

Mohinder Singh v. State of Punjab and another (A. S. Bains, J.)

(20) For the reasons recorded above, this appeal succeeds, the judgment and decree of the trial Court are set aside and the plaintiff-respondent's suit for specific performance of the contract is dismissed with no order as to costs.

N.K.S.

Before S. S. Sandhawalia, C.J. & A. S. Bains, J.

MOHINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB and another,—Respondents.

Civil Writ Petition No. 4351 of 1973.

September 28, 1982.

*Punjab Land Reforms Act (X of 1973)—Section 5—Constitution of India—Articles 14, 19, 31-A, 31-B, Seventh Schedule, List I, Entries 1 and 2 and List II, Entry 18 and Ninth Schedule—Land Reforms Act included in the Ninth Schedule to the Constitution—Validity of the Act challenged on the ground of incompetence of the State Legislature to enact such a law—Such challenge—Whether could be gone into in view of Articles 31-A and 31-B—Land allotted as gallantry award not exempted from the operation of the Reforms Act—Grant of such a gallantry award—Whether a matter pertaining to the defence of India within the meaning of Entries 1 and 2 of List I of the Seventh Schedule—State Legislature—Whether competent to enact the law.*

*Held*, that admittedly the Punjab Land Reforms Act, 1972 is included in the Ninth Schedule of the Constitution of India 1950 and is protected under Articles 31-A and 31-B from being challenged on the ground that it violates Articles 14 and 19 of the Constitution. Where, however, the Act is challenged not on the ground that it violates Articles 14 and 19 but on the ground that the Punjab Legislature was not competent to enact the same, the validity can be gone into.

(Para 2).

*Held*, that the object of the Punjab Land Reforms Act is the agrarian reform and to impart security of tenure, to make the tiller the owner and to trim large holdings setting sober ceilings, to create peasant proprietorship and to ensure even distribution of land. The *sine qua non* was the building up of a reservoir of land carved

out of the larger land holding and make available for utilisation by the State for resettling ejected tenants and the other tillers of the soil. It was aimed at for a peaceful transformation of agrarian relations between the landlords and the tillers of the soil. The Reforms Act prescribes ceiling on big land holdings. Small land owners have been left untouched by section 5 of the Reforms Act. Power to legislate on matters concerning land and agriculture vests with the State Legislature. The Reforms Act is within the legislative competency of the Punjab Legislative Assembly as the subject 'land' is covered under item 18 of List II (State List) of the Seventh Schedule of the Constitution. Hence, the State Legislature is fully competent to legislate on the subject. The land granted for gallantry awards is not covered under the Union List's Entries 1 and 2. Land has no relation with these two items and, thus, the Parliament is not competent to legislate with regard to the land given as gallantry award. (Para 3).

*Petition under Articles 226/227 of the Constitution of India praying that—*

- (a) *the records of the case may please be summoned for the proper disposal of the writ petition;*
- (b) *a Writ of certiorari be issued declaring the Act and its impugned sections 3(4), 4(5), 5(1), 7(4)(i) as ultra vires. In fact as the impugned sections are integral part of the whole of the Act including rules made thereunder and the Act cannot separately work the whole of the Act be declared as ultra vires;*
- (c) *any other suitable writ, order or direction which this Hon'ble Court may deem proper in the circumstances of the case be issued;*
- (d) *Costs of this petition be awarded.*

H. S. Wasu, Senior Advocate, for the Petitioner.

Gurmukh Singh Chawla, Advocate, for the State of Punjab.

