

# GURBAX SINGH

v.

## STATE OF PUNJAB & ORS.

October 25, 1966

[K. SUBBA RAO, C. J., R. S. BACHAWAT AND J. M. SHELAT, JJ.]

*Punjab Security of Land Tenures Act (10 of 1953), ss. 5(1), 5-B, 9(1) and 18—Rules 3, 5, and 6—Reservation under s. 5(1), procedure for—'Reserved area' under s. 5(1) and 'selected area' under s. 5-B whether the same—Right of tenant to buy land under s. 18 when area 'selected' under s. 5-B—Effect of s. 9(1)(i).*

The appellant was a tenant of the 3rd respondent since 1950 in respect of 49 bighas of land situated in the Punjab. He applied for the purchase of those lands under s. 18 of the Punjab Security of Land Tenures Act, 1953, and rule 23 of the Rules made thereunder. The Assistant Collector allowed his application and on appeal the Collector confirmed the order. The Additional Commissioner and the Financial Commissioner however took the view that the 3rd respondent had not 'reserved' the land under s. 5(1) of the Act but had 'selected' it under s. 5-B and therefore the appellant had no right to purchase the land under s. 18. The appellant's writ petition against the Financial Commissioner's order was dismissed *in limine* and he came to this Court by special leave.

It was contended on behalf of the appellant that (i) the Financial Commissioner had committed an error of law in holding that the 3rd respondent had not reserved the land under s. 5(1) when in fact he had not done so; and (ii) a landlord who did not 'reserve' any area under s. 5(1) of the Act but 'selected' the area under s. 5-B of the Act could not evict the tenant under s. 9(1) of the Act and therefore the tenant had the right under s. 18 to purchase the said land in his possession for the prescribed period.

**HELD :** (i) A valid reservation can only be made by the landowner under s. 5(1) of the Act, read with the rules made thereunder, when the particulars contained in the application sent by him to the Patwari were verified by the latter. In the present case the landowner sent an application to the Patwari in the prescribed form, but there was nothing on the record to show that the Patwari verified the correctness of the said particulars. In view of this it could not be said that the Financial Commissioner's finding that there was no reservation under s. 5(1) was vitiated by an error of law. [929 E]

(ii) The purpose of the Act must be borne in mind in construing the relevant provisions of the Act. The two concepts on which the entire Act revolves are the 'permissible area' and the 'surplus area'. Out of the permissible area the landowner is empowered to reserve land not exceeding the said area and the balance is defined as surplus area. This reservation is to enable the land owner to sustain himself by self-cultivation. The object of the surplus area is to confer rights in respect thereof on the tenants. This twofold object of the Act cannot be achieved unless the landlord has reserved some land in the manner prescribed by s. 5 of the Act. But for one reason or another, if the reservation has not been made by the land-owner, s. 5-B gives him another opportunity to do so. [932 C-D]

Though 'reserved area' has been defined there is no definition of 'selected area'. This indicates that the Legislature did not introduce a new concept of 'selected area' in the Act. Even a comparison of ss. 5 and 5-B

**A** shows that the process of reservation and selection are almost the same. Under s. 5(1) reservation is made by selection of the land and under s. 5-B the landowner selects his reserved area. The expressions 'reservation' and 'selection' involve the same process and indeed to some extent they are convertible for one can reserve land by selection and select land by reservation. [932 E.G]

**B** It is true that under s. 9(1)(i) a tenant of the area reserved under the Act can be evicted and there is no other clause enabling the landowner to evict a tenant from the selected area. But under s. 9(1)(i) the expression used is 'the area reserved under the Act, and not 'reserved area'. The land selected by the landowner out of the permissible area can legitimately be described as the area reserved under the Act. If that be the interpretation of s. 5(1), s. 5-B and s. 9(1), it follows that under s. 18 the tenants cannot claim to purchase the land from the landowner for it is included in the reserved area of the landowner. [932 H; 933 A]

**C** *Karam Singh v. Angrez Singh*, (1960) 39 Lah. L.T. 57 and *Angrej Singh v. Financial Commissioner, Punjab, Chandigarh*, 64 Punj. L.R. 736, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 708 to 1964.

**D** Appeal by special leave from the judgment and order dated April 3, 1962 of the Punjab High Court in Civil Writ No. 394 of 1962.

