CIVIL MISCELLANEOUS

Before H. R. Khanna, J.

NARAIN KAUR,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER, *Respondents*

Civil Writ No. 856 of 1962

1964

August, 21st.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S.2(b) and (m) and Chapter IV-A—Punjab Tenancy Act (XVI of 1887)—S.4(1)—Banjar *Land and* ghair mumkin *Land—Whether can be declared surplus.*

Held, that the description of *banjar* land in clause (b) of section 2 of the Pepsu Tenancy and Agricultural Lands Act, 1955, does not answer to the description of land as defind in clause (1) of section 4 of the Punjab Tenancy Act but in clause (3) of section 32-N of the Act it is clearly stated that in Chapter IV-A of the Act land includes *banjar* land, save as otherwise provided. Chapter IV-A deals with the ceiling on land and acquisition and disposal of surplus area. Sections 32-D and 32-E, which are contained in Chapter IV-A of the Act, make provision for the declaration of the surplus area and its vesting in the State Government. It would, therefore, follow that in the absence of anything to the contrary, the Collector can declare surplus the *banjar* land of a land-owner besides other land if the area owned by the land-owner exceeds the permissible limit. Section 32-G of the Act also goes to show that banjar area too of land-owners can be declared surplus because it prescribes the compensation which is payable for the *banjar* land declared to be surplus.

Held, that *ghair mumkin* land, which is not subservient to agriculture, cannot be declared surplus as it does not answer to the description of land as defind in clause (1) of section 4 of the Punjab Tenancy Act.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order, dated the 23rd November, 1960, passed by respondent No. 2.

K. N. Tewari, Advocate, for the Petitioner.

S. K. Kapur, Advocate-General and M. R. Sharma, Assistant Advocate-General, for the Respondents.

ORDER

Khanna, J. Khanna, J.—This judgment would dispose of three writ petitions Nos. 856, 857 and 858 of 1962 which have been filed by Shrimati Narain Kaur, Gurdev Singh and Dhana Singh, respectively. The three petitioners belong to the same family and as the facts in all the three cases are stated to be identical it would be proper to refer to the facts in petition No. 856 of 1962 only.

According to the allegations of the petitioner she is the daughter-in-law of Sher Singh deceased. The descendants of Sher Singh jointly owned 8,500 Bighas of land out of which 7,135 was under cultivation and the rest was non-cultivable. It is stated that without notice to the petitioner the Collector of Bhatinda as per order dated 23rd of November, 1960, declared as surplus the petitioner's share of 50/319 in land comprised in Khasra numbers, list of

which was enclosed with the petition. 50/319 share of the land came to 161.14 ordinary acres convertible into 94.03 standard acres which, after being declared surplus, vested, under the orders of the Collector, in the State Government. The petitioner was thereafter served with a notice to the effect that out of the total compensation of Rs. 2,02,814 payable to the whole family, the provisional compensation payable to the petitioner came to Rs. 32,000. The petitioner by means of this petition has sought to challenge the above order of the Collector dated 23rd of November, 1960.

The petition has been resisted by the State of Punjab.

Mr. Tewari on behalf of the petitioner, has, at the outset, argued that before declaring the land of the petitioner surplus, it was essential for the Collector to serve the draft statement on the petitioner as required by sub-section (2) of section 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No. 13 of 1955)—hereinafter referred to as the Act. It is urged that personal service was not effected on the petitioner, but was effected on Jagjit Singh, who was the adult male member of her family. The aforesaid service, according to the learned counsel, was not a valid service. It is, however, conceded that service has to be effected in the same manner as is prescribed by section 90 of the Punjab Tenancy Act. According to that section, if service cannot be effected personally on the person concerned, it may be effected on the adult male member of his family, who is residing with him. The petitioner has not produced copy of the report of the process server, and in the absence of that report it cannot be said that conditions justifying the service of the summons on the adult son of the petitioner did not exist. There is nothing to show that the petitioner remained ignorant of the draft statement in spite of the service which was effected on her adult son. I, therefore, find no force in the contention that the order of the Collector is liable to be quashed because personal service was not effected on the petitioner.

Mr. Tewari has then pointed out that the Collector has declared the *banjar* land of the petitioner surplus along with the other land which has been declared surplus. It is urged that the *banjar* land of the petitioner could not

Narain Kaur
v.
The State of Punjab and others

Khanna, J.

be declared surplus under the Act. Reference in this connection has been made to clause (m) of section 2 of the Act, according to which all other words and expressions used in the Act and not defined therein but defined in the Punjab Tenancy Act, or the Punjab Land Revenue Act, would have the meanings assigned to them in either of those Acts. Land has been defined in clause (1) of section 4 of the Punjab Tenancy Act as under:—

> " 'land' means land which is not occupied as the site of any building in a town or village and is occupied or has been left for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land."

