

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

LPA No. 211 of 2009

DATE OF DECISION : 05.12.2015

The State of Punjab and others

.... APPELLANTS

Versus

Joginder Kaur (deceased) through her LR's and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present : Mr. B.S. Chahal, DAG, Punjab,
for the appellants.

None for the respondents.

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SATISH KUMAR MITTAL, J.

The State of Punjab and others have filed this intra-court appeal under Clause X of the Letters Patent against the judgment dated 03.03.2008 passed by the learned Single Judge, whereby the writ petition (CWP No. 1111 of 1984) filed by Gehna Singh (predecessor of the respondents herein) was allowed; and the order dated 07.06.1976 (Annexure P-1) passed by the Collector (Agrarian), Mansa, declaring 0.6287 hectares of first quality land as surplus land in the hands of the big land owner (Gehna Singh); the orders dated 06.02.1979 (Annexure P-2) and 13.10.1983 (Annexure P-3) passed by the Commissioner, Ferozepur Division, Ferozepur, and the Financial Commissioner, Appeals, Punjab, dismissing the appeal and revision,

respectively, filed by the big land owner against the aforesaid order of the Collector, were set aside; and it was held that under Section 5 (1) of the Punjab Land Reforms Act, 1972 (hereinafter referred to as 'the Act'), the big land owner was entitled to select separate permissible area for his major grandsons (sons of pre-deceased son).

In brief, the relevant facts of the case are that Gehna Singh (died during the pendency of the writ petition) was a big land owner. With coming into force of the Act on 24.03.1973, he furnished declaration in Form 'A' under Section 5 (1) of the Act selecting his permissible area. He was having three sons. All of them were murdered in the year 1961. At that time, one of his sons was adult and married and was having two sons. On the appointed day, i.e. on 24.01.1971, as defined in Section 3 (1) of the Act, both the grandsons of the big land owner were adult. Gehna Singh, while furnishing declaration in Form 'A', selected separate permissible area for both the grandsons stating that they are entitled to one unit of the separate permissible area being sons of his pre-deceased son. The Collector (Agrarian) vide order dated 07.06.1976 rejected the said claim of the big land owner and declared 0-6287 hectares of first quality land as surplus land in his hands. The said order was upheld by the Commissioner and the Financial Commissioner in appeal and revision filed by the big land owner. Aggrieved against the aforesaid orders of the revenue authorities, the big land owner filed the writ petition, which was allowed by the learned Single

Judge vide the impugned order dated 03.03.2008, while observing as under :-

“It is clear from the definitions as mentioned above that a narrow meaning of the word “Son” cannot be given as it does not include the grandson in the definition of “Son”. The Financial Commissioner as well as other revenue authorities have not gone into the meaning of the word “grandsons” and has not decided the claim of the petitioners in a proper manner. Secondly as per Section 5 (1) of the Act, the claim of the petitioners has not been decided and accordingly they have not been given right to select their permissible area as the permissible area are to be selected by the persons owning or holding the land and each such person is allowed an extra permissible area in respect of each adult son that he may have. The intention of the Legislature is to allow an additional permissible area for each adult son that he may have. In the present case, the said benefit has not been granted to the petitioners whose father had been murdered and they were major on the appointed day. Such situation could not be pre-meditated at the time of passing of Legislature and, as such, failed to provide such an eventuality in specific terms, though the same is clear from the intention while framing the said rule. All the revenue officers have failed to appreciate the said

*intention of the Legislature in its true spirits and
all the orders are liable to be set aside”*

We have heard learned Deputy Advocate General, Punjab, appearing on behalf of the appellants, as no body is present on behalf of the respondents.

Learned counsel for the appellants argued that a big land owner is not entitled to select separate permissible area for his grandsons. Under Section 5 (1) of the Act, he is entitled to select such area only for his adult son. Since the word “son” has not been defined either in the Act or in the Punjab Tenancy Act, 1887, it does not include in its ambit the word “grandson”. Learned counsel further argued that in the instant case, since on the appointed day, no adult son of the big land owner was alive, therefore, he was not entitled to select separate permissible area for his grandsons, though they are sons of the pre-deceased son of the big land owner. Learned counsel contends that the learned Single Judge has gone wrong while giving liberal interpretation to the word “son” and include in its ambit the sons of pre-deceased son of the big land owner. He submits that in the Act, the word “family” has been defined, which includes the wife, his minor children, other than a married minor daughter. Thus, according to learned counsel for the appellants, even the grand children of a big land owner do not fall under the definition of “family”.

After considering the submissions of learned counsel for the

appellants and going through the impugned order and the provisions of the Act as well as those of the Hindu Law, we are not inclined to interfere with the impugned order passed by the learned Single Judge.

Undisputedly, under Section 5 (1) of the Act, a big land owner is entitled to select separate permissible area in respect of his son, out of the land owned or held by him, if on the appointed day i.e. on 24.01.1971, his son was adult. Unfortunately, in the present case, all the three sons of the big land owner were murdered prior to the appointed day. On the appointed day, one of his murdered sons was having two adult sons. The question is whether those adult sons of the pre-deceased son of the big land owner are entitled for a share in the Hindu joint family property. The answer is obviously in the affirmative. They being sons of the pre-deceased son are entitled to a share in the Hindu joint family property. If they are so entitled, under Section 5 (1) of the Act, the big land owner cannot be prohibited from selecting one unit of separate permissible area for his adult grandsons, who are sons of his pre-deceased son, who unfortunately died before the appointed day. Merely because adult son of the big land owner died before the appointed day, in our opinion, does not deprive the big land owner from selecting a separate permissible area for the adult sons of his pre-deceased son. If an adult son of a big land owner dies even one day before the appointed day, then the big land owner cannot be deprived of selecting separate permissible area for the adult sons of such pre-deceased son. It is

against the intention of the Legislature. Under the Hindu Law, on a relevant date, sons of pre-deceased son are entitled for a share in the Hindu joint family property held by their grand-father. Since the word “son” has not been defined either in the Act or in the Punjab Tenancy Act, 1887, we cannot give a restricted meaning to this word for the purposes of Section 5 (1) of the Act.

In our opinion, the learned Single Judge has rightly come to the conclusion that “son” includes “grandsons” of the pre-deceased son. The definition of word “family” given in sub-section (4) of Section 3 of the Act is not relevant, because in that definition, even the adult son does not fall in the definition of “family”. This definition is entirely in a different context.

In view of the above, we do not find any illegality in the impugned order passed by the learned Single Judge. Hence, this appeal is dismissed being without any merit.

(SATISH KUMAR MITTAL)
JUDGE

December 05, 2015
ndj

(SHEKHER DHAWAN)
JUDGE