

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) LPA No.1731 of 2013 (O&M)

Date of Decision: 18.11.2015

Premo Devi & Ors.

. . . . Appellants

VS.

State of Haryana & Ors.

. . . . Respondents

(2) RSA No.952 of 1989 (O&M)

Sube Singh & Ors.

. . . . Appellants

VS.

Rameshwar & Ors.

. . . . Respondents

(3) RSA No.953 of 1989 (O&M)

Sube Singh & Ors.

. . . . Appellants

VS.

Sarupa (through LRs)

. . . . Respondent

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: Mr. Ashish Aggarwal, Senior Advocate, with
Mr. Kulwant Singh, Advocate for the appellants

Ms. Kirti Singh, DAG Haryana

S/Sh. SK Jain & Deepak Jain, Advocates
for the private respondents

SURYA KANT, J.

(1) The order dated 31.08.2013 whereby learned Single Judge
has dismissed the appellants' Civil Writ Petition No.3109 of 1989
along with Regular Second Appeals No.952 & 953 of 1989, is the

subject matter of challenge in this Letters Patent Appeal. As no intra-Court appeal was maintainable against the order *qua* dismissal of two Regular Second Appeals, the appellants preferred Special Leave Petition before the Hon'ble Supreme Court. Simultaneously, they also filed the instant Letters Patent Appeal against that order to the extent it pertained to the dismissal of their writ petition. This Court vide order dated October 22, 2013 permitted the appellants to withdraw their appeal with liberty to file Special Leave Petition in the writ-matter also so that there was no possibility of any conflicting judgements.

(2) The Hon'ble Supreme Court disposed of all the Special Leave Petitions with a direction to this Court to decide LPA No.1731 of 2013 afresh, along with RSA Nos.952 & 953 of 1999. This is how that the Letters Patent Appeal and two Regular Second Appeals are now being decided by a common order.

Facts:

(3) Firstly, the facts which are relevant for the disposal of all the three cases are noticed.

(A) Bhale Ram (since deceased) – predecessor-in-interest of appellants was owner of land measuring 116 Bighas 17 Biswas in village Pauli, District Jind. The Collector (Agrarian), Jind vide order dated 15th July, 1961 declared his 31 standard acre 1 $\frac{1}{4}$ th unit land as 'surplus' under the

PEPSU Tenancy and Agricultural Lands Act, 1955 (in short, 'the PEPSU Act').

- (B) In February, 1964, Bhale Ram is claimed to have renounced the world and became a Dadupanthi Sadhu (saint).
- (C) In 1964-65, the surplus land of Bhale Ram was allotted to various tenants including the predecessors of private respondents and part possession was also handed over to some of the allottees like Badlu etc.
- (D) Bhale Ram suffered a civil court decree on 21.01.1967 in favour of his son Sube Singh etc. and relinquished the ownership of land in dispute in their favour.
- (E) Bhale Ram's son Sube Singh (who was husband of first appellant and father of appellants No.2 to 4) along with his sisters then applied under Section 32-FF of the PEPSU Act on 30.08.1967 for the release of the land of their father from 'surplus pool' on the plea that he had met with 'civil death' and the land-holding transferred to them through the civil court decree was not 'surplus' in their hands. The Collector allowed that application on the very next day i.e. on 31.08.1967 and ordered the release of land of Bhale Ram from the surplus pool.
- (F) The respondent-allottees who were not even heard, challenged the above-stated order of Collector. Their appeal

was allowed by the Commissioner vide order dated 23.06.1969.

- (G) Sube Singh etc. challenged the order of Commissioner in revision before the Financial Commissioner but that was dismissed on 15.01.1971.
- (H) They approached this Court by way of CWP No.425 of 1971 and during its pendency, the Haryana Ceiling on Land Holdings Act, 1972 (in short, 'the Haryana Act') came into force on 23.12.1972.
- (I) A learned Single Judge dismissed the writ petition on 15.10.1979 but intra-Court appeal i.e. LPA No.178 of 1979 filed by Sube Singh etc. was allowed by a Division Bench of this Court on 13.08.1980 (A1) [judgement reported as **1981 PLJ 70**]. The operative part of that judgement is also a bone of contention and it appears useful to reproduce its following paragraphs:-

“5. ...When the Commissioner had come to the conclusion that reliance could not be placed on the Civil Court judgment, then the proper course to be adopted by him was to have remanded the case to the Collector for deciding the question of Bhalle Ram having died civilly, but that course was not adopted. In this view of the matter, we are unable to agree with the learned Single Judge that the Commissioner was not bound to give a fresh finding in this respect, as no finding in that respect had been given by the Collector.

