CIVIL MISCELLANEOUS

Before Harbans Singh and S. S. Sandhawalia, JJ.

HARPAL SINGH—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2566 of 1967

February 5, 1970.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 32-FF—Sale of land protected by exceptions to section 32-FF—Such sale pre-empted by prescribed heirs of the vendor—Divesting of the vendee by the pre-emptors—Whether would bring the land within scope of the section—Power of review—Whether exists under the Act—Punjab Pre-emption Act (I of 1913)—Section 4—Code of Civil Procedure (V of 1908)—Order 20 Rule 14(1)—Pre-emptor's right to property—Whether vests from the date of the pre-emption decree—Interpretation of statutes—Pepsu Tenancy and Agricultural Lands Act—Whether confiscatory in nature—Extended meaning to its provisions—Whether can be given by legal fiction.

Held, that if a valid sale of land has been made by the original landowner which is protected by the exceptions given in section 32-FF of the Pepsu Tenancy and Agricultural Lands Act, the property in the land passes from the date of the registration. From the date of the registration the original landowner is divested of all right, title and interest in the land and if such a sale is protected under section 32-FF, the land in question would go out of the ambit of its liability to be declared surplus *qua* the original landowner. The subsequent divesting of the vendee by the superior right of the pre-emptor would not for a second time bring the land again within the scope and mischief of the confiscatory provision under section 32-FF. If once a valid title has accrued to the vendee, his subsequent divesting at a later point of time by operation of law in pursuance of a decree of pre-emption, cannot by any stretching of legal fictions be deemed to be a transfer by the original landowner in favour of the prescribed relations under the rules framed under the Act. The doctrine of substitution of the pre-emptor in place of the vendee in pursuance of a pre-emption decree cannot be carried to abstruse and illogical ends. (Paras 7 and 9).

Held, that the Act and even the Rules framed thereunder confer no power of review whatsoever on the authorities. Therefore, the proceedings in review taken by the Collector Agrarian Reforms are devoid of jurisdiction and consequently invalid. There is no provision in the relevant statute granting express power of review to any of the authorities under the Act. The power of the review is a creature of the statute and there exists no inherent power to review a judicial decision given on merits.

(Para 16).

Held, that property sold vests in the vendee from the date and time of registration of the sale and on a decree of pre-emption being granted, the property by a legal fiction would vest in the pre-emptor and accrue to him only on the date of the decree or when he makes the requisite deposit in Court in compliance to the said decree. The dates of vesting of the property in the vendee and the pre-emptor are always distinct and invariably separated by a period of time. They cannot be identical. The title of the pre-emptor in pursuance of the decree does not relate back to the date of the original sale. (Para 8).

Held, that the Act is in nature of confiscatory statute. The legislation of this type which is patently in the nature of curtailing ordinary rights of a person to hold and enjoy property, should not be given and extended meaning (by the aid of legal fiction) which does not expressly or by necessarily intendment follow clearly from the provisions of the said statute. (Para 13).

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, or any other appropriate writ, order or direction be issued calling for the records of respondents Nos. 1 to 5 relating to the Surplus Area case of the petitioner under the PEPSU Tenancy and Agricultural Lands Act, No. XIII of 1955, and after a perusal of the same (a) to quash the orders of respondents Nos. 2 and 3, dated 24th October, 1967 and 13th June, 1967 and the recommendation, dated 11th May, 1967 and the fresh draft statement, dated 13th September, 1967 issued by Respondent No. 5, and to declare that the order of the Collector, dated 17th October, 1962 whereby the Surplus Area Case of the petitioner was originally decided, cannot be reopened.

J. N. KAUSHAL, ADVOCATE, WITH ASHOK BHAN, ADVOCATE, for the Petitioner.

A. S. BAINS, ASSISTANT ADVOCATE-GENERAL (PUNJAB), for the Respondents.

JUDGMENT

The judgment of this Court was delivered by :

SANDHAWALIA, J.—Common questions of law arise in these two connected writ petitions Nos. 2566 of 1967 and 2437 of 1968 which have been directed to be placed before a Division Bench in view of the importance of the questions involved. We propose to deal with both these petitions by this judgement.

