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together with interest at the rate of 2 per cent, as mentioned in section 5(3) of the 1957 Act, within two months from today.

(14) No objection is raised by the learned counsel for the respondents to this submission of the petitioners and I order accordingly.

No other point was argued before me.

I would like to make it clear that the impugned order passed by the Government on 11th November, 1966, resuming the *Arnauli Jagir* with effect from 5th August, 1958, is *not* quashed.

(15) In view of what I have said above, the writ petition succeeds to the limited extent mentioned above. I would, however, leave the parties to bear their own costs in this Court.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

GENL. SHIVDEV SINGH, AND ANOTHER,—*Petitioners.*

*Versus*

THE PRESCRIBED AUTHORITY (ASSISTANT COLLECTOR FIRST GRADE), BHATINDA AND OTHERS,—*Respondents.*

Civil Writ No. 2333 of 1967

May 26, 1969

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 2(m) and 26—Punjab Tenancy Act (XVI of 1887)—Section 4(10)—Punjab Land Revenue (Surcharge) Act (XXXVI of 1954)—Section 2—Punjab Land Revenue (Special Charges) Act (VI of 1958)—Section 2(a)—Word “land revenue” used in section 26—Whether includes surcharge and special charges—Compensation payable by a tenant under the section—Whether to include such surcharge and special charges.*

*Held*, that the definition of “land revenue” as given in section 2(m) of the Pepsu Tenancy and Agricultural Lands Act, 1953 read with section 4(10) of the Punjab Tenancy Act, 1887 includes the surcharge levied under the Punjab Land Revenue (Surcharge) Act, 1954 and the Punjab Land Revenue (Special Charges) Act, 1958, as it is not confined only to the land revenue assessable under the Punjab Land Revenue Act, 1887. According to section 2 of 1954 Act, every landowner who pays land revenue in excess of ten rupees

is liable to pay a surcharge thereon to the extent of one-quarter of the land revenue if the amount payable by him as land revenue does not exceed thirty rupees and two-fifth of the land revenue where the amount payable by him exceeds thirty rupees. The proviso to this section makes the intention of the legislature clear that the surcharge under this Act is to be an addition to the land revenue. If it was not to be, there was no necessity of enacting the proviso. The only effect of the proviso is that the Jagirdars or the assignees of land revenue are not able to claim the surcharge levied under this Act which is to be recovered by the Government. Sub-section (2) of section 2 also leads to the conclusion that the surcharge is an addition to the land revenue as it is to continue to be charged and levied so long as the assessment of the land revenue prevailing at the commencement of this Act continues to be in force. The assessment of land revenue is made at various settlements which take place at an interval of 20 or 30 years. The legislature had felt the necessity of increasing the land revenue till re-assessment was made at the next settlement and for this reason the increase was made in the manner of levying surcharge on the land revenue already being paid by the landowners. The fact that the surcharge is assessed as one-quarter or two-fifth of the land revenue, as the case may be, also shows that it is an addition to the land revenue. The provisions of 1958 Act also clearly lead to the conclusion that the special charges made under this Act are in addition to the land revenue payable by a landowner and are recoverable as part of the land revenue along with the land revenue assessed under the Punjab Land Revenue Act, 1887. Hence in order to determine the compensation payable by a tenant at ninety times the land revenue under section 26 of the 1955 Act, the land revenue has to include the surcharge and the special charges. (Paras 4, 5 and 9)

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari be issued quashing the orders passed by the Prescribed Authority, Collector and Financial Commissioner, and further directions be issued to the Respondents No. 1, 2 and 3 to determine compensation after taking into consideration the surcharge and special charges levied under the provisions of Punjab Land Revenue Surcharge Act, 1954 and Punjab Land Revenue (Special Charges) Act, 1958.*

