

CWP No.2880 of 1993

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

CWP No.2880 of 1993
Date of decision: 28.01.2015

Babu Singh (dead) through LRs

....Petitioner

Versus

The State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. L.N. Verma, Advocate, for the petitioner.
Mr. Sandeep S. Mann, Sr. DAG, Haryana.

PARAMJEET SINGH, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari quashing the order dated 13.03.1989 (Annexure P-1) passed by Collector-cum-Prescribed Authority, Sirsa, under the provisions of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as 'the Act'), order dated 12.11.1992 (Annexure P-2) passed by Commissioner, Hisar Division, Hisar, and order dated 05.01.1993 (Annexure P-3) passed by Financial Commissioner, Haryana.

Brief facts of the case are that petitioner – Babu Singh filed his declaration form regarding his land under the provisions of the Act before the Sub Divisional Officer (Civil), Sirsa, exercising the powers of

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Prescribed Authority, on 16.08.1976. The Prescribed Authority considered the case of the petitioner and declared 70 kanals and 10 marlas of land in Village Chormar Khera and 49 kanals and 6 marlas of land in Village Jagmalwali, total measuring 119 kanals and 6 marlas (14.98 ordinary acres) as surplus on 19.09.1978. Petitioner preferred an appeal against the aforesaid order before the Collector, Sirsa, which was dismissed vide order dated 31.08.1981. Thereafter, petitioner filed an appeal before the Commissioner. Commissioner set aside the orders passed by Prescribed Authority and Collector and remitted the case back to Collector for deciding the declaration form on merits. Collector again upheld the order of the Prescribed Authority dated 19.09.1978 vide order dated 06.12.1983. Petitioner again preferred an appeal before the Commissioner, Hisar. Commissioner set aside the order dated 06.12.1983 vide order dated 12.05.1988 and remanded the case back to the Collector-cum-Prescribed Authority, Sirsa, with a direction to afford due opportunity to the petitioner to adduce his evidence and thereafter decide the case on merits. After remand, vide impugned order dated 13.03.1989 (Annexure P-1) again Collector-cum-Prescribed Authority, Sirsa, upheld the order dated 19.09.1978. Aggrieved against the order dated 13.03.1989 petitioner preferred an appeal before the Commissioner, Hisar which was dismissed vide order dated 12.11.1992 (Annexure P-2). Thereafter, petitioner filed revision petition before the Financial Commissioner, Haryana, which has been dismissed vide order dated 05.01.1993 (Annexure P-3). Hence this writ petition.

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It needs to be mentioned that original owner of the land was Ganga Singh, father of the petitioner, who died on 14.07.1970 leaving behind three sons and widow, namely, Punjab Kaur. After the death of Ganga Singh mutation was sanctioned in favour of his three sons and his widow was not given any share in the land whereas she was entitled to inherit equally with her sons. In lieu of maintenance Babu Singh transferred land vide civil court decree dated 05.05.1972 before the commencement of the Act i.e. 23.12.1972 in good faith. The said land has been taken into consideration for the purpose of declaring the land surplus in the hands of Babu Singh. The issue, which needs to be considered in the present case is *“whether the decree dated 05.05.1972 in favour of Punjab Kaur, wife of Ganga Singh and mother of Babu Singh, is legal and valid and is a bona fide transfer protected under the provisions of the Act?”*

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

Learned counsel for the petitioner vehemently contended that in natural course of succession of Ganga Singh, Punjab Kaur being widow was entitled to get land as per her share besides her three sons. Punjab Kaur, mother of the petitioner, has been given land by the petitioner in lieu of maintenance vide civil court decree dated 05.05.1972 prior to commencement of the Act i.e. 23.12.1972. Otherwise also, widow was equally entitled to inherit her husband's land along with her sons. Land was mutated in the names of sons of Ganga

