

In the High Court of Punjab and Haryana at Chandigarh

**C.W.P. No. 2207 of 1993
Date of Decision: October 28, 2015**

Mahla Ram (deceased) through LRs and others

... Petitioners

Versus

Financial Commissioner (Revenue), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1. Whether Reporters of local papers may be allowed to see the judgment? **Yes**

2. To be referred to the Reporters or not? **Yes**

3. Whether the judgment should be reported in the Digest? **Yes**

Present: Mr. C.M. Munjal, Advocate,
for the petitioners.

Mr. Suresh Singla, Addl. A.G., Punjab.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing order dated 26.07.1991 (Annexure P/2) passed by respondent no.3 – Special Collector (Agrarian), District Ferozepur, order dated 20.07.1992 (Annexure P/3) passed by respondent no.2 – Commissioner, Ferozepur Division, Ferozepur and order dated 12.01.1993 (Annexure P/4) passed by respondent no.1 – Financial Commissioner, Revenue, Punjab.

Brief facts of the case are that Som Lal – respondent no.4

was a big landowner, under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the 'Punjab Act'). His surplus area case was decided vide order dated 27.11.1965 by the Special Collector (Agrarian), Punjab, vide which 42 standard acres 14-1/4 units of land were declared as surplus. Land belonging to respondent no.4 – Som Lal was joint with his brothers, namely, Hans Raj, Parma Nand and Ved Parkash. The said land was required to be separated under Section 24-A(ii) of the Punjab Act for the purpose of its utilization. The Collector started proceedings for separation in the year 1984-85. Jhangi Ram, father of petitioners no. 1 to 8 and husband of petitioner no.9, had purchased the land from respondent no.4, big landowner vide registered sale deed dated 25.06.1957 much prior to the declaration of surplus area. Excess land in the hands of the big landowner was declared surplus. When the proceedings of surplus case were pending, neither Jhangi Ram predecessor-in-interest nor the petitioners were served any notice or made party in the proceedings. The petitioners and their predecessor-in-interest have been condemned unheard without affording opportunity of hearing. Thereafter, the petitioners approached the Special Collector, Agrarian, alleging that they have purchased the land vide registered sale deed dated 25.06.1957 and they are bonafide transferees and the sale is for valuable consideration. It would be apposite to mention here that order dated 26.07.1991 (Annexure P/2) passed by the Special Collector, Agrarian is without impleading the petitioners as party. However, they have preferred an appeal before the Commissioner, Ferozepur Division, Ferozepur, which has been dismissed by the Commissioner, vide order

dated 20.07.1992 (Annexure P/3) and the relevant part of the order reads as under:-

“5. I have considered the arguments advanced by the learned counsel for the appellants and the State representative and have also gone through the record of the case. The appellants have claimed that the predecessor-in-interest of the appellants had purchased the land in dispute on 25.06.1957 from Som Lal, respondent no.2, Hans Raj, Parmanand and Ved Parkash who were the joint owners of the land. According to Section 10-A (b) of the Punjab Security of Land Tenures Act, 1953, sales made after 15.04.1953 which have the effect of diminishing the surplus area have to be ignored. In view of this clear provision of law the executive instructions cannot have the overriding effect over the statute. This view has also been held by the learned Financial Commissioner (Revenue), Punjab, in his order dated 26.02.1991 in ROR No. 829 of 1989-90 “Bhaira Ram vs. The State of Punjab and others”. In view of this situation, I do not find any force in this appeal and dismiss the same.”

Thereafter, petitioners preferred a revision petition and the same has also been dismissed by the Financial Commissioner, Revenue, Punjab, vide order dated 12.01.1993 (Annexure P/3) and the relevant part of the order reads as under:-

“3. I have considered the position as stated by the counsel for the parties and have also gone through the papers filed with revision petition. I agree with the Senior State counsel that this revision petition is covered by my decision dated 03.11.1992 passed in ROR No. 823 of 185-86 - “Krishan Lal and others versus The State of Punjab”, wherein I have held that the Punjab Government

instructions of 06.03.1967, as they run counter to the explicit provisions of law, are not helpful to the petitioners, who are vendees of the surplus area which they have purchased after coming into force of the Punjab Land Reforms Act, 1972. The revision petition is, therefore, dismissed in limine.”

Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that the surplus area of the big landowner was declared without impleading the person interested i.e. petitioners and their predecessors-in-interest. The land in question was purchased by Jhangi Ram predecessor in interest of the petitioners on 25/06/1957 vide register sale deed for consideration. The order of the Collector (Annexure P/2) and subsequent orders passed by the Commissioner and Financial Commissioner are null and void and are not sustainable in the eyes of law. The collector was required to serve a notice upon Jhangi Ram and after his death upon the petitioners being his legally representatives. Petitioners are entitled to adequate opportunity of hearing to defend their rights.

Learned State Counsel vehemently contended that order passed by the collector agrarian, Commissioner and financial Commissioner are legal and valid. The petitioners are not entitled to any relief. Petitioners have no locus standi to file the present writ petition. The petitioners are not entitled any benefit on the basis of sale deed dated

25th of June 1957. All the sales made after 15th of April 1953, which have the effect of diminishing the surplus area have to be ignored the surplus area was declared by the Special Collector vide order dated 27/11/1965. The petition needs to be dismissed .

Before I proceed to adjudicate the respective contentions on merits, it would be appropriate to have bird's eye view of the legal position qua the rights of the State, the big land owner and a transferee from a big land owner.

The Hon'ble Supreme Court examined the effect of a sale by a big land owner under the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as 'the Pepsu Act') in the case of ***S. Pritam Singh Chahil v. The State of Punjab and Ors., 1967 P.L.J. 114***, held that a sale effected by a big land owner, after 21.8.1956, does not bind the State and would have to be ignored while adjudicating the permissible/surplus area of a big land owner. Such a sale would not effect the surplus area in any manner whatsoever. However, Hon'ble Supreme Court clarified that such sales, though not binding on the State would be legal, valid and binding between the big land owner and the transferee. Relevant extract of the above mentioned judgment is reproduced hereunder:-

"12. The proposal to introduce the said bill must have caused apprehension in the minds of the landowners that they would lose the lands above the permissible area and naturally they must have transferred their lands in favour of their relatives. Section 32-FF was added to frustrate such devices and to make the enforcement of the Act really

effective. Under the said section such a transfer made after August 21, 1956, shall not affect the rights of the State Government under the Act to the surplus area to which it would be entitled but for such transfer. Between the transferor and the transferee the transfer would be good, but it would not be effective against the State Government. That is to say for ascertaining the surplus area the land transferred would be included in the transferor's land....."

The above mentioned legal position has not undergone any change and the provision of the Punjab Act are *peri materia* to Pepsu Act. It is, thus, apparent that a transferee from a big land owner would be a person concerned/a person interested qua the the land purchased. In surplus area proceedings many a time land of the transferee(s) is added in the surplus area and such an act would prejudicially effect the rights of a transferee, if any. The principles of natural justice, are not excluded from their applicability to enactment for agrarian reforms and, therefore, a transferee from a big land owner is a person interested and entitled to an opportunity of hearing in proceedings to declare surplus land belonging to his vendor.

The contention of the learned State counsel that service of a notice upon a transferee would be an exercise in futility as the transfer does not bind the State and there is no right in a transferee to claim that land transferred to it be placed in the permissible area of the landlord. In my opinion such a contention is against the settled principles of natural justice.

The right to a hearing, in my opinion, does not emanate

from the nature of defence but from the threatened invasion of a transferees rights. The obligation to serve a notice is not to be misunderstood as accepting, prima facie, any claim or right of the vendee. The notice, would not in any manner effect the rights of the State emanating from statute. The Collector cannot assume/ prejudge the nature of the defence of the transferee. A transferee is required to be served with a notice. The statute does not warrant an interpretation that order affecting person can be passed without notice to him, minimum principles of natural justice is the requirement of every statute and nor does it seek to confer such powers upon the Collector. The question, whether the defence is plausible, bonafide or not would obviously be considered and decided after the transferee puts up his defence in response to a notice served upon him. A Division Bench of this Court in ***Hardev Singh and Ors. v. The State of Punjab and Ors., 1971 P.L.J. 283*** has held as under:-