K. P. BHANDARI AND I. B. BHANDARI, ADVOCATES, for the Petitioners.

B. S. BINDRA, AND MRS. SURJIT BINDRA, ADVOCATES, for Respondent No. 4.

#### JUDGMENT

TULI, J.—This judgment will dispose of 14 writ petitions (Civil Writs No. 2274, 2328, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342; 2343 and 2343-A of 1967) as common questions of law and fact arise and all of them are directed against the same order of the learned Financial Commissioner, Punjab. The first three respondents to each writ petition are the Prescribed Authority (Assistant Collector First Grade), Bhatinda, the Collector, district Bhatinda, and the Financial

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Commissioner, Punjab, Chandigarh. The fourth respondent in each case is the tenant, who made the application under section 22 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called the Act), to acquire from his landowners (the petitioners) in respect of the land comprising his tenancy the right, title and interest of the landowners. Such applications by the tenants were made in 1965.

(2) The dispute is about the quantum of compensation payable to the petitioners. The applications of the tenants were decided by the Assistant Collector First Grade, Bhatinda, on May 31, 1966 a copy of which is Annexure 'A' to the writ petition. The Assistant Collector held that the petitioners were entitled to ninety times the land revenue and the rates and cesses and that the expression "land revenue" does not include the surcharge levied under the Punjab Land Revenue (Surcharge) Act, 1954 (hereinafter called the 1954 Act) and the special charges levied under the Punjab Land Revenue (Special Charges) Act, 1958 (hereinafter called the 1958 Act). The petitioners filed an appeal against that order before the Collector, who dismissed the same on October 18, 1966. A copy of that order is Annexure 'B' to the writ petition. The petitioners filed a revision against that order before the Financial Commissioner, who dismissed the same on June 9, 1967. A copy of that order is Annexure 'C' to the writ petition: The petitioners then filed the present writ petitions in this Court and the sole point for determination is whether the term "land revenue" used in section 26 of the Act includes the surcharge and the special charge under the 1954 and 1958 Acts.

(3) The tenants have contested these writ petitions without filing any returns as the point to be decided is a pure question of law with regard to the interpretation of section 26 of the Act.

(4) The learned counsel for the petitioners has submitted that "land revenue" has not been defined in the Act, but according to section 2(m) this phrase has to be given the meaning assigned to it in the Punjab Tenancy Act, 1887 or the Punjab Land Revenue Act, 1887. The Punjab Land Revenue Act defines "land revenue" in section 3(6) as under:—

" 'land revenue' includes assigned land revenue and any sum payable in respect of land by way of quit-rent or commutation for service, to the Government or to a person to whom the Government has assigned the right to receive the payment."

This definition does not help in interpreting the phrase "land revenue" as used in the Act. We have, therefore, to turn to the Punjab Tenancy Act.

"Land revenue" is defined in section 4(10) of this Act as under:—

" 'land Revenue' means land revenue assessed under any law for the time being in force or assessable under the Punjab Land Revenue Act, 1887, and includes—

- (a) any rate imposed in respect of the increased value of land due to irrigation, and
- (b) any sum payable in respect of land, by way of quit-rent or of commutation for service, to the Government or to a person to whom the Government has assigned the right to receive the payment."

This definition of "land revenue" clearly includes the surcharge levied under the 1954 Act and the special charges levied under the 1958 Act as it is not confined only to the land revenue assessable under the Punjab Land Revenue Act, 1887. The 1954 Act was extended to the territories comprised in the former Patiala and East Punjab States Union by Punjab Act No. 35 of 1957. According to section 2 of this Act, every landowner who pays land revenue in excess of ten rupees is liable to pay a surcharge thereon to the extent of one-quarter of the land revenue if the amount payable by him as land revenue does not exceed thirty rupees, and two-fifth of the land revenue where the amount payable by him exceeds thirty rupees. There is a proviso to sub-section (1) of section 2 as under:—

"Provided that the levy of surcharge shall not have the effect of adding to the value of any Jagir or any assignment of land revenue."