In the view we have taken, it is not necessary for us to go into the other contentions of the learned counsel for the appellants.

6. For the reasons recorded above, we allow this appeal, set aside the judgment of the learned Single Judge and also the orders of the Financial Commissioner, dated 25th of January, 1971 (Annexure D), Commissioner, dated 23rd of June, 1969 (Annexure BB) and Collector (Agrarian Reforms) Jind, dated 31st of August, 1967 (Annexure A), and send back the case to the Collector (Agrarian Reforms), Jind for deciding the whole matter afresh on merits after affording full opportunity of hearing to the parties. In the circumstances of the case, we make no order as to costs.”

- (J) After the remand, the Collector (Agrarian) vide order dated 05.05.1981 held that Bhale Ram became a sadhu more than 17 years back and thus had died ‘civil death’, therefore, the status of the land was to be seen in the hands of his legal heirs who being small landowners, no area could be declared ‘surplus’.
- (K) The Commissioner, Hisar Division also upheld the order of Collector (Agrarian) and dismissed the respondent’s appeal vide order dated 16.05.1983.
- (L) Still aggrieved, the private respondents filed revision petition before the Financial Commissioner, Haryana, who

vide self-speaking order dated 03.11.1988 set aside the orders of Collector and Commissioner.

- (M) The Financial Commissioner held that (i) the so-called *sanyas* taken by Bhale Ram was neither proved nor it was valid in law; (ii) the prescribed ceremonies like *pind daan* etc. were not performed; (iii) no custom permitting persons of his caste to become *sanyasi* was established; (iv) the intimation of Bhale Ram having become *sanyasi* was not given to the revenue authorities nor the mutation was got changed; (v) it was after three and half years that a collusive decree was obtained by his family members from the Civil Court under suspicious circumstances; (vi) even if he had become *sanyasi* it was nothing but a voluntary transfer of land in favour of his heirs and since such transfer had the effect of reducing the surplus area, it militated against the philosophy of PEPSU Act; (vii) concededly, there was no bar on Bhale Ram of becoming 'worldly man' again. His becoming a *sanyasi* was thus not an irrevocable act, hence his land could not be exempted from surplus area under Section 32-FF of the PEPSU Act; and (viii) the land was declared surplus in the year 1961 and it was partly utilized also. Since allotment of surplus land under the PEPSU Act resulted in taking over the

possession, the entire exercise stood completed much before Bhale Ram became Sanyasi.

(N) The order dated 03.11.1988 passed by Financial Commissioner, Haryana has been upheld by the learned Single Judge, giving rise to the instant Letters Patent Appeal.

(O) Bhale Ram died his natural death on 12.11.1991, during the pendency of writ petition.

RSA No.952 of 1999

(4) In continuity of the facts as noticed above, the Collector (Agrarian) after the matter was remanded to him, passed the order dated 05.05.1981 holding that there was no surplus land in the hands of legal heirs of Bhale Ram. No sooner that order was passed, the appellants on 03.06.1981 forcibly took back the possession of surplus land which had been meanwhile allotted and handed over to some of the allottees.

(5) The aggrieved tenant-allottees filed a civil suit under Section 6 of the Specific Relief Act for restoration of their possession. Their suit was decreed on 09.01.1984 with a categorical finding that the Collector (Agrarian) accepted the claim of landowners without hearing the allottees though they had meanwhile deposited the compensation and mutation had also been sanctioned in their favour. The Civil Court thus directed the restoration of possession in their favour.

(6) Sube Singh etc. (son and daughters of Bhale Ram) challenged the Civil Court decree dated 09.01.1984 by way of another civil suit No.506 of 1984 (Sube Singh etc. vs. Rameshwar etc.) which was dismissed on 29.01.1987. Their first appeal was also turned down vide judgment and decree dated 25.01.1989. These judgments and decrees are under challenge in the instant Regular Second Appeal.

RSA No.953 of 1989

(7) Sube Singh etc. (son and daughters of Bhale Ram) filed one more civil suit No.504/1984 seeking a declaration that they are owners in possession of the land measuring 6 Bighas 8 Biswas fully described in the headnote of the plaint and further sought a restraint order against the defendants (Sarupa etc.), from interfering in their peaceful possession or from taking forcibly possession of the suit land under the judgement and decree dated 09.01.1984 passed by Civil Court, Jind. This Civil Suit pertained to the same land, the possession of which was taken back by the appellants and for which the civil suit of allottees filed under Section 6 of the Specific Relief Act for restoration of their possession was decreed.

