LETTERS PATENT APPEAL

Before Prem Chand Pandit and S. S. Sandhawalia, JJ.

CHETAN DASS,—*Appellant.*

versus

MARU AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 270 of 1970

December 18, 1970.

Punjab Security of Land Tenures Act (X of 1953)—Section 2(3), Proviso (ii) (b) and Explanation—"Displaced person" within the ambit of the proviso (ii)—Whether must be the allottee to whom the land is originally allotted—Original allottee inheriting additional area from another allottee—Concession of a larger permissible area given to displaced persons—Whether applicable to such allottee—Landlord without making reservation of permissible area bonafide litigating that he was a small land-owner—Whether entitled to make reservation when declared to be a big landowner.

Held, that a "displaced person" to be within the ambit of clause (b) of proviso (ii) to section 2(3) of the Punjab Security of Land Tenures Act, 1953 must be one who has been himself originally allotted land by the authorities. The plain language of this provision visualises that the displaced person must be one to whom the first allotment is originally made. The phrase "who has been allotted land" in the proviso cannot include within its ambit an heir of the original allottee because such an heir derives his title by inheritance and not by allotment. Inheritance from an allottee is in substance different from direct allotment received by the original allottee and the two are not synonymous terms. Moreover, the Explanation to section 2(3) (ii) of the Act, has in unequivocal terms clarified the situation that the concession of a larger permissible area given by the statute to displaced persons is intended for the original allottees alone and not for their heirs. Hence the concession of proviso (ii) would not apply to the heirs and successors of the displaced persons to whom land had been originally allotted.

(Paras 4 and 6)

Held, that where a landlord, without making any reservation or selection of his permissible area, bonafide litigates on the firm position that he in fact is a small landowner, he is entitled to make reservation of his permissible area in accordance with the provisions of the Act when he is declared to be a big landowner.

(Para 11)

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment of the Hon'ble Mr. Justice Prem Chand Jain passed in Civil Writ No. 209 of 1968 on 30th March, 1970.

RAM RANG, ADVOCATE, for the appellant.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL, HARYANA for Respondent No. 2.

D. S. KANG, ADVOCATE for Respondent No. 1.

JUDGMENT

S. S. SANDHAWALIA, J.—What is the extent of the permissible area of a displaced landowner, who whilst holding allotted land in his own right, further acquires an additional area of land by way of inheritance—is the primary question which has been debated in these two connected appeals Nos. 270 and 271 under Clause 10 of the Letters Patent. The facts (which are not in dispute) and the points of law are identical and the learned counsel are agreed that this judgment will govern both these appeals.

(2) A brief reference to the facts in L.P.A. No. 270 will suffice. Chetan Das, appellant, was allotted one Standard Acre and 14¾ Units of evacuee land as a displaced person in his own right in 1949 in village Kuleri, Tahsil Fatehabad, District Hissar. The appellant's father Suba Mal was also allotted 70 Standard Acres and 14¼ Units as a displaced person in village Mirpur. Suba Mal died on the 16th December, 1949, and after his death the allotment above-said was inherited by the appellant and his brother in equal shares. The total holdings of the appellant, therefore, came to 37 Standard Acres and 5—7/8 Units of land. The respondents, who are tenants, had been cultivating the land which came under the ownership of the appellant for more than 8 years and they moved applications under section 18 of the Punjab Security of Land Tenures Act (hereinafter referred to as the Act) for purchasing the same. These applications were allowed by the Assistant Collector, Fatehabad, by his order dated the 16th September, 1966. The appellant filed an appeal against the said order before the Collector which, however, was rejected on the 7th December, 1966. A revision against this rejection met a similar fate before the Commissioner, Ambala Division, by his order, dated the 10th May, 1967. On a further revision having been filed, however, the appellant succeeded and the Financial Commissioner by his order dated the 21st November, 1967, set aside the orders of the revenue authorities below and dismissed the applications of the tenants on the finding that the area of land held by the appellant fell within his permissible area and he was consequently a small landowner. This order of the Financial Commissioner was impugned by way of the writ petition which stands allowed by the learned Single Judge who has held that in view of the Explanation to sub-section (3) of section 2 of the Act, the appellant could not take the benefit of the provisions of proviso (ii) thereof in respect of the area he had inherited from

his father Suba Mal and consequently he was not a small landowner under the provisions of the Act.