(2) The facts in Civil Writ No. 2437 of 1968 alone may be noticed. Sardara Singh petitioner No. 1 a landowner of village Dhur Kot,

district Bhatinda sold 9.36 Standard Acres of land to one Sarwan Singh vide sale deed dated the 16th of October, 1956. Subsequently petitioners Nos. 2 and 3 the sons of petitioner No. 1 filed a pre-emption suit and secured a decree dated the 20th of April, 1957, pre-empting the said sale in their favour. The surplus area in the hand of petitioner No. 1 was determined by an order dated the 2nd of July, 1960, by the Collector Agrarian Reforms, Faridkot, and by this order he held that the above-said sale of 9.36 Standard Acres being to a person who was a small landowner and not being a prescribed relation under the Pepsu Tenancy and Agricultural Lands Act (hereinafter referred to as the Act) and the rules framed thereunder was valid and this land was taken out of consideration for the determination of the surplus area. No appeal or revision was filed against this order. Meanwhile the case of *Jai Lal* v. *State of Punjab* (1) was decided by this Court and consequently the Government issued instructions dated the 9th of April, 1963. The Collector Agrarian Reforms thereupon moved on the 24th of May, 1967, for permission to review his earlier order dated the 2nd of July, 1960, and the Commissioner, Patiala Division (Respondent No. 3) granted leave to review by his order dated the 3rd of June, 1967. The Collector Agrarian Reforms thereupon decided afresh the case of the surplus area of petitioner No. 1 and disallowing of the area of 9.36 Standard Acres by his order dated the 28th of November, 1967, declared the same to be surplus in view of the decision in *Jai Lal's case* (1) above. Aggrieved by this order, the petitioner preferred an appeal which, however, was dismissed and a revision against the said order to the Financial Commissioner met the same fate.

(3) Mr. K. C. Puri on behalf of the petitioner at the very outset assails the correctness of the law laid down in *Jai Lal's case* (1) on the basis of which the circular letter dated the 9th of April, 1963, was issued by the Government and the proceedings for review in all such similar cases initiated by the Collector. This very decision has again been relied upon by the Collector, the Commissioner and the Financial Commissioner to sustain the impugned orders of these revenue authorities declaring the relevant area to be surplus in the hands of the petitioner.

(1) 1963 P.L.J. 51.

(4) In the case above-said the landowner had sold 23 Standard Acres and 2¼ Units of his land for consideration to the vendee on the 22nd of November, 1957. A few days later the four sons of the landowner brought a suit for pre-emption and the vendee forthwith admitted the claim on the basis of which a decree was passed in favour of the sons on the 19th of December, 1957. On the basis of this decree the sons objected that no portion of the land comprised in the holding of the father could be declared surplus as each of them had acquired title therein. The revenue authorities held on the particular facts of the case that the transaction of sale and the pre-emption thereof was fictitious, fraudulent and deliberately engineered to override the provisions of the statute. The learned Judge agreed with the findings of the revenue authorities and further noticed that the possession of land also had never changed and had continued with the original landowner. It was further mentioned that it had not been established that the original vendee was a landless person or a small landowner to whom the transfer was saved under the exceptions of section 32-FF. All these facts were found to be indicative of the fictitious nature of the sale. However, the learned Judge proceeded to hold that even if the sale in favour of the vendee was valid the moment it was pre-empted by the sons of the vendor they stood substituted in place of the vendee and the sale therefore stood in the names of the pre-emptors. As these pre-emptors being the sons fell within the ambit of the definition of prescribed relations under the rules, this acquirement of land by them was held to be directly hit by the provisions of section 32-FF of the Act. Primary reliance was placed on the observations of Mahmood J. in *Gobind Dayal* v. *Inayatulla* (2) and reference was also made to the observations of the Supreme Court in *Audh Behari Singh* v. *Gajadhar Jaipuria and others* (3) and in *Bishan Singh and others* v. *Khazan Singh and another* (4). It is the abovesaid enunication of the law by the learned Judge which has been seriously assailed by the learned counsel for the petitioners in both these petitions.

(5) We would first examine the view propounded by the learned Judge in *Jai Lal's case* (1) abovesaid in principle before adverting to the authorities relied upon therein. The relevant provision of the

(2) I.L.R. 7 All. 775.
(3) A.I.R. 1954 S.C. 417.
(4) AI.R. 1958 S.C. 838.

statute which is applicable and consequently falls for construction is in the following terms :—

> "32-FF. 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/or up to 30th July, 1958 by a landless person, or a small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, for consideration up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit no transfer or other disposition of land effected after 21st August, 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition :
>
> Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation for it, to the person from whom he received it."

