State of Punjab and Others Vs Ram Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 13, 1979

Acts Referred: Constitution of India, 1950 â€" Article 14
Pepsu Tenancy and Agricultural Lands Act, 1955 â€" Section 5
Punjab Security of Land Tenures Act, 1953 â€" Section 13, 14, 18, 19, 31, 31

Citation: AIR 1980 P&H 18 : (1980) 1 ILR (P&H) 1

Hon'ble Judges: S.S. Sandhawalia, C.J; Harbans Lal, J

Bench: Division Bench

Judgement

S.S. Sandhawalia, C.J.
Whether sub-section (2) of Section 32BB of the Pepsu Tenancy and Agricultural Lands Act, 1955 vests such an

uncanalised and unguided powers in the prescribed authority so as to infract the guarantee of equality before law under Article 14 of the

Constitution of India, is the sole, though meaningful, question that arises for determination in this appeal under clause X of the Letters Patent.

2. As is evident from the above, the facts would pale into relative insignificance and it suffices to mention that the prescribed authority penalised the

respondent-landowner under the provisions of Section 32-BB sub-section (2) of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter

referred to as "the Act") for making default with regard to the filing of the returns there under. An area of 5 standard acres was declared surplus;

specifically for not complying in strictness with the aforesaid provision, leaving in the hands of the respondent-landowner only 25 standard acres of

land. The respondent though having statutory right of appeal under the statute, u/s 32-D sub-section (3) of the Act, failed to resort to that remedy

and instead he preferred a revision before the Financial Commissioner, which the latter declined for the reasons recorded in his order Annexure

"B" dated 9th April, 1963.

3. It deserves to 6e recalled that the petitioner had earlier preferred Civil Writ Petition No. 2066 of 1963, but not having challenged the vires of S.

32-BB of the Act therein he withdrew the same and then preferred the present writ petition, from which the proceedings arise and under which as

noticed by the learned Single Judge, the sole question raised was the vires of Section 32-BB of the Act, It is manifest that no other paint was-

urged and agreeing with the challenge posed on behalf of the respondent, the learned single Judge held that Section 32-BB (2) was violative of

Article 14 and not saved by Article 31(2B) of the Constitution. On these premises alone the writ petition was allowed and the impugned orders of

the Collector and the Financial Commissioner were quashed.

4. It appears to me that the learned counsel for the parties before the learned single Judge were slightly remiss in not presenting the matter in a

correct perspective. An analysis of the judgment would disclose that no reference or reliance was placed on Article 31A, which is obviously

attracted to the situation and'' instead some argument was sought to be built around Article 31(2B) which appears to me as of no great relevance

at all to the issue. It is plain that at the very threshold it is first to be determined whether the impugned Section 32-BB(2) of the Act is saved and

protected under Article 31A of the Constitution and, therefore, immune from any challenge under Articles 14, 19 or Article 31. The weighty

argument of Mr. I. S. Tiwana learned Additional Advocate General for the appellant State of Punjab is that Article 31A provides an impenetrable

shield around the impugned provisions against any attack on the ground of unreasonableness either under Article 14 or under Article 19.

5. Inevitably the argument must revolve around the relevant provisions of Article 31A and the impugned provisions of Section 32BB(2) of the Act.

It is, therefore, necessary to read them first:--

31A Saving of laws providing for acquisition of estates, etc.

(1) Notwithstanding anything contained in Article 13, no law providing for--

(a) the acquisition by State of any rights therein or the extinguishment or modification of any such rights,

(b) to (e)* * * *

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19

or Article 31:

PROVIDED that where such law is a law made by the legislature of a State, the provisions of this article shall not apply thereto unless such law,

having been reserved for the consideration of the President, has received his assent"".

PEPSU TENANCY AND AGRICULTURAL LANDS ACT

32-BB: Declarations supported by affidavits to be furnished by certain landowners and tenants:

(1) Every landowner or tenant required to furnish a return u/s 32-BB, whose land is situated in more than one patwar circle, shall furnish to the

Collector within a period of one month from the commencement of the Pepsu Tenancy and Agricultural Lands (Amendment) Ordinance 1953, a

declaration supported by an affidavit in respect of the lands owned or held by him in such form and manner as may be prescribed.

