvind Minocha for the Respondent in C.A 123 of 1969.

O. P. Sharma for Respondent No. 1 (In C.A. 2023/72). The Judgment of the Court was delivered by KRISHNA IYER, J. These two appeals turn on the construction of s. 19B of the Punjab Security of Land Tenures Act, 1953 (Act X of 1953) (for short, the Act). This legislation was enacted to bring about an agrarian re-ordering so pivotal to the progress of our rural economy. Haryana, happily a granary of our country, is one of the States where land reform laws are likely to generate great changes by banishing big concentration of Natur's bounty in a few feudal hands, creating an enthusiastic sense of distributive justice and exploiting the productive potential of land by the possessive passion of the landless many. So strategic is land reform that special constitutional concern has been shown for this programme. Naturally the State enacted the Act whereby ceiling on land-ownership was set; surplus lands were taken over for settling ejected tenants and others and peasant proprietorship created. The scheme of the Act with which we are concerned is fairly simple and somewhat scientific, although its language, what with frequent amendments dovetailed from time to time, has made for ambiguity, obscurity, marginal inconsistency and a rich crop of litigation. Indeed, the conflict of opinion at the High Court level and the bone of contention before us arise from this drafting deficiency Legal Preface:

A thumb-nail sketch of the Act is a prefatory necessity. the defines 'small land-owner' [S. 2(2)] having in mind the optimum ownership in the given conditions. 'Permissible area' [s. 2(3)] is a cognate concept limiting the maximum permissible extent a person may hold, and so long as he does not have any excess, he is a small landholder. He can evict the tenants from his holding and be in actual enjoyment as provided by the Act. If, however, he has lands beyond the permissible area, he becomes a large land-owner and has to cough up the excess. However, he is given the option to choose there best area he desires to keep, called 'reserved area' [s. 2(4)] and then he must make available to the State such excess called surplus area [s. 2(5-a)]. This creation of a surplus pool or reservoir is vital to the success of the statutory project since, by distribution of such lands, rehabilitation of ejected tenants and landless persons is to be "accomplished. Maximisation of the surplus pool and suppression of evasion by large holders are of profound legislative, concern.

Even if a person is a small holder, it is quite on the cards that, by inheritance or other operation of law, or by voluntary transfer, he may acquire lands in excess of the permissible limit. The law takes care to see that such excess is also made available for re-settlement of ejectees and their ilk. In short, the legislative mandate is that every agricultural holder in the State shall hold no more than the

permissible area and the surplus in the hands of large holders, whether acquired by voluntary transactions or involuntary operation of law, will go to feed the surplus pool.

A semi-medieval set-up where considerable estates are cornered by a landed gentry, will naturally resist re- distributive reform measures and try ingenious methodology to defeat the law. But the legislature has to be astute enough to outwit such devious devices and subtle subterfuges. With this end in view, the Act has been amended to block all escape routes unearthed by the law-makers as often as the High Court has upheld certain patterns of alienations and oblique dealings by interpretative process. A study of the history of the Act and the provocation for and frequency of amendments thereto, suggests an unspoken criticism about judicial approach which we will refer to later. Suffice it to say that the law we are construing is a radical agrarian measure; its basic goals are to cut down large holdings and distribute lands to various landless people according to a design and to foster, according to legislative policy, an agrarian community of peasant proprietors. De-hoarding and defeating hide-outs are essential to make the twin objects successful and so ss. 10A and 19B among others, have been written into the Act. To explore the import and ambit of these two provisions, particularly the former, with a view to see whether it strikes at a gift made by, the respondent in. favour of his sons whereby he sought to stow away some of his lands, shed some of his excess lands and look slim on as a small holder before the law Language permiting, the Court as interpretor, must fulfil, not frustrate the legislative mission.

Factual Silhouette At this stage it is appropriate to set out the facts in the two appeals which are not in dispute and speak for themselves.