*Bhawani Lal and Mohan Lal Agarwal*, for the appellant *Gopal Singh*, for respondent No. 3.

**E** The Judgment of the Court was delivered by

**Subba Rao, C.J.** This appeal by special leave raises the question of the true scope of the expression "selected area" within the meaning of s. 5-B of the Punjab Security of Land Tenures Act, 1953, (Act No. 10 of 1953), as amended by Act No. 46 of 1957, hereinafter called the Act.

**F** The facts are not in dispute and they are as follows: The appellant is a tenant under respondent No. 3 since the year 1950 in respect of 49 bighas of land. As he was in continuous occupation of the said land for a period of 6 years, he applied under s. 18 of the Act and r. 23 of the Rules made thereunder in the prescribed form to the Assistant Collector, 1st Grade, Fazilka, for the purchase of the said land.

**G** The Assistant Collector held—it does not appear that the 3rd respondent questioned the right of the appellant to purchase the said land—that the appellant was entitled to purchase the land and determined the price payable by the appellant to the 3rd respondent in a sum of Rs. 20,630/ and ordered that the said amount was payable in 10 equal six-monthly instalments. On appeal to the Collector, Ferozepure, the order of the Assistant Collector was confirmed. On a revision petition filed by the 3rd respondent before the Additional Commissioner, Jullunder, the said Commissioner took the view that the said area was selected by the

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3rd respondent under s. 5-B of the Act and, therefore, the appellant had no right to purchase the same under s. 18 of the Act. On that view, he submitted the case to the Financial Commissioner, Punjab, who, agreeing with the view expressed by the Additional Commissioner, Jullunder, held that the 3rd respondent did not reserve the said area under s. 5(1) of the Act and, therefore, he was entitled to select the same under s. 5-B of the Act and that the appellant had no right to purchase the same under s. 18 thereof. In the result, he accepted the revision. The appellant filed a petition under Art. 226 of the Constitution in the High Court of Punjab at Chandigarh for quashing the order of the Financial Commissioner, Punjab, but the said petition was dismissed *in limine*. Hence the present appeal. The scope of this appeal should necessarily be confined to the ambit of the writ petition in the High Court. It is, therefore, necessary for the appellant to establish that the order of the Financial Commissioner was without jurisdiction or was vitiated by an error of law apparent on the record.

As there was no question of want of jurisdiction in the Financial Commissioner to dispose of the revision, it was contended that the said order was vitiated by two errors of law on the face of the record: firstly, it was argued that the Commissioner committed an obvious error in holding that the 3rd respondent had not reserved the said land under s. 5(1) of the Act when as a matter of fact he had done so; and secondly, it was said that a landlord who did not reserve any area under s. 5(1) of the Act but selected the area under s. 5-B of the Act, could not evict the tenant under s. 9(a) of the Act and, therefore, the tenant had the right under s. 18 to purchase the said land in his possession for the prescribed period.

The first question, therefore, is whether the 3rd respondent reserved the disputed land under s. 5(1) of the Act. The material parts of the relevant provisions of the Act and the Rules made thereunder read thus:

*Section 2(4):* "Reserved area" means the area lawfully reserved under the Punjab Tenants (Security of Tenures) Act, 1950 (Act XXII of 1950), as amended by President's Act of 1951," hereinafter referred to as the "1950 Act" or under this Act.

*Section 5(1):* Any reservation before the commencement of this Act shall cease to have effect and subject to the provisions of sections 3 and 4 any land-owner who owns land in excess of the permissible area may reserve out of the entire land held by him in the State of Punjab as land-owner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form and manner to the Patwari of the estate in which the land reser-

**A** ved is situate or to such other authority as may be prescribed.

**B** The land under this sub-section can only be reserved by the land-owner by intimating his selection in the prescribed form and manner to the Patwari of the estate concerned.

**C** *Rule 3—Intimation for reservation—*A land-owner having land in excess of the permissible area and intending to make a reservation in pursuance of the provisions of sections 3, 4 or sub-section (1) of section 5 of the Act shall notify, in duplicate, his reservation to the Patwari of the Estate in which the land is situated in the form in Annexure 'B' to these rules.

*Rule 5.* The reservation by the land-owner shall be deemed to have been effected as soon as the application is received by the Patwari subject to the verification of all details as hereinafter provided.

