PETITIONER:
SANT SINGH NALWA & ANR.

Vs.

RESPONDENT:
THE FINANCIAL COMMISSIONER, HARYANA & ORS., ETC.

DATE OF JUDGMENT30/03/1981

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)
SEN, AMARENDRA NATH (J)

CITATION:
1981 AIR 1148 1981 SCR (3) 330
1981 SCC (2) 557 1981 SCALE (1)594

ACT:
Punjab Security of Land Tenures Act, 1953, S. 2(5) and Punjab Security of Land Tenures Rules 1953-Annexure 'A'-Classification of land according to quantity of yield and quality of soil-Whether valid.

HEADNOTE:
The appellants who were displaced persons were allotted land which was entered as sailab land in the revenue records and they became the owners of these lands. After the coming into force of the Punjab Security of Land Tenures Act, 1953, the Revenue Authorities proceeded to determine the permissible area of the land of the appellants under section 2(3). They allowed 50 standard acres of land to each of the appellants and declared the balance as surplus land.

The appellants claimed that the lands allotted to them as displaced persons fell in a portion of District Karnal which was sailab and adna sailab and according to the classification made under the Punjab Security of Land Tenures Rules, 1953 they did not carry any valuation. The Collector dismissed their application.

The Commissioner dismissed their appeals holding that the Collector was right in treating the surplus area as an unirrigated areas and valuing the same at nine annas per standard acre.

A single Judge accepting the contention of the appellant in his writ petition set aside the orders of the Revenue Court. The Financial Commissioner filed an appeal which was allowed by the Division Bench and the writ petition was dismissed.

In the appeals to this Court it was contended on behalf of the appellants that (1) whereas sub-section (5) of section 2 of the Act directed the Government to frame Rules after considering the quantity of the yield and quality of soil, in the Rules framed by the Government the main guide-lines laid down by sub-section(5) were not followed, and the classification made by the Rules under Annexure 'A' was arbitrary without determining the quantity of the yield and quality of the soil, and (2) that even if the classification made in Annexure 'A' was valid, the Revenue Courts as also the High Courts committed an error of law in misconstruing

the classification and in arbitrarily placing the surplus area in the category of unirrigated land.
331
Dismissing the appeals,
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HELD: 1(i) The view of the single Judge is not in consonance with the scheme and spirit of the Rules framed under the Act and is based on a wrong interpretation of the nature, extent and ambit of the classification made in Annexure 'A'. The classification is in accordance with provisions of sub-section (5) of section 2 of the Act and is, therefore, constitutionally valid. [337 E-F, G]

(ii) The Land Resettlement Manual prepared in 1952 by Tarlok Singh shows that the classification has been made in a very scientific manner after taking into consideration all the relevant factors. The Punjab Settlement Manual (4th Edition) prepared by Sir James M. Douie though possessing unimpeachable authenticity was made long ago and since then there have been great changes resulting from various steps taken by the Government for improving the nature and character of the land and the irrigation facilities. Even so, the classification made by Sir James Douie has been adhered to broadly and basically by Tarlok Singh in his Manual which forms the pivotal foundation for the schedule containing Annexure 'A' framed under the Rules. [335H-336 C]

(iii) The classifications of land like barani, sailab, abi, nehri, chahi etc. are clearly mentioned in the Punjab Settlement Manual. The Rule Making Authority has not in any way either departed from the principles mentioned in sub-section(5) of section 2 of the Act or violated the guidelines contained therein, nor could it be said that the classification made under the Rules has not been made according to the quantity of yield or the quality of the soil. [336 C, D-E]

(iv) If the dominant object of the act was to take over the surplus area according to the formula contained in various provisions of the Act particularly sub-sections (3) and (5) of section 2, there is no material on the record to show that the Rules do not fulfil or carry out the object contained in the Act. [336 G]

Jagir Singh and Ors. v. The State of Punjab and Ors., 44 (1965) Lahore Law Times 143, approved.

2.(i) There was no error in the classification made by the revenue authorities. So far as Karnal District was concerned, there was no sailab land at the time when the Rules were framed and the classification was made. Even if the land in question could be treated as sailab and equated with the land in Sonepat then the valuation would have been at 12 annas which could be more deterimental to the interest of the appellants. The Collector and the Commissioner have rightly treated the land as unirrigated which is the lowest category and whose valuation is given as nine annas per acre. [338C, B]

(ii) The three categories given in clauses (a), (b) and (c) of Rule 2 do not cover the land of the appellants which is sailab or adna sailab and therefore, they cannot be given the benefit of any of these three sub-clauses of the proviso. [339 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 490 and 2228 (N) of 1970.

