

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**(I) CWP No.14308 of 1990
Date of decision : 05.08.2015**

Arjun Dass and others

... Petitioners

Versus

State of Haryana and others

... Respondents

**(II) CWP No.3198 of 1993
Date of decision : 05.08.2015**

Balbir Singh and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present : Mr. Som Nath Saini, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. L.S. Sidhu, Advocate for respondent No.3.

Mr. J.S. Thind, Advocate for respondent
Nos.7, 12 to 15 (in CWP No.3198 of 2015)

Jitendra Chauhan, J.

The above noticed two writ petitions, filed under Articles
226/227 of the constitution of India, are being disposed of by this
single judgment of mine, as common questions of law and fact

are involved therein. However, the facts are being derived from CWP No.14308 of 1990, for brevity.

2. The brief facts of the case (CWP No. 14308 of 1990) are as follows:-

Vide order dated 06.06.1961 passed in case 'State versus Pokhar Dass', Collector, Surplus Area, Hissar declared land with Pokhar Dass (land owner), to the extent of 85.14 Ordinary Acres (OA) = 36.76 Standard Acres (SA), as surplus. Against the order dated 06.06.1961, the Pokhar Dass filed an appeal before the Commissioner. Vide order dated 26.02.1962, Commissioner, Ambala Division, Ambala remanded the case for fresh adjudication by Collector, Surplus Area. The case was again decided by Collector, Surplus Area, Hissar, holding that after deducting the area under the old tenants and the area acquired by the State Government and decrease in the land due to consolidation, Pokhar Dass (allottee) is left with 155.04 OA. Being a displaced person, Pokhar Dass (allottee), in accordance with the provisions of Section 2(3)(a) of Punjab Security of Land Tenures Act, 1953, is entitled to keep a permissible area of 100 OA. Bhagwan Dass, *Mukhtiar-e-Aam* of Phokhar Dass was examined and he stated that the allottee be allowed to keep his permissible area at village Madh and the land situated at village

Hukmanwali be declared as surplus. Accordingly vide order dated 25.09.1962 land of Pokhar Dass situated at village Hukmanwali was declared as surplus. Land owner i.e. Pokhar Dass did not filed any appeal against order dated 25.09.1962 and as such the matter attained finality.

In the meantime the tenants of Pokhar Dass namely Atma Ram and Gulla Ram filed purchase applications in the court of Assistant Collector, Ist Grade, Hissar. Both these applications were accepted and the tenants were allowed to purchase the land. The land owner i.e. Pokhar Dass filed appeals before Collector Hisar, in both cases. In the case of Gulla Ram appeal was accepted and his purchase application was ordered to be dismissed by the Collector, whereas, in case of Atma Ram the order of purchase was upheld and the appeal filed by Pokhar Dass was ordered to be dismissed. In case of Atma Ram, land owner Pokhar Dass filed a revision petition in the court of Commissioner, Ambala Division, Ambala, whereas, on the other hand, after his purchase application was dismissed in appeal, Gulla Ram filed a revision petition before Commissioner, Ambala Division, Ambala. Vide order dated 20 February, 1964 the Revision Petition filed by the land owner Pokhar Dass was dismissed by Commissioner, Ambala Division, Ambala and the purchase in favour of

Atma Ram was upheld. Simultaneously, vide another order dated 20.02.1964 the Revision Petition filed by tenant Gulla Ram was accepted and the order dated 19.10.1962, passed by Ld. Assistant Collector, whereby purchase application was allowed, was upheld and order dated 06.03.1963, whereby the appeal filed by land owner was allowed, was set aside. As a result the Ld. Commissioner, Ambala Division allowed the application for purchase filed by both the tenants. Against the order dated 20.02.1964, the land owner Pokhar Dass went in ROR before Financial Commissioner. The Financial Commissioner, vide order dated 08.04.1965, upheld the right of the tenants to purchase, however, remanded the case to Commissioner, Ambala Division for fresh determination of surplus area with land owner Pokhar Dass. Commissioner, Ambala Division, Ambala further remitted the case to Collector, Surplus Area to determine the surplus area a fresh. It was ordered that after fresh assessment of surplus area the case will come up before Commissioner, Ambala Division, regarding purchase, on 11.07.1967.