(8) The facts, legal pleas and the relief sought in the second civil suit were substantially similar to those taken in civil suit No.506 of 1984. The appellants' 2nd suit seeking declaration and injunction was also dismissed by the trial court on 25.02.1987 and the first appeal too met with the same fate on 25.01.1989. These judgements and decrees are under challenge in the instant regular second appeal.

Additional facts in respect of RSA No.2189 of 1980 (Sube Singh vs. Rameshwar) dismissed on 13.10.1980 and RSA No.2510 of 1980 (Rameshwar vs. Sube Singh) dismissed as infructuous on 06.08.2001.

(9) Even before the above-stated two Civil Suits of 1984, Sube Singh etc. had filed Civil Suit No.100/1 dated 16.07.1976 against Rameshwar etc., seeking a decree for possession of the suit land (declared surplus) with a further declaration that Bhale Ram on becoming 'sadhu' had died 'civil death'. Their suit was dismissed by the Civil Court, Jind vide judgment and decree dated 31.07.1978 with a finding that there was no 'civil death' of Bhale Ram. The Civil Court, however, also set aside the allotment of surplus land in favour of defendants after declaring them ineligible for such allotment.

(10) Sube Singh etc. challenged the said judgement and decree in first appeal. The defendants also filed their cross-objections challenging the findings returned against them. The appeal as well as cross-objections were dismissed by the First Appellate Court on 31.05.1980.

(11) Both the aggrieved parties preferred regular second appeals in this Court. RSA No.2189 of 1980 filed by Sube Singh etc. was dismissed *in limine* on 13.10.1980.

(12) RSA No.2510 of 1980 preferred by the cross-objectors (Rameshwar etc.) remained pending and came up for final hearing on 06.08.2001 when it was dismissed as infructuous with the following order:-

“Learned counsel for the plaintiffs-respondents states, on instructions, that the suit be dismissed as withdrawn. Suit is dismissed as withdrawn. Consequently the appeal is dismissed as infructuous. There will be no order as to costs.”

(13) It may be seen from the above-reproduced order that counsel for the plaintiff-respondents (Sube Singh etc.) (present appellants) sought and were permitted to withdraw their Civil Suit itself. Consequently, the regular second appeal filed by cross-objectors was rendered infructuous.

Findings returned by learned Single Judge in the judgement under appeal:

(14) Learned Single Judge considered the question as to whether Bhale Ram had met with ‘civil death’ and answered it against the appellants on the basis of judgement and decree dated 31.07.1978 passed by Civil Court, Jind, in Civil Suit No.100 dated 16.07.1976 as one of the issue decided therein was whether Bhale Ram had become sadhu and had died ‘civil death’? Learned Single Judge viewed that since the Civil Court judgement and decree had attained finality with the dismissal of RSA No.2189 of 1980 by this Court, the said finding operates as *res judicata* against the appellants and they are bound by the same. As regards the remand order passed by this Court in LPA No.178 of 1979, learned Single Judge has held that Bhale Ram suffered a decree in favour of his son/daughters etc. on 21.01.1967 and such like judgment or decree obtained after commencement of the PEPSU Act having the effect of diminishing the surplus area, was

liable to be ignored by virtue of Section 32-DD of the PEPSU Act. Similarly, learned Single Judge has turned down the appellants' plea that the Civil Court decree passed under Section 6 of the Specific Relief Act for restoration of possession in favour of the allottees was without jurisdiction.

(15) We have heard learned counsel for the parties at a considerable length and gone through the record.

Contentions raised on behalf of the appellants:

(16) Shri Ashish Aggarwal, learned senior counsel for the appellants very forcefully argued that -

(i) the surplus case of late Bhale Ram was pending under the PEPSU Act at the time of commencement of the Haryana Act or thereafter, hence in view of Section 33(2)(ii) of the Haryana Act, his surplus case has to be decided under the old Act i.e. the PEPSU Act.

(ii) Due to actual death of Bhale Ram on 12.11.1991 during pendency of the case, namely, before the surplus case could attain finality, his legal heirs are entitled to the benefit of Section 32-FF of the PEPSU Act. He drew support from (i) **Chanan Mal Newar & Ors. vs. State of Haryana & Ors., 1977 PLJ 81**, (ii) **Ishar Singh vs. State of Punjab & Ors, 1981 PLJ 112**, (iii) **Kartar Kaur vs. State of Haryana, 1985 PLJ 47**, (iv) **Hernek Singh vs. Financial Commissioner, Appeals, Punjab, (2001) 9 SCC 480** (v) **Ajit Kaur & Ors. vs.**

The Punjab State & Ors., 1980 PLJ 354 (FB), (vi) CWP No.1861 of 1991 (Babu Singh vs. State of Haryana) and (vii) CWP No.832 of 1993 (Puran Singh vs. State of Haryana).