(3) The gravemen of the argument of Mr. Ram Rang in support of these appeals is that the case of the appellant falls squarely within the ambit of section 2(3)(ii)(b) of the Act and the total area held by him being within his permissible area he is consequently a small landowner. In support of this contention reference is first made to the definition of a 'Displaced Person' in section 2(11) of the Act on the basis of which it is claimed that the appellant is a displaced person in his own right. Relying then on the definition of landowner in section 2(1) which includes an allottee, counsel calls in aid further the definition of an allottee under section 2(b) of the East Punjab Displaced Persons (Land Resettlement) Act, 1949, wherein the said word is defined to include the heirs, legal representatives and sub-lessees of the allottee as well. On the basis of the above definition by a process of strained reasoning it is sought to be argued that the appellant being a displaced person and a landowner under the Act would also be an allottee of the land inherited by him from his father by virtue of the definition in the East Punjab Displaced Persons (Land Resettlement) Act of 1949. Therefore it is contended that to the extent of the area inherited by him from Suba Mal as an heir he would be deemed to be an allottee thereof and the said land is in the eye of law an allotment in his favour as a displaced person. In plainer language the contention seems to be that Chetan Das, being the heir of an allottee, is as much an allottee as his father and the land inherited by him must be deemed to be allotted to him for all intents and purposes.

(4) The crux of the issue in the present case is whether the appellant can be deemed to be a displaced person who has been allotted land under section 2(3) (ii) of the Act in respect of the area of land inherited by him from his father Suba Mal. To appreciate the rival contentions, it is first necessary to set down the relevant provisions of the Act and those of the Displaced Persons (Resettlement) Act, 1949, on which learned counsel have placed reliance:—

> "2(1) 'Land-owner' means a person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and shall include an 'allottee' and "lessee' as defined in clauses (b) and (c), respectively, of section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act

XXXVI of 1949), hereinafter referred to as the 'Resettlement Act'.

* * * *.

(3) 'Permissible area' in relation to a landowner or a tenant, means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres such sixty acres :

Provided that—

(i) no area under an orchard at the commencement of this Act, shall be taken into account in computing the permissible area ;

(ii) for a displaced person—

(a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case may be,

(b) who has been allotted land in excess of thirty standard acres, but less than fifty standard acres, the permissible area shall be equal to his allotted area,

(c) who has been allotted land less than thirty standard acres, the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition.

Explanation.—For the purposes of determining the permissible area of a displaced person, the provisions of proviso (ii) shall not apply to the heirs and successors of the displaced person to whom land is allotted."

"*Displaced Persons (Land Resettlement) Act.*

2. In this Act, unless there is anything repugnant in the subject or context—

(a) * * * *.

(b) 'allottee' means a displaced person to whom land is allotted by the Custodian under the conditions published with East Punjab Government notification No. 4892/S., dated the 8th July, 1949, and includes his heirs, legal representatives and sub-lessees ;

(c) 'displaced person' means a land-holder in the territories now comprised in the province of Punjab in Pakistan or a person of Punjabi extraction who holds land in the Provinces of North-West Frontier Province, Sind or Baluchistan or any state adjacent to any of the aforesaid Province and acceding to Pakistan, and who has since the 1st day of March, 1947, abandoned or been made to abandon his land in the said territories on account of civil disturbances, or the fear of such disturbances, or the partition of the country.

(d) * * *."