The case was taken by Collector, Surplus Area for re-determining of the surplus area. Vide order dated 08.11.1967, the Collector Surplus Area filed the case on the ground that Pokhar Dass, landowner, has less than 50

standard acres of land. Against the order dated 08.11.1967 passed by Collector, Surplus Area, the tenants filed appeal before the Commissioner, Ambala Division and vide order dated 26.03.1969, he remanded the case to Ld. Collector, Surplus Area, for a fresh adjudication. On 09.09.1971 the case was instituted before Collector, Surplus Area, afresh, after its remand. However, during the pendency of the case, on dated 26.10.1974 Pokhar Dass (land owner) died. Vide order dated 03.07.1975 the Collector, Surplus Area held that since prior to dated 26.10.1974 no surplus area case was pending, as such, the same is not exempted under Section 33 of Haryana Ceiling on Land Holdings Act, 1972, thus the status of heirs is not to be determined under Punjab Security of Land Tenures Act, 1953. However, to the contrary, the case was still decided under the Punjab Security of Land Tenures Act, 1953 and it was held that, at the time of his death, Pokhar Dass was holding 82.23 Standard Acres of land, however, after his death, on 26.10.1974, his 6 legal heirs have inherited $82.23/6 = 13.70$ Standard Acres each. The same is less than 30 S.A., thus, the heirs of land owner Pokhar Dass have become small land owners.

Against the order, dated 03.10.1975, passed by Collector, Surplus Area, Fatehabad, an appeal was filed by

the tenant Atma Ram before Commissioner, Hisar Division. The same was dismissed on 07.05.1984. Against the order passed in appeal, the tenant Atma Ram went in ROR (ROR 371 of 1983-84) before the Financial Commissioner, who, vide impugned order dated 08.06.1989, remanded the case for fresh adjudication, on the basis of his observation passed in another case i.e. Balbir Singh versus State of Haryana (R.O.R. 339 of 1983-84), which are listed as under:-

- (i) As far as the quantum of surplus area of Milkhi Ram landowner, is concerned, it stood finally determined as per order of 10.1.1964 against which he, in no way agitated. Only point taken by one of the tenants against this order was that the surplus land allotted to him, which was earlier out of the reserved area was included in the reserved area in January, 1964 and that should be undone. If the contention of the tenant was correct it only meant taking some area out of the reserved area of the landowner and giving him reserved area at some other place preferably under his self cultivation, if there was any. It involved nothing more.

Therefore, those resettled, under Section 9A of

Punjab law being ejectable from the reserved area or the area of the small landowner have a right to continue on that land. This is confirmed in view of Supreme Court in Rameshwar and others Versus Jot Ram and another (1975 PLJ, page 455).

(ii) The death of the land owner during the pendency of proceedings under Punjab Law if it took place after December, 1972 cannot have any effect to diminish the surplus area under Punjab Law. The surplus is to be determined in this case as if Mukh Ram did not die. Liability of surrender to the State had arisen on 23.12.1972 and it should be enforced as on that day.

(iii) As regard the purchase of lands given in Annexure 'Ka' measuring 347.56 ordinary acres it can ordinarily be exempted only if the purchase was under Section 18 of Punjab Law or if it is by allottees as per provisions of resettlement scheme. It cannot be exempted if it is not covered by section 8 sub section (1) clause (a) or (b) of Haryana Law. This be

determined afresh after giving notice to the parties concerned as per provisions of law.

- (iv) The land measuring 94.18 ordinary acres left with the landowner as per Annexure 'Ga' has been done so incorrectly. The entitlement of the landowner be determined under Haryana Law as per position on 23.12.1972 as if Mukh Ram was alive. The landowners are not entitled to anything more.

3. Being aggrieved against these orders, these two writ petitions have been filed by the heirs of the landowners.

4. It has been argued by the Ld. Counsel representing the petitioners that where the surplus area has not been finally determined and the matter is pending in appeal or revision before the Revenue Courts or before this Court under Article 226 of the Constitution or before the Supreme Court of India, death of the land owner would cause lead to a presumption of constructive possession of surplus area which would be required to be re-determined in the hands of the heirs of the deceased landlord. Reliance placed upon the Full Bench judgment of this Court in the case of '*Sardara Singh and others vs. The Financial Commissioner and others*', 2008(2) RCR (Civil) 744.

5. It has further been argued on behalf of the petitioners that if during the pendency of purchase application u/s 18 of the Punjab Security of Land Tenures Act the original big landowner dies (during the pendency of purchase proceedings), the heirs of such landowner become small landowners and the tenant cannot purchase the tenancy rights. Reliance has been placed upon the judgment of Hon'ble Apex Court in '**Kanaya Ram vs. Rajinder Kumar and others**', 1985 RRR 436.