#### JUDGMENT

A. S. Bains, J.—(1) In these four writ petitions, i.e., C.P.W. Nos. 4351 to 4354 of 1973, which were referred by me,—*vide* my order dated 24th February, 1982, to a larger Bench, the constitutionality of the Punjab Land Reforms Act, 1972 (Punjab Act No. 10 of 1973), hereinafter referred to as the 'Reforms Act', has been

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challenged on the ground that the Reforms Act has not exempted the land from its operation which was allotted to the ancestors of the petitioners as gallantry award in recognition of the service rendered in war and that grant of such gallantry award and all matters connected therewith, including the purpose for which these awards are given are directly connected with the defence of the country, which is a subject on which only the Parliament of India can legislate and not the State Legislature. Thus, the question which arises for determination is, whether the Punjab Legislative Assembly was competent to enact the Reforms Act relating to the Gallantry Award lands or was it within the legislative competence of the Parliament of India. It is true that under sections 19-D and 19-DD of the Punjab Security of Land Tenures Act, 1953, which is repealed, the Gallantry Award land was exempted, but under the Reforms Act the same is not exempted.

2. Mr. G. S. Chawla, learned counsel for the State, raised a preliminary objection that the Reforms Act is an agrarian law and its provisions are protected from invalidation under Articles 31-A and 31-B of the Constitution of India as it is included in the Ninth Schedule thereof and its provisions are *intra vires* of the Constitution as held in the Supreme Court authorities reported as *Dattatraya Govind Mahajan and others v. The State of Maharashtra and another* (1) and *Nand Lal and others v. State of Haryana and others* (2). Admittedly, the Reforms Act is included in the Ninth Schedule of the Constitution and it is protected from invalidation under Articles 31-A and 31-B of the Constitution, but the argument of Mr. H. S. Wasu, learned Counsel for the petitioners, is that he does not challenge the validity of the Reforms Act on the ground of its infringement of any of the principles 14 or 19 of the Constitution but on the ground of competency of the Punjab State Legislative Assembly. Since the validity of the Reforms Act is not challenged on the ground of infringement of articles 14 and 19 of the Constitution, I am of the view that its validity can be challenged on the ground of legislative competency of the State legislature. Thus, the preliminary objection of Mr. Chawla being meritless is overruled.

3. The argument of Mr. Wasu, learned counsel for the petitioners, so far as the legislative competency of the State Legislature

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(1) AIR 1977 S.C. 915.

(2) AIR 1980 S.C. 2097.

on the subject is concerned, is based on item Nos. 1 and 2 of List I (Union List) of Seventh Schedule to the Constitution of India, which read as follows:—

- (1) Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
- (2) Naval, military and air forces; any other armed forces of the Union.

His argument is that the Government has been giving gallantry awards to the army officers and men for exceptional valour and bravery shown in field service and such grants are obviously given by way of an incentive to the army personnel to give their best in the field area, even at the risk and hazard of their life and such grants also give encouragement to the fighting soldiers who show outstanding courage and, thus, the scheme of giving gallantry awards is conducive to the defence of the country. He further argued that grant of such awards and all matters connected therewith including the purpose for which these awards are given, relate to and are connected directly with the defence of the country and, thus, the subject is covered by items (1) and (2) of List I of Seventh Schedule to the Constitution of India and that since these items are within the legislative competence of the Parliament of India, the Punjab State Assembly was not competent to pass the Reforms Act so far as the Gallantry Award lands are concerned. He concedes that he cannot cite any of the authorities of the Supreme Court or High Courts to support his argument as there is none so far either by the Supreme Court or by any of the High Courts. The argument of Mr. Wasu though attractive is misconceived. The objects of the Reforms Act is the agrarian reform and to impart security of tenure, to make the tiller the owner and to trim large holdings setting sober ceilings, to create peasant proprietorship and to ensure even distribution of land. The *sine qua non* was the building up of a reservoir of land carved out of the larger land holdings and make available for utilisation by the State for resettling ejected tenants and the other tillers of the soil. It was aimed at for a peaceful transformation of agrarian relations between the landlords and the tillers of the soil. The success of the land reforms depends on the extent of the surplus pool. That is why the legislature has jealously protected the surplus pool

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which played a pivotal role in the whole programme. In *State of Punjab (now Haryana) and others v. Amar Singh and another* (3), it was observed by their Lordships of the Supreme Court as under:—

“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 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 corner stone 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 resettling ejected tenants.

