

CWP No.17281 of 1995

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

CWP No.17281 of 1995
Date of decision: 26.08.2015

Gurmit Singh

....Petitioner

Versus

The State of Punjab 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. Sarjit Singh, Sr. Advocate, with
Ms. Ishrat Kaur Pannu, Advocate, for the petitioner.
Mr. S.S. Chandumajra, Addl. A.G., Punjab.

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 for quashing the order dated 19.04.1983 (Annexure P-5) passed by respondent No.4 – Collector Agrarian, Feteahgarh Sahib, order dated 03.10.1984 (Annexure P-6) passed by respondent No.3 – Commissioner, Patiala Division, Patiala, and order dated 24.08.1995 (Annexure P-7) passed by respondent No.2 – Financial Commissioner (Appeals-II), Punjab.

Brief facts of the present case are to the effect that Ranjit

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Singh s/o Gurmukh Singh resident of village Rajinder Nagar Tehsil Sirhind, a big land owner filed his return in Form A under Section 5 of the Punjab Land Reforms Act, 1972 (hereinafter referred to as 'the Act') and Rules 1973 before the Collector Agrarian Fatehgarh Sahib on 3.10.1973 according to which the land owner and other members of his family owned 430K-1M of land in village Rajinder Nagar, Tehsil Sirhind District Patiala and 13B-16B of land in village Maksudra Tehsil Payal District Ludhiana, respectively. The Collector Agrarian Fatehgarh Sahib after having necessary verification made through the field staff came to the conclusion that the landowner alongwith the members of his family owned and held land in concerned villages measuring 39-17-36 of 1st quality on the appointed day i.e. 24.01.1971. The landowner had two adult sons and was thus entitled to retain 21.00 hectares of first quality land as his permissible area. The Collector Agrarian, Fatehgarh Sahib vide his order dated 17.06.1976 declared 18.77.36 hectares of first quality land surplus with the landowner Ranjit Singh. Ranjit Singh and others went in appeal before the Commissioner, Patiala Division, Patiala against the order of Collector, Agrarian, Fatehgarh Sahib. The Commissioner Patiala Division, Patiala vide his order dated 21.11.1978 accepted the appeal and remanded the case back to the Collector, Agrarian Fatehgarh Sahib for fresh decision after giving an opportunity of being heard to all the landowners and the State and all concerned with the case. On remand, Collector, Agrarian, Fatehgarh Sahib, vide order

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dated 19.04.1983 (Annexure P-5) declared land measuring 20.43.91 hectares of first quality land as surplus with landowner Ranjit Singh, his wife Kartar Kaur and his family members and landowner was directed to select his permissible area within seven days otherwise surplus area was to be declared according to Rules. Aggrieved against the order of Collector Agrarian, Ranjit Singh and others preferred appeal before the Commissioner, Patiala Division, Patiala, which was dismissed vide order dated 03.10.1984 (Annexure P-6). Ranjit Singh and others further preferred revision petition before the Financial Commissioner, which has also been dismissed vide order dated 24.08.1995 (Annexure P-7). Hence, this writ petition.

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

Learned counsel for the petitioner contended that Ranjit Singh son of Gurmukh Singh and Kartar Kaur wife of Ranjit Singh were the owners of the property, which was consolidated for determining the surplus area under the Act. After remand, Collector Agrarian passed order on 19.04.1983 (Annexure P-5) whereby area was declared surplus but prior to that Kartar Kaur died on 28.02.1983 and her succession had reopened. As per vernacular copy of death certificate registered on 15.02.1987 (Annexure P-8) Ranjit Singh died on 03.02.1987 before passing of the order dated 24.08.1994 (Annexure P-7) by Financial Commissioner, thus, succession of Ranjit Singh also re-opened. Learned

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counsel for the petitioner further contended that it is settled principle of law that once the succession re-opens, property devolves upon the natural heirs and they have a right to be heard and their property is required to be re-determined in accordance with law. Learned counsel for the petitioner further contended that a major portion of land has already been sold regarding which entries have already been effected in the revenue record i.e. rapat roznamcha was entered on 28.08.1969 and that land has been sold to Raghbir Singh etc. but the sale deed could not be executed and registered as mutation was not sanctioned. Thereafter, declaratory decree (Annexure P-3) has been passed in favour of Darshan Singh etc. Learned counsel for the petitioner contended that impugned orders are not sustainable in the eyes of law and area is required to be re-determined in the hands of LRs of Ranjit Singh and Kartar Kaur.

