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ARJAN SINGH AND ANR.

v.

THE STATE OF PUNJAB AND ORS.

October 8, 1968

B [J. C. SHAH, G. K. MITTER, K. S. HEGDE AND A. N. GROVER, JJ.]

Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act XVI of 1962 *ss.* 1(2) *and* 7—*Expression "this Act" in s.* 7—*if referred to principal Act or Amendment Act—Whether s.* 32-*KK introduced into the principal Act came into force on* 30*th October* 1956 *in view of provisions of s.* 1(2) *or from commencement of principal Act.*

C The Pepsu Tenancy and Agricultural Lands Act XIII of 1955 came into force on March 6, 1955, whereby it was provided that every land owner would be entitled to select any parcel or parcels of land not exceeding the permissible limit, which was fixed at 30 standard acres. The principal Act was amended in 1956 by the inclusion of Chapter 4A which provided for the Government taking over the surplus lands in the hands of a land owner. Another Amendment Act III of 1959 which was made operative from January 19, 1959 incorporated into the principal Act
D s. 32(FF) which provided that except in certain specified cases no transfer or other disposition of land effected after 21st August 1956 could affect the rights of the State Government under the Act. In 1962 the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act XVI of 1962 was passed. Section 7 of this Act introduced a new s. 32-KK into the principal Act whereby it was provided that land owned by a Hindu undivided family would be deemed to be land of one land owner
E and, a partition of land owned by such a family shall be deemed to be a disposition of land for the purposes of s. 32-FF. Section 1(2) of the Amendment Act provided that Sections 2, 4, 5, 7 and 10 "shall be deemed to have come into force on the 30th day of October, 1956 and the remaining provisions of this Act shall come into force at once".

The first Appellant together with his son the second Appellant and two other sons were members of a joint Hindu family which owned agri-
F cultural lands in Punjab. The Appellant's family divided their family property by a Registered Partition Deed on September 6, 1956 and necessary changes were thereafter made in the mutation register. After Act III of 1959 came into force, the Collector of Sangrur started proceedings under Chapter 4A of the Act for determining the surplus lands in the hands of the appellant. Despite the representations of the Appellants, the Collector ignored the partition effected in the family and held that about 18 standard acres were surplus in their hands. Appeals filed
G by the Appellants before the Commissioner, Patiala Division and the State Government were rejected. The Appellants then challenged the orders of these authorities by a writ petition under Art. 226 of the Constitution, but this was dismissed by a Single Judge of the High Court who took the view that as s. 32-KK had become a part of the principal Act, the words "this Act" in that section must refer to the principal Act and not to Section 7 of the Amendment Act. A Division Bench of the High Court dismissed an appeal following an earlier decision of the Court in *Bir Singh*
H *and Ors.* v. *The State of Punjab and Ors.* (1963) P.L.R. 961. In the appeal to this Court there was no dispute that if the partition entered into in the family was taken into consideration, the lands held by the different sharers would be within the permissible limits.

HELD : The orders impugned in the writ petition must be quashed.

A reading of the various provisions of the 1962 Act show that the legislature intended that s. 7 of that Act which introduced s. 32-KK into the principal Act should be deemed to have come into force on the 30th October 1956. The words "this Act" in s. 7 of the Amendment Act (s. 32-KK of the principal Act) were intended to refer to the Amendment Act and not to the principal Act. It is true that ordinarily when a section is incorporated into the principal Act by means of an amendment, reference in that section to "this Act" means the principal Act. But in view of sub-s. (2) of s. 1 of the Amendment Act of 1962 that construction had become impermissible. Every statute has to be construed as a whole and the construction given should be a harmonious one. It was not permissible for the Court to proceed on the basis that the legislature had enacted sub-s. (2) of s. 1 of the Amendment Act 1962, by oversight. If any mistake had crept into that section it was for the legislature to correct the same. [352 C—F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 463 of 1966.

Appeal by special leave from the judgment and order, dated March 30, 1964 of the Punjab High Court in Letters Patent Appeal No. 24 of 1963.

E. C. Agrawala and *Champat Rai*, for the appellant.

Harbans Singh and *R. N. Sachthey*, for the respondents.

