

of the Commissioner under section 40 of the Act, in order to keep away the orders of proceedings of the Tribunal from its purview, and making the order of the Tribunal final explicitly, makes the intent of the Legislature plain that the Tribunal's orders had not to be tinkered with by the Commissioner; for what is prohibited to be done directly cannot be allowed to be done indirectly on the ostensible plea that the order of the Tribunal is left uninterfered with but the order of the Deputy Excise and Taxation Commissioner alone is being sought to be revised. Permitting such course, as it appears to me, would be a fraud on the statute: a course totally impermissible. In the scheme of things and the language employed in the aforesaid provisions, the doctrine of merger surfaces out to take cover and give a protective umbrella to the order of the Tribunal as also to that of the Deputy Excise and Taxation Commissioner when having passed through the appellate mill before the Tribunal. Thus, for these reasons it appears plain to me that the Commissioner had no jurisdiction to revise the order of the Deputy Excise and Taxation Commissioner howsoever erroneous the latter order may be and howsoever justified the Commissioner may be on merits of the case.

(4) The question posed at the outset is answered thus in the positive i.e., in favour of the petitioner and against the Revenue. Thus, the impugned order of the Commissioner being without jurisdiction needs be and is hereby quashed without adverting to the other points raised by the learned counsel for the petitioner. This petition accordingly succeeds but without any order as to costs. C.M. No. 1578 of 1984 has become infructuous and is dismissed as such.

N.K.S.

Before M. M. Punchhi, J.

YATINDER CHAND

Petitioner.

versus

Respondents.

THE STATE OF PUNJAB AND ANOTHER

Civil Writ Petition No. 3782 of 1977

December 14, 1984

*Punjab Land Reforms Act (X of 1973)—Sections 2(15), 8 and
10—Punjab Land Revenue Act (XVII of 1887)—Section 3(2)—Area*

Yatinder Chand v. The State of Punjab and another
(M. M. PUNCHHI, J.)

of land declared surplus in the hands of a landowner—Such area already sold by the landowner to different persons before such declaration—Compensation for the surplus area—Whether payable to the vendees—Landowner—Whether can lay claim for the compensation.

Held, that it is the Collector or the Officer authorised by the State Government in that behalf who has to determine the amount to be paid for the land which has vested in the State Government under Section 8 of the Punjab Land Reforms Act, 1972. Nowhere in the said section has it been specifically provided that compensation is to be paid to the landowner in whose hands the area was declared surplus. The curb to have more land than the permissible area is not only towards owning it but also towards holding it. It has thus to be seen not only as to who holds the proprietary interest in the land declared surplus as also who has its possessory interest. The word 'landowner' has a very wide signification and includes many persons whose interest in land are of a limited or ephemeral character. They may not strictly fall within the expression 'owner of land'. The Act appeared on the scene to bring a ceiling on land of landowners, as also mortgagees with possession and even those of tenants. Persons holding partly in one capacity and partly in another, were also brought within the ambit of the provisions. It is for land of such landowners whose area fell beyond the ceiling limit and had been declared surplus, that compensation had to be paid. And compensation necessarily had to be paid to those persons who were entitled as landowners and who had been sought to make way for the claims of the State. On this understanding of the matter, it becomes plain that though the holding of a landowner had to be reckoned for the purpose of computing surplus area as it stood on the appointed date, compensation had to be paid for the land declared surplus to the persons who made way for the State to take it over. Where a landowner transferred his area to a set of vendees even before it was declared surplus and the State reckoned the surplus area on the legal fiction that the area kept belonging to the landowner, ignoring at that stage the transfers, then the claim of the State that it would pay compensation to the vendees, in the scheme of things, seems perfectly justified for it took possession from the vendees and needs to compensate them for the purpose. This is in keeping with the scheme and the provisions of the Act.

(Paras 2 and 3).

Civil Writ Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs may be granted to the petitioner:—

- (i) *that the respondents be directed to produce to this Hon'ble Court the relevant record of the case;*

- (ii) *that a writ of mandamus be issued, directing the respondents to make the payment of the entire amount of compensation along with interest created thereon, for the petitioner's land declared surplus,—vide Annexure P.1 forthwith;*
- (iii) *that any other writ, order or direction which this Hon'ble Court may deem fit in the circumstances of this case be issued; and*
- (iv) *that the costs of the petition may be awarded to the petitioner throughout.*