Appeals by certificate from the Judgment and order

dated 9-10-1969 & 14-1-1970 of the Punjab and Haryana High Court in Letters Patent Appeal Nos. 553 of 1968 & 570 of 1969 respectively.

332

Hardev Singh and R.S. Sodhi for the Appellants (In both the Appeals.)

K C. Bhagat and R.N. Podar for the Respondent (in both the Appeals)

The Judgment of the Court was delivered by

FAZAL ALI, J. These two appeals by certificate are directed against judgments dated 9.10.69 and 14.1.1970 of the Punjab and Haryana High Court in Letters Patent Appeals Nos. 553 of 1968 and 570 of 1969 by which the contentions raised by the appellants in the two appeals were rejected. After the matter came up in this Court the two appeals were consolidated as they arose out of almost the same subject-matter and involved identical points. The facts which have given rise to these appeals lie within a very narrow compass and may be briefly summarised thus.

The appellants were refugees from Pakistan and Sant Singh Nalwa was allotted 63 standard acres and 8/1/4 units in village Marghain and another area of 19 standard acres and 5 units in Garden Colony in Jundla which were entered as sailab land in the revenue records. The other appellant, Kartar Kaur, was allotted 96 acres, 3 bighas and 13 biswas in the same district. These lands were given to the appellants as they were displaced persons. After the appellants had become owners of the lands, the State of Punjab passed the Punjab Security of Land Tenures Act, 1953, (hereinafter referred to as the 'Act') which later applied to Haryana also, under which every land owner whether a displaced person allottee or otherwise could not retain any area of land which fell beyond the extend prescribed by sub-section (3) of s. 2 of the Act.

After the coming into force of the Act the revenue authorities proceeded to determine the permissible area of the land of both the appellants so that the area which was found to be in excess may be taken over by the State after paying the compensation as provided in the Act and the Rules made thereunder, viz., The Punjab Security of Land Tenures Rules, 1953 (hereinafter called the 'Rules'). In order to determine the permissible area the Act contains certain provisions by which the entire area held by a land owner has to be converted into standard acres on the basis of a formula contained in sub-section (5) of s. 2 of the Act which defines 'standard acre' thus:

> " 'Standard acre' means a measure of area convertible into ordinary acres of any class of land according to the

333

> prescribed scale with reference to the quantity of yield and quality of soil."

Similarly, the relevant portion of sub-section 5-a which defines 'Surplus Area' may be extracted thus:

> " 'Surplus Area' means the area other than the reserved area, and, where no area has been reserved, the area in excess of the permissible area selected (under section 5-B or the area which is deemed to be surplus area under sub section (1) of section 5C) (and includes the area in excess of the permissible area selected under section 19-B) but it will not include a tenant's permissible area;.. "

So far as the appellant, Sant Singh Nalwa, was concerned, the revenue authorities held that he was entitled to retain 50 (fifty) standard acres being the permissible

area and the balance of 13 standard acres and odd units was declared as surplus. Similarly, in the case of the other appellants, Kartar Kaur, she was allowed to retain 50 standard acres and about 15 standard acres of land was taken over being surplus. In the instant appeals, there is no dispute that the formula by which the extent of the land in possession of the appellants had been converted into standard acres was not in accordance with the provisions of the Act. The only point that was canvassed before the revenue authorities as also in the High Court centered round the question of the nature of the land and the valuation thereof for the purpose of assessing compensation. The appellants case was that as the lands which had been declared surplus or for that matter the entire lands/allotted to them as displaced persons fell in a portion of District Karnal which was sailab and Adna sailab and therefore according to the classification made under the Rules they did not carry any valuation.

Sant Singh Nalwa challenged before the Collector the validity of declaration of the surplus area and contested the valuation put by the Collector. The Collector dismissed the application by his order dated 13.3.1963 and held that 13 standard acres and 6 units of the land had to be declared surplus. Against this order, Sant Singh filed an appeal before the Additional Commissioner, Ambala Division where the only point raised by him was that the area was not correctly evaluated. His main grievance was that the area in question was equated with Barani land and valuated at the rate of unirrigated area as given in the valuation statement of the Karnal District under Annexure 'A' of the Rules. The main contention of

334

the appellants before the Commissioner as also before us was that as the surplus area does not fall under any of the categories mentioned in Annexure 'A' it carried no valuation at all. The Commissioner, however, dismissed the appeal holding that the collector was right in treating the surplus area as an unirrigated area and valuing the same at 9 annas per standard acre.