(2) If a landowner or tenant fails to furnish the declaration supported by an affidavit as required by sub-section (1), the prescribed authority not

below the rank of Collector may, by order direct that the whole or part of the land of such landowner or tenant, in excess of 10 standard acres to

be specified by such authority, shall be deemed to be the surplus area of such landowner or tenant, and thereupon such area shall be included by

the Collector as the surplus area of such landowner or tenant in the statement to be prepared in respect of him under S. 32-D.

PROVIDED: that nothing herein shall affect--

(a) the lands of such landowner or tenant which have been exempted u/s 32-K; or

(b) the right of such person to any compensation in respect of such surplus areas to which he may be entitled under this Act:

PROVIDED further that no such order shall be made without giving the person concerned an opportunity of being heard.

(3) Where a landowner or tenant, who is required to furnish a declaration under sub-section (1) fails to do so, the Collector may in respect of him

obtain the information required to be shown in the declaration through such agency as he may deem fit"".

6. As regards the true nature and scope of Article 31A(1)(a) it is unnecessary to dilate on this point very much on principle, because a long line of

precedent has by now established that this Article was intended to provide protection in particular to laws directed towards agrarian reform. Nor is

it in serious dispute that under the provisions of this Article 31A the acquisition and even extinction of all rights of any citizen (which inevitably

includes agricultural land) made by a law for the purpose of agrarian legislation have been made immune from any challenge under Articles 14, 19

or 31. This being so the crucial and Indeed the only question which would first arise is whether the impugned provisions of Section 32-BB (2) of

the Act is a law falling within the ambit of legislation for agrarian reforms and consequently protected by Articles 31A(1)(a).

7. At the very outset, however, it may be first noticed that herein admittedly the procedural requirement of the proviso to Article 31A(1) stands

satisfied insofar as the assent of the President has been duly secured for the impugned provisions of the AM. This being so, one may straightway

proceed to first examine the larger object and scope of the whole Act itself. Now the fact that this statute is pre-eminently directed towards

agrarian reform is writ so large upon its provisions that it might perhaps. look wasteful to elaborate the matter in any great detail or to delve into its

legislative history. Even the learned counsel for the respondent did not and perhaps could not raise any serious contention to controvert this

obvious situation. It, therefore, suffices to mention that the very preamble of the Act declares that it is to provide for certain measures of land

reforms. The definition of the permissible limit u/s 3 and the reservations for personal cultivation u/s 5 and an additional reservation in specified

cases u/s 5-A of the Act are in the very beginning clear pointers to the larger object of the imposition of a ceiling on the holding of lend by citizens.

This would obviously bring the statute under the label of legislation directed to land reform. This apart, Chapter IV-A which was introduced a year

or more later by Pepsu Act No. 15 of 1956 would leave no manner of doubt that agrarian reform is the primary intent of the framers of the statute.

This Chapter in its very heading provides that it relates to ceiling on land and acquisition and for the disposal of surplus area as a result thereof.

Section 32-A lays down the ceiling on land holding and to effectuate that purpose Section 32-B provides for an obligation of filing returns on alt

holders of land having the same in excess of the prescribed ceiling. Then follows Section 32-BS with which we are directly concerned which

obligates a further declaration supported by an affidavit an the very case of persons whose whole holding may be situated in more than one Patwar

Circle. Section 32-E then prescribes for the vesting of the surplus area in the State Government and Section 32-F empowers the Collector to take

possession thereof. It is perhaps unnecessary to notice other provisions because even those referred to above make it more than amply manifest

that the impugned Section 32-BB itself and the context in which the same is set in Chapter IV-A cannot but be deemed as a statutory provision

directly and Primarily related to measures of agrarian reform.

8. Adverting now to the particular Section 32-BB it deserves recalling that this was inserted in the statute by Punjab Act No. 9 of 1959. The

relevant part of the "objects and reasons" thereof deserves pointed notice and is in the following terms:--

To enable Government to make correct assessment of surplus area available with landowners and tenants owning or holding lands in excess of the

permissible limit (ceiling) in more than one Patwar Circle; it has been decided that every such landowner and tenant should furnish a declaration,

supported by an affidavit, in respect of his lands within a period of one month and that he should suffer penalty in the event of his committing a

default"".