"9. Even otherwise, the requirement of service of notice on all persons interested under Sub-rule (3) of Rule 6 of the 1956 Rules appears to us to be based on principles of natural justice requiring an opportunity being afforded to any person who is likely to be prejudicially affected by an order which might be passed in the relevant proceedings. The want of such a notice cannot be dispensed with or ignored on the mere ground that particular transferees or tenants who may otherwise be deemed to be the persons interested in the proceedings have really no good defence to the proposed order. It is no doubt correct that neither the Act nor the 1956 Rules, require the Circle Revenue Officer or the Collector to hold an investigation into who could be

the possible persons interested in the proceedings before them. It is, therefore, manifest that notice under Rule 6(3) has to be issued in the proceedings before the Circle Revenue Officer only to such persons whose names may be mentioned in form 'D' prepared by the Patwari or whose names may be shown in the relevant revenue records available to the Circle Revenue Officer as either vendees or donees or other transferees or tenants of the land which is proposed to be included in the surplus area of the original landowner. In the present case it is admitted that the names of the petitioners had been entered in the revenue record as donees of the disputed land on account of the sanction of the mutation of the gift, and that relief on account of the said alienation had been claimed by the landowner before the Circle Revenue Officer. We, therefore, hold that the entire proceedings for determination of the surplus area of the original land owner its so far as it relates to the land forming the subject matter of the gift deed in favour of the petitioners is concerned, are vitiated by the above mentioned apparent error of law which has prejudicially affected the petitioners."

The aforementioned judgment, was referred to with approval by a Full Bench (Five Judges) of this Court reported as ***Harnek Singh and Anr. v. The State of Punjab and Ors., (1972)74 P.L.R. 127 (F.B.)*** while considering the provisions of the Pepsu Act, the Full Bench held that a transferee from a big land owner was entitled to an opportunity of being heard. Relevant paragraph of the judgment reads as under:-

"16. Though Mr. Seth has tried to argue that a transferee is included in the expression "persons concerned" occurring in Section 32-D(2) of the Act, and is, therefore, entitled to be heard at all stages relating to the declaration of the

surplus area of the transferor, we consider it unnecessary to enter into this controversy for the simple reason that even if the statute and the rules framed thereunder are silent on the point, it appears to us to be necessary for satisfying the principles of natural justice, without which it is impossible to maintain the rule of law, to give an adequate opportunity to a transferee to safeguard his interest in proceedings which can possibly culminate in a decision prejudicially affecting him and his property rights. I have already illustrated in an earlier part of this judgment that the interests of such a transferee are always in jeopardy in proceedings for determination of the surplus area of his transferor. The Full Bench in Pritam Singh's case (1966) C.L.J. (Pb.) 165 (F.B.):I.L.R. (1966)1 Pb. 707 appears to have thought (in the passage quoted above) that the net result of Section 32-FF was that "the transfers have to be ignored" and, therefore, "no question of any notice to the transferees arises." It has since been settled by the Supreme Court in S. Pritam Singh Chahil's case (supra) that the only effect of Section 32-FF is that such transfers do not bind the Government, but they are otherwise good transfers so far as the transferors and the transferees are concerned. The point in issue does not appear to have been argued before the Full Bench at any length and appears to have been raised there almost incidentally towards the end of the case. It appears to me that in view of the authoritative pronouncement of the Supreme Court in Pritam Singh Chahil's case relating to the scope and effect of Section 32-FF relating to transfers referred to therein and having regard to the other provisions of the Act and the Rules, the observations of the Full Bench in the case of Pritam Singh and Ors. v. The State and Ors. (supra) (about no notice of the surplus proceedings to the transferee being necessary),

which have been quoted in an earlier part of this judgment, are no longer good law."

Other judgment on the matter in issue is ***Gurcharan Singh and Ors. v. Prithi Singh and Ors., 1974 P.L.J. 166***, wherein the Hon'ble Supreme Court held that a transferee from the big land owner is entitled to be heard in Surplus area proceedings initiated against big landowner-vendor.

