

Darshan Singh v. State of Punjab and others (Mehtar Singh, C.J.)

a different class because they were recruited as employees of the Corporation, whereas those, who were already serving private companies were merely given option to become the employees of the Corporation on certain terms and conditions and those who did not do so were given compensation. Therefore, it is wrong to suggest that both sets of employees stand on the same footing and do not form two different classes. We are clearly of the view that the provisions of Article 14 are not offended so far as the present case is concerned.

(6) The last contention of Mr. Sibal was that the order of the Zonal Manager whereby he dropped the recovery proceedings is in fact a contradictory order and if correctly read, denotes that the charge which was levelled against the petitioner and on the basis of which he was dismissed was held to be not proved. In our opinion, there is no force in this contention. The order demanding the payment of profits earned as a partner in Jain Brothers Giddarbaha was an illegal order and that order alone was set aside by the Zonal Manager. The Zonal Manager affirmed the finding of the Inquiry Officer that the petitioner had engaged in private business contrary to Regulation 27(1) and it is really the consequence of that breach which has resulted in the order of dismissal.

(7) No other contention has been advanced.

(8) For the reasons recorded above, this petition fails and is dismissed. There will be no order as to costs.

N. K. S.

LETTERS PATENT APPEAL

Before Mehtar Singh, C.J. and Bal Raj Tuli, J.

DARSHAN SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 301 of 1966

May 18, 1970.

Punjab Security of Land Tenures Act (X of 1953)—Sections 5, 5-B(1), 5-B(2) and 10-A(b)—Landowner reserving or selecting permissible area and transferring other area—Such transferred area—Whether can be included in the reserved or selected area—Permissible area not reserved or

selected and some area transferred—Collector—Whether can decide about the transferred area being part of either permissible or surplus area.

Held, that where a landowner has reserved his permissible area under section 5 or selected his permissible area under section 5-B(1) of Punjab Security of Land Tenures Act, 1963, there is no provision in the Act which gives power to any authority under the same to bring within such reserved or selected area any other area belonging to such a landowner that he has transferred to third parties. If in such a case there is any allegation of deceit or *mala fide* or fraud on the part of such a landowner so far as the transfer to such a third party is concerned, then it may be that such a third party has other remedy under the law against such a landowner, but no such consideration can give power to the authorities under the statute to bring the transferred area within the reserved or selected permissible area of a landowner. If, on the other hand, no permissible area has been reserved or selected by a landowner, then, when proceeding under sub-section (2) of section 5-B of the Act, the Collector may, after hearing the parties concerned, decide whether the transferred area should form part of the permissible area of a landowner or remain outside of it and form part of surplus area having regard to the circumstances and equities of a particular case. (Para 7)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment passed by the Hon'ble Mr. Justice Jindra Lal pronounced by the Hon'ble the Vacation Judge A. N. Grover on 31st May, 1966 in Civil Writ No. 679 of 1963.

M. K. MAHAJAN, ADVOCATE, for the appellant.

M. R. SHARMA, DEPUTY ADVOCATE-GENERAL I (PUNJAB), for the respondents.

JUDGMENT

MEHAR SINGH, C.J.—(1) The holding of the appellant, Darshan Singh, on April 15, 1953, the date on which the Punjab Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953), came into force, was 78 standard acres and $5\frac{1}{2}$ units. He, being a displaced person, was entitled to permissible area of 50 standard acres according to proviso (ii) to sub-section (3) of section 2 of the Act. His land was situate in the area of two villages, the area in village Shafipur being 70 standard acres and $14\frac{1}{2}$ units and in village Mohra Khurd 7 standard acres and 7 units. He was in excess by 28 standard acres and $5\frac{1}{2}$ units and the area declared surplus was the whole of the holding of 7 standard acres and 7 units of village Mohra Khurd and 20 standard acres and $14\frac{1}{2}$ units in village Shafipur.

(2) After April 15, 1953, the appellant sold 60 Kanals and 10 Marlas land on April 13, 1958, to Jagat Singh, Kishan Singh and Bhagwan Singh, vendees, 96 Kanals and 7 Marlas to Paramjit Kaur, respondent 3, on April 30, 1959, and 96 Kanals and 15 Marlas to Karam Singh and Charan Singh, respondents 4 and 5, on July 3, 1959.

