

Before I. S. Tiwana, J.

MALIK LAH LABHU MASIH,—*Petitioner.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 1352 of 1973

May 29, 1980.

Punjab Security of Land Tenures Act (X of 1953)—Sections 18 and 19-DD—Colonization of Government Land (Punjab) Act (V of 1912)—Section 10—Land allotted to an heir of the grantee of a gallantry award after the death of the grantee—Such allotment made on the conditions enumerated under section 10(2) of the Colonization Act—Such land—Whether covered by the provisions of section 19-DD—Tenant thereon—Whether entitled to purchase it under section 18.

Held, that to attract the applicability of section 19-DD of the Punjab Security of Land Tenures Act, 1953 what has to be established is (i) that the land was granted for gallantry some time before the 20th day of January, 1950; (ii) to a member of the Armed Forces and (iii) the land has not passed from the original grantee into more than three successive hands by inheritance or bequest. None of these conditions is satisfied where land is allotted to an heir of the grantee of a gallantry award after his death. The grant of land was on the conditions which have been enumerated in pursuance of the provisions of sub-section (2) of section 10 of the Colonization of Government Lands (Punjab) Act, 1912. This latter Act deals with the colonization and administration of Government Lands in Punjab. Sub-section (i) of section 10 of this Act lays down that the Government may grant land in a colony to any person on such conditions as it thinks fit. These conditions relating to special military grants have been laid down in the gazette notification issued under sub-section (2) of section 10. Sub-section (4) of section 10 further lays down that no person shall be deemed to be a tenant or to have any right or title in the land allotted to him until such a written order has been passed and he has taken possession of the land with the permission of the Collector. After possession has been so taken, the grant shall be held subject to the conditions declared applicable thereto. Thus it is apparent that right or title in the allotted land passes on to the person to whom it has been so allowed only on his taking possession of the said land. If that is so then, it cannot be said that the deceased who was granted a gallantry award after his death ever acquired any interest or title in the land which was allotted to his heir on account of his valour or his heroic deeds. Moreover, it is difficult to say that the grantee of gallantry award was a member of the Armed Forces when the said grant was

made in favour of his heir. Thus it cannot be said that the land which was granted to an heir of the deceased grantee of a gallantry award had come to him through succession from his father. It is manifest that the land having been granted to an heir, the same cannot be said to be covered by the provisions of section 19-DD of the Punjab Security of Land Tenures Act and it is therefore not exempt from being purchased by the tenant under section 18 of the Act.

(Paras 5, 6 and 7).

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

- (i) records of the case may please be summoned ;
 - (ii) a writ, order or direction quashing the impugned order dated 28th March, 1973, of respondent No. 2 ;
 - (iii) Any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be issued ;
 - (iv) Costs of this writ petition be awarded to the petitioner ;
- and

It is further prayed that pending the decision of the writ petition the implementation/operation of the impugned order and dispossession of the petitioner from the land in dispute be stayed.

C.M. 376 of 1974.

Application under section 151 Civil Procedure Code praying that the relevant record of allotment of land to respondent No. 3 may kindly be summoned from Civil Secretariat, Jullundur, to enable this Hon'ble Court to adjudicate the writ properly.

C.M. 547 of 1975.

Application under section 151 Civil Procedure Code praying pending decision of the writ petition, the proposed mutation as well as the sale of the land may kindly be stayed.

R. K. Garg, Advocate with H. S. Singla, Advocate and K. S. Chaudhary, Advocates, for the Petitioner.

D. N. Awasthy, for Respondent No. 3.

JUDGMENT

I. S. Tiwana, J.

(1) This judgment will dispose of Civil Writ petition No. 1352 of 1973 and R.S.A. No. 706 of 1973, as these two emanate from the same set of facts and are *inter partes* petitioner in C.W.P. No. 1352

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of 1973, Malik Lah Labhu Masih (since dead and now being represented by his legal representatives) is a tenant of Salién Krishna Majumdar, the appellant in the regular second appeal (for purpose of convenience hereinafter they would respectively be referred to as the tenant and the landlord). The facts which are beyond the pale of controversy are as follows.