A close examination of this section in its context would indicate that it first requires e declaration supported by the affidavits to be furnished both by

the landowner and the tenant, as the case may be, who holds land in excess of the ceiling area to be filed with the Collector in case of persons

holding lands in different patwar Circles. It in thus evident that virtually the preconditions for the application of ceiling laws are the returns filed by

persons on the basis of which the, prescribed authority or the Collector proceeds to determine the surplus area, if am, in their hands, It may;

therefore, be well said that this filing of returns under Ss.32-B & 32-BB (1) is the cornerstone upon which the superstructure of the ceiling law is

sought to be rested. In this context particular emphasis deserves to be placed on the fact that in cases of landowners or tenants whose land is

situated in more than one patwer circle it is the owner or the tenant of the land in whose special knowledge it is whether the land in the aggregate

held by him in all these patwar circles exceeds the prescribed permissible limit or not. But for this requirement or obligation laid on such landowner

or tenant u/s 32-BB (1) it would be extremely difficult if not impossible, for the Surplus Areas Authority to note the particulars or to determine the

agricultural area by the landowner or tenant in different villages. Therefore the specific obligation laid out is in sub-section (1) and the sanction

provided for the violation thereof is prescribed in sub-section (2) of Section 32-BB of the Act, in case where the landowner or the tenant fails to

furnish such a declaration. Therefore this section in particular must necessarily be construed as a provision having a direct nexus with the object of

agrarian reform.

9. Once it is held as it must be that the Act in general and Section 32-BB particular is directed to agrarian reforms then it inevitably follows that the

same would immediately attract the protective cloak of Article 31A(1)(a). The only ground on which the learned Single Judge chose to upset the

judgments of the authorities below was that Section 32-BB (2) offends Article 14 of the Constitution. Once the protection of Article 31A is

attracted to the impugned provision then it is obvious and indeed well settled that no challenge could be laid thereto under Article 14 as found by

the learned Single Judge and further even under Articles 19 and 31. The sole and the primary ground, therefore, upon which the learned Single

Judge based himself for nullifying the provision is thus constitutionally not available in view of the protection given to the impugned legislation under

Article 31A.

10. Principle apart, the matter seems to be equally covered by binding precedent. In the Full Bench decision reported as Pritam Singh v. State of

Punjab, AIR 1987 Punj 198, the provisions of Sections 32-FF and 32-G of this very Act were challenged as being violative of Articles 14, 19 and

31 of the Constitution, Repelling the attack on the ground that the statute was protected by Article 31A it was held:--

The effect and scope of Article 31A vis-a-vis agrarian reforms has come up for decision in a number of cases before the Supreme Court and it

has been repeatedly held by their Lordships that such provisions, though violative of Arts. 14, 19 and 31 are saved by Article 31A of the

Constitution. The very object of Art. 31A was to save such legislation from attack

It is plain that what has been said above in the context of the other provisions of this very statute is equally applicable to S. 32-BB (2). It must.

therefore, be concluded that this section is immune from constitutional attack under Arts. 14, 18 and 31.

11. Apart from the above, Mr. I. S. Tiwana, learned Additional Advocate General, Punjab for the appellant-State appears to be on equally firm

ground in contending that the view taken by the learned single Judge that the provisions of S. 32-BB(2) are arbitrary and vest uncanalised and

unguided power in the Collector is perhaps not tenable both on principle and precedent. The issue herein is pointedly with regard to the primary

purpose and object of sub-s. (2). As has already been noticed the filing of the returns and the affidavits by persons having land in excess of the

ceiling area is the very bedrock of the agrarian legislation. Mr. Tiwana was, therefore, rightly able to contend that in so far as persons having

surplus land in a single Patwar Circle are concerned the revenue Patwari or other officials of the said area can easily discover and determine the

surplus land in the hands of a particular landowner. However, with regard to persons holding land in more than one Patwar Circle and in many

cases in different Districts at one extreme corner of the State to the other it would be obviously difficult, if not impossible, for the revenue

authorities to detect the quantum and the quality of the land so held or to determine whether it exceeds the permissible limits. Therefore, the

particular necessity of a legal obligation laid on such landowners or tenants is to disclose their holding by filing the requisite returns and affidavits.