A Full Bench (Five Judges) of this Court in ***State of Haryana and Ors. v. Vinod Kumar and Ors., 1986 P.L.J. 161***, examined the question whether an order passed without issuance of a notice to a transferee from the big land owner would be liable to challenge before a Civil Court for failure to serve a notice upon a transferee. The Full Bench held that as a notice was required to be served upon a transferee, the order could be challenged before a Civil Court. There is catena of judgments of this Court, in which it has been held that a transferee from a big land owner is a person interested and is entitled to hearing. Importants are ***Ghamandi Lal and others v. The State of Punjab, 1965 PLJ 24***, ***Shrimati Pari and others v. State of Punjab and others, 1966 PLJ 226***, ***Bhool Chand and others v. The State of Punjab and others, 1968 PLJ 360***, in which a similar view was taken. This view was reiterated in Full Bench decision in ***Ashok Kumar v. The State of Haryana and others, 1974 PLJ 456***. ***Birbal v. Bawa Basant Dass and Ors., 1971 P.L.J. 65***, ***Lal Singh and Anr. v. State of Punjab and Ors., 1972 P.L.J. 730***, ***Rajinder Singh and others vs. The Financial Commissioner (Revenue) Punjab and others, 1980 PLJ 154***, ***Sudagar***

Singh and others vs. Punjab State and other, 1981 PLJ 166, Chanan Mal Newar and others vs. State of Haryana and others, 1984 PLJ 547, Bhakhtawar Singh and Ors. v. The State of Punjab and Ors., 1987 P.L.J. 7, Sabar Khan and Ors. v. The Financial Commissioner (Appeals) Punjab and Ors., 1993 P.L.J. 208 and Raghbir Singh and Ors. v. State of Punjab and Ors., (2002-2)131 P.L.R. 747.

A judgment of the Hon'ble Supreme Court reported as ***Lajpat Rai and Ors. v. State of Punjab and Ors., 1981 P.L.J. 316***, gives impression that transferee is not entitled to hearing, but in fact it is not so. The controversy therein was whether a transferee could claim a right to include his land in the permissible area of the vendor/big land owner. The Hon'ble Supreme Court held that where the land owner had himself made a selection, the Collector had no right to alter the selection and, therefore, the vendees could not maintain an action requiring the Collector to include the land purchased by them in the permissible area of the land owner. In my opinion, the said judgment does not hold that a vendee is not entitled to a hearing during surplus area proceedings. The principle set down in the aforementioned judgment would be applicable during the course of hearing of surplus area case, when the Collector would be called upon to consider the nature of the claim set out by a vendee. It is at that stage that the Collector, would consider all claims put forth by the vendee and decide them in accordance with law. To non suit a vendee on the basis of the aforementioned judgment would in my opinion be pre judging the issue in hand and denying a right to a hearing on the basis of the proposed defence.

A Division Bench of this Court in **C.W.P. No. 5570 of 1988** titled as **Smt. Ghammo Bai and others vs. State of Punjab and others**, decided on 02.09.2013, held as under:-

“We have heard counsel for the parties. It is not in dispute that the big land owner Mukhtiar Singh died on 15.03.2004. After enforcement of 1972 Act, fresh proceedings to determine surplus land in the hands of his heirs were not started. When this matter came up for hearing on 06.05.2009, following questions were raised by counsel for the petitioners:-

*“(1) When possession of surplus land was not taken under the Punjab Land Reforms Act, fresh steps are required to be initiated for determining surplus area of the land. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **Ujjagar Singh (Dead) by L.Rs v. The Collector Bhatinda and another, 1996 PLJ 505.***

*(2) Since the land owner died after determination under the old law, the determination of surplus land was required to be made afresh, under the new law in the hands of heirs. Reliance has been placed on the Full Bench judgment of this Court in **Ajit Kaur v. Punjab State 1980 P.L.J. 354;***

*(3) Since the land was exempted from utilization, the said exemption could not be withdrawn. Reliance has been placed on a Division Bench judgment of this Court in **Bhagat Gobind Singh v. Punjab State and others, (1963) 65 PLR 105.**”*

It is not in dispute that till today, the petitioners/the vendees are in possession of the land purchased by them on 04.10.1957. Neither under the old Act, i.e. the 1953 Act nor under the 1972 Act, State Government took possession of the

land in dispute.