(2) Father of the landlord, late Wing Commander K. K. Majumdar, who laid down his life in the 2nd World War, was given a gallantry award posthumously and as a result thereof 442 *Kanals* and 10 *marlas* of land was granted to him in Chak No. 535 G.B., Tehsil and District Layallpur. Possession of this land was taken by Salién Krishna Majumdar, the present landlord, on July 24, 1947. As a result of the partition of the country, the family of late Wing Commander K. K. Majumdar migrated to this part of the country and was allotted 69 Standard Acres and 2 Units of land in village Bhogri, Tehsil and District Jullundur, as compensation for the land left behind in Pakistan. Out of this land, 19 Standard Acres came to be in possession of the petitioner, Malik Lah Labhu Masih, the tenant. On an application dated February 26, 1961, under section 18 of the Punjab Security of Land Tenures Act 1953, (hereinafter referred to as the Act), the tenant was allowed to purchase the land under his tenancy by the Assistant Collector Ist Grade,—*vide* his order dated January 15, 1962, against the payment of Rs. 21,007.88 paise in ten equal six monthly instalments of Rs. 2,100.88 paise each. As a result of an appeal by the landlord, the Collector, Jullundur, enhanced the amount payable to the landlord to Rs. 23,133.53. During the pendency of these proceedings, the landlord also moved an application under sections 9 and 14-A of the Act and actually secured an order of ejection of the tenant on September 27, 1961. On a revision filed by the landlord before the Commissioner, in the proceedings under section 18 of the Act, the said officer made a recommendation to the Financial Commissioner for setting aside the orders of the Assistant Collector and the Collector allowing purchase of land by the tenant on the ground that the landowner's application for the ejection of the tenant had since been allowed. This recommendation was accepted by the Financial Commissioner and through an *ex parte* order, the orders of the Assistant Collector and the Collector allowing the purchase of land in favour of the petitioner-tenant, were set aside. The tenant, however, successfully assailed this order of the Financial Commissioner

in this Court through a writ petition No. 1158 of 1963 (*Malik Lah Labhu Masih, v. Financial Commissioner, Punjab and another*),—vide which the order of the Financial Commissioner dated April 9, 1963, was quashed on August 30, 1966 (Copy Annexure 'A' to the petition). As a result of this, the landlord received the full payment of the amount from the tenant and a mutation recording the change of ownership in favour of the tenant was also attested. It may be mentioned here that the order of ejectment which the landlord had secured against the tenant had also been upheld up to the Financial Commissioner and was even later affirmed by the High Court in *Labhu Masih v. Financial Commissioner, Punjab, etc.*¹ As in the meantime the tenant had secured the proprietary rights of the land under his tenancy, no ejectment of his, however, could take place.

(3) Having failed to eject the tenant through the revenue officers, the landlord ultimately brought a suit (suit No. 86 of 1970) in the Court of Sub-Judge Ist Class, Jullundur, against the tenant with the allegation that since the land in question was a gallantry award in favour of a member of the Armed Forces, the tenant had no right to purchase the said land or any portion thereof in exercise of his right under section 18 of the Act in view of the introduction of section 19DD with retrospective effect,—vide Punjab Act No. 12 of 1968. This section provides that notwithstanding anything contained in this Act, where any land is granted for gallantry at any time before the 26th day of January, 1950, to any member of the armed forces, whether maintained by the Central Government or by any Indian State, then so long as such land or any portion thereof, as the case may be, has not passed from the original grantee into more than three successive hands by inheritance or bequest, and is held by the grantee or any of such hands, such land or portion, as the case may be, shall not be taken into account in computing the surplus area under the Act, nor shall any tenant of such land or portion have the right to purchase it under section 18. The civil Court, after framing various issues on the basis of the pleadings of the parties, held that though the land was covered by the provisions of section 18 of the Act, yet it had no jurisdiction in the matter and dismissed the suit,—vide its judgment dated March 21, 1972, Annexure 'B' to the petition. An appeal against this judgment and decree by the landlord to the District Judge, Jullundur, also failed,—vide judgment and decree dated February 14, 1973,

(1) CW 90 of 1963 decided on 21st March, 1963.

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Annexure 'C' to the petition. It is against this decree that the present R.S.A. No. 706 of 1973 has been filed.

