

## CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

PHUL CHAND,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Miscellaneous No. 1321 of 1961.

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 32-P—Orchard plantation—How to be determined.*

1962

April, 3rd

Held, that all that the Pepsu Tenancy and Agricultural Lands Act, 1955, requires is that the petitioner should plant an orchard within the prescribed time. If he does so, he is entitled to the exemption even if he has failed in his attempt provided that he has not altogether abandoned it. The existence of the orchard, later on or at the time when the Commission was going into the matter, would be of no relevancy. This does not mean that in order to get exemption the petitioner may plant an orchard and later do away with it and start cultivating the land, but it also does not mean that if the petitioner does plant an orchard and for no fault of his the plants do not survive and he persists in his effort to plant an orchard he would lose his right merely because at the relevant time either the trees which are standing on the land are not old enough to come to the conclusion that the orchard was planted within the prescribed period or that in his repeated attempts to raise an orchard the trees are of a very young age at the time when the Commission inspects the orchard.

*Petition under Article 227 of the Constitution of India, praying that by an appropriate order the advice of respondent No. 2 to respondent No. 1, in his order dated 6th April, 1961, refusing to grant exemption in respect of land, measuring 150 bighas, under section 32(K) of the Pepsu Tenancy and Agricultural Lands, Act, 1955, be quashed.*

D. C. AHLUWALIA, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, for the Respondents.

## ORDER

Mahajan, J.

MAHAJAN, J.—This is a petition under Article 227 of the Constitution of India and is directed against the advice of the Land Commission to the Government under section 32-P of the Pepsu Tenancy and Agricultural Lands Act, 1955. The petitioner's case before the Land Commission was that he had an old orchard existing before the coming into force of the Act on an area measuring 23 *bighas* and that he did plant an orchard on the reserved area under section 32-K(1)(vi) after the coming into force of the Act. Under the Act an owner of land is entitled to reserve 10 standard acres of land for the purpose of an orchard. The petitioner did reserve that land and according to him he did plant an orchard. The Commission has observed as under:—

“It is no doubt clear to us that the petitioner did put in some seedling after the land had been allotted to him and he also put in more seedling subsequent to putting in the form VII-A. But partly because there was no water supply for irrigating the entire land and partly because some fields were flooded with water, the trees did not flourish and the result was that there is very little of the garden at the moment.”

To me it seems that the Commission has really misdirected itself. All that the Commission had to see was whether within two years of the second amendment to the Act the petitioner had planted an orchard. The existence of the orchard, later on or at the time when the Commission was going into the matter, would be of no relevancy. This does not mean that in order to get exemption the petitioner may plant an orchard and later do away with it and start cultivating the land, but it also does not mean that if the petitioner does plant an orchard and for no fault of his the plants do not survive and he persists in his effort to plant an orchard he would lose his right merely because at the relevant time either the trees which are standing on the land are not old enough to come to the

conclusion that the orchard was planted within the prescribed period or that in his repeated attempts to raise an orchard the trees are of a very young age at the time when the Commission inspects the orchard. Any person who is conversant with the planting of an orchard will realise the force of the contention of the learned counsel for the petitioner. Trees in a particular area may take much longer to get established than in another area. All that the Act requires is that the petitioner should plant an orchard within the prescribed time. If he does so, he is entitled to the exemption even if he has failed in his attempt, and has not altogether abandoned it. It is evident from the order of the Commission that they did not accept the contention that the petitioner had planted the orchard within the prescribed date, on the ground that on the date when the Commission determined the matter the existing orchard could not be said to have been planted within two years of the prescribed date as the age of the plants was such that it would negative the conclusion that an orchard was planted within the prescribed date. I have already pointed out that this is entirely an erroneous approach. It does not take into account the mortality of the plants for various reasons and puts an undue burden on the person claiming the exemption for it is not within his power to fight nature. Therefore, the result is that this petition is allowed. The order of the Commission is quashed and the Commission is directed to go into the question and determine on evidence whether the petitioner did plant the orchard within the prescribed period and is continuing in his attempt to raise an orchard. If it is satisfied that the petitioner did plant an orchard within the prescribed time and is persisting in his attempt, he will be entitled to the exemption but not otherwise. So far as the old orchard is concerned, the finding of the Commission is not disturbed.

The Commission would afford the petitioner an opportunity to lead such further evidence in this behalf as he may be so minded.

No order as to costs.

B.R.T.

Phul Chand  
v.  
The State  
of Punjab  
and another  
—————  
Mahajan, J.