**D** *Rule 6—Procedure for dealing with reservation forms.—*The Patwari shall after verifying all the particulars given in the forms, retain one copy and forward the other copy to the Tehsildar with his report as to the correctness of the particulars referred to.....

**E** It will be seen from the said provisions that a valid reservation can only be made by the land-owner under s. 5(1) of the Act, read with the rules made thereunder, when the particulars contained in the application sent by him to the Patwari were verified by the latter. In this case the land-owner sent an application to the Patwari in the prescribed form, but there is nothing on the record to show that the Patwari verified the correctness of the said particulars. The Financial Commissioner in his order observed:

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**G** "Having examined the case carefully, I find that the Exhibit P.X. on which the learned Advocate for the respondent has relied is really no proper form as was required under section 5 of the Punjab Security of Land Tenures Act. On the other hand, it is only a mere report. The proper forms in this case were filed in only in accordance with the provisions of section 5-B and they are on the file."

It has not been shown that the finding is vitiated by any error of law; indeed, as we have indicated earlier, there is no report by the Patwari verifying the particulars given by the appellant.

**H** The second contention turns upon the relevant provisions of the Act. It would be convenient at the outset to collect the said provisions at one place.

*Section 2(3):* "Permissible area" in relation to a land-owner 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:

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*Section 4:* "Reserved area" means the area lawfully reserved under the Punjab Tenants (Security of Tenures) Act, 1950 (Act XXII of 1950), as amended by the President's Act of 1951, hereinafter referred to as the "1950 Act" or under this Act.

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*Section 2 (5-A):* "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 5-C 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;

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*Section 5. (1)* Any reservation before the commencement of this Act shall cease to have effect and subject to the provisions of sections 3 and 4 any land-owner who owns land in excess of the permissible area may reserve out of the entire land held by him in the State of Punjab as land-owner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form and manner to the Patwari of the estate in which the land reserved is situate or to such other authority as may be prescribed:

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*Section 5-B. (1)* A land-owner who has not exercised his right of reservation under this Act, may select his permissible area and intimate the selection to the prescribed authority within the period specified in section 5-A and in such form and manner as may be prescribed:

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Provided that a land-owner who is required to furnish a declaration under section 5-A shall intimate his selection along with that declaration.

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*Section 9. (1)* Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant:—

(i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner.

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A           Section 18(1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a land-owner other than a small land-owner—

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

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The gist of the provisions may be stated thus: "Permissible area" is defined and the landlord is empowered to demarcate a reserved area for his self-cultivation out of the permissible area and intimate his selection in the prescribed manner to the Patwari of the estate. The area other than the reserved area is defined as "surplus area". No land-owner is competent to eject a tenant unless he is a tenant in the reserved area and if he has made one or other of the defaults mentioned in s. 9 of the Act. The State Government shall be competent to utilize the surplus area in the re-settlement of the tenants ejected. The tenant who has been in continuous occupation of the land comprised in his tenancy for a minimum period of 6 years shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area. But, for one reason or other, some of the land-owners did not make the reservation in the manner prescribed under s. 5 of the Act and the rules made thereunder. Presumably to give relief to such land-owners s. 5-B which was inserted by the 1957 Act, enabled them to intimate the selection to the prescribed authority within the period prescribed therein, *i.e.*, within a period of six months from the commencement of the Amending Act. If the area selected under s. 5-B could be equated with the reserved area, the land-owner could evict the tenant from that area for the purpose of his self-cultivation. In that event, it would not be a surplus land which could be allotted for the evicted tenants; and it could not also be purchased by the tenants at their option. We are not concerned in this case with small holders.

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On this analysis the short question that falls to be decided is whether a reserved area can be equated with an area selected by the land-owner under s. 5-B of the Act.

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To answer the said question it is necessary to know briefly the scope and purpose of the Act. The purpose of the Act has been neatly summarized by the Financial Commissioner of Punjab in *Karam Singh v. Angrez Singh*(1) thus:

"The main purpose of that Act seems to be to :

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(i) provide a "permissible area" of 30 standard acres to a land-owner/tenant, which he can retain for self-cultivation.

(1) (1960) 39 Lah. L.T. 57.

