

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.2180 of 2012 (O&M)
Date of Decision:- 30.04.2015.

Suresh Chander and others

.....Appellants

Versus

The State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of 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: None for the appellant.

Mr. R.D. Sharma, DAG, Haryana.

Mr. Ashok Verma, Advocate for
respondent Nos.8 and 9.

SURYA KANT, J. (ORAL)

1.) Though this appeal was adjourned to enable counsel for the appellants to implead the legal representatives of private respondents, most of whom are reported to have died during the pendency of the proceedings. The said order was not complied with, hence, on December 15, 2014, one more opportunity was granted to the appellants to do the needful.

2.) Four months have passed thereafter but impleadment of legal representatives is still awaited. Counsel for the appellants is not present. On the previous date also, the appellants were unrepresented.

3.) Earlier, the appeal was dismissed for non-prosecution on July 12, 2013 but on application, that order was recalled and the appeal was restored to its original number and file for adjudication on merits.

4.) In these circumstances, we propose to decide the appeal on merits after going through the record.

5.) The order dated 04.08.2011, whereby, learned Single Judge dismissed the writ petition filed by appellants as well as the subsequent order dated September 28, 2012 declining review of the earlier order dated 04.08.2011, both are under challenge in this Letters Patent Appeal.

6.) The issue that arose for consideration of the learned Single Judge was whether the appellants are entitled to seek exemption of land from 'surplus pool' under the provisions of the Haryana Ceiling on Land Holdings Act, 1972 on the ground that the subject land was gifted to them by the big land owner in the year 1968-69?

7.) Smt. Ram Ditti was a big land owner and part of her land-holding measuring 21 standard acres $5 \frac{3}{4}$ was declared surplus under the Punjab Security of Land Tenures Act, 1953 on 27.11.1965.

8.) State of Haryana enacted the Haryana Ceiling of Land Holdings Act, 1972 whereunder the 1953 Act ceased to operate. Under the new Act, Section 12 (1) of the Haryana Act, 1972 provides that the land declared surplus under the 1953 Act and/or hitherto

shall automatically vest in the State. Such lands constitute the 'surplus pool' which to be allotted to the landless persons, tenants or other eligible persons.

9.) The appellants are not strangers to Smt. Ram Ditti-the big land owner. They are the family members of brother of her husband. They claim that Smt. Ram Ditti executed a 'gift deed' in their favour in respect of part of the land which was declared surplus in the year 1965 under the provisions of 1953 Act. It was in this backdrop that the question posed at the outset arose for the consideration of the learned Single Judge.

10.) On a plain reading of the order dated 04.08.2011, passed by learned Single Judge, it is revealed that such a plea taken by the appellants has been concurrently declined by the Authorities under the Act and as well as by the learned Single Judge.

11.) No exception can be taken to the view formed by the authorities or the learned Single Judge. Section 12 (1) of the 1972 Act expressly says that:-

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 public purpose] and all rights, title and interest (including the contingent interest, if any, recognised 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.

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.

12.) We have no reason to doubt that the so called gift deed was nothing but a sham transaction to defeat the legislative object of agrarian reforms for which the 1953 Act, as substituted by the Haryana Act of 1972, were enacted. It was not a case of a 'bona fide purchase' of the suit land for consideration. Even if it were so, yet the law does not exempt the land on the basis of an instrument of transfer including sale deed; if it has already fallen in surplus pool.

13.) For the reasons aforestated, we do not find any merit in this appeal.

14.) Dismissed.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

April 30, 2015.

sandeep sethi