As noticed already, the primary reliance of the learned counsel for the appellant is on section 2(3)(ii)(b) above-said. Now the fallacy in the argument of Mr. Ram Rang is that it loses sight of the crucial words in this provision which referred to the *'displaced person, who has been allotted land'*. This obviously requries that displaced persons to be within the ambit of this clause must be one who has been himself originally allotted land by the authorities. The plain language of this provision visualises that the displaced person must be one to whom the first allotment is originally made. In our view the phrase "who has been allotted land" cannot include within its ambit an heir of the original allottee because such an heir derives his title by inheritance and not by allotment. On closely perusing the context and the language of the provision we are of the view that inheritance from an allottee is in substance different from direct allotment received by the original allottee. In the present case there is no dispute that the original allottee was Suba Mal, the father of the appellant. It was after his death that,—*vide* mutation No. 300, the appellant and another brother of his inherited the land of the original allottee. Obviously in these circumstances without straining the language and doing violence to it it cannot possibly be said that Chetan Das was himself allotted land. Inheritance from an allottee and direct allotment to the original allottee cannot possibly be synonymous terms.

(5) The interpretation sought to be placed on the provision above-said by the appellant would also lead to anamolous results. The appellant stands in a dual capacity as he is the recipient of direct allotment and also has inherited an area from his father, the original allottee. Obviously in the same context the phrase "who has been

allotted land" cannot be given two different meanings so as to include both the direct allotment to the appellant of an area of 1 Standard Acre $14\frac{3}{4}$ Units and further what he along with his brother got by way of inheritance from the original allottee Suba Mal. Same phraseology cannot possibly cover these two substantially different situations.

(6) Another serious almost fatal hurdle in the way of the appellant is the Explanation to section 2(3) (ii) of the Act. This Explanation was not part of sub-section (3) when it was originally substituted by Punjab Act 11 of 1955. This Explanation was inserted in the Act by Punjab Act No. 14 of 1962. The purpose of the insertion of this Act appears to be plain. The object obviously was to clarify the situation that the concession of a larger permissible area which was given by the statute to displaced person was intended for the original allottees alone and not for the heirs thereto. This clarification was made in unequivocal terms by the Explanation which clearly drew a line between the original allottees and the heirs to them. It is expressly specified that the provisions of proviso (ii) would not apply to the heirs and successors of the displaced persons to whom land had been originally allotted. The contention raised by Mr. Ram Rang would in effect render the insertion of this explanation wholly nugatory and purposeless. This is so because Mr. Ram Rang has sought to contend that the heirs and the successors of the original allottee are themselves in the identical situation as the person to whom they succeed. Such an interpretation would directly tend to defeat the unequivocal intention of the legislature expressed in the plain language of the Explanation. We had pointedly asked the learned counsel to visualise a situation in which the said Explanation could take effect. It was frankly conceded by Mr. Ram Rang that he could not imagine any such situation and he in terms submitted that the Explanation was meaningless and totally ineffective. It is impossible to accede to such a contention in face of the settled canon of interpretation that every word of the statute must be given a meaning and no part thereof should be deemed to be redundant.

(7) The interpretation which we are inclined to take of the provisions above-said receives support from the observations of the Full Bench in *Munshi Ram* v. *The Financial Commissioner Haryana and others* (1). In that case apart from considering the effect of the conversion formula of 30 Standard Acres, the Full Bench also adverted to the meaning of the Explanation and the position of the heirs of

(1) 1967 P.L.R. 913.

an original allottee. Therein one Bishan Das, the original allottee had died and his sons claimed to be the direct allottees of the land as displaced persons. Repelling such a contention Shamsher Bahadur J. observed as follows:—

> "On a strict interpretation it appears that the status of a displaced person could be accorded to Bishan Dass and to him alone as it was he who had held land and had abandoned it as a result of partition. It is also to be noted that he had filed a claim under the East Punjab Refugees (Registration of Iand Claims) Act, 1948, in which a refugee has been defined in precisely the same terms as a displaced person in the Resettlement Act. Bishan Das having filed his claim as a refugee, a term which is to be equated with a displaced person, it is strange for the appllants now to urge that it is they who are displaced persons under the Resettlement Act instead of their father. Bishan Dass fulfilled the requirements of the definition of a displaced person, and having been dealt with and allotted lands as such, the language cannot be stretched in favour of his sons to treat them also as such when they are specially excepted under the explanation."