C.A. 123 of 1969:

One Sampuran Singh who owned 450 bighas and 9 biswas of land, acting with foresight, gifted half of it to his mother in 1951, perhaps with a premonition of coming restrictions by way of ceiling on owner ship. We need not speculate on that point in the light of subsequent happenings. The Act came into force on April 15, 1953 but even before that date the. Owner (who was the petitioner before the High Court under Art. 226 and respondent before us) executed a mortgage with possession over 12 bighas and 5 biswas. There was also some waste land included in his total holding which fell outside the scope of the Act. So much so, on the date when the Act came into force, he was the owner of about 178 bighas which, admittedly, fell safely short of the permissible area of 30 standard acres [vide s. 2(3)]. Having thus dwarfed himself into a small land owner as defined in s. 2(2), the 'ceiling' provision held out no threat to him. Certain small extents of land which were legally deductible from his total holding brought down the area in his possession to 138 odd bighas. Unfortunately for him, his mother passed away in February 1958 and, he being the heir, all that he had gifted to her earlier came back to him as successor. The unhappy consequence was that his holding expanded to 363 odd bighas, far in excess of the permissible area as set out in s. 2(3) of the Act. Necessarily, this spill-over became surplus area as in s. 2(5-a) of the Act. Sensing the imminent peril to his property and manoeuvring to salvage it from the clutches of the legal ceiling the petitioner executed a gift of 182 bighas of land to his son by deed dated February 11, 1959. He also executed three mortgages with possession. The cumulative result of the shedding operations was to shrink the size of his holding to well within the permissible area. The Collector, however,

investigat ed into the matter and declared an area of 117 bighas as surplus in his hands. He reached this conclusion by ignoring the tell-tale gift of February 1, 1959 in favour of the son and the three possessory mortgages executed in June 1958. The status of 'small land-owner' thus being forfeited, the threat lo the surplus lands revived but was sought lo be warded off by the petitioner moving an unsuccessful appeal Lo the Commissioner, and a further fruitless revision to the Financial Commissioner. Eventually, he challenged the Collector's order i Writ Petition which, met with success. There was disagreement between the two learned Judges on the Bench and the third learned Judge decided in favour of the petitioner holding that s. 19B, read with s 10A. did not affect the petitioner's transfers. The two Judges, whose opinion upheld the claim of the petitioner, substantially concurred in their reasonings but the scope of the interpretative exercise. is somewhat limited. We, therefore, propose straight to go into a study of the relevant provisions and may perhaps indicate our conclusion in advance. We wholly disagree with the High Court and hold that to accept the construction which has appealed to the learned Judges is to frustrate the agrarian reform scheme of the Act and the alternative reading gives life to the law, teeth to its provisions and fulfilment to its soul.

C.A. 2023 of 1972: The facts in this appeal are different but the point of law involved is identical. In both the cases the State of Haryana has come up to this Court in appeal, the former by certificate under Art. 133(1)(c) and the latter by special leave granted by this Court. Anyway, in C.A. 2023 of 1972, respondent no. 1 owned 86 odd ordinary acres of land on April 15, 1953 when the Act came into force. After the commencement of the Act he inherited nearly 30 ordinary acres and thus he held well above the permissible area and ceased to be a small land owner. Around the year 1957 he transferred 167 bighas of land to respondents nos. 3 to 6 pursuant to a Civil Court decree passed in 1957 in favour of his sons and wife. We may mention here, parenthetically but pathetically, that the weapons in the armoury of large land owners to defeat the land reform law included securing simulactral decrees from civil courts against themselves in favour of their close relations, thus using the judicial process to have. their excess lands secreted in the names of their dear and near. This invited legislative attention and an amendment of the Act was made viz., s. 10A whereby decrees and orders of courts were to be ignored in dealing with surplus lands. Thus, the Collector ignoring the transfer of 167 bighas of land by respondent no. 1 (which resulted ill civil court decrees of 1957 in favour of his sons and wife declared 38.41 ordinary acres as surplus with respondent no. 1. The statutory. remedies did not see the first respondent (writ- petitioner) safe ashore and so he sought harbourage by moving the High Court under Art. 26 where he urged that the land inherited by him and later transferred to his sons and wife were not hit by s. 10A and s. 19B of the Act He succeded in the Court in view of a certain strict construction adopted by the Court and the State has come up in appeal challenging the soundness of the High Court's approach.

Statutory Construction:

The key-thought that pervades our approach is that if the constitutionally envisioned socio-economic revolution is not to be a paper tiger, agrarian laws have to be meaningfully enacted, interpreted and executed and the court is not the anti-hero in the drama of limping land reform. Much to the same effect this Court observed in Amar Singh's Case(1):

> "We have to 'bear in mind the activist, though inarticulate, major premise of statutory construction that the rule of law must run close to the rule of life and the court must read into an enactment, language permitting, that meaning which promotes the benignant intent of the legislation in preference to the one which perverts the scheme of the statute on imputed legislative presumptions and assumed social values valid in a prior era. An aware court, in formed of this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of a land reforms law unless compelled by its language, and the crux of this case is just that accent when double possibilities in the chemistry of construction crop up."