6. *Per contra*, it has been argued on behalf of State of Haryana as well as the private respondents that the area of landowner (Pokhar Dass) was declared surplus on 06.06.1961 by Collector, Surplus Area. He filed an appeal before Commissioner, Ambala Division. The case was remanded for fresh determination. Again, vide order dated 25.09.1962, the area of Pokhar Dass was declared surplus. Against this order no appeal was filed by the land owner. Thus the matter attained finality and the same cannot be reopened subsequently as the land declared surplus already stood vested in the State. Reliance is placed upon the judgment, dated 13.02.2009, passed by this Hon'ble Court in '**State of Haryana vs. Smt. Ram Kali**', passed in LPA NO. 389 of 2003 where the Hon'ble Division Bench has held,

“xxx Moreover, it has been judicially settled by the Apex Court that the land declared surplus under the Punjab Security of Land Tenures Act, 1953 cannot be reopened after it stood vested in the State. In the present case, the land was declared surplus in the year 1966 and the said order, declaring the land surplus, has become final. No appeal till date has been filed against the order declaring the land surplus. The land stood allotted to the tenants in the meanwhile. The order vide which the land became surplus, has become final. The same cannot be allowed to be reopened. Xxx”

7. It has been further argued on behalf of the respondents that the tenants applied for the purchase of ownership under Section 18 of the Act. Primary authority found them eligible, price was fixed, entire installments were paid and corresponding entries were made in the revenue record. Tenants are thus deemed to have become the owner. Subsequent death of the landowner and devolution of rights upon heirs will not affect the right of ownership already acquired by the tenants. Reliance is placed upon the judgment of Hon’ble Apex Court in ‘**Rameshwar and others vs. Jot Ram and others, AIR 1976 SC 49**’, where the Hon’ble Apex Court has held,

“xxx. Where each of the tenants under a large landowner applied for purchase of ownership under Section 18 (1) of the Act and the primary authority found them eligible, fixed the price and installments of payment and they duly deposited the first installment as required by Section 18 (4), the tenants shall be deemed to have become the owners of the land by virtue of Cl. (b) of Section 18(4) and the subsequent death of the landowner during the pendency of appeal by him against the order for purchase and the devolution of the rights of the landowner on his heirs will not affect the rights of ownership already acquired by the tenants under Section 18(4). Xxx”.

8. The first question that needs to be determined in the present case is: - **What is the effect of death of Pokhar Dass (land owner) during the re-instituted proceedings before the Collector, Surplus Area?**

9. The contention of the Ld. Counsel for the petitioner that after the death of landowner the inheritance opened and, as per Section 10-A of Punjab Security of Land Tenures Act, 1953, the same would cause affectation of surplus area which would be required to be re-determined in the hands of the heirs of the

deceased landlord deserves to be repelled in view of Section 10-B of the Act.

10. After the land was declared surplus, it was fully utilized by an allotment made in favour of Atma Ram (tenant) to whom possession was also delivered in 1964. Mutation about the proprietary rights acquired by Atma Ram with regard to the area purchased by him is entered as No. 2765, dated 23.01.1964. Atma Ram remained in possession over the area in question throughout his life by personally cultivating the land and after his death his LRs., who were ordered to be brought on record vide order dated 16.07.2014, have been in possession.

11. Section 10-A and 10-B of the Punjab Act provide as under:-

"10-A. (a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected. or to be ejected, under clause (i) of sub-section (1) of section 9.

(b) Notwithstanding anything contained in any other law for the time being in force and 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 no transfer or other disposition of land which is comprised in surplus area at the

commencement of this Act. shall affect the utilization thereof in clause (a).

Explanation - Such utilization of any surrplus area will not affect the right of the land-owner to receive rent from the tenant so settled.

(c) For the purposes of determining the surplus area of any person under this section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored.

10-B. Saving by inheritance not to apply after utilization of surplus area. - Where succession has opened after the surplus area or any part thereof has been utilized under clause (a) of section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that section shall not apply in respect of the area so utilised.

12. While Sub-clause (a) of Section 10-A authorizes the State Government or any officer empowered by it in that behalf to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under Section 9(1)(i) of the Act, Clause (b) creates an exemption in favor of land which, in the meantime, is inherited by the heirs on the death of the land owner. The land so inherited cannot be utilized. But if the land has already been

utilized, then the exemption will not be available to the heirs as provided by Section 10-B.