(6) Considering the matter in the light of the abovesaid provisions, the crux of the matter appears to be this :—

> Is the transfer by the original landowner to the vendee hit by the provisions of section 32-FF?

If such a sale is not hit by the language of the abovesaid provision of the statute property in the transferred land passes to the vendee and from that point of time, such land would go out of the scope and ambit of section 32-FF. In determining this the relevant issue, therefore, is as to at what point of time does the original landowner get divested of the right, title and interest under the sale made by him and secondly at what point of time does the pre-emptor under the decree get vested with the right of ownership.

(7) On principle if a valid sale of land has been made by the original landowner which is protected by the exceptions given in section 32-FF, the property in the land passes from the date of the registration. From the date of the registration the original landowner is divested of all right, title and interest in the land and if

such a sale is protected under section 32-FF, the land in question would go out of the ambit of its liability to be declared surplus *qua* the original landowner. Once it is so held that the original transfer to the vendee is valid it appears plain to us that the subsequent divesting of the vendee by the superior right of the pre-emptor would not for a second time bring the land again within the scope and mischief of the confiscatory provision under section 32-FF. If once a valid title has accrued to the vendee, his subsequent divesting at the later point of time by operation of law in pursuance of a decree of pre-emption, cannot by any stretching of legal fictions be deemed to be a transfer by the original landowner in favour of the prescribed relations under the rules framed under the Pepsu Tenancy and Agricultural Lands Act, 1955.

(8) On closer analysis of the reasoning given by the learned Judge, it is patent that property vests in the vendee from the date and time of registration of the sale and it can be said, that on a decree of pre-emption being granted, the property by a legal fiction would vest in the pre-emptor and accrue to him only on the date of the decree or when he makes the requisite deposit in Court in compliance to the said decree. The fallacy which seems to have arisen is to equate the date of the vesting of the property in the pre-emptor with that of the vesting of the property in the vendee. These two dates are always distinct and invariably separated by a period of time. They cannot be identical. The title of the pre-emptor in pursuance of the decree does not relate back to the date of the original sale. It is, therefore, patent that in such a sale property first vests in the vendee from the date of registration and remains so for a considerable period of time till under the pre-emption decree he is divested either at the time of the deposit made in Court or subsequently by actually being dispossessed of the property in the suit. This necessarily follows first from the provisions of the statute as laid down in order 20, Rule 14(1)(b) of the Code of Civil Procedure in the following terms :—

> "Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or

before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs."

(9) Mr. K. C. Puri rightly urged that the doctrine of substitution of the pre-emptor in place of the vendee in pursuance of a pre-emption decree cannot be carried to abstruse ill-logical ends. It is rightly pointed out that between the original sale and the grant of the pre-emption decree (e.g. in case of dismissal of the suit in the trial Court and the subsequent grant of the decree of pre-emption in first or second appeal) there may well intervene a period of years. During this period obviously the ownership and the title of the land continues to vest in the original vendee. The pre-emption decree cannot possibly wipe out this fact that during this period the vendee was in law and fact the owner and possessor of the transferred land. The pre-emptor's title and right to ownership of the pre-empted land cannot operate retrospectively and relate back to the original date of the sale to the vendee. It was rightly pointed out that an anomalous situation would arise if it were to be deemed that the vendee in fact never had been the owner or possessor of the land and that the pre-emptor's right or title by substitution should operate retrospectively from the date of the original sale. It was submitted that there existed no basis either in principle or the authority for such a proposition.