While dealing with a somewhat analogous set of provisions under the same Act. The emphatic importance of augmenting the surplus pool for distribution by the State is brought out in Amar Singh (supra) thus:

> "The triple objects of the agrarian reform projected by the Act appear to be (a) to impart security of tenure (b) to make the tiller the owner, and (c) to trim large land holdings, setting sober ceilings. To convert these political slogans and into legal realities, to combat the evil of mass evictions, to create peasant proprietorships and to ensure even distribution of land ownerships a statutory scheme was fashioned the cornerstone of which was the building up of a reservoir of land carved out of the large landholdings and made available for utilisation by the State for re-settling ejected tenants." (p. 998) Unfortunately, judicial decisions construing the language of the law have resulted in stultifying the objectives of the enactment leading to further amendments. We are concerned in the present case with ss. 10A and 19B which, in their final form, appeared by an amendment of 1962 (Act XIV of 1962), but retrospective effect was given with effect from the commencement of the Act, viz., April 1953.

In this context it is convenient to excerpt the observations of this Court in Amar Singh (supra) at p. 999:

> (1) A.I.R.. 1974 S.C. 994, 996.
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> "The objects and reasons of Punjab Act 14 of 1962, which brought in certain significant restrictions on alienations and acquisitions of large land-holders starts off in the statement of objects thus: "Some of the recent judicial pronouncements have the effect of defeating the objectives with which the Punjab Security of Land Tenures Act, 1953, was enacted and amended from time to time. It was intended that the surplus area of every land-owner recorded as such in the revenue records should be made utilisable for the settlement of ejected tenants."
>
> Certain specific decisions and their impact on the legislative operation were mentioned, and then the statement of objects proceeded:

> "In order to evade the provisions of section 10-A of the Parent Act interested persons, being relations, have obtained decrees of courts for diminishing the surplus area. Clause (43 of the Bill seeks to provide that such decrees should be ignored in computing the surplus area."

The short point which confronts us in both these appeals is as to whether the gifts made by land-owners who exceeded their permissible area having come by additional lands by inheritance are to be ignored or taken into account when computing the surplus area in their hands, having regard to the specific provision in s. 19B living in fellowship with s. 10-A.

It is appropriate to read ss. 10A and 19B here, before proceeding to the crucial discussion in the case:

> 10-A.-(a) The State Government or any officer em powered by it in this behalf shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) or section 9.
>
> (b) Notwithstanding anything contained in any other law for the time being ill force and 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 no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a) Explanation.-such utilization of any surplus area will not affect the right of the landowner to receive rent from the tenant so settled.
>
> (c) For the purposes of determining the surplus area of any person under this section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored."

"19B. Future acquisition of land by inheritance, in excess of permissible area.-

> (1) Subject to the provisions of s. 10-A, if after the commencement of this Act, any person, whether as land-owner or tenant, acquires any inheritance or by bequest or gift from :. person to whom he is an heir any land, or in after the commencement of this Act and before the 30th of July, 1958, any person acquires by transfer, exchange, lease, agreement or settlement any land, or if, after such commencement, any person acquires in any other manner any land and which with or without the lands already owned or held by him exceeds in the aggregate the permissible area, then he shall within the period prescribed, furnish to the Collector, a return in the prescribed form and manner giving the particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which 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 section 5-A. (2) If he fails to furnish the return and select his land within the prescribed period, then the Collector many in respect of him obtain the

information required to be shown in the return through such agency as he may deem fit and select the laud for him in the manner prescribed in sub section (2) of section 5-B. (3) If such person fails to furnish the declaration the provisions of section 5-C shall apply. (4) The excess land of such person shall be at the disposal of the State Government for utilization as surplus are; under clause (a) of section 10-A or for such other purposes the State Government may by notification direct."

Unclouded by case law, we first study s. 1953.