It is obvious that this blue-print for a peaceful transformate of agrarian relations assumes the availability of a large surplus area on which the State can settle tenants from the reserved areas and small landholder's holdings. Thus the key to the success of the scheme is the maximising of the surplus land reservoir and sealing off the legal leakages through private alienations, collusive orders and decrees and the like, and so care was taken to interdict alienations and ignore decrees and orders which diminished the surplus pool.

The success of the scheme, therefore, depends on the extent of the surplus pool. That is why the Legislature has jealously protected the surplus pool which plays a pivotal role in the whole programme.”

The Reforms Act prescribes ceiling on big land holdings. Small landowner has been left untouched by section 5 of the Reforms Act. Power to legislate on matters concerning land and agriculture vests with the State Legislature. Item 18 of List II (State List) of Seventh Schedule to the Constitution of India provides as follows:—

“18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the

collection of rents; transfer and alienation of agricultural land, land improvement and agricultural loans, colonization.”

Thus, in my view, the Reforms Act is within the legislative competency of the Punjab Legislative Assembly as the subject ‘land’ is covered under item 18 of List II (State List) of the Seventh Schedule to the Constitution. Hence the State Legislature is fully competent to legislate on this subject. The land granted for gallantry awards is not covered under the Union List’s items 1 and 2. Land has no relation with the aforesaid two items and, thus, the Parliament is not competent to legislate with regard to the land given as gallantry award. The exemption under sections 19-D and 19-DD of the Punjab Security of Land Tenures Act was also given by the Punjab Legislative Assembly and not by the Parliament and the present Reforms Act is based on the national guidelines drawn up by the Government of India on the basis of the conclusions of the Chief Ministers’ Conference and except the exemptions to the religious and charitable institution of public nature, all other exemptions were withdrawn.

4. In interpreting the statutes like the Reforms Act the intention of the Legislature in passing such Act is to be kept in view. It is settled law that while interpreting the scope of items in the legislative lists in Schedule VII to the Constitution of India the widest possible amplitude must be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can fairly be said to be comprehended in it. In *Dattatraya Govind Mahajan’s case* (supra), their Lordships of the Supreme Court observed as under:—

“It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up and doubt and ambiguity in it. But ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention.”

In *Chaturbhai M. Patel v. Union of India and others* (4), it was observed by the Supreme Court as follows:—

“In the interpretation of the scope of items in the legislative lists in Schedule VII the widest possible amplitude must

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be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can fairly be said to be comprehended in it."

5. Thus, it is plain that the State Legislature is competent to legislate regarding the land, i.e., rights in or over land, land tenures including the relation of landlord and tenant and the collection of rents; transfer and alienation of agricultural land, land improvement and agricultural loans, colonization, etc. This item is wide enough to include any land for the purpose of declaring surplus area or to give exemption to any category of land. Item No. 18 pertaining to land does not exclude the gallantry award lands from the purview of the competency of the State Legislature.

6. For the reasons recorded I am of the view that the Punjab Land Reforms Act is a valid piece of legislation passed by the Punjab State Legislature, which was competent to do so and items (1) and (2) of List I (Union List) of Seventh Schedule to the Constitution had nothing to do with land of any type.

7. Although other points were also taken in these writ petitions but Mr. Wasu says that those are covered by the earlier decisions and, in all fairness, he did not urge those points.

8. In the result, these petitions are dismissed but without any order as to costs.

S. S. Sandhawalia, C.J.—I agree.

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N.K.S.

Before I. S. Tiwana, J.

SUMITRA DEVI,—Petitioner.

versus

THE STATE OF HARYANA,—Respondent.

Civil Writ Petition No. 4035 of 1982.

September 28, 1982.

*Resignation—Withdrawal of—Resignation tendered by an employee but sought to be made effective from a future date—Such*