and again my learned brother P. C. Pandit, J., who was a member of the Bench observed in similar terms at page 930:—

> "The explanation (ii) to this proviso added by Punjab Act XIV of 1962 fully covered their case. This explanation says that for the purposes of determining the permissible area of a displaced person, provisions of proviso (ii) would not apply to the heirs and successors of the displaced person to whom land was allotted. As already held above, the land was actually allotted in the name of Bishan Dass who was a displaced person and the appellants were his heirs and successors."

(8) Faced with the above observations of the Full Bench, Mr. Ram Rang had faintly sought to contend that the argument which he now seeks to raise before us was not presented in that form before the Bench and that the above observations do not lay down the correct legal position. It was also argued that an appeal against the

judgment of the Full Bench case is pending in the Supreme Court. Neither of these two reasons is any warrant for deviating from the clear observations therein which are binding on us and no substantial reason has been advanced to repel the reasoning thereof.

(9) In fairness to Mr. Ram Rang we would notice the three cases on which he sought to place reliance. *Wazir Chand* v. *The State* (2) is obviously of no help to the appellant because the decision in the said case has been given much earlier to the insertion of the Explanation by the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962. The Single Bench decision of Mahajan, J. in *Roshan Das* v. *Financial Commissioner, Punjab and others* (3) is wholly distinguishable. Therein on the peculiar circumstances of the case it was held that a *benami* allotment held by a person in the name of his brother may be deemed to be in fact an allotment to the real owner himself. Obviously no such situation arises in the present case and further the Explanation to which reference has been made earlier was never the subject of interpretation in that case. On a close perusal of *Pat Ram* v. *The State of Punjab* (4) another Single Bench decision by Gurdev Singh, J., we find that neither the facts nor the ratio thereof have even a remote application to the present one.

(10) In the light of the foregoing discussion we find no merit in the contention raised on behalf of the appellant and both the appeals must fail.

(11) We find, however, merit in an ancillary prayer raised by Mr. Ram Rang. It is contended by him that the highest revenue Tribunal, namely, the Financial Commissioner had held that he was a small landowner and consequently the respondent-tenants were not entitled to purchase the land comprised in their tenancy. It is argued that in the lower revenue Courts the appellant had *bona fide* litigated on the firm position that he in fact was a small land owner and in such a situation no question of making reservation or selection

(2) C.W. No. 1122 of 1957 decided on 1st September, 1958.

(3) 1964 L.L.T. 120.

(4) C.W. No. 1433 of 1964.

of the land would arise. It is further contended that there continued to be an acute divergence of judicial opinion on the point whether the appellant would be a small or a big landholder till the matter was ultimately decided by the authoritative pronouncements of this Court recently. In such a situation it is claimed that the appellant is entitled to make a reservation of his land from the time when he is declared a big landholder and in the present case that would be by the judgment of the learned Single Judge.

(12) The contention above-said receives support from the observations in *Mana Ram and others* v. *Financial Commissioner, Haryana and another* (5) wherein it has been observed as follows:—

> "* * * *. The big land-owner cannot be denied the right to select or reserve the area for his personal cultivation and he can exercise his right only when he is found to be a big landowner. This right could not be exercised by a person who had been wrongly or rightly declared as a small land owner."

To the same effect are the observations of Sodhi J. in *Ram Chand* v. *Munshi Ram and others,* (6). In view of the above we would hold that the appellant who has now been held to be a big land holder is entitled to make the reservation in accordance with the provisions of the Punjab Security of Land Tenures Act.

(13) With these observations the appeals fail and are dismissed without any order as to costs.

P. C. Pandit, J.

I agree.

B. S. G.

(5) 1970 P.L.J. 676.

(6) 1969 P.L.J. 74.