Forgetting s. 10-A for moment, we find that if, after the commencement of the Act, April 15, 1953, any person acquires any land by inheritance or bequest or gift which, with the lands already held by him exceed in the in the permissible area, than he shall furnish to the Collector a return indicating the permissible area he desires to retain. This he shall do within the prescribed period [S 19B(1)]. If he defaults to make the return, the Collector will select the land for him [19B(2). He will suffer a penalty for failure to furnish the declaration [19B(3)]. The excess land, i.e., the surplus area shall be at the disposal of Government for utilization under s. 10-A [19B(4)1. The surplus land will be used for re-settlement of tenants ejected or to be ejected under cl. (i) sub-s. (1) of s. 9 or other purpose notified by Government. The profound concern of the law to preserve the surplus stock is manifest from the obligation cast by sub-ss. (1) and (4) of 19B to declare and deliver excess lands. How you came to hold the excess is not the question. Why you should be permitted to keep more than what others can lawfully own is the query. A might have 10-925 Sup CI/75 acquired by paying hard cash might have received by gift and by bequest and D by settlement and by partition. The agrarian policy is equitable ownership and the reform philosophy is redistributive justice the rural goal being small peasant proprietorship. What difference does it make as to how you came by a large holding from the standpoint above outlined? The thrust of s. 19-B is that even if the source of the excess area is inheritance, bequest of gift, the capacity to own is conditioned by the permissible limit.

Section 10-A does not militate against this mandate of s. 19-B. Indeed, s. 19-B had to be enacted because the High Court took the view that area which became surplus subsequent to April 15, 1953 was not hit by the ceiling set and land acquired by an heir by inheritance is saved from utilisation by the State. Section 10-(a) is wide in its terms and encompasses all surplus area, howsoever obtained. Even s. 10A(b) strikes not discordant note. All that it says and means is that lands acquired by an heir by inheritance are saved in so far as dispositions of such lands are concerned. The drafting of the saving clause is cumbersome but the sense is and, having regard to the conspectus, can only be that although in the hands of the propositus, it is surplus land, if among the heirs it is not, then their transfers will not be affected by the interdict of s. 10- A(a) the sins of the father shall not set the teeth of the children on edge. If the heirs are otherwise small holders, the fact that their father was a large owner will not deprive the former of their heritage, if it is less than the permissible area. We see no conflict between s. 10-A and 19B. Assuming some inconsistency, primacy goes to s. 19B which effectuates the primary object. It is settled law that Courts should favour an interpretation that promotes the general purpose of an Act rather than one that does not.

Counsel for the respondents adopted the arguments which found favour with the High Court and pressed two points. The scheme of the Act, according to the learned Judges, was to see that no one

held in excess of the permissible area and since by the gift to the son or wife the latter had only lands within permissible limits, there was no frustration of the policy of the law This reasoning is repugnant to the basic scheme because the surplus pool will be adversely affected if gifts and other transfers which will skim off surplus were to be allowed. Indeed, the flaw in the High Court's argument is that if it were allowed to prevail, there will be no surplus land at all, every large holder being free to screen his surplus in the names of his with and kin or servants or reliable friends, by going through alienatory exercises. A legislation which has provided for ignoring decrees diminishing surplus lands and has otherwise prevented the escape of excess area by voluntary transfers, cannot conceivably be intended to permit inherited excesses.

The second argument which appealed to the High Court is a little curious, and somewhat difficult to follow. Section 19-B directs the owner who, by inheritance, comes to own an excess area, to make a declaration of his lands within a prescribed time. This does rot mean that the time lag is statutorily given for executing gifts and transfers to defeat the law itself. Such a conclusion would be obviously absurd. What is intended is to give some time to the, heir to ascertain the assets he has inherited, make the choice of his 'reserved area' which he likes to keep and make the necessary declaration. A processual facility cannot be converted into an opportunity to pervert and to thwart the substantive object of the law. After all, courts, faced with special case situations, have 'creatively' to interpret legislation. The courts are 'finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further. processing', said Donaldson J., in Corocraft Ltd. v. Pan American Airways Inc.(1) and indeed it is no secret that courts constantly give their own shape to enactments.

We feel that when economic legislation in the implementation of Part lV of the Constitution strikes new ground and takes liberties with old jurisprudence, there looms an interpretation problem of some dimensions which Indian jurists will have to tackle. The genre of agrarian reform laws, with special constitutional status, as it were, warrants interpretative skills which will stifle evasive attempts, specially by way of gifts and bequests and suspect transfers. Here ss. 10-A, 19-A and 19B, inter alia, strike at these tactics.

Our conclusion, in conformity with the principles of statutory construction we have projected, is that the gifts in both the appeals fail in the face of s. 19B. It follows that the appeals have to be allowed, which we hereby do without hesitation, without costs how ever to either party at any stage.

P.H.P. Appeals allowed.

(1) [1968] 3 W.L.R. 714, 732.