IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.9941 of 1988
Date of decision:15.01.2015

Bhag Mal (deceased, through his LRs) son of Chuni, resident of Village Nirwan, Tehsil and District Sirsa.
... Petitioner

versus

State of Haryana through Secretary to Government, Haryana, Revenue Department, Haryana Civil Secretariat, Chandigarh, and others.
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Manish Soni, Advocate, for the petitioner.

Mr. Sudeep Mahajan, Additional Advocate General, Haryana.
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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. The writ petition challenges the assessment of holding under the Haryana Ceiling on Land Holdings Act and the declaration of surplus made already by the order of the Sub Divisional Officer exercising the powers of the Prescribed Authority, Sirsa on 16.06.1982. The property was stated to be the property of Ganga Devi-the petitioner's mother-in-law. The order was on the declaration form submitted by the petitioner in terms of Section 9 of

the Act. The total holding was evaluated as 1087 kanals 4 marlas of 'C' category of land comprising of 283 kanals 6 marlas at the Village Nirwan and 803 kanals 18 marlas in Village Jamal. By the first order, 432 kanals of land had been treated as the permissible area of the declarant and his family and an extent of 655 kanals 4 marlas had been treated as surplus.

2. The petitioner challenged the declaration on the ground that the property, which had been mortgaged with possession to one Begh Raj on 12.08.1964 by the owner Ganga Devi and referred to in the mutation No.509 sanctioned on 07.01.1965, ought to be excluded. The Collector dismissed the appeal on 02.04.1984 affirming the declaration made by the Prescribed Authority. This order was again put to challenge before the Commissioner who was prepared to grant a relief to the extent of $1/4^{th}$ of 246 kanals 19 marlas on the ground that $3/4^{th}$ share of the land had been transferred to the mortgagee and only $1/4^{th}$ of the share must be included in the holding. This way the petitioner's surplus was reduced from 655 kanals 4 marlas to 586.89 kanals. The Commissioner has specifically ruled that the area mortgaged in possession was not included in the permissible area of the petitioner. This was again put to challenge before the Financial Commissioner, who dismissed the revision. The petitioner is again before this court.

3. The petitioner is before this court contending: (i) the property had not been declared surplus at the time when the last owner Ganga Devi died on 09.04.1973. Consequently, the property fell to be divided to her legal heirs by testamentary succession through a Will executed by her on 15.12.1972, on the basis of which a consent decree had also been passed between the petitioner's wife and his daughters, who were the grand daughters of Ganga Devi. The said property ought to be excluded. The entire property of what was mortgaged must also be excluded. Even the petitioner had died and his children inherited the property as legal heirs. A fresh computation must be done taking note of succession that has opened before the vesting with the State. The counsel would refer me to the decisions of this court rendered in ***Smt. Pyari and others Versus State of Haryana and others in CWP No.14633 of 1990*** and ***Kehar Singh (deceased) through his LRs Versus Financial Commissioner, Haryana, Chandigarh and another-2012(1) PLR 95***. Both these decisions refer to the fact of when the declaration by the State itself had been subsequent to the death of the original owner, the devolution by succession must be taken note of and the computation to be re-done. It is also contended that the entire property which was mortgaged must be excluded and they could not be brought within the reckoning of the landowner's holding.

4. Section 12 of the Haryana Ceiling on Land Holdings Act constitutes the vesting of property with the State. Section 12(1) reads as under:-

> "**12. Vesting of surplus area.-**(1) The surplus area of a landowner shall, from the date on which it is declared as such shall be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force) of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance.
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> Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.
>
> (2) ......
>
> (3) ......
>
> (4) ......"

5. The order of vesting was passed by the 3rd respondent on the application filed by the petitioner under Section 9. If Ganga

Devi had died on 09.04.1973, the effect of succession shall surely be relevant, but in this case, admittedly the petitioner's wife was the only heir at law and she was treated to be the owner of the entire extent held by her mother. When the order was passed, there was no objection by the grandchildren of Ganga Devi staking their claim to the property under a Will. It appears that a suit had been filed by the daughters against the mother and a consent decree was obtained only on 08.09.1982, that is, after the order was passed by the 3rd respondent on 16.06.1982. The collusion is writ large and it cannot take effect at all. By virtue of Section 8, transfers or disposition made after the appointed day shall not be deemed to affect surplus area. A disposition in the manner of a consent decree after the appointed date and even after the order of the 3rd respondent cannot affect the surplus area determined. The decisions in ***Pyari*** and ***Kehar Singh*** (supra) will have no application where the survivorship by succession was in favour of the only daughter of the mother viz., the petitioner's wife's and her holding alone would be relevant.

6. In the manner of reckoning the total holding, the permissible area shall be in the manner contemplated under Section 4. The permissible area shall be in relation to a landowner and the "landowner" is defined under Section 3(h) as a person, who is the owner of the land. If there has been any mortgage and the owner

had parted with possession, it cannot be excluded, for, what is relevant is only the ownership of the land for a landowner by creating a mortgage does not lose the ownership thereof. However, if the Commissioner has given the benefit of exclusion of a property of 1/4th share which had not been mortgaged, the petitioner must be thankful that the Commissioner has provided for an exclusion which is even doubtful. A permissible area for a mortgagee in possession which Section 4 contemplates is to allow for the mortgagee to hold property in such capacity as a mortgagee. It is for this reason that Section 12 which constitutes the vesting provision provides through the proviso that if any portion of the property that falls within surplus is in the hands of a mortgagee, only the mortgagee's rights shall be deemed to have been acquired by the Government. In other words, a property which is brought within the surplus, but which is in the possession of a mortgagee, shall vest in the State only in the capacity as such mortgagee and not an owner thereof. However, I am not prepared to reopen the issue in favour of the State as regards the exclusion already granted to benefit the petitioner, since the State itself is not in challenge against the order of the Commissioner which stood confirmed by the Financial Commissioner.

7. There is no scope for recognizing either the validity of the Will or the decree that had been passed subsequent to the appointed date. The succession that had fallen which would have

been relevant under normal circumstances to take into account the distribution of shares to several persons of the original landowner has no relevance in this case since the sole inheritor of Ganga Devi was the petitioner's wife and the order had been passed on 16.06.1982 when the petitioner's wife was still alive. The declaration of surplus made under the circumstances was perfectly justified and I find no reason for intervention.

8. The writ petition is dismissed on the above terms.

(K.KANNAN)
JUDGE

15.01.2015
sanjeev