After reading of paper book, this Court is of the opinion that by passing the impugned orders, grave injustice has been done to the petitioners. It is positive finding of the authorities below that the petitioners/their predecessors-in-interest were not related to the big land owners. They do not own more than 10 acres of land in the State of Punjab. As such, they are the small land owners. Their land was also exempted from utilization vide order dated 06.10.1964 and order dated 28.07.1983 (Annexure P-3). Above facts were ignored when orders under challenge were passed. Perusal of order dated 06.10.1964, as reproduced in the preceding paragraphs of this order, shows that Naib Tehsildar, Agrarian noted above said facts and then ordered that in terms of Government instructions, their land be exempted from utilization. Similarly, in order dated 28.07.1983, placing reliance upon order passed in the year 1964, notice issued to the petitioners under Section 9 of the 1972 Act was ordered to be withdrawn by the Special Collector. That very officer passed order against them on 14.08.1984 (Annexures P-4 and P-5 respectively) including land under their possession in the surplus pool.

We feel that orders passed are perfectly unjustified. As per instructions issued by the State Government on 22.07.1961, exemption was granted to the vendees who had purchased land upto 30.07.1958. The relevant instruction read thus:-

“It has been decided that the following two categories of surplus area which has been declared so far should not be utilized for resettling tenants thereon. They should be allowed to remain with the occupiers. Separate instructions are being issued to show such areas as utilized in the relevant Performa:-

i) *The areas which have been declared surplus in erstwhile Punjab but which have been purchased by landless persons or small landowners who are not the relations of prescribed degree of the vender landowners, between the period 15.4.1953 and 30-7-1958, upto such limit which with other area owned by the person, comes upto 10 standard acres.”*

It is specifically stated that those vendees who are the small land owners and are not related to the big land owners and have purchased land between 14.04.1953 to 03.07.1958 upto 10 standard acres, land owned by them shall not be put to utilization. It was further stated that separate instructions will be issued showing that land had been utilized. Vide instructions dated 19.07.1966, the benefit given vide instructions dated 22.07.1961 was extended to those vendees also who had purchased land upto 01.02.1967. Taking note of above said instructions, order was passed in favour of the petitioners on 06.10.1964. Similar benefit was further extended to the subsequent purchasers who are not related to the big land owners and their holding is not more than 10 standard acres vide instructions dated 05.12.1961. The authorities below have wrongly said that such like instructions were not there when land of the petitioners was exempted from utilization in the year 1964. In the face of above said instructions, relief cannot be declined to the petitioners. The petitioners are small land owners, in terms of instructions referred to above, land purchased by them which is in their possession till today should have been deemed to be utilized. Above facts were not taken note of by the authorities concerned when appeal and revision filed by the petitioners was dismissed on 12.06.1986 and 04.02.1988. In the later order, the Financial Commissioner

wrongly said that no instruction, to exempt utilization of the surplus land was in existence in the year 1964. Simply because the petitioners have not laid challenge to an order dated 14.08.1964 separating land owned by the big land owner in the separate khewat, is no ground to decline relief to the petitioners which, otherwise, is coming out from the record.”

The legal position as referred above leaves no manner of doubt that it is mandatory for the Collector to serve a notice upon a transferee from a big land owner, before the conclusion of surplus area case, informing him of the pendency of surplus area proceedings against his vendor. Failure to do so would entail quashing of the order being violative of principles of natural justice, in so far as it effects the transferee's rights.

Now coming to the facts of the present case, admittedly, Jhangi Ram predecessor-in-interest of the petitioners remained in possession throughout in view of registered sale deed dated 25.06.1957 and thereafter petitioners are in continuous possession of the land as vendees. During the pendency of the proceedings, a new Act known as “Punjab Land Reforms Act, 1972” (in short hereinafter to be referred as “Reforms Act”) has come into enforce. The effect of the Reforms Act has been considered by Hon'ble Supreme Court and this Court in various judgments. I need not refer again here but they have been referred in the case of **Ghammo Bai** (supra) .