13. Part IV of the Rules made under the Punjab Act deals with the resettlement of tenants ejected or liable to ejectment. Rule 13 indicates the procedure for dispossession of tenants liable to ejectment under Section 9(1)(i). Rule 14 provides for resettlement of tenant on the application of the landowner. Rule 15 provides for resettlement on the application of the tenants. *Suo motu* proceeding for resettlement of tenant can be initiated by the circle Revenue Officer under Rule 16. Rule 17 indicates the procedure which is to be followed by the Circle Revenue Officer while Rule 18 provides for the procedure for allotment of land. Rules 20-A, 20-B, 20-C and 20-D, which are relevant for purposes of the present case, provide as under:-

"20-A. Issue of certificates. - Every tenant shall be given a certificate in Form K-6 describing clearly the land allotted to him. A copy each of the certificate shall be sent landowner on whose land the tenant is to be resettled, and another copy shall be retained on the file for record.

20-B. Delivery of possession. - (1) After orders of allotment of any surplus area have been passed the Circle revenue Officer, shall move the Collector for passing necessary orders directing the landowner or the tenant, as the case may be to deliver possession of

the land in his surplus area to the Circle Revenue Officer, who shall be deemed to be an officer empowered by the Government, under section 19-C, for the purpose of delivery of possession.

(2) Every tenant resettled on the surplus area shall be bound to take possession of the land allotted to him within a period of two months of the date on which demarcation of the land is made at site in his presence or within such extended period, as may, for reasons to be recorded in writing, be allowed by the Circle Revenue officer. The possession of the land shall be delivered to the tenant by the Circle Revenue Officer himself.

(3) The possession of the land on which a tenant is resettled shall ordinarily be given after the crops are cut. If, however, the Circle Revenue Officer deems it necessary to deliver possession of the land to any tenant before the crops are cut a statement showing the crop and the area under the same shall be prepared by the Patwari before the possession is taken by the tenant. A copy of the statement shall be furnished to the landowner as well as to the tenant.

20-C. Conditions of resettlement. - The tenant who is resettled under this part- (a) shall be tenant of the landowner in whose name the land in question stands in the revenue records;

(b) shall be liable to pay the same amount of rent as is customary in that estate for such land subject to the maximum fixed under section 12 of the Act; and

(c) shall in respect of the land upon which he is resettled execute a Qabuliyatt or a Patta as given in Annexure 'C' appended to the Punjab Security of Land Tenures Rules, 1953, in favour of the landowner before he is put in possession of the land.

20-D. Consequences of not taking possession. - In case, a tenant does not take possession of surplus area allotted to him, for resettlement within the period specified in sub-rule (1) of rule 20-B, the allotment shall be liable to be cancelled and the area allotted to such tenant may be utilized for resettlement of another tenant.

14. The statutory provisions quoted above indicate that the surplus land has to be allotted to a tenant already ejected or likely to be ejected for resettlement. After allotment of the surplus area to a tenant, a Certificate in Form K-6, describing clearly the land allotted to him, is issued, copies whereof are sent to the Patwari concerned as also the landowner on whose land the tenant is to be resettled. Thereafter, possession of the allotted area is delivered to the tenant who is bound to take possession within a period of two months of the date on which demarcation of the land is made at the site in his presence or within such extended period as may be allowed by the Circle Revenue Officer. Once a tenant has been resettled, he becomes the tenant of the landowner and becomes liable to pay rent to that owner, Rule 20-C(c) further requires that the tenant so resettled, shall execute a Kabuliyat or a Patta on the

Proforma given in Annexure 'C' appended to the Rules in favour of the landowner. But the execution of Kabuliyat or Patta has to be done before the tenant is put in possession of the land. Resettlement has to take place in the manner indicated in the above provisions. Once the process is completed, the surplus land shall be treated to have been utilised within the meaning of Section 10-A(a) of the Punjab Act.

15. It has been specifically mentioned in the written statement filed on behalf of Atma Ram (respondent No. 3) as follows:-

xxx. The sale in favour of Atma Ram were complete and entries were made in the Jamabandi and the answering respondent Atma Ram is still continuing in possession of this land. It is also pertinent to mention that mutation about the proprietary rights acquired by the answering respondent with regard to the area purchased by him is entered as No. 2765 dated 23.1.1964 when Haryana was still a part of Punjab”.

16. There is no rebuttal, in the form of replication, on behalf of the petitioner. As such, whether all the steps indicated in the Rules, referred to above for utilization of land, were observed and followed or not, is a question which has not been raised at all by the petitioner. Even otherwise, this Court would normally have

not entered, in the present proceedings under Article 226 of the Constitution, into those questions of fact. Thus it must be implied that the mandatory requirements indicated in the Act and the Rules were followed.