This proviso, in my opinion, clearly makes the intention of the legislature clear that the surcharge under this Act is to be an addition to the land revenue. If it was not to be, there was no necessity of enacting the proviso. The only effect of the proviso is that the Jagirdars or the assignees of land revenue are not able to claim the surcharge levied under this Act, which is to be recovered by the Government. Sub-section (2) of section 2 also leads to the conclusion that the surcharge is an addition to the land revenue as it is to continue to be charged and levied so long as the assessment of the

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land revenue prevailing at the commencement of this Act continues to be in force. It is well known that the assessment of land revenue is made at various settlements which take place at an interval of 20 or 30 years. The legislature had felt the necessity of increasing the land revenue till reassessment is made at the next settlement and for this reason the increase was made in the manner of levying surcharge on the land revenue already being paid by the landowners. The fact that the surcharge is assessed as one-quarter or two-fifth of the land revenue, as the case may be, also shows that it is an addition to the land revenue.

(5) When we come to the 1958 Act, we find that "land revenue" for the purposes of that Act has been defined in section 2(a) as under:

" 'land revenue' shall have the meaning assigned to it in section 3(6) of the Punjab Land Revenue Act, 1887, and shall include the surcharge leviable under the Punjab Land Revenue (Surcharge) Act, 1954 (No. XXXVI of 1954)."

This special charge has to be paid by every landowner who pays land revenue in excess of fifty rupees in accordance with the rates specified in the Schedule to the Act which is as under:—

"(a) Land revenue exceeding Rs. 50, but not exceeding Rs. 100 annually—

|   |     |             |
|---|-----|-------------|
| On the first Rs. 50                     | ... | Nil         |
| On the remaining Rs. 50 or part thereof | ... | 50 per cent |

(b) Land revenue exceeding Rs. 100, but not exceeding Rs. 200 annually—

|                                     |     |             |
|-------------------------------------|-----|-------------|
| On the first Rs. 50                 | ... | Nil         |
| On the next Rs. 50                  | ... | 50 per cent |
| On the next Rs. 100 or part thereof | ... | 70 per cent |

(c) Land revenue exceeding Rs. 200, but not exceeding Rs. 500 annually—

|                                     |     |              |
|-------------------------------------|-----|--------------|
| On the first Rs. 50                 | ... | Nil          |
| On the next Rs. 50                  | ... | 50 per cent  |
| On the next Rs. 100                 | ... | 70 per cent  |
| On the next Rs. 300 or part thereof | ... | 100 per cent |

(d) Land revenue exceeding Rs. 500, but not exceeding Rs. 1,000 annually—

|                                     |     |              |
|-------------------------------------|-----|--------------|
| On the first Rs. 50                 | ... | Nil          |
| On the next Rs. 50                  | ... | 50 per cent  |
| On the next Rs. 100                 | ... | 70 per cent  |
| On the next Rs. 300                 | ... | 100 per cent |
| On the next Rs. 500 or part thereof | ... | 150 per cent |

(e) Land revenue exceeding Rs. 1,000 annually—

|                         |     |                |
|-------------------------|-----|----------------|
| On the first Rs. 50     | ... | Nil            |
| On the next Rs. 50      | ... | 50 per cent    |
| On the next Rs. 100     | ... | 70 per cent    |
| On the next Rs. 300     | ... | 100 per cent   |
| On the next Rs. 500     | ... | 150 per cent   |
| On the remaining amount | ... | 300 per cent." |

This special charge is recoverable as land revenue under section 6 of this Act. In my opinion, the provisions of this Act also clearly lead to the conclusion that the special charges made under this Act are an addition to the land revenue payable by a landowner and are recoverable as part of the land revenue along with the land revenue assessed under the Punjab Land Revenue Act, 1887. It has also to be noted that for the purposes of this Act "land revenue" means land revenue assessed under the Punjab Land Revenue Act and the surcharge levied under the 1954 Act.