(4) Having failed once again in the civil Court to take possession of the suit, land, the landlord yet thought of another device to achieve that end by filing an execution application seeking to execute the order of the Assistant Collector Ist Grade, Jullundur, dated June 26, 1961,—*vide* which ejection of the tenant had been ordered. The plea put forward by the landlord before the Assistant Collector was that after the order of affirmance by this Court in Civil Writ Petition No. 1158 of 1963 (Annexure 'A' to the petition),—*vide* which the purchase of the land by the tenant under section 18 of the Act had been upheld, section 19-DD was introduced in the Act with retrospective effect, that is, from the date of the inception of the Act in 1953, through an ordinance which later assumed the form of Punjab Act No. 12 of 1968 and in view of the later provision of law, the very right of the tenant to purchase the land had been negatived with effect from the date of commencement of the Act, that is, April 15, 1953. It was also contended before the Assistant Collector that the civil Court,—*vide* their judgments, Annexures 'B' & 'C', had upheld the claim of the landlord that the land in suit was covered by the provisions of section 18 of the Act and the tenant had no right to purchase the same. Therefore, the Assistant Collector could execute the eviction order dated June 26, 1961, passed against the tenant. The Assistant Collector Ist Grade, Jullundur, accepting these pleas of the landlord ordered the issue of warrant of possession against the tenant,—*vide* his order dated March 28, 1973 (Annexure 'D' to the petition). It is this order which led to the filing of the present petition No. 1352 of 1973. The implementation of this order was stayed by the Motion Bench at the time of admitting the writ petition. So the tenant continues to be in possession of the land in question.

(5) The above narration of facts narrows down the controversy between the parties to as to whether the land in question is or is not covered by the provisions of section 19-DD of the Act. It is beyond dispute that in case it is held that it is so covered, the tenant would have no right to purchase the said land and if, on the other hand, it is found that the land is not exempted from purchase under the above said provision, then the purchase of land by the tenant would have to be upheld. It is the introduction of this provision of

law with retrospective effect that has led to unsettle this settled controversy,—*vide* judgment of this Court, Annexure 'A'. In order to settle the question, it is essential to analyse the said provision of law, that is, section 19-DD the relevant portion of which is reproduced hereunder :—

“Notwithstanding anything contained in this Act, where any land is granted for gallantry at any time before the 26th day of January, 1950 to any member of the armed forces, whether maintained by the Central Government or by any Indian State, then, so long as such land or any portion thereof, as the case may be, has not passed from the original grantee into more than three successive hands by inheritance or bequest, and is held by the grantee or any of such hands, such land or portion, as the case may be, shall not be taken into account in computing the surplus area under this Act, nor shall any tenant of such land or portion have the right to purchase it under section 18.”

To attract the applicability of this section, what has to be established is (i) that the land was granted for gallantry some time before the 20th day of January, 1950; (ii) to a member of the Armed Forces, and (iii) the land has not passed from the original grantee into more than three successive hands by inheritance or bequest. To my mind, none of these conditions is satisfied in the present case. The following facts lead to this conclusion.

(6) Mr. D. N. Awasthy, learned counsel for the landlord has shown to me a copy of Memo No. 2354-C dated March 30, 1946, from Deputy Secretary, Development, to the Government of Punjab, to the Commissioners of the Lahore, Rawalpindi and Multan Divisions, which led to the grant of the land in question and the same for purposes of reference, is reproduced as under :—

“ No. 2354-C.

Lahore, dated the 30th March, 1946.

(From : D.S.D. To : The Commissioners, Lahore,
Rawalpindi and Multan Divisions.

Subject : Award of land in the Punjab for acts of
gallantry in the field.

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Reference : Punjab Government memorandum No. 3583-C, dated the 30th Novr., 1944, on the above subject.

Memorandum :

*No. Rank and name
IND/1555 W/COR—K. K.
Majumdar (deceased). Heir
Master Sailen Krishna Maj-
umdar (Minor son).
Address
C/O R.B.P.N. Dutt,
Ashiyana, Jullundur City.
Award
D.F.C. & Bar to D.F.C.
Date of Award:
Nov. 1942 and the 23-1-1945

The Deputy Commissioner, Jullundur has reported that the name and address of the recipient of decoration noted in the *margin are correct, and he was a resident of his district and was a British subject. The Deputy Commissioners, Lahore, Sheikhpura, Gujrat, Shahpur, Layallpur, Montgomery, Jhang and Multan and the Colonization Officer, Nili Bar Colony Pakpattan, and Haveli Project, Multan, should be instructed to allot two squares/rectangles of land as early as possible to the heir of the grantee noted in the margin in accordance with the orders contained in the memorandum under reference.

Sd/- J. F. G. Sykes,
Deputy Secretary, Development."