H. N. Mehtani, Advocate, for the Petitioner.

G. S. Chawla, Advocate, for A.G. Punjab.

JUDGMENT

M. M. Punchhi, J. (Oral):

(1) The undisputed facts are these. The petitioner was a big landowner in the State of Punjab. His holding when computed under the Punjab Land Reforms Act, 1972, came to be 16-23.38 hectares. Leaving seven hectares of first quality land as his permissible area, the remaining land was declared surplus by the Collector,—vide order, dated June 30, 1976 (Annexure P.1), details whereof are coming forth in the order itself. The petitioner moved this Court lamenting that a sum of Rs. 34,375 assessed as compensation due for the surplus area, had not been paid to him despite the fact that the land involved had been mutated in the name of the State. The State in its return took the plea that before June 30, 1976, when order, Annexure P.1 was passed, the petitioner had sold his entire declared surplus area for Rs. 16,800 and that by his act he was no longer entitled to compensation. It has further been pleaded that mutations which have been sanctioned in favour of the Government were from the names of the vendee to the State. Nevertheless, it is categorically stated that the vendees are entitled to get compensation for the lands sold to them.

(2) The petitioner bases his claim solely on the ground that he was the landowner and it was his area which was declared surplus, entitling him to compensation. Stress has been laid on the scheme of the Act to contend that it was intended that landowners

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be paid the compensation to be determined under section 10 of the Act. It is noteworthy, however, it is the Collector or the officer authorised by the State Government in that behalf who shall determine the amount to be paid for the land which has vested in the State Government under section 8. Nowhere in the said section has it been specifically provided that compensation is to be paid to the landowner in whose hands the area was declared surplus. The curb to have more land than the permissible area is not only towards owning it but also towards holding it. It has thus to be seen not only as to who holds the proprietary interest in the land declared surplus as also who has its possessory interest.

(3) At this stage, it would help seeing the definition of the word 'landowner', which stands engrafted in the provisions of the Punjab Land Reforms Act, 1972, as is contained in the Punjab Land Revenue Act [see section 2(15) of the former Act for the purpose]. Now section 3(2) of the latter Act provides:

“* * * * *

- (2) “landowner” does not include a tenant or an assignee of land revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate;”

A Division Bench of this Court in *Baba Badri Dass v. Shri Dharm and others*, (1) to which I was a member drew distinction between the word “landowner” and the expression “owner of land”. Terms “owner of land” and “landowner” were held not synonymous. The word “landowner” has a very wide signification and includes many persons whose interests in land are of a limited or ephemeral character. They may not strictly fall within the expression “owner of land”. The Punjab Land Reforms Act appeared on the scene to bring a ceiling on land of landowners, as also mortgagees with possession and even those of tenants. Per-

(1) 1981 P.L.J. 447.

sons holding partly in one capacity and partly in another, were also brought within the ambit of the provisions. It is for land of such landowners whose area fell beyond the ceiling limit and had been declared surplus, that compensation had to be paid. And compensation necessarily had to be paid to those persons who were entitled as landowners and who had been sought to make way for the claims of the State. On this understanding of the matter, it becomes plain that though the holding of the petitioner had to be reckoned for the purpose of computing surplus area as it stood on the appointed date 'January 24, 1971', compensation had to be paid for the land declared surplus to the person who made way for the State to take it over. Admittedly, on the facts of the present case, the petitioner transferred his area somewhere after January 24, 1971, but before June 30, 1976, to a set of vendees who are not parties to these proceedings. The State reckoned the surplus area on the legal fiction that the area kept belonging to the petitioner, ignoring at that stage the transfers. Its claim at the later stage that it would pay compensation to the vendees, in the scheme of things seems to me, perfectly justified for it took possession from the vendees and needs to compensate them for the purpose. This is in keeping with the scheme and the provisions of the Act. It is precisely for this purpose, as said earlier, that both proprietorial and the possessory interests in the land have to be kept in view to work out the scheme of the Act. No fault at all can be found in the stance adopted by the State. The petitioner is not entitled to the compensation.

(4) For the foregoing reasons, there is no merit whatsoever in this petition. It accordingly fails and is dismissed with costs.

N. K. S.

Before J. M. Tandon, J.
BAKHSHO—Petitioner.

versus

PAKHAR SINGH AND ANOTHER—Respondents.

Civil Revision No. 1233 of 1984

December 17, 1984.

Code of Civil Procedure (V of 1908)—Order 21, Rules 90 and 92 and Order 43, Rule 1(j)—Sale of property by auction in execution of a decree—No objections filed under Rule 90 against the auction—Executing Court confirming the sale—Order confirming the sale—Whether appealable.