(3) The Collector ignored all three transfers for the purpose of finding out surplus area with the appellant on the ground that the same had been made after April 15, 1953, and this he did according to section 10-A(b) of the Act. On appeal, the Commissioner by his order of February 8, 1962, curiously enough ordered that the whole of the area transferred by the appellant should be placed in his reserved or selected area. On revision to the Financial Commissioner, the only relief that the appellant got was that in view of the decision in *Bhalle Ram v. The State of Punjab* (1), the first sale of April 13, 1958, was not to be placed in his reserved or selected area, but the other two were rightly so placed. It was at this stage that the appellant came in petition under Articles 226 and 227 of the Constitution, questioning the legality and validity of the order of the Financial Commissioner.

(4) The learned Single Judge has very rightly pointed out that there is nothing in the Act which prohibits transfer of land with a landowner, but that all that section 10-A provides is that certain transfers made after the coming into force of the Act, that is to say after April 15, 1953, shall be ignored for the purpose of utilization of the surplus area of such an owner. So that if a landowner has more than his permissible area, there is nothing in the Act which bars him from transferring any part of his area. The validity of the transfer is not touched by any provision of the Act. All that section 10-A of the Act provides is that the transferred area will also be available for utilization if found surplus with such a landowner. So far there is no difficulty.

(5) If a landowner has not reserved or selected any area according to section 5 or 5-B(1) of the Act, and if he has surplus area and he has also transferred part of his holding, then the Collector, when selecting his permissible area under sub-section (2) of section 5-B of the Act, may place the land transferred either in the permissible area of such a landowner or in his surplus area, as the circumstances

(1) 1962 P.L.R. 331.

and the equities of the case may justify. However, where the landowner has either reserved his permissible area under section 5 or selected his permissible area under sub-section (1) of section 5-B, and then he makes a transfer of the area which he has not reserved, there is no power in any authority under the Act to bring such transferred area within his reserved or selected area. This is as much as the learned single judge has held and very rightly. This dictum of the learned single judge is not questioned in this appeal, and indeed there is nothing in the Act which justifies a contrary opinion.

(6) The learned judge on the opinion as above, at the end of his judgment and order observed that "During the course of argument, it was urged on behalf of the state that there has been a change of law since and that if the order is quashed, the same should be quashed as a whole, so that the entire matter be reconsidered afresh. In the light of the observation made above and the change of law, if any, I feel this is a proper thing to do and I, therefore, quash the order of the learned Financial Commissioner and direct that he should hear arguments afresh and redecide the case." So the appellant in substance succeeded in his petition with the direction by the learned single judge as above. The date of the order of the learned single judge is May 31, 1966. This is an appeal under clause 10 of the Letters Patent, curiously enough by the appellant who succeeded before the learned single judge in his petition.

(7) As has been stated above, where a landowner has reserved his permissible area under section 5 or selected his permissible area under sub-section (1) of section 5-B of the Act, there is no provision in the Act which gives power to any authority under the same to bring within such reserved or selected area any other area belonging to such a landowner that he has transferred to third parties. If in such a case there is any allegation of deceit or *mala fide* or fraud on the part of such a landowner so far as transfer to such a third party is concerned, then it may be that such third party has other remedy under the law against such a landowner, but no such consideration can give power to the authorities under the statute to bring the transferred area within the reserved or selected permissible area of a landowner. If, on the other hand, no permissible area has been reserved or selected by a landowner, then, as pointed out, when proceeding under sub-section (2) of section 5-B, the Collector may, after hearing the parties concerned, decide

Tek Chand v. The State of Punjab, etc. (Sodhi, J.)

whether the transferred area should form part of the permissible area of a landowner or remain outside of it and form part of surplus area having regard to the circumstances and equities of a particular case.

(8) In the approach as above, the direction of the learned single judge is the only direction that could have been made in the case. However, what the learned counsel for the appellant urges is that while the Financial Commissioner had taken out the first sale of land by the appellant from his reserved or selected area, the effect of the order of the learned single judge is to bring that also into consideration. But if the appellant has reserved or selected his permissible area and the areas transferred are outside the same, there is nothing which is open to exception in the direction of the learned Single Judge. If, on the contrary, he has not done so, then the justice of the case requires the reconsideration of it, whether all or any of the transfers made by him should form part of his permissible area or surplus area. The learned Judge proceeded to quash the order of the Financial Commissioner as a whole because of an argument that there has been a change in the law. The counsel for the parties are not able to specifically refer to any change of Act in the case, but in view of the argument urged before the learned Judge the approach made by him is unexceptional.

9. In consequence this appeal fails and is dismissed, but there is no order in regard to costs.

B. R. TULI, J.—I agree.

B. S. G.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

TEK CHAND,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 954 of 1969

May 19, 1970.

Punjab Municipal Act (III of 1911)—Section 16(1)(e)—Punjab Municipal (General) Rules, 1918—Rule 3-A—Statutory object of—Stated—Interest of the member attending the Municipal meeting in violation of the