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Singh. It is settled principle of law that mutation does not confer any title and as per natural succession, Punjab Kaur was also entitled to equal share. In support of his contention learned counsel for the petitioner has placed reliance on the judgment of this Court in ***Jagir Singh v. The State of Punjab and others, 1980 PLJ 631*** that transfer in favour of widow is a bona fide transfer. Learned counsel for the petitioner further by relying on the judgment of the Hon'ble Supreme Court in ***Ram Swarup and others v. S.N. Maira and others, 1999(1) PLJ 11*** contended that transfers made prior to 23.12.1972 are fully protected. Learned counsel for the petitioner further contended that orders passed by quasi-judicial authorities are non-speaking as they have not dealt with the issue with regard to bona fide sale/transfer by petitioner in favour of his mother by way of civil court decree. It is mandatory for the quasi-judicial authorities to pass speaking order. Learned counsel for the petitioner further contended that petitioner – Babu Singh died during the pendency of the writ petition on 10.02.2007 leaving behind his legal heirs who have been brought on record. As such succession re-opens and surplus area is to be determined afresh. In support of this contention, learned counsel for the petitioner placed reliance on the judgment of Full Bench of this Court in ***Sardara Singh and others v. The Financial Commissioner and others, 2008(2) R.C.R.(Civil) 744.***

On the other hand, learned counsel for the State vehemently contended that findings of fact recorded by the authorities below cannot be assailed in the writ petition. No legal issue is involved.

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I have considered the contentions raised by learned counsel for the parties.

Following substantial questions of law arise for consideration in this writ petition.

- “(i) *Whether transfer by way of civil court decree dated 05.05.1972 in favour of his mother by petitioner is a bona fide transfer or in the alternative mutation does not confer any title and she was also entitled to natural succession in the property of Ganga Singh?*
- (ii) *Whether on account of death of Babu Singh during the pendency of the present writ petition, succession reopens?”*

In Re. No.(i) : -

Admitted facts are to the effect that transfer was made prior to the commencement of the Act i.e. 23.12.1972. Deceased Ganga Singh died leaving behind three sons and widow, namely, Punjab Kaur mother of the petitioner. Punjab Kaur was also entitled to natural succession. Mutation does not confer any title. Hence in the facts and circumstances of the case it is held that transfer made by way of civil court decree dated 05.05.1972 is legal and valid and has wrongly not been taken into consideration by the authorities. Otherwise property of Ganga Singh should have devolved upon Punjab Kaur as legal heir being widow in view of Section 8 of the Hindu Succession Act, 1956. It is settled law that succession devolves upon the legal heirs immediately when one dies. It is settled law that mutation does not confer title.

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In Re. No.(ii) : -

It is settled proposition of law that in case the landowner dies at any stage of pending litigation, the surplus area has to be re-determined afresh in the hands of his legal heirs. Even the decision of Full Bench of this Court in the case of ***Ranjit Ram v. Financial Commissioner, Punjab and others, 1981 PLJ 259*** has been approved by Larger Bench of Hon'ble Supreme Court in the case of ***Ujagar Singh (dead) by L.Rs. v. The Collector, Bhatinda, 1996(3) R.C.R.(Civil) 446*** and Full Bench of this Court in ***Sardara Singh and others v. The Financial Commissioner and others, 2008(2) R.C.R.(Civil) 744*** has specifically held that death of big landowner during the pendency of surplus area proceedings causes affectation of surplus area which is required to be redetermined in the hands of the heirs of the deceased landowner. Admittedly, petitioner – Babu Singh has died during the pendency of this writ petition on 10.02.2007 leaving behind his two daughters – Sukhpal Kaur and Veerpal Kaur, who have been brought on record as his legal heirs.

In view of above, impugned orders are set aside. Writ petition is allowed. However, the authorities will be at liberty to proceed against landowners having excess land than their entitlement as per the Act.

No order as to costs.

(Paramjeet Singh)
Judge

January 28, 2015
R.S.