17. After perusing the record of the case it becomes apparent that the land of Shri Pokhar Dass declared surplus in September, 1962 had been allotted and possession given to the allottees. It may be possible that in the process of allotment and utilization of surplus land some of the technicalities like execution of Kabuliat Nama or delivery of possession within 2 months of the date of allotment may not have been fully complied with. However, as has been held by the Hon'ble Apex Court in ***KRISHNA KUMARI & ANR V. STATE OF HARYANA & ORS*** [1998] RD-SC 569 (27 November 1998) these are mere technicalities and a poor tenant cannot be deprived of his right to allotment of surplus land merely because some of these technicalities about delivery of possession and utilization of land had not been complied with. In fact, delivery of possession being the official act of the Revenue Circle Officer as indicated in Rule 20-B, a presumption has to be raised that all antecedent formalities were duly complied with.

18. Moreover, the land was declared surplus by the Collector (SA) Hissar vide order dated 25.09.1962. This order of the

Collector became final and has not been challenged before any Court. Once, the order has become final under the Punjab Security of Land Tenures Act, 1953, there is no provision under the Haryana Ceiling on Land Holdings Act, 1972 to re-open the same as has been held by the Division Bench of this Court in the case of '**Janga vs. Zora Singh**' 2003(4) RCR (Civil) 811 which relied on the judgment of the Apex Court in '**Amar Singh and others v. Ajmer Singh and others**' 1994(3) Punjab Law Reporter. It has been held by this Court as under:-

“433. The Hon'ble Supreme Court in the case of Amar Singh (supra) while holding that there is no provision under the Haryana Ceiling on Land Holdings Act, 1972 to re-open the proceedings finalised under the Punjab Act, observed as follows :-

“We have heard learned counsel for the parties.

The High Court fell into patent error in allowing the writ petition on the basis of the ratio in Jaswant Kaur and anr. v. State of Haryana and anr., 1977 PLJ 230. The said case is not even remotely relevant to the facts of the present case. The learned Judge failed to appreciate that in the present case the surplus proceedings under the Punjab Act had been finalised as back as 1961/1962. There is no provision under the Haryana Act to reopen the surplus determined under the Punjab Act.

Based on wholly erroneous assumptions the learned Judge allowed the writ petition. The Letters Patent Bench of the High Court mechanically dismissed the appeal in limine."

19. Thus viewed, it is apparent that the land in question did not remain un-utilized. A reading of Section 12(3) of Haryana Ceiling on Land Holdings Act, 1972 leaves no doubt that there is no scope for re-opening or re-determining the land where proceedings for declaration of surplus are under the Punjab Act have become final. Section 12(3) of the Act is, therefore, necessary to be viewed.

"Section 12(3) - The area declared surplus or tenant's permissible area under the Punjab law and the area declared surplus under the Pepsu law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab law or the Pepsu law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration."

20. Thus, as per Section 12(3) of the Haryana Act, the land would automatically vest in the Government, once, the proceedings for declaration of the surplus area under the Punjab Act have attained finality. The Haryana Act does not give any scope to re-determine the land for which proceedings stand finalized under the Punjab Act. Hon'ble Apex Court in Amar Singh's case (supra), while considering the question of re-opening the surplus area declared under the Punjab Act, concluded as follows :-

“Learned counsel for Ajmer Singh, respondent, has contended that although the surplus proceedings against Maru Ram was finalized in the year 1961/1962 but the possession of the surplus land remained with Ajmer Singh, respondent, till 1981 when the same was handed over to the appellant. Simply because the surplus land declared under the Punjab Act was not utilized and it remained in possession of Ajmer Singh-respondent would not make any difference so far as the position in law is concerned. The language of Section 12(3) is unequivocal and clear. According to it the surplus land declared under the Punjab Act stood vested in the State. The non- utilization of surplus land till the

date of vesting (December 23, 1972) is of no consequence and makes no difference. The view we have taken is supported by the judgment of this Court in Smt. Bhagwanti Devi and another v. State of Haryana and another 1994(1) Scale 861. We, therefore, allow the appeal, set aside the impugned judgment of learned single judge of the High Court dated September 23, 1987 and also the order of the Letter Patent Bench dated November 3, 1987. Civil Writ Petition No.163 of 1986 filed by Ajmer Singh in the High Court stand dismissed. The appellant shall be entitled to his cost which we quantify as Rs. 11,000/-. Costs to be paid by respondent-Ajmer Singh."