(10) We now proceed to examine the authorities relied upon by the learned Judge in support of the view enunciated by him in *Jai Lal's case* (1). The learned Judge seems to have been particularly swayed by the following observations of Mahmood J. in his classic exposition of the right of pre-emption in *Gobind Dayal* v. *Inayatullah* (2):—

"But the Mahammadan Law of pre-emption involves no such anomalous inconsistencies of reasoning, because the right of pre-emption is not a right of 're-purchase' either from the vendor or from the vendee, involving any new contract

of sales; but it is simply a right of substitution, entitling the pre-emptor by reason of a legal incident to which the sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title. **It is, in effect, as if in a sale-deed the vendee's name were rubbed out and the pre-emptor's name inserted in its place.**"

(11) If the last sentence of the quotation abovesaid is construed literally, it would tend to the view that the right of ownership of the pre-emptor accrues to him from the date of the original sale itself. It appears to us that the learned Judge accepted this sentence almost in its literal sense. However, in our view Mahmood J. was not laying down any such proposition and had merely used a picturesque phrase to highlight the nature and right of pre-emption under the Mahammadan Law. In a later Full Bench case reported as *Deokinandan* v. *Sri Ram and another* (5), the learned Judge himself clarified the above quoted passage in the following terms :—

"And I went on further to emphasize the rule by saying, 'It is, in effect, as if in a sale-deed the vendee's name was rubbed out and the pre-emptor's name inserted in its place. I have quoted these passages because they have been relied upon in support of the hypothesis that a pre-emptor's title of ownership dates from the date of the sale in respect of which he has enforced his pre-emption. * * * * * * * * * But when I spoke of substitution in that case, and as I speak of it now, I never said nor do I now intend to say that substitution is independent of the rules of law imposed thereupon as conditions precedent to and governing such substitution itself. Among the conditions of such substitution as the pre-emptor can claim is the condition which the texts which I have cited indicate, namely that pre-emptor's ownership does not vest in him till he actually enforces his right by one of the two methods which those texts contemplate, that is either by surrender by mutual consent or by decree of Court."

(5) I.L.R. 12 All. 234.

Earlier the learned Judge had held as follows :—

> "Now reading these texts carefully (and all of them are authoritative) there can be no doubt that under the Muhammadan Law of pre-emption the ownership of pre-empted property does not in the case of a successful pre-emptor, vest in him till he had actually enforced his right, whether by surrender by the purchaser, or under decree of Court, and that in either case his right of ownership does not take date from the time of the sale to the purchaser, but from such surrender or decree."

The matter does not admit of any doubt now in view of the subsequent observations of the Privy Council in *Deonandan Prashad Singh* v. *Ramdhari Chowdhri and others* (6), wherein on affirming the abovesaid view of the Hon'ble Mr. Justice Mahmood in *Deokinandan* v. *Sri Ram* (5), that in a suit for pre-emption, ownership of the property does not vest in the pre-emptor from the date of the sale notwithstanding success in the suit but from the date of possession obtained on payment of the amount fixed under the decree. A Full Bench of the Lahore High Court in *Lachhman Singh* v. *Natha Singh and another* (1), after exhaustively considering the case law including the observations abovesaid of Mahmood J. in *Gobind Dayal* v. *Inayatullah* (2) (*supra*) and following the Privy Council decision held that the pre-emptor's right to or in the property accrues only when he has complied with the conditions laid down in the decree and paid the purchase money into Court and it is then and only then that the property vests in him and is divested from the vendee. On the abovesaid view of the law, it would follow that the right and title of the pre-emptor in the land accrues to him not from the date of the original sale. The original sale to the vendee, therefore, stands as an independent and a valid transaction. That being so, as soon as the original landowner would transfer the land to the vendee and in case such a sale does not offend the provisions of section 32-FF, the land in question could not be declared surplus either with the original landowner or with the vendee. The mere fact that at a later period of time which may run well into a number of years the said land may be pre-empted, would not bring

(6) A.I.R. 1916 P.C. 179.
(7) A.I.R. 1930 Lah. 273.

it back within the ambit of section 32-FF. The original sale to the vendee cannot be said to have been wiped out by the decree of pre-emption because the right and title of the pre-emptor always accrues subsequent to the original date of the sale.

(12) The matter may also be viewed from yet another angle. It is well settled that the pre-emptor by a legal incident is entitled to stand in the shoes of the vendee. In fact, he takes all the rights and obligations arising from the sale which accrued to the vendee. If that is so and the transfer was protected in the hands of the vendee one fails to see why the same transfer should not also remain immune to attack under section 32-FF in the hands of the pre-emptor if it was so protected in the hands of the original vendee.

(13) When construing the relevant provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955 and the rights of the landholders thereunder, one cannot lose sight of the fact that the said Act is in the nature of a confiscatory statute. We do not see any reason why legislation of this type which is patently in the nature of curtailing ordinary rights of a person to hold and enjoy property, should be given an extended meaning (by the aid of legal fiction) which does not expressly or by necessarily intendment follow clearly from the provisions of the said statute.