Once it is so it would equally become necessary to effectuate this purpose to provide some sanction in face of the non-filing of the return or filing of

incorrect returns by such landowners or tenants. We are ourselves of the view that indeed some sanction in this context is necessary if the very

purpose of the statute is not to be frustrated in this particular context, Once it is so then the legislature in its wisdom had chosen to lay that sanction

in sub-s. (2) of S. 32-BB and it is not easy for the Court to sit in judgment over the wisdom of the legislature in prescribing some penalty or the

quantum thereof, Mr. Tiwana rightly contended that even if the sanction under S. 32-BB may be construed as a bit stringent it was nevertheless

necessary for the laudable purpose of the agrarian reforms and, therefore, the legislature would be perfectly entitled to prescribe the same.

12. Mr. Tiwana was further able to contend that the imposition of the penalty under S. 32-BB (2) has again been deliberately kept in relatively

responsible hands and the statute itself lays down that no authority below the rank of a Collector is authorised to impose the same. This apart, the

provision itself lays down that a penal order thereunder is not to be passed unless the person concerned had been given an adequate opportunity of

being heard, Further safeguards have then been provided by the provisions of an appeal against any penalty order therein by S. 39 of the Act and

also a power of revision even thereafter. It was also rightly argued that in the matter of imposition of penalty it inevitably becomes necessary to vest

in the authority empowered to do so some discretion and when the same is vested in a responsible officer and governed by appellate end revisional

powers then it cannot and should not be characterised as either arbitrary or uncanalised or unguided. In the very nature of things the default of non-

filing of returns or the filing of deliberately incorrect returns may be due to various reasons and may lead to myriad results. It would, therefore, be

neither prudent nor possible to lay down a fixed norm in each and every case which can be inflexibly applied. Therefore the vesting of discretion in

a responsible authority is inevitable and when the same is controlled by the appellate and revisional jurisdiction i cannot easily be characterised as

either extraordinary or exceptional.

13. Rationale apart, Mr. Tiwana was further able to contend that his stand was equally well supported by precedent. In this context what deserves

highlighting is the fact that the provisions of Section 5(c) of the analogous statute of Punjab Security of Land Tenures Act are virtually in pari

materia with Section 32-BB (2) and for facility of reference this may be set down:--

5-C. (1) If a landowner or tenant fails to furnish the declaration supported by an affidavit as required by S. 5-A, the prescribed authority not

below the rank of Collector may, by order, direct that the whole or part of the land of such landowner or tenant in excess of ten standard acres to

be specified by such authority shall be deemed to be the surplus area of such landowner or tenant and shall be utilised by the State Government for

the purpose mentioned in S. 10-A:

Provided that no such order shall be made without giving the landowner or tenant concerned an opportunity of being heard.

(2) Where a landowner or tenant who is required to furnish a declaration under S. 5-A fails so to, do, the prescribed authority may in respect of

him obtain the information required to be shown in the declaration through such agency as it may deem fit.

The aforesaid section came up for consideration in Division Bench judgment in Bhagat Gobind Singh v. Punjab State AIR 1983 P&H 319 and

their Lordships thought the matter to be so plain that they summarily rejected any challenge to its constitutionality. The observations are in the

following terms:--

**** It is stated in the petition that provisions of Ss. 5-A, 5-B and 5-C are "ultra vires" the Constitution, but it is not explained how, in what

manner and in relation to which Article. At the hearing the learned counsel has addressed no argument in this respect. These sections merely

provide a machinery for the enforcement of the substantive provisions of Punjab Act 10 of 1953 for ascertainment of permissible area, and of

surplus area, end then for utilisation of surplus area There is nothing in these sections which attracts violation of any Article of the Constitution. So

this ground is without substance.

Counsel further pointed out that S. 5-C of the Punjab Security of Land Tenures Act has thereafter held unchallenged sway.

14. On this aspect also we agree with the appellant-State that the provisions of S. 32-BB (2) cannot be characterised as either arbitrary or vesting

uncanalised and unguided powers in the Collector.

15. In the light of the aforesaid discussion we are, with great respect, constrained to set aside the judgment of the learned single Judge and restore

the orders of the revenue authorities below. The appeal is allowed but in view of the difficult questions raised, the parties are left to bear their own

costs

16. Appeal allowed.