Banjar land has been defined in clause (b) of section 2 of the Act as under:—

> " '*banjar* land' means land which has remained uncultivated for a continuous period of not less than four years immediately preceding the date on which the question whether such land is *banjar* or not arises."

It is urged that the above description of *banjar* land would go to show that it does not answer to the description of land as defined in clause (1) of section 4 of the Punjab Tenancy Act. Reliance in this connection has also been placed upon the case *Nemi Chand Jain* v. *The Financial Commissioner, Punjab and another* (1), wherein I, sitting along with Mehar Singh, J., held that *banjar jadid* or *banjar qadim* land did not answer to the description of the 'land' as given in section 2(8) of the Punjab Security of Land Tenures Act. In my opinion, the above contention of the learned counsel would have carried weight if the other provisions of the Act had been silent with regard to the point now canvassed. As things, however, are, I find that in clause (3) of section 32-N of the Act it is clearly stated that in Chapter IV-A of the Act land includes *banjar* land, save as otherwise provided. Chapter IV-A deals with the ceiling on land and acquisition and disposal of surplus area. Sections 32-D and 32-E, which are contained in

(1) I.L.R. (1964) 1 Punj. 780=1964 P.L.R. 278.

Chapter IV-A of the Act, make provision for the declaration of the surplus area and its vesting in the State Government. It would, therefore, follow that in the absence of anything to the contrary, the Collector can declare surplus the *banjar* land of a landowner besides other land if the area owned by the landowner exceeds the permissible limit. Section 32-G of the Act also goes to show that *banjar* area too of landowner can be declared surplus because it prescribes the compensation which is payable for the *banjar* land declared to be surplus. I would, therefore, hold that the contention that the *banjar* land of the petitioner could not be declared to be surplus under the Act is not well-founded.

Mr. Tewari has next argued that the *ghair mumkin* land of the petitioner could not be declared to be surplus. It is pointed out that the above *ghair-mumkin* land is included in the *abadi* and the members of the petitioner's family have built their residential houses and *kothis* on that land. The fact that *ghair-mumkin* land has been taken from the petitioner, is not denied by the respondents because it is clearly stated in the written statement that 19 Bighas and 11 Biswas have been taken out of the *ghair-mumkin* land. According, however, to the respondents, part of this area is subservient to agriculture and part of it is surrounded by areas declared as surplus due to which it was not considered advisable to exclude it from the surplus pool. So far as the land, which is subservient to agriculture, is concerned, it would be covered by the definition of land as given in clause (1) of section 4 of the Punjab Tenancy Act. The *ghair-mumkin* land of the petitioner, which is, however, not subservient to agriculture cannot be deemed to be land and the mere fact that it is surrounded by area declared to be surplus would not bring it within the ambit of the definition of land. *Ghair-mumkin* land has been defined in Land Revenue Assessment Rules, 1929 as under:—

> "*ghair-mumkin*: land which has for any reason become unculturable, such as land under roads, buildings, streams, canals, tanks, or the like, or land which is barren sand, or ravines."

Ghair-mumkin land, which is not subservient to agriculture, in view of the above definition, would obviously not

Narain Kaur
v.
The State of Punjab and another

Khanna, J.

answer to the description of land as defined. Indeed, no arguments to show to the contrary have been advanced before me. Such *ghair-mumkin* land, in the circumstances, could not be declared to be surplus and the order of the Collector in this respect is not warranted by law.

Mr. Tewari has also urged that the Collector, while awarding compensation to the petitioner, has considered her share to be 50/319, while in fact her share is higher than that and that the petitioner should have been awarded compensation in accordance with her higher share. It is, however, not stated in the petition as to what exactly is the share of the petitioner. In the circumstances the petitioner can be granted no relief by this Court on that score. If so advised, as pointed out by the learned Advocate-General, she may agitate the matter before the revenue authorities.

It has also been argued that the amount of compensation has not been correctly calculated. The order by means of which the amount of compensation was calculated, has, however, not been placed on the file, and it is not shown as to what was the particular error in the method of calculation. In any case, the proper forum for agitating this matter are the higher revenue authorities. It may be mentioned that Section 39 of the Act gives a right of appeal as well as of revision to the person aggrieved by the order of the Collector to the higher authorities.

I, accordingly, accept the three writ petitions to the extent of quashing the orders of the Collector in so far as he has declared surplus the *ghair-mumkin* land of the petitioners which is not subservient to agriculture. The parties, in the circumstances of the case, are left to bear their own costs.

B.R.T.