The Judgment of the Court was delivered by

Hegde, J. Though several questions of law were raised in this appeal by special leave, after hearing the Counsel for the parties on one of those questions, namely on what date s. 32(KK) of the Pepsu Tenancy and Agricultural Lands Act 1955 (Act No. XIII of 1955) (to be hereinafter referred to as the Principal Act) should be deemed to have come into force, we did not think it necessary to hear the Counsel for the parties on the other questions raised in the appeal.

Before examining the question of law referred to hereinbefore it is necessary to set out the material facts.

The second appellant is the son of the first appellant. The appellants alongwith Charanjit Singh and Darshan, the two other sons of the first appellant were members of a joint Hindu family. That family owned agricultural lands in the village Hathoa, Tehsil Malerkotla, District Sangrur. The principal Act came into force on March 6, 1955. The preamble to that Act says that it is an Act to amend and consolidate the law relating to tenancies of agricultural lands and to provide for certain measures of land reforms. That Act provided that :

> "subject to the provisions of s. 5 every land owner owing land exceeding thirty standard acres shall be en-

A titled to select for personal cultivation from the land held by him in the State as a land owner any parcel or parcels of land not exceeding in aggregate area the permissible limit and reserve such land for personal cultivation by intimating his selection in the prescribed form and manner to the Collector."

B The permissible limit is thirty standard acres. Under that Act, there was no provision for Government taking over the lands that were in excess of the permissible limits. The appellants' family divided their family properties as per a registered partition deed on September 6, 1956. Thereafter necessary changes in the mutation register were made. The principal Act was C amended in 1956 as per Amendment Act 15 of 1956 which came into force, it appears several alienations were effected by to the principal Act Chapter 4A which provides for Government taking over the surplus lands in the hands of a land owner *i.e.* the lands in excess of the permissible limit. After that amendment came into force, it appeals several alienations were effected by D the land owners to get out of the reach of the law. Neither the principal Act nor the Amendment effected in 1956 prohibited any alienation. Then came the Pepsu Tenancy and Agricultural Lands (Amendment) Act, No. III of 1959 which was made operative from January 19, 1959. Among other provisions that Amendment Act incorporated into the Act s. 32(FF) which E says :

"Save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance or up to 30th July 1958 by a landless person or a small landowner not being a relation as prescribed of the person making the transfer F or disposition of land, for consideration up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit, no transfer or other disposition of land effected after 21st August, 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposi- G tion :"

This Section has a proviso which reads :

"Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation H for it, to the person from whom he received it."

In 1962 the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act, No. XVI of 1962 was passed. It

came into force on July 20, 1962. Two sections in that Act which are relevant for our present purpose are ss. 7 and 1. Section 7 reads :

> "Insertion of new section 32-KK in Pepsu Act 13 of 1955.—After section 32-K of the principal Act, the following section shall be inserted, namely :—
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> "32-KK. Land owned by Hindu undivided family to be deemed land of one landowner.—Notwithstanding anything contained in this Act or in any other law for the time being in force,—
>
> (a) where, immediately before the commencement of this Act, a landowner and his descendants constitute a Hindu undivided family, the landowned by such family shall, for the purposes of this Act, be deemed to be the land of that landowner and no descendant shall, as member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right; and
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> (b) a partition of land owned by a Hindu undivided family referred to in clause (a) shall be deemed to be a disposition of land for the purposes of section 32-FF."
>
> *Explanation* :—In this section, the expression "descendant" includes an adopted son."

Section 1 sets out the short title and commencement of that Act. That Section reads :

> "This Act may be called the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act, 1962.
>
> (2) Section 2, section 4, section 5, section 7 and section 10 shall be deemed to have come into force on the 30th day of October 1956 and the remaining provisions of this Act shall come into force at once."

