

temple can be declared as surplus. I am unable to agree with this contention. 'Person' is defined in section 2(4) of the Punjab General Clauses Act, 1898, as under:—

“ ‘person’ shall include any company or association or body of individuals, whether incorporated or not.”

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This definition of a 'person' is very wide and is an inclusive definition. In Stroud's Judicial Dictionary at page 2167, it is stated that the word 'person' may well include both a natural person and an artificial person. If I were to accept Mr. Shamair Chand's contention, then no relationship of landlord and tenant can ever come into being and nor can a temple be a landowner, a result which cannot be countenanced. I do not think the extreme contention urged by the learned counsel for the petitioner is sound and, therefore, it must be rejected. In my view, the 'person' will include a temple, unless the context shows otherwise. There is nothing in the Act which gives an indication to the contrary. That being so, this petition fails and is dismissed. There will be no order as to costs.

R.S.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

JAGDIP SINGH,—*Petitioner.*

versus

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

Civil Writ No. 293 of 1961

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 32K—10 Standard acres of land retained for planting an orchard—Orchard not planted within prescribed period of two years on account of consolidation proceedings—Exemption from ceiling—Whether can be claimed in respect of those ten acres.

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Held, that the Pepsu Tenancy and Agricultural Lands Act, 1955, contemplated that the reservation must have been done within two years of the Act by the landowner and if as a result of circumstances not visualised in the Act he is disabled from planting an orchard he cannot under this Act claim exemption from ceiling. Section 32-K deals with exemption from ceiling on land and clause (vi) fixes a period of two years for planting an orchard where an undertaking in writing has been given to the Collector. If orchard could not be planted by reasons over which the landowner had no control, the Act does not protect him as there is no provision for granting extension of the period for planting an orchard.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of the Pepsu Land Commission, dated the 19th February, 1960 and subsequent proceedings taken by the Collector or the Government.

BALDEV SINGH, ADVOCATE, for the Petitioner.

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

ORDER

Tek Chand, J. TEK CHAND, J.—These are three writ petitions (Nos. 293, 294, and 295 of 1961) which can conveniently be disposed of by one judgment because of the similarity of facts and the question arising in these petitions. The petitioner in each of these three cases is a landowner. It is alleged that in the year, 1956, 10 acres of land was reserved by the petitioner for the plantation of orchard as contemplated by section 32-K. of the Pepsu Tenancy and Agricultural Lands Act, 1955. In this village consolidation proceedings had been going on since 1953, though for a time in June, 1954, the consolidation scheme had been revoked. In August, 1954, the consolidation proceedings were restarted and they have continued till February, 1960. It is stated that the land in lieu of the one previously held by the petitioner was allotted to him and the possession thereof was given to certain tenants

though it is contended by the petitioner that they were really not the tenants. It is then stated that it was not known which fields would be allotted to the petitioner finally and that being his difficulty he was not in a position to plant any orchard. The matter came up before the Pepsu Land Commission and a request of the petitioner to be granted exemption on the basis of his claim was rejected (*vide* annexure 'A'). The order of the Pepsu Land Commission is now being assailed by the petitioner on the ground that it is illegal, void, arbitrary and beyond jurisdiction.

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The exemptions from the ceiling on land are given in section 32-K which provides that section 32-A, which fixes the ceiling on land shall not apply to—

- (i) orchards where they constitute reasonably compact areas;

* * * * *

- (vi) where a landowner gives an undertaking in writing to the Collector that he shall, within a period of two years "from the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, plant an orchard in any area of his land not exceeding ten standard acres, such area of land."

Subsection (2) of section 32-K is in the following words:—

"Where a landowner has, by an undertaking given to the Collector, retained any area of land with him for planting an orchard and fails to plant the orchard within a period of two years referred to in clause (iv) of sub-section (1), the land so retained by him shall on the expiry of that period vest in the State Government under section 32-E and compensation therefor, shall be payable in accordance with the provisions of this Chapter."

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Mr. Baldev Singh, learned counsel for the petitioner contends that the landlord in this case had given an undertaking in writing to the Collector that he would within a period of two years from the Act plant an orchard in an area not exceeding 10 standard acres. But he could not do so because of extraneous circumstances prevailing, namely, his land being put into a hotch potch by reason of consolidation proceedings which commenced first in 1953 and later in 1954. The argument is that it is not a case where a landlord had "retained" any area of land for him for planting an orchard. His contention is that he failed to plant the orchard within the prescribed period because he has ceased to retain any area of land as it had formed a part of consolidation pool. According to Mr. Baldev Singh the area 'retained' should be construed to mean "to hold or continue to hold in possession or use." He says that he had given an undertaking and his failure to plant the orchard was because there was no land in his possession which he had retained. The effect of sub-section (2) is that this area becomes liable to vestment in the State Government as surplus area. Only if he had failed to plant the orchard within two years on the retained area and as he had lost possession, there was left no area during the relevant time which he could retain. On the other side the argument is that the word 'retain' also means to hold or keep that which one already owns and not merely possesses. According to this rendering the petitioner did own the area which would be taken to be retained.

It appears to me that the Act contemplated that the reservation must have been done within two years of the Act by the landowner and if as a result of circumstances not visualised in the Act he is disabled from planting an orchard he cannot under this Act claim exemption from ceiling. Section 32-K deals with exemption from ceiling on land and clause (vi) fixes a period of two years for planting an orchard where an undertaking in writing has been given to the Collector. If orchard could not be planted by reasons over which the

landowner had no control, the Act does not protect him.

My attention has been drawn by the learned Advocate-General to an un-reported decision of a Division Bench to which I was a party in *Bachan Singh v. State of Punjab* (C.W. 1132 of 1960), dated the 13th November, 1961. Therein I had said—

“The argument advanced by the learned counsel is that as the consolidation proceedings were going on and the land formed part of the consolidation pool, the orchard could not be planted. Even if this explanation be well-founded on facts, the relevant provisions of the Act referred to above do not contemplate any extension of the period for planting an orchard. The language of section 32-K, leaves no room for any ambiguity. For failure to comply with the requirements of the provisions of section 32-K, exemption from ceiling on land in respect of area of land not exceeding ten standard acres cannot, therefore, be claimed. This writ petition is entirely without merit.”

I do not find the argument of the learned counsel for the petitioner sufficiently convincing in order to accept his point of view and to extend the period allowed under the Act to enable him to plant an orchard and earn the exemption. These petitions fail and are dismissed. I would in the circumstances, leave the petitioner in each petition to bear his costs.

B.R.T.

APPELLATE CRIMINAL

Before Inder Dev Dua, and J. S. Bedi, JJ.

KISHAN SINGH,—Appellant.

versus

THE STATE,—Respondent.

Criminal Appeal No. 349 of 1962

Murder Reference No. 36 of 1962

Evidence Act (I of 1872)—Section 32(1)—Dying declaration—Scope, relevancy and value of—Whether can form the

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The State of
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Tek Chand, J.

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