21. As the suit land was already surplus on the appointed day under the Haryana Act, it vested in the State of Haryana under Section 12(3) of the Haryana Act, which provides that lands declared surplus under the Punjab Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day. Thus, even if it is presumed that the suit land had not vested in the joint State of Punjab, but as it was declared surplus under the Punjab Act, it vested in the State of Haryana, with the enactment

of the Haryana Act, under the provisions of Section 12(3) of the Haryana Act. Even otherwise, it would be necessary to reiterate that neither Pokhar Dass (landowner) nor any of his heirs ever impugned the correctness of the order declaring the suit land surplus.

22. The principles of law laid down by this Court in Full Bench judgment rendered in the case of '*Sardara Singh and others vs. The Financial Commissioner and others*', 2008(2) RCR (Civil) 744 are not applicable to the facts of the present case, in as much as:

(i) The Full Bench was constituted with the following reference by the Hon'ble Division Bench:-

“There appears to be a marked distinction between the cases where there is a determination of surplus area under the provisions of the Punjab Security of Land Tenures Act, 1953 and the one that may come into being on the dint of the provisions contained in the Punjab Land Reforms Act, 1972. Be that as it may, if learned Single Judge has doubted the decision of Division Bench of this Court in Jasbir Kaur's case (supra) which judgment, as mentioned above, is of the Division

Bench and which is directly on the point involved in this case, the present matter need to be determined by a Full Bench and not by a Division Bench.”

Section 11(5) & (7) of the Punjab Land Reforms Act, 1972

The reference was addressed in the pretext of Sections 11(5) and 11(7) of Punjab Land Reforms Act, 1972 and the same is concluded with the following line:-

“Such an interpretation would harmoniously construct the provisions of Section 11(5) and 11(7) and also give a proper interpretation to both the views expressed in Ajit Kaur's case”.

- (ii) The facts of the case of ‘Sardara Singh and others vs. The Financial Commissioner and others’, were totally different from the facts of the present case. The facts of that case have been summed up by the Hon’ble Full Bench in the following manner:-

Death of landowner

9. After Hari Singh's death on May 29, 1981, the petitioners applied on July 27, 1981 pleading that as Hari Singh had died, succession had opened in their favour. Therefore, the question of surplus area was required to be determined again as Hari Singh's estate came to vest in them.

10. According to the petitioners, Hari Singh had remained in cultivating possession of his entire holding and no part of it had been taken possession of under the Act, his ownership had never ended and the land in dispute did not vest in the State. The petitioners had become owners of land by inheritance, the question of surplus was required to be determined again in their hands.

11. The heirs of the original landowner continued in possession of the land inherited by them, even though it was declared surplus in the hands of their predecessor-in-inter-est. Therefore, the argument was that the land had not yet vested in the State Government, free from all encumbrances. It would vest only on

the date on which possession was taken. This was provided by Section 8 of the Act. As possession had not been taken, according to Section 9 the land did not vest in the State Government.

As has been noted hereinabove, in the present case, the sale in favour of Atma Ram was already complete, all installments were already paid, Atma Ram was already put in possession and, as such, the land had already vested in the State Government, free from all encumbrances, during the life time of Pokhar Dass.

23. As a result of the aforementioned discussion, it is held that once the land in the hands of allottee (landowner) has been declared as surplus by Collector (S.A.) Hisar, and such order has attained finality, the subsequent death of the allottee (landowner) Pokhar Dass would be of no consequence.

24. The second question that needs to be determined in the present case is: - **What is the effect of death of original big landowner (Pokhar Dass) during the pendency of purchase proceedings?**

25. Section 18 of the Punjab Security of Land Tenures Act, 1953, which deals with the rights of certain tenants to purchase land, reads as under:-

"18. Rights of certain tenants to purchase land.- (1)
Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of 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.

(ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amounts to six years or more, or

(iii) who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment.

shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within Clause (i) or Clause (ii) at any time, and in the case of any tenant falling within Clause (iii) within a period of one year from the date of the commencement of this Act:

Provided that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect of the land or any portion thereof if he had sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried:

Provided further that if the land intended to be purchased is held by another tenant who is entitled to pre-empt the sale under the next preceding section, and who is not accepted by the purchasing tenant, the tenant in actual occupation shall have the right to pre-empt the sale.