Per contra, learned counsel for the State contended that impugned orders passed by authorities below are legal, valid and cannot be declared illegal, arbitrary and there is no question of fresh determination of the area.

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

It is settled proposition of law that in case the landowner dies at any stage of pending litigation, the surplus area has to be redetermined 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,***

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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.

The Hon'ble Supreme Court in ***Ujagar Singh*** (supra) has considered the decision rendered by the Full Bench of this Court in ***Ranjit Ram's*** (supra) and held as under: -

*“7. The learned counsel, who appeared for the State, did not take a stand that under the Punjab Act, the appellant is holding any surplus area. He, however, placed reliance on the judgment of this Court in the case of **Amar Singh v. Ajmer Singh, 1994(3) R.R.R. 90 : 1994 Supp.(3) SCC 213**, where it has been said that merely because the land had not been utilised and remained in possession of the heirs of the landowner was inconsequential. The aforesaid decision of this Court relates to the Haryana Ceiling on Land Holdings Act, 1972 which came into force w.e.f. 23.12.1972. From a bare reference to the aforesaid judgment, it shall appear that the vesting under that takes place on the appointed date. There is no provision under that Act like 32-E(a) of the Pepsu Act under which the surplus area had been declared so far the appellant is concerned. As such the aforesaid judgment in the case of **Amar Singh v. Ajmer Singh** (supra) is of no help to*

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the respondent-State. In normal course, we would have directed the respondent-State to examine the question of surplus land held by the appellant along with his four adult sons in accordance with the provisions of the Punjab Act, but in view of an admitted position that if a fresh proceeding is to be initiated under the Punjab Act, there is no question of declaration of any land as surplus area, no useful purpose will be served by issuing any such direction. Accordingly, the appeal is allowed. The order of the dismissal passed by the High Court on the writ petition filed on behalf of the appellant is set aside. All proceedings initiated against the appellant either under the provisions of the Pepsu Act or the Punjab Act are quashed. In the facts and circumstances of the case there shall be no order as to costs."

Hon'ble Full Bench of this Court in **Sardara Singh's case** (supra) in paras 41 and 42 made following observations :-

"41. We are, therefore, of the considered opinion that in order to harmoniously read the two views in Ajir Kaur's case and to give correct interpretation of the provision of Section 11(50 and 11(7) of this Act, we ought to take the aid of Supreme Court's judgement in Ajmer Kaur's case. We hold that until the surplus area has been finally determined by the Collector and appeals/revisions have been dismissed, the death of the landowner would certainly cause affectation to the surplus area which would b e required to be redetermined in the hands of his heirs.

42. Resultantly, where the surplus area has not been finally determined and the matter is pending in appeals or revisions before the Revenue Courts or before this court under Article 226 of the Constitution or before the Supreme Court of India,

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death of the landowner would cause affectation of surplus area which would be required to be redetermined in the hands of the heirs of the deceased landowner. 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. However, we are unable to uphold the judgements of this court in Jasbir Kaur's case because Ajit Kaur's case was not at all considered by the Hon'ble Division Bench. As regards Manjit Kaur's case, even though Ajit Kaur's case was considered, the majority view had been entirely overlooked."

In the present case, Kartar Kaur died on 28.02.1983 even before the order of Collector whereby area has been declared surplus. Her major married daughters are entitled to their shares as per Hindu Succession Act. Ranjit Singh also died on 03.02.1987 when proceedings were pending before the Financial Commissioner.

Since landowners died during the pendency of proceedings, in the light of settled proposition of law, surplus area needs to be redetermined in the hands of legal heirs in accordance with law.

In view of above, impugned orders are set aside. Case is remanded to the Collector Agrarian, Fatehgarh Sahib, for fresh decision. It may also be determined afresh as to what is the effect of agreement on the basis of which entry dated 28.08.1969 (Annexure P-2) was made in the revenue record whereby sale was admitted, however, registry was to be effected after the mutation is sanctioned. Effect of subsequent decree will also be seen. It appears that entries were much prior to coming into

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operation of the Act and possession stood already delivered to the prospective vendees. Parties through their counsel are directed to appear before the Collector Agrarian on 28.09.2015.

Disposed of.

August 26, 2015
R.S.

(Paramjeet Singh)
Judge