It was in pursuance of this communication that the land in question was allotted to the heir of the grantee of the award, Mr. K. K. Majumdar. This grant of land was on the conditions which have been enumerated in the Gazette Notification dated November 22, 1944, issued in pursuance of the provisions of sub-section (2) of section 10 of the Colonization of Government Land (Punjab) Act, 1912. It would be appropriate at this stage to notice the provisions of the said Act which deals with the colonization and administration of Government lands in Punjab. The most relevant provision of this statute is section 10, sub-section (i) of which lays down that the Government may grant land in a colony to any person on such conditions as it thinks fit. As pointed out earlier, these conditions relating to special military grants like the one in hand, have been laid down in the Gazette Notification dated November 22, 1944. Sub-section (4) of this section 10 further lays down that no person shall be deemed to be a tenant or to have any right or title in the

land allotted to him until such a written order has been passed and he has taken possession of the land with the permission of the Collector. After possession has been so taken, the grant shall be held subject to the conditions declared applicable thereto. Thus it is apparent that right or title in the allotted land passes on to the person to whom it has been so allotted only on his taking possession or title in the land which was allotted to the landlord on account of his said that Mr. K. K. Majumdar, deceased, ever acquired any interest or title in the land which was allotted to landlord on account of his valour or heroic deeds. Essentially, the answer to this question has to be in the negative. Moreover, it is difficult to say that Mr. K. K. Majumdar was a member of the Armed Forces when the said grant was made in favour of his son, Salien Krishna Majumdar. It is not in dispute that Mr. K. K. Majumdar had died much earlier to this grant of land. In law he cannot be said to have continued to be a member of the Armed Forces even after his death. If for argument's sake the submission of Mr. D. N. Awasthy, learned counsel for the landlord, to the effect that the grantee need not be a member of the Armed Forces at the time of the actual grant of the land, is accepted, then can it be said in this case that the land has been received by Mr. Salien Krishna Majumdar through succession? It is well-known that succession never remains in abeyance. Thus it cannot be said that the land which according to the own showing of the landlord was granted to him for the first time in the year 1946, as an heir to Mr. K. K. Majumdar had come to him through succession from his father. Though it looks a little anomalous that the State should have made a provision in the statute only with regard to the exemption of lands allotted to members of the armed forces during their life time or when they were in service as such and should not have provided for such exemption in case of persons to whom lands have been granted posthumously yet as has been observed by the Supreme Court in *Smt. Hira Devi and others v. District Board, Shahjahanpur*, (2), it is not the duty of the Court to try and harmonise the various provisions of the statute by stretching the words used by the Legislature to fill in gaps or omissions in the provisions of an Act. A similar view was also expressed in a later judgment of the Supreme Court in *S. Narayanaswami v. G. Panneerselvam and others*, (3).

(2) AIR 1952 S.C. 362.

(3) AIR 1972 S.C. 2284.

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(7) In the light of the discussion above, it is manifest that the land in question having been granted to Salién Krishna Majumdar, the landlord, in the year 1946, the same cannot be said to be covered by the provisions of section 19-DD of the Act. The Assistant Collector at the time of passing the impugned order, annexure 'D', completely lost sight of the fact that the finding given by the civil Court on issue No. 6 holding that the land in suit was covered by the provisions of the Punjab Security of Land Tenures Act, was a finding by a Court which admittedly had no jurisdiction in the matter. In fact while dismissing the suit of the landlord, the civil Court itself held so. In that view of the matter the Assistant Collector could not pass the impugned order for the dispossession of the tenant who had become owner of the land in question in exercise of his rights under section 18 of the Act. For this reason the impugned order, Annexure 'D', deserves to be quashed and I order accordingly. In this view of the matter the other arguments of Mr. R. K. Garg, learned counsel for the petitioner that the land now allotted to the landlord in village Bhogri, Tehsil and District Jullundur, cannot be said to have been allotted in lieu of the land granted in Chak No. 535 G.B., Tehsil and District Layallpur, in view of the provisions of the Displaced Persons (Compensation & Rehabilitation) Act, 1954, as the present allotment was only by way of compensation for the loss suffered by the landlord on account of the partition of the country and that the provisions of section 19-DD of the Act are *ultra vires* the Constitution as the same have the effect of depriving the petitioner of his property without providing for any compensation etc. do not require any consideration and I decline to go into that aspect of the matter.

(8) So far as the appeal of the landlord is concerned, I have come to the conclusion that the land in suit is not covered by the provisions of section 19-DD and was thus not exempt from being purchased by the tenant under section 18 of the Act and in that view of the matter the said appeal deserves to be dismissed.

(9) For the reasons recorded above, I allow the Civil Writ Petition No. 1352 of 1973 and quash the impugned order, Annexure 'D', passed by the Assistant Collector Ist Grade and dismiss the regular second appeal filed by the landlord. In either case I award no costs.

H.S.B.