(6) In the light of the provisions of 1954 and 1958 Acts, discussed above, the argument of the learned counsel for respondent 4 may now be examined. His argument is that section 29 was added to the Act by the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 27 of 1962, which reads as under:—

"29. Recovery of land revenue, etc., from tenants and their right to set off the same against rent:—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, the amount of land revenue (including surcharge, special charge, additional surcharge or special assessment), or of acreage rates, or of betterment charges, or of any other tax (including rates and cesses), payable under any

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law for the time being in force of any land, the proprietary rights of which a person under this Chapter is entitled to acquire, may be recovered from such person.

- (2) Where any amount has been recovered from a person under sub-section (1), such person shall be entitled to set off such amount against the rent payable in respect of such land."

and in this section land revenue (including surcharge, special charge, additional charge or special assessment) has been used which indicates that the land revenue used simpliciter does not include these charges and in section 26 of the Act the words "land revenue" simpliciter have been used. I regret my inability to accept this argument. In my opinion, the words used in section 29, on which emphasis has been laid by the learned counsel for respondent 4, go to show that the legislature intended land revenue to consist of the land revenue assessed under the Punjab Land Revenue Act, augmented by the surcharge and the special charge under the 1954 and 1958 Acts and these charges are payable along with the land revenue by the tenants to the Government under section 29 of the Act, after the coming into force of Act 27 of 1962, whether they purchased the land under their tenancy or not. The tenant is entitled to set off the amount paid under section 29 of the Act against the rent payable in respect of such land. It is thus obvious that in order to recover the land revenue including the surcharge and the special charge under 1954 and 1958 Acts, the amount of the same has to be determined by the departmental officials which has to be recovered by the Revenue Department from the tenants on the land, who are entitled to acquire the same. There is, therefore, no substance in the argument that the amount of special charge under 1958 Act cannot be determined as it varies with the land revenue payable by each landowner and is not dependant on each parcel of land in his ownership, but occupied by the tenants. The answer to this argument is that it is for the revenue officials to determine the amount payable to the Government under section 29 of the Act and that amount will be treated as land revenue on the land which a tenant is entitled to acquire and for which he is liable to pay compensation under section 26 of the Act.

- (7) Another argument advanced by the learned counsel for respondent 4 is that the levy of special charge under the 1958 Act

will work unequally on the compensation for the land payable by the tenants of various landowners according to the total land held by them on which revenue is payable. The special charge goes on increasing with the amount of the land revenue as it goes higher and higher. The result is stated to be that the tenant of a very big landowner might have to pay the compensation for the land which he is entitled to acquire at a much higher rate than a tenant of a comparatively small landowner because the special charge recoverable from the two will differ. I again do not find it possible to accept this argument. The reason is that the classification made by the 1958 Act is reasonable and is permissible under the Constitution. Moreover, the legislature has limited the maximum compensation payable to Rs. 200 per acre if ninety times the land revenue exceeds that figure. No tenant is required to pay more than Rs. 200 per acre. The legislature itself was aware of the fact ninety times the land revenue may in some cases be less than Rs. 200 per acre while in other cases it may exceed Rs. 200 per acre. That is why it has been provided that the compensation payable will be at the rate of ninety times the land revenue or Rs. 200 per acre whichever is less. It cannot, therefore, be said that the compensation based on land revenue as including the surcharge and special charge under the 1954 and 1958 Acts will work in discrimination which may be violative of Article 14 of the Constitution.

(8) The learned counsel for the petitioners has brought to my notice a Privy Council judgment, in *Bageswari Prasad Singh v. Mohamed Gowhar Ali Khan* (1). In that case the land had been sold for realisation of arrears of Government revenue and the objection to the sale was that the amount which was sought to be recovered as arrears included *malikana* which was not land revenue and, therefore, the land could not be sold for the realisation of *malikana*. This argument was repelled by a Division Bench of the Calcutta High Court in these words:—

“In the first place, it is quite clear that, as regards revenue, there is no difference between land revenue and *malikana*. The *kabuliyat* executed by the proprietor of the estate in this case shows that he was bound to pay *malikana* as well as land revenue, and that he was bound to pay both to Government, and that he was bound to pay both at the same time and in the same *kists*.