(14) In view of the foregoing discussion we are of the view that the observations of the learned Judge in *Jai Lal's case* (1) are too widely stated and do not lay down the correct law. That being so, the impugned orders, which are based entirely on the reasoning and the law in the said case, cannot be sustained and have to be quashed.

(15) The point of law apart, the facts of the present two petitions are even otherwise distinguishable from those in *Jai Lal's case* (1). In the said case the finding of fact by the revenue authorities and accepted by the learned Judge was that the transaction of sale and pre-emption thereof was fictitious fraudulent and engineered to override the provisions of the statute. In the present case in fact there was no such finding by the revenue authorities and the transaction was accepted as a bona fide one by the Collector in his original order dated the 2nd July, 1960. Another incident against the

landowner was that the possession of land had never changed and had continued with the original landowner and from the said fact an adverse inference was rightly raised. In the present case, there is no such finding by the Courts below. Lastly in *Jai Lal's case* (1) it was found that it had not been established that the original vendee was a landless person or a small landowner to whom the transfer was saved under the exceptions of section 32-FF. In the present case, in fact, the finding was expressly in favour of the landowner in the following terms :—

> "As regards his objection No. 4 since the petitioner has sold out land measuring 9.36 standard acres to a person who is small landowner and not related to him under Rule 32-A. So the transfer is treated as valid and the land in question may be taken out for determining the surplus area".

(16) The second contention of Mr. K. C. Puri is even of greater validity. It is argued that the Pepsu Tenancy and Agricultural Land Act and even the Rules framed thereunder confer no power of review whatsoever on the authorities under the Act. It is hence argued that the proceedings taken in review by the Collector, Agrarian Reforms are also devoid of jurisdiction and consequently invalid. There is patent merit in this contention. It is conceded on behalf of the respondents that there is no provision in the relevant statute granting express power of review to any of the authorities under the said Act. It is well settled that the power of the review is a creature of the statute and there exists no inherent power to review a judicial decision given on merits. This has been so held by this Court in **Deep Chand and another** v. **Additional Director, Consolidation of Holdings, Punjab and another** (8), where a full Bench of Five Judges had held that the Additional Director of Consolidation is not empowered to recall or review his earlier erroneous and unjust order on merits. This view stands affirmed by the observations of their Lordships of the Supreme Court in *Patel Chunibhai Dajibha etc.* v. *Narayanrao Khanderao Jambedar and another* (9), where whilst construing section 76-A of the Bombay Tenancy and Agricultural Lands Act (67 of 1948) it was observed as follows :—

> "These orders passed by the Collector in the exercise of his revisional powers were quasi-judicial, and were final. The

(8) 1964 P.L.R. 318 (F.B.).
(9) A.I.R. 1965 S.C. 1457.

Act does not empower the Collector to review an order passed by him under section 76-A. In the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the Mahalkari's order. The subsequent order dated February 17, 1959, reopening the matter was illegal *ultra vires* and without jurisdiction."

This view was again reaffirmed in *Harbhajan Singh* v. *Karam Singh and others* (10), whilst construing the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. In the context of this particular statute, namely, the Pepsu Tenancy and Agricultural Lands Act in *Ram Chand & another* v. *The State of Punjab* (11), S. B. Capoor J. held that this Act does not contain any provision at all for review of the order of the prescribed authority and hence the Collector was not competent under the Act to review the order of his predecessor. Again in *Nasib Singh* v. *The State of Punjab and others* (12), Narula J. has also held that there is no provision in this Act authorising the Collector or any other authority under the Act to review its order and that the authorities under this Act had no inherent power to review their incorrect orders.

(17) In view of the above the matter seems to be fully covered both by principle and authority. The orders of review passed by respondent No. 4, the Collector, and their subsequent affirmance by the respondents (Nos. 2 and 3) is thus wholly without jurisdiction and have necessarily to be quashed.

(18) In the light of the foregoing discussion, both these petitions must succeed and are allowed. We would, however, make no order as to costs.

R. N. M.

(10) A.I.R. 1966 S.C. 641.
(11) 1965 P.L.J. 130.
(12) 1966 L.L.T. 185.