- (ii) provide security of tenure to tenants by reducing their liability to ejection as specified in section 9, A
- (iii) ascertain surplus areas and ensure re-settlement of ejected tenants on those areas,
- (iv) fix maximum rent payable by tenants, and
- (v) confer rights on tenants to pre-empt and purchase their tenancies in certain circumstances. B

These purposes must be borne in mind in construing the relevant provisions of the Act. The two concepts on which the entire Act revolves are the "permissible area" and the "surplus area". Out of the permissible area the landowner is empowered to reserve land not exceeding the said area and the balance is defined as the surplus area. This reservation is to enable the landowner to sustain himself by self-cultivation. The object of the surplus area is to confer rights in respect thereof on the tenants. This two-fold object of the Act cannot be achieved unless the landlord has reserved some land in the manner prescribed under s. 5 of the Act. But, for one reason or other, if the reservation was not made by the land-owner, s. 5-B gives him another opportunity to do so. But it is said that if that be the intention of the Act, there was no reason why the same phraseology used in s. 5(1) was not used in s. 5-B. Though "reserved area" has been defined, there is no definition of 'selected area'. This indicates that the Legislature did not introduce a new concept of "selected area" in the Act. Even a comparison of ss. 5 and 5-B shows that the process of reservation and selection are almost the same. Under s. 5(1) the land-owner, after making the reservation, intimates his selection in the prescribed form to the Patwari. It is, therefore, manifest that the reservation is made by the process of selection. So too, under s. 5-B, a land-owner, who has not exercised the right of reservation under the Act, may select his reserved area and intimate his selection. The wording of s. 5-B indicates that the selection therein is a selection similar to that in s. 5(1) and the selection in s. 5-B is because of default made in reserving by selection under s. 5(1). In terms s. 5-B gives the land-owner another chance, because he has not exercised his right of reservation earlier under s. 5(1). The expressions "reservation" and "selection" involve the same process and indeed, to some extent, they are convertible, for one can reserve land by selection and another can select land by reservation. The argument based on s. 9 is also without force. It is true that under s. 9(1) (i) a tenant of the area reserved under the Act can be evicted and there is no other clause enabling the land-owner to evict a tenant from the selected area. It is said that "reserved area" is defined and that "selected area" does not fall under that definition and that, therefore, the effect of s. 9 is that a tenant in the selected area cannot be evicted. But, it may be

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- A noticed that under s. 9(1) (i). the expression "reserved area" is not used, but instead the expression "the area reserved under the Act" is mentioned. As we have said earlier, the land selected by the land-owner out of the permissible area can legitimately be described as the area reserved under the Act. If that be the interpretation of s. 5(1), s. 5-B and s. 9(1), it follows that under s. 18
- B the tenants cannot claim to purchase the land from the land-owner for it is included in the reserved area of the land-owner.

- If the contrary interpretation be accepted, it defeats the purpose of the Act. Tenants could be induced and they would be permitted to purchase permissible area to the grave detriment of the land-owners. The entire concept of surplus area would be eroded.
- C When asked what purpose ss. 5-B(1) and 5-B(2) would serve, the learned counsel said that in the case of selected area the land-owner can enjoy the land through the tenant for six years. That would be an insignificant benefit for the landowner and it could not have possibly been the reason for introducing voluntary and compulsory selection of land out of the permissible area under
- D s. 5(1) and 5(2) of the Act. It is true that under s. 5(1), the land-owner has to include in his reserved area certain specified categories of land, but under s. 5-B, his selection is not subject to any such restrictions. It may be that one of the objects of the amendment was to enlarge the discretion of the land-owner in the matter of reservation or it may be that in the matter of selection the land-owner has to conform to the provisions of s. 5(1). We leave open
- E that question for future decision. Our view is consistent with that accepted by Financial Commissioner, Punjab, in *Karam Singh v. Angrez Singh*<sup>(1)</sup> and the Division Bench of the Punjab High Court in *Angrez Singh v. Financial Commissioner, Punjab Chandigarh*<sup>(2)</sup>. We have gone through the two judgments and we are satisfied that the opinion expressed therein is correct.

- F In the result, the appeal fails and is dismissed with costs.

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*Appeal dismissed.*

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(1) (1960) 39 Lah. L. T. 57.

(2) 64 Punj. L. R. 736.