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(1) I.L.R. (1904) 31 Cal. 256.



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Under these circumstances, we think that *malikana* is clearly to be classified as land revenue and dealt with as such. But the provisions of section 2 of Act XI of 1859 and section 1 of Bengal Act VII of 1868, place the matter beyond a doubt. It is perfectly clear that under the provisions of these two sections, to which we have referred, *malikana* does come under the definition of land revenue therein given; and, therefore, it cannot be said, as the Subordinate Judge has said, that *malikana* is different from land revenue, and that so a notice was necessary under section 5."

This decision of the Division Bench was approved by their Lordships of the Privy Council but, in my opinion, the observations made do not help the learned counsel for the petitioners in the instant case because according to the learned Judges the definition of land revenue in the two Acts mentioned included *malikana*.

(9) The judgment of a Single Judge of the Madras High Court in *C. V. Rajagopalachariar v. State of Madras* (2), is, however, helpful to the learned counsel for the petitioners. In that case the Acts under consideration were Madras Land Revenue Surcharge Act (19 of 1954) and Madras Land Revenue (Additional Surcharge) Act (30 of 1955). The validity of both these Acts was challenged. The Surcharge levied under those Acts was in similar terms as the surcharge in 1954 Act. The learned Judge held the surcharge to be a part of the land revenue and observed as under :—

"The word 'surcharge' implies an excess or additional burden or amount of money charged. Therefore, a surcharge of land revenue would also partake the character of land revenue and should be deemed to be an additional land revenue. Although section 4 of the two enactments referred to above only deems it to be recoverable as a land revenue, it is manifest that the surcharge would be a part of the land revenue. The effect of the two Acts would be, therefore, to increase the land revenue payable by a landholder to the extent of the surcharge levied. If, therefore, a surcharge levy has been made, the Government would be enabled to collect a higher amount by way of land revenue from a *ryotwari pattadar* than what

(2) A.I.R. 1960 Mad. 543.

was warranted by the terms of the previous *ryotwari* settlement.”

Section 4(10), of the Punjab Tenancy Act, defines land revenue as meaning land revenue assessed under any law for the time being in force or assessable under the Punjab Land Revenue Act, 1887. For the reasons given above, this definition makes the surcharge and the special charge under the 1954 and 1958 Acts, part of the land revenue and for this reason the words “land revenue” in section 26, of the Act, are to be read as meaning the land revenue assessed under the Punjab Land Revenue Act, the surcharge levied under the 1954 Act, and the special charge levied under the 1958 Act. All these levies together make the land revenue which is payable under section 26 of the Act. In order to determine the compensation at ninety times the land revenue, the land revenue has to be determined as above.

(10) For the reasons given above, these petitions are accepted and the respondents are directed to determine the land revenue as including the surcharge and the special charge levied under the 1954 and 1958 Acts, in the land revenue assessed under the Punjab Land Revenue Act. If the amount of compensation worked out at this rate exceeds Rs. 200.00 per acre, respondent 4 in each case shall be liable to pay compensation at the rate of Rs. 200.00 per acre but if ninety times the land revenue worked out as above falls short of Rs. 200.00 per acre, the compensation payable will be at the lesser rate. Since the matter involved interpretation of section 26 of the Act, and there is no reported judgment on the point, I leave the parties to bear their own costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

KRISHNA MURTI SULHIAN,—*Petitioner.*

*versus*

CANTONMENT BOARD, AMBALA AND OTHERS.—*Respondents.*

**Civil Writ No. 1631 of 1967**

May 29, 1969

*Cantonment Fund Servants Rules (1937)—Rule 8(1)(c)—Constitution of India (1950)—Articles 14, 16 and 311—Rule 8(1)(c)—Whether offends*