(iii) in view of Section 32-E of the PEPSU Act, the land could be treated as utilized only if its actual possession was taken from the big landowner. Mere allotment or deposit of instalments by allottees does not confer any right on them. Unless the actual possession is delivered to the allottee before the death of big landowner, such allottee does not acquire any right in the land and the legal heirs of deceased landowner are entitled to seek re-opening of the surplus area case. [Ref: (i) *Bhagwan Singh & Ors. vs. State of Punjab & Ors. 1965 PLJ 124 (DB)*, and (ii) *Chet Singh vs. State of Punjab & Ors., 1972 PLJ 440 (DB)*];

(iv) this Court in [LPA No.178 of 1979] remanded the case with a direction to the Collector to decide the “**whole matter**” afresh. It was an open remand and the authorities were obligated to re-determine the surplus area case overlooking the previous order dated 15.07.1961 which stood set aside by the Collector’s later order dated 30.08.1967. Reliance was placed on a decision of this Court in *Babu Ram & Ors. vs. State of Punjab & Ors., 1965 PLJ 185*;

(v) Section 12(3) of the Haryana Act is not attracted as it applies only in a case where proceedings were not pending under the old Act;

- (vi) the appellants who are children/grandchildren of late Bhale Ram are the 'aggrieved' persons in true sense after the 'civil death' of Bhale Ram, hence proceedings initiated by them before different forums are/were maintainable;
- (vii) Ceiling Laws are confiscatory legislations and have to be construed strictly;
- (viii) Learned Single Judge did not delve into the question of 'civil death' of Bhale Ram and has overlooked the order dated 06.01.2001 passed in RSA No.2510 of 1980 whereby Civil Suit No.100 dated 16.07.1976 was permitted to be withdrawn and the findings returned by the Civil Court in judgement dated 31.07.1978 or by this Court in RSA No.2189 of 1980 decided on 13.10.1980, were thus rendered redundant and infructuous;
- (ix) the jurisdiction of Civil Court to restore possession in favour of allottees under Section 6 of the Specific Relief Act was barred in view of the special provisions contained in Section 43 & 47 of the PEPSU Act;
- (x) The issue *re:* determination of 'civil death' of Bhale Ram under the PEPSU Act was open for the reason that the civil suit in which such an issue had earlier arisen for consideration was withdrawn by the appellants. Order 23 Rule 1 CPC bars only a fresh civil suit and it has no effect on the exclusive jurisdiction vested in the authorities under the PEPSU Act;

(xi) There is ample evidence on record to establish the 'civil death' of Bhale Ram. The authorities as well as learned Single Judge have failed to appreciate the settled principle that a person having renounced the world ceases to have any interest in his properties and his heirs inherit the same.

The Respondents' Counter:

(17) Sarvshri SK Jain and Deepak Jain learned counsel for the contesting respondents refuted the appellants' claim and urged that the order passed by learned Single Judge deserves approval, *inter alia*, for the reasons that:-

- (i) Bhale Ram was admittedly a big landowner. The Collector (Agrarian) declared his land 'surplus' vide order dated 15.07.1961. An appeal against that order could be filed within 30 days under the PEPSU Act but no such appeal was ever filed by Bhale Ram and the said order attained finality;
- (ii) The only 'aggrieved' person to challenge the order declaring his land as 'surplus area' was Bhale Ram, who never challenged that order during his lifetime;
- (iii) The plea that Bhale Ram had renounced the world or became a 'sadhu/sanyasi' was nothing but to affront the legislative policy of the PEPSU Act. The appellants have miserably failed to prove the performance of ceremonies for

conversion as a sadhu (saint). Revenue Authorities were never informed of such renunciation;

- (iv) Contrarily, Bhale Ram continued to actively participate in worldly affairs. In a collusive suit filed by his son Sube Singh and others on 06.01.1967 claiming themselves to be owners of the subject land, Bhale Ram appeared in Court and admitted their claim on 21.01.1967.
- (v) Financial Commissioner as well as learned Single Judge have rightly discarded the plea of Bhale Ram having renounced the world;
- (vi) The surplus land stood allotted to tenants in June, 1964 and an entry to this effect was made in the revenue record vide rapat No.687 dated 07.08.1964;
- (vii) The Civil Court findings in the judgement dated 31.07.1978 passed in Civil Suit No.100 dated 16.07.1976 and upheld by this Court on 13.10.1980 in RSA No.2189 of 1980 are binding and constitute *res judicata*, notwithstanding the subsequent withdrawal of that civil suit in RSA No.2510 of 1980;
- (viii) The order dated 15.07.1961 declaring the land of Bhale Ram as 'surplus' remained unaffected by the order dated 13.08.1980 passed by this Court in LPA No.178 of 1979 as the case was remanded only for determining the question

whether Bhale Ram had become a sadhu, and if so, what was its effect on the surplus area case?