(2) A tenant desirous of purchasing land under Sub-section (1) shall make an application in writing to an Assistant Collector of First Grade having jurisdiction over the land concerned and the Assistant Collector after giving notice to the land-owner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall determine the value of the land which shall be the average of the prices obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made.

(3) The purchased price shall be three-fourths of the value of land as so determined.

(4)(a) The tenant shall be competent to pay the purchase price either in a lump sum or in six monthly

instalments not exceeding ten in the manner prescribed.

(b) On the purchased price or the first instalment thereof, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall, where the tenant is not already in possession, and subject to the provisions of the Punjab Tenancy Act (XVI of 1887) put him in possession thereof.

(c) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall, on application by the person entitled to receive it, be recoverable as arrears of land revenue.

(5) If the land is subject to a mortgage at the time of the purchase, the land shall pass to the tenant unencumbered by the mortgage, but the mortgage debt shall be a charge on the purchase money.

(6) If there is no such charge as aforesaid the Assistant Collector shall, subject to any directions which he may receive from any court, pay the purchase money to the land-owner.

(7) If there is such a charge, the Assistant Collector shall, subject as aforesaid, apply in the discharge of the mortgage debt so much of the purchase money as is required for that purpose and pay the balance, if any, to the land-owner, or retain the purchase money pending the decision of a Civil Court as the person or persons entitled thereto."

26. An analysis of the provisions reproduced above shows that notwithstanding anything to the contrary contained in any law, usage or contract, a tenant can apply for purchase of land if he proves that (a) he has been in possession of the land under his tenancy for a continuous period of six years on the date of application, (b) his landlord is not a small land-owner, and (c) the land sought to be purchased by him is not included in the reserve area of the land-owner. If the application of the tenant satisfies the aforementioned conditions, then the concerned Assistant Collector, 1st Grade is required to determine value of the land which shall be the average of the price obtaining for similar land in the locality during 10 years immediately preceding the date of application. He is required to give notice to the land-owner and all other persons interested in the land.

27. Hon'ble Apex Court in '**Kanaya Ram vs. Rajinder Kumar and others**' 1985 RRR 436 has drawn a distinction in two situations (i) where first installment of the purchase price, as required by Section 18(4)(a) of the Act has been deposited and (ii) where the case has not gone beyond the stage of mere application under Section 18(1). The Hon'ble Apex Court thus held:-

“10. Much reliance was placed on the decision of this Court in Rameshwar's case, supra, but it is

clearly distinguishable on facts. There, the Court was dealing with a case where the tenants who had applied for purchase of their holdings under Section 18(1) of the Act had in compliance with the order made by the Prescribed Authority in their favour, made the requisite deposit of the first instalment of the purchase price as required by Section 18(4)(a) and thereupon were deemed to have become owners of the lands by reason of the legal fiction contained in Clause (b) thereof, The Court was therefore dealing with a case where the tenants had acquired a vested right to purchase the lands and the case had gone beyond the stage of a mere application under Section 18(1). The Court accordingly held that the death of Teja, the large landholder, during the pendency of the appeal before the Financial Commissioner, on the happening of which event inheritance opened resulting in his legal heirs becoming small landholders, would not nullify or annul the order made by the Prescribed Authority in favour of the tenant who had acquired a vested right to the grant of relief on the day they made their application under Section 18(1) of the Act. The observations made by Krishna lyer, J. that the right

of parties are determined by the facts as they exist on the date the action is instituted must be read in the context in which they were made and do not lay down any rule of universal application. The decision in each case must depend on its own facts. In the present case, Harditta Ram, the predecessor-in-title of the appellants, when he made the application for purchase under Section 18(1) of the Act, had a mere hope or expectation of, or liberty to apply for acquiring a right, and not a 'right acquired or accrued' under Section 18(1). It has been held ever since the leading case of Abbot v. Minister for Lands LR (1895) AC 425 that a. mere right to take advantage of the provisions of an Act is not an accrued right. Abbot's case has been followed by this Court in a number of decisions. In such a situation, the Court is bound to take into consideration the subsequent events and mould the relief accordingly. The decision in Rameshwar's case clearly turned on the legal fiction contained in Section 18(4)(b) of the Act and the death of the large landholder Teja during the pendency of the appeal before the Financial Commissioner on which inheritance opened and his legal heirs became small landholders, could not

impair the vested rights acquired by the tenants by virtue of the order passed by the Prescribed Authority and the deposit by them of the first instalment of the purchase price as required under Section 18(4)(a).”