The question that now survives adjudication is whether the petitioners were actually served with a notice in the surplus area

proceedings, which culminated in order dated 27.11.1965. There is no iota of evidence on the paper-book from which an inference can be drawn that petitioners or their predecessor -in -interest was served with notice before declaring the land of the petitioners as surplus while considering the case of big landowner.

A perusal of the impugned orders does not specify the mode or manner, in which the parties concerned were to be summoned whether by personal notices or by proclamation. The impugned orders make no reference to the fate of the service i.e. whether the summons were received, refused or served. There is no order directing service by proclamation or reference to any report evidencing service by proclamation upon any one, much less the petitioner. Rule 6(7) of the Punjab Security of Land Tenures Rules, 1956 (hereinafter referred to as 'the 1956 Rules') prescribes the procedure for service of a notice in Form F. The said Rule further postulates that such notice shall be served as if it were a summon under Section 90 of the Punjab Tenancy Act, 1887. Section 90 Sub-section (1) of the Punjab Tenancy Act, 1887 requires that summons issued by a Revenue Officer shall, if practicable, be served (a) personally on the person to whom it is addressed on failing which; (b) his recognized agent, or (c) an adult male member of the family who is residing with him. Section 90(2) of the Punjab Tenancy Act, 1887 provides that if service cannot be made, or if acceptance of service so made is refused, the summons may be served by posting/pasting a copy thereof at the usual or last known place of residence of the person to whom it is addressed. Sub-section (3) empowers a Revenue Officer to

serve by proclamation in case the persons having same interest are so numerous that personal service on all of them is not reasonably practicable.

The Collector, Commissioner and the Financial Commissioner have failed to appreciate the legal issue which already stand settled by catena of judgments. As noticed in the earlier part of the judgment, the respondents have failed to produce any record or any evidence that petitioners or Jhangi Ram were/was given opportunity to defend. Consequently, I have no option but to hold that service was never effected upon the petitioners or Jhangi Ram, thus surplus order passed at the back of the petitioners is not binding upon them .

In view of discussion above, it is apparent that the petitioners through Jhangi Ram, being transferees from a big land owner are required to be served with a notice and afforded an opportunity of hearing to defend, the proceedings to declare land purchased by Jhangi Ram vide registered sale deed dated 25.06.1957 as surplus. It is further held that as no notice was served upon the petitioners or their predecessors-in-interest at the time of declaring surplus area of big landowner nor at the time of passing the impugned order of the Collector (Annexure P/2). It is settled principle of law that hearing at the appellate or revisional stage is no substitute for hearing at the original stage of enquiry for which provision is made in a statute. Basic judgment in this regard is by Federal Court in case of ***Suraj Narain Anand vs. The North West Frontier Province, AIR 1942 FC 3***, in which it is held that there is a well marked difference between a decision given by an officer who acts

in the consciousness that he is primarily responsible for the investigation and decision of the case and the act of one who is expected only to satisfy himself that another officer who had the primary responsibility has properly dealt with the case or not. The distinction, so held by the Federal Court, is one of substance and is not merely formal or technical. It is equally well settled that judgment passed without impleading an affected person as party, is not binding upon him.

In view of above, orders of the Collector, the Commissioner and the Financial Commissioner (Annexures P-2, P-3 and P-4 respectively) are set aside.

It is, however, grant of a hearing to the petitioners (transferees) shall not be construed to be an expression of opinion on the rights of the parties, which shall be determined by the Collector, Agrarian, in accordance with law, after affording an opportunity of hearing to the petitioners, the land owner and the State. Consequently, the present writ petition is allowed. Costs made easy.

Parties are directed to appear before the Collector, Agrarian, on 07.12.2015, who shall adjudicate their claim afresh and in accordance with law, preferably within period of six months.

October 28, 2015
vkd

[Paramjeet Singh]
Judge