After the Pepsu Tenancy and Agricultural Lands (Amendment) Act No. III of 1959 came into force, the Collector of Sangrur started proceedings under Chapter 4A of the Act for determining the surplus lands in the hands of the appellants. In those proceedings despite the representations of the appellants, the Collector ignored the partition effected in the family of the appellants in determining the surplus lands in the hands of the members of the family. He considered them as one unit and on that basis held that eighteen standard acres and 5½ units of lands are surplus in their hands. There is no dispute that if the partition entered into in the family had been taken into consideration, the lands

A held by the different sharers are within permissible limit. The appellants unsuccessfully went up in appeal against that order to the Commissioner, Patiala Division. Against the order of the Commissioner, the appellants appealed to the State Government but that appeal was rejected on September 1, 1961. Thereafter the appellants filed Civil Writ No. 1418 of 1961 in the High Court
B of Punjab at Chandigarh under Art. 226 of the Constitution challenging the decisions of respondents 1 to 3. The learned Single Judge who heard that petition dismissed the same on November 27, 1962. He held that as s. 32(KK) had become a part of the principal Act the words "this Act" in that section must refer to the principal Act and not to s. 7 of the Amendment Act. The decision of the learned Single Judge was affirmed by a Divi-
C sion Bench of that Court. That bench followed an earlier decision of that Court in *Bir Singh and Ors.* v. *The State of Punjab and Ors.*(1). At this stage we may mention that in the Punjab High Court at one stage there were conflicting decisions on the question of law under consideration. It is not necessary to refer to those decisions as grounds on which they differed are referred to
D in *Bir Singh's* case(1). The decisions which have taken the same view as taken by the High Court in this case have ignored the significance of s. 1(2) of the 1962 Amendment Act. They have exclusively focussed their attention on s. 32(KK) and the supposed reasons for its enactment.

It is a well settled rule of construction that no provision in
E a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended.

To accept the line of reasoning adopted by the learned Judges
F of the High Court who decided this case is to completely ignore sub-s. (2) of s. 1 of the 1962 Amendment Act. That Section in specific terms says that s. 32(KK) (s. 7 of the Amendment Act) shall be deemed to have come into force on the 30th day of October 1956. We fail to see how we can ignore this mandate of the legislature. That provision clearly brings out the intention
G of the legislature. There is no ambiguity in it. It is not possible to adopt any rule of construction which would necessitate the Court to ignore that provision. It is not possible to accept the conclusion of the High Court that s. 32(KK) must be deemed to have come into force on the date the principal Act came into force namely on March 6, 1955. That is not even the case of the respondents. Clause (b) of s. 32(KK) which is the clause
H relevant for our present purpose would be a meaningless provision unless the same is read along with s. 32(FF) which was for

(1) [1963] P.L.R. 961.

the first time incorporated into the principal Act in 1959 though it affects all transfers and other dispositions of land effected after August 21, 1956. It is not the case of the respondents that the transfers effected or the partitions made before August 21, 1956 are within the mischief of s. 32(FF) or s. 32(FF) read with s. 32(KK). Therefore there is no basis for saying that s. 32(KK) has been given retrospective effect as from the date the principal Act came into force.

On a reading of the various provisions of the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act, 1962, it appears to us that the legislature intended that s. 7 of that Act which introduced into the principal Act s. 32(KK) should be deemed to have come into force on the 30th October 1956. Evidently the draftsman when he drafted s. 7 of that Act had in his mind the Amendment Act and not the principal Act. The words "this Act" in s. 7 of the Amendment Act (s. 32-KK of the principal Act) in our opinion were intended to refer to the Amendment Act and not to the principal Act. It is true that ordinarily when a Section is incorporated into the principal Act by means of an amendment, reference in that Section to "this Act" means the principal Act. But in view of sub-s. (2) of s. 1 of the Amendment Act of 1962 that construction has become impermissible. Every statute has to be construed as a whole and the construction given should be a harmonious one. It may be that the legislature intended that s. 32(KK) should be deemed to have come into force on the 30th day of October 1956, on which day s. 32(FF) became a part of the principal Act. It is possible that the legislature did not intend to give to that Section the same retrospective effect as it had given to s. 32(FF). It is not permissible for us to proceed on the basis that the legislature had enacted subs. (2) of s. 1 of the Amendment Act 1962 by oversight. If any mistake had crept into that Section it is for the legislature to correct the same and it is not for this Court to proceed on the supposition that the same was enacted by oversight.

For the reasons mentioned above this appeal is allowed and the orders impugned in the Writ Petition are quashed. The respondents shall pay the costs of the appellants both in this Court as well as in the High Court.

R.K.P.S. *Appeal allowed.*