Thereafter, the appellant filed a writ petition before the High Court which was allowed by the Single Judge by his order dated July 23, 1963. The Single Judge set aside the orders of revenue courts and accepted the contention of the appellant. Against this order, the Financial Commissioner filed an appeal under Letters Patent before a Division Bench of the High Court which by its judgment dated 9.10.69 allowed the appeal and dismissed the writ petition filed by the appellant before the High Court.

Similarly, Kartar Kaur, the other appellant also filed an appeal before the Additional Commissioner, Ambala Division regarding the surplus land and having failed there, filed a writ petition in the High Court on 10.2.1965 which was ultimately dismissed on 10.10.69 and the appeal under Letters Patent against the said order of the Single Judge was also dismissed on 14.1.70.

Thus, the position is that both the appellants failed to get any redress from the High Court which ultimately confirmed the orders of the Revenue courts.

The learned counsel for the appellants raised two contentions before us. In the first place, it was argued that the Revenue courts as also the High Court were in error in holding that the surplus area was rightly evaluated in as much as the classification made under the Rules was ultra vires as being in direct disobedience to the mandate contained in sub-section (5) of s. 2 of the Act. In other

words, it was argued that whereas sub-section (5) directed the Government to frame Rules after considering the quantity of the yield and quality of soil, in the Rules framed by the Government under its rule making power given to it by the Statute the main guidelines laid down by sub-section (5) were not followed and the classification made by the Rules under Annexure 'A' was arbitrary without determining the quantity of the yield and the quality of the soil. We might mention here that this contention appears to have found favour with the Single Judge in the writ petition filed by the appellant, Sant Singh Nalwa but the judgment of the Single Judge'

335

as already indicated, was reversed by the Division Bench in the Letters Patent appeal.

Secondly, it was contended that even if the classification made in Annexure 'A' was valid, the Revenue courts as also the High Court committed an error of Law in misconstruing the classification and in arbitrarily placing the surplus area in the category of unirrigated land.

Coming now to the first point raised by the appellants regarding the constitutionality of the Rules framed under the Act, after hearing the counsel for the parties we find no merit in this contention. Sub-section (5) of section 2 of the Act merely requires that the Rule should classify the land according to the quantity of the yield and quality of the soil. The Rules have classified the land by preparing a schedule consisting of various Annexures which divide the lands according to the quantity of yield and quality of the soil into various categories. A perusal of the Annexures to the Rules clearly shows that the valuation statement and the class of land has been described not only as being applicable to one place or the other but in view of the entire topography of every district or tehsil, it is manifest that in a peculiar State like Punjab and Haryana diverse factors, namely, the situation or position of the land, its nearness to the river, the irrigation facilities, the ravages of flood, the fertility of the land and its produce and various other similar circumstances have to be taken into consideration in determining the nature and character of the land. As far back as 1952, a Land Resettlement Manual was prepared by Tarlok Singh, which was relied upon by the judgment of the Single Judge and at p. 287 the land has been classified in following categories:

"Chahi and Abi
Chahi
Nehri
Unirrigated
Nehri Non-Perennial or other Nehri
or Nehri-Inundation"

This classification varies from District to District and Tarlok Singh has also given the approximate value of the land. After going through the Land Resettlement Manual we find that the classification has been made in a very scientific manner after taking into consideration the relevant factors. Even Sir James M. Douie in his Punjab Settlement Manual (4th Edition), which is undoubtedly a work of

336

unimpeachable authenticity, as pointed out by the Single Judge, had made a classification which is almost similar to the one made by Tarlok Singh. It is, however, obvious that the Punjab Settlement Manual by Sir Douie was made long ago and since then there have been great changes resulting from various steps taken by the Government for improving the

nature and character of the land and the irrigation facilities. It is, therefore, not possible for us to rely on the Manual prepared by Sir Douie as the Single Judge had done because that would not be an objective assessment. Even so, the classification made by Sir James Douie has been adhered to broadly and basically by Tarlok Singh in his Manual which forms the pivotal foundation for the schedule containing Annexure 'A' framed under the Rules. The classification of land like barani, sailab, abi, nehri, chahi, etc., are clearly mentioned in para 259 of Sir James's Punjab Settlement Manual which Sarkaria, J., as he than was, rightly classed as the Bible of Land Revenue Settlement. The point, however, that has to be considered in this case is whether the rule making authority has in any way departed from the mandate given or the guidelines contained in the Act. There does not appear to be any material to show that the Rule Making Authority has in any way either departed from the principles mentioned in sub-section (5) of s. 2 of the Act or violated the guidelines contained therein. The appellants were not able to show that the classification made under the Rules has not been made according to the quantity of the yield or the quality of the soil. Neither any affidavit nor any document has been produced before the courts below to prove this fact. In this state of the evidence the Single Judge was not justified in striking down the Rules as being ultra vires.