28. As has been noticed herein above, in the present case the sale in favour of Atma Ram was already complete, all installments had been already paid, he (Atma Ram) had been already put in possession. Thus subsequent death of the landowner and devolution of rights upon heirs will not affect the right of ownership already acquired by the tenants.

29. Apart from the aforesaid, while discussing the scope and ambit of Punjab Security of Land Tenures Act, 1953, the Hon’ble Apex Court in **‘State Of Punjab (Now Haryana) and others vs. Amar Singh And Another’** 1974 AIR 994, 1974 SCC (4) 305 has held as under:-

“We have to bear in mind, the activist, though inarticulate, major premise of statutory construction that the rule of law must run close to the rule of life and the court must read into an enactment, language permitting, that meaning which promotes the benignant intent of the legislation in preference to the one which perverts the scheme of the statute on

imputed legislative presumptions and 'assumed social values valid in a prior era. An aware court, informed of this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of a land reforms law unless compelled by its language, and the crux of this case is just that accent when double possibilities in the chemistry of construction crop up.'"

30. Hon'ble Apex Court summed up the objects underlying the Act as follows:-

"The objects of the agrarian reform underlying the Act are: (a) to impart security of tenure; (b) to make the tiller the owner; and (c) to trim large land holdings thus creating peasant proprietorships ensuring even distribution of land ownership. The intendment of the statute is that reservation was to be made by a landowner to enable self-cultivation, and so, landowners could eject tenants. But, since agrarian reform must promote not eviction but security of tenure, it became necessary for the State to create surplus area of a considerable extent, so that, the evicted tenants could be rehabilitated on

such surplus lands, enjoying fixity of tenure and paying rent to the owners”.

31. Any interpretation unaware of the living aims ideology and legal anatomy of an Act will miss its soul substance, a flaw which must be avoided particularly in socio-Economic legislation with a dynamic will and mission. A brief introduction about the objects of the Punjab Security of Land Tenures Act, 1953 is found in the reference order of the Full Bench (Shamsher Bahadur, J.) in ‘**MAM RAJ CHHOGA Vs. STATE OF PUNJAB**’, LAWS(P&H)-1969-3-10, (1) I.L.R. [1969] 2 Pun. & Har. 680; 682-683:

“The triple objects of the agrarian reform projected by the Act appear to be (a) to impart security of tenure (b) to make the tiller the owner, and (c) to trim large land holdings, setting sober ceilings. To convert these political slogans into legal realities to combat the evil of mass evictions, to create peasant proprietorships and to ensure even distribution of land ownerships a statutory scheme was fashioned, the cornerstone of which was the building up of a reservoir of land carved out of the large landholdings

and made available for utilization by the State for re-setting ejected tenants.”

32. Right from the beginning one of the primary objects of the statute had been to enable tenants to purchase the Landlord's right and become full owners. Every such statute has a soul and an integrated personality. The basic judicial approach must be to discover this soul of the law and strive to harmonize the many limbs to subserve the pervasive spirit and advance the social project of the enactment.

33. So, while deciding this question, it is held that the landowner (Pokhar Dass) had died only after the instance of sale in favour of tenants (Atma Ram and others) was already complete. The death of landowner and devolution of rights upon his heirs would, thus, not affect the right of ownership already acquired by the tenants.

34. It may be noted that the history of this case dates back to the year 1961. The state of affairs in which such cases keep on lingering for years has been deplored by the Hon'ble Apex Court in Amar Singh's case (supra):-

“It was stated at the Bar that a score of years notwithstanding, the processes of fixing reserved areas and surplus areas on the strength of which alone conferment of proprietary right on tenants and

re-settlement of ejected tenants could, proceed, are still lingering. If this is true Government has much to answer for and litigation abounds where delays in executive enforcement occur. We expect that this land reform measure will not be a slow motion picture but a strict and swift procedure so that parties affected may know where they stand. There is an 'executive' dimension to law's delays which defeats the rule of law. It must be remembered that the third reading of a bill and the last appeal in court are not the final scene in the drama of law and society. A post-audit on the enforcement of social legislation, all social scientists will agree, is a material aspect of law in action, inter-alia to avoid the administrative cutting edge of the law becoming blunt”

35. It is, thus, expected that the further proceedings would attain finality without any undue delay.

36. As a sequel to the above discussion, this Court does not find any merit in the present writ petitions. Therefore, CWP No.14308 of 1990 and CWP No.3138 of 1993, are, hereby, dismissed.

05.08.2015

Sk/atulsethi

(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to reporter ? Yes / No