

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.4084 of 2015

Date of Decision:-26.03.2015

Parbhu Dayal & Ors.

.....Petitioners.

Versus

The State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Sachin Mittal, Advocate for the Petitioners.

JASWANT SINGH, J. (ORAL)

Challenge in the present petition is to orders Annexure **P-1** to **P-4** passed by the Authorities below, whereby the prayer of the petitioners for including the land measuring 38 Kanals (land in dispute) within the permissible area of Ude Singh (original land owner and vendor of predecessor in interest of petitioners) has been declined.

Facts in brief are that one Ude Singh son of Jeevan, resident of village Jatuala, Tehsil and District Gurgaon was a big land owner having 93 acres of agricultural land on the appointed day i.e. 15.04.1953. Out of his total land holding, 53 acres including the land in dispute were declared surplus in his presence on 5.1.1960 in the proceedings under the provisions of Punjab Security of Land Tenures Act, 1953 (for short 1953 Act). It is further the case of the petitioners that Ram Karan (predecessor in interest of the petitioners) purchased land measuring 38 Kanals (land in dispute) vide

sale deed dated 16.06.1958 for a sale consideration of Rs.1200/- which was registered on 1.12.1958 and mutation to this effect was sanctioned on 20.5.1959 vide mutation number 376. However vide mutation no.1084 dated 25.12.1982, the land was transferred in favour of Haryana Government in view of the automatic vesting of the surplus land under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972 (for short 1972 Act) and against this, the petitioners filed an application before the prescribed authority, Gurgaon on 4.1.1991. The said application was dismissed vide order dated 17.01.2003 and appeal against the same was also dismissed by Collector, Gurgaon on 29.05.2006 and revision was also dismissed by the Commissioner on 30.01.2008. It is also evident from the record that out of the area purchased by predecessor in interest of petitioner, 20 Kanal being part of surplus land pool was allotted to one Om Parkash. It is further the case of the petitioners that the area bought by him/his predecessors in interest should be treated as the land owners' permissible area because the sale took place on 16.6.1958 and thus, the provisions of the 1953 Act as well as 1972 Act respectively are not applicable to the present petitioners.

Learned Counsel for the petitioners has argued on the basis of the facts mentioned hereinabove and has stated that the Authorities below have wrongly dismissed the claim petition for declaring the area under possession and ownership of petitioners since the sale made on 16.06.1958 was prior to 30.07.1958 although registered on 01.12.1958 and thus exempted from the surplus area in the light of the provisions of 1972 Act.

After hearing learned Counsel for the petitioners and perusing the paper book, this Court is of the considered view that the present petition

is devoid of any merit and the same deserves to be dismissed.

It is an admitted fact that the said order dated 5.1.1960 declaring the land in dispute to be surplus was never challenged by the original big land owner-Ude Singh or by Ram Karan-the predecessor in interest of the petitioner and thus had attained finality under the provisions of the 1953 Act. Such land by operation of law in the light of the provisions of Section 12(3) of the 1972 Act, had automatically come to vest in the State of Haryana w.e.f. 23.12.1972. Even in cases where the proceedings under the 1953 Act were under challenge in appeal or revision before higher Authorities and pending, by virtue of provision of Section 33(2)(ii) of the 1972 Act were to be decided under the provisions of 1953 Act, since the permissible area of the big land owner under the 1972 Act had been reduced. There is no express provision engrafted in the 1972 Act which permits the reopening and recomputation of a surplus area already declared so under the 1953 Act. The sale/transfer of land by the big land owner, whose case has been finalised under the 1953 Act, after 01.02.1955 under Section 16 of the Act is not to be considered valid and the area under such transfer/sale is to be included for the purpose of declaring surplus area of the big land owner.

Thus the successor in interest of Ram Karan i.e. the petitioners could not even maintain their application moved on 8.01.1991 before the prescribed Authority, Gurgaon from exempting the land in dispute purchased from the big land owner and forming part of the declared surplus land, and that to after a delay of 31 years since the passing of the order dated 5.01.1960. This view finds support by a decision of this Court rendered in **Smt. Bhagwanti Devi & Anr. Vs. State of Haryana & Anr.**

1994(2) R.R.R. 358.

The plea raised on behalf of the petitioner that the purchase by the predecessor in interest of the petitioner i.e. Ram Karan from the big land owner on 16.06.1958 being prior to the appointed date as per the 1972 Act i.e. 30.07.1958 thus being protected and exempted is totally misconceived. Firstly, there is to be no determination of surplus land of the original big land owner Ude Singh under the 1972 Act, secondly, even the alleged purchase having being registered vide sale deed dated 01.12.1958 and thus acquiring any legal sanctity is after the appointed date of 30.07.1958 and not liable to be exempted even under the 1972 Act.

In view of the above, finding no merit in the present writ petition the same is hereby dismissed.

**(JASWANT SINGH)
JUDGE**

March 26, 2015
Vinay