Moreover, it is obvious that the Rules were made under section 27 of the Act which authorises the Government to make rules for carrying out the purposes of the Act. If the dominant object of the Act was to take over the surplus area according to the formula contained in various provisions of the Act particularly sub sections (3) and (5) of s.2, there is no material on the record to show that the Rules do not fulfil or carry out the object contained in the Act. Moreover, in Jagir Singh and Ors. v. The State of Punjab and Ors. a Division Bench of the Punjab High Court while considering a similar contention rejected the argument that the Annexure framed under the Rules was bad as it did not consider the nature

337

and quality of the Soil. In this connection, the Division Bench observed thus:-

> "It is thus clear that the formation of an assessment circle necessarily takes into consideration the various factors mentioned by the learned author and those include the nature of soil and its quality apart from various other factors affecting the yield. The circumstance therefore, that in the Annexure the State of Punjab has been split up into assessment circles, as determined at the time of the Settlement, is highly significant, and leaves no doubt that Settlement, is highly significant and leaves no doubt that the nature and the quality of the soil inherent in the formation of an assessment circle have been taken into consideration for valuing the land for purposes of its conversion into standard acres. At the same time, the existing sources of irrigation have all been taken into consideration. It is, in the circumstances, impossible to agree that the Annexure in any manner violates the direction contained in the Punjab Security of Land Tenures Act.
>
> We are, in the circumstances, unable to agree that the disputed rule and Annexure 'A' attached to the Rules are ultra vires the Punjab Security of Land Tenures Act."

We find ourselves in complete agreement with the observations made by the High Court and endorse the same. With due respect, the view taken by Sarkaria J., as he then was (the single Judge in the instant case) is not at all in consonance with the scheme and spirit of the Rules framed under the Act and is based on a wrong interpretation of the nature extent and ambit of the classification made in annexure 'A'.

We therefore fully agree with the Division Bench judgment of the High Court that the classification is in accordance with the provisions of sub section (5) of s. 2 of the Act and is therefore, constitutionally valid. The first contention put forward by the counsel for the appellants is therefore overruled.

Coming now to the second contention that even if the classification is correct, the revenue authorities were wrong in treating the surplus land in dispute as unirrigated area. We find no substance in this argument. The relevant Annexure which gives the surplus land in District Karnal is to be found at page 308 of the compilation of Punjab & Haryana Local Acts (vol VII) where while lands
338
classified as Chahi, Abi, Nehri, Unirrigated and Nehri/Non-perennial are mentioned, there is no mention of sailab or adna sailab lands. Whereas at page 306 in the same volume there is no sailab land except in tehsil Sonepat. Thus, it appears that so far as Karnal District is concerned there was no sailab land at the time when the Rules were framed and the classification was made. Even if the land in question could be treated as sailab and equated with the land in Sonepat then the valuation would have been at 12 annas as shown at p. 306 of the aforesaid compilation, in which case this would be more detrimental to the interests of the appellants. The Collector and the Commissioner have therefore rightly treated the land as unirrigated which is almost the lowest category and whose valuation is given as 9 annas per acre. We, therefore, find no error in the classification made by the revenue authorities.

We are unable to agree with the counsel for the appellants that as the land in question did not fall in any of the heads of classification made in District Karnal they will carry no value at all because this is directly opposed to the various schemes of the classification made under the Rules. A subsidiary contention in this very argument was that the land should have been valued in accordance with Rule 2, provisos (a) to (c), which may be extracted thus:

> "2. Conversion of ordinary acres into standard acres. The Equivalent, in standard acres, of one ordinary acre of any class of land in any assessment circle, shall be determined by dividing by 16, the valuation shown in Annexure 'A' to these rules for such class of land in the said assessment circle;
>
> Provided that the valuation shall be-
>
> (a) in the case of Banjar Qadim land, one-half of the value of the class previously described in the records and in the absence of any specific class being stated, one-half of the value of the lowest barani land.
>
> (b) in the case of Banjar Jadid land, seven-eighth of the value of the relevant class of land as previously entered in the records, or in the absence of specified class in the records of the lowest barani land; and
>
> (c) in the case of cultivated thur land subject to waterlogging, one-eighth of the value of the class

of land shown in the records or in the absence of any class, of the lowest barani land."

339

The three categories given in clauses (a), (b) and (c) as extracted above do not at all cover the land of the appellants which is sailab or adna sailab and therefore they cannot be given the benefit of any of these three sub-clauses of the proviso. For these reasons, the second contention is overruled.

The result is that we find no merit in the appeals which are accordingly dismissed but in the circumstances without any order as to costs.

N.V.K. Appeals dismissed.

340