- (ix) Section 32-FF of the PEPSU Act cannot be invoked by the appellants for the exemption of transfer or other disposition made after the cut-off date of 21.08.1956. Rather, Section 32-DD(b) is attracted according to which any judgement or decree obtained after the commencement of the Act and having the effect of diminishing the surplus area, was liable to be ignored;
- (x) The allottees who were forcibly dispossessed, had no other remedy except to institute a civil suit under Section 6 of the Specific Relief Act, for Section 43 of the PEPSU Act deals with summary eviction and fine on the person who is found in unauthorized or wrongful possession. It does not provide any remedy for restoration of possession of a lawful allottee who was wrongfully dispossessed;
- (xi) No substantial question of law is involved in the connected regular second appeals.

Our Findings

(18) Having given thoughtful consideration to the rival submissions, it appears that the following issues arise for determination:-

- (i) Whether the order dated 15.07.1961 passed by Collector (Agrarian) has attained finality, and if so, to what effect?

- (ii) Whether Bhale Ram had renounced the world and became a sanyasi in February, 1964, and if so, does it affect the surplus area case?
 - (iii) Whether the surplus area case of late Bhale Ram or his legal heirs requires re-determination under the PEPSU Act?
 - (iv) Whether the surplus area case of late Bhale Ram is liable to be re-opened after his actual death on 12.11.1991?
 - (v) What is the legal effect of the Civil Court findings which were duly upheld by appellate Courts, after this Court permitted the appellants to withdraw the Civil Suit itself in a later regular second appeal?
- (19) The PEPSU Act (unamended) came into force on 06th March, 1955. It was an agrarian law. The object of the Act was to restrict the landholding of an owner for personal cultivation and to prevent illegal termination of tenancy rights. The other pre-dominant object of the Act was to allow the tenants to acquire proprietary rights on payment of symbolic compensation to the landowners subject to the eligibility conditions prescribed in the Act.
- (20) Chapter IV-A for “CEILING ON LAND AND ACQUISITION AND DISPOSAL OF SURPLUS AREA” comprising Section 32-A to 32-NN was inserted vide PEPSU Act No.15 of 1956. Its Section 32-A mandated that notwithstanding anything to the contrary in any law, custom, usage or agreement, no person shall be

entitled to own or hold the land as landowner or tenant under his personal cultivation exceeding the permissible limit. Section 32-B required all such landowners or tenants to file the returns furnishing details of their land to the Collector duly supported by an affidavit. The Collector was authorized to verify the information whereafter a draft statement in the prescribed manner was to be sent to the State Government for the advice of PEPSU Land Commission.

(21) According to Section 32-BB(2) if a landowner or tenant fails to furnish the declaration supported by affidavit, the Collector was competent to declare the land of such landowner or tenant in excess of the 10 standard acres, to be the 'surplus area'. Any person aggrieved by the order of the Collector under sub-Section (2) could file appeal within 30 days to the State Government or an officer authorized in this regard.

(22) Section 32-DD declared that notwithstanding anything contained in the Act, a tenancy created after the commencement of the PEPSU Act or **“any judgement, decree or order of a Court or other authority, obtained after the commencement of that Act and having the effect of diminishing the area of such person which could have been declared as his surplus area; shall be ignored”**.

(23) According to Section 32-E irrespective of anything to the contrary contained in any law, custom or usage, the 'surplus area' of a landowner shall stand vested in the State Government.

(24) Section 32-FF protected certain transfers which were not to affect the surplus area and as per this provision, no transfer or disposition of land effected after 21st August, 1956 shall effect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition made by *“a landless person, or a small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, for consideration up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit...”*.

The provision further mandates that:-

“Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation for it, to the person whom he received it.”

(25) Section 32-J declared that the ‘surplus area’ vested in the State Government under Section 32-E shall be at its disposal and the State Government may through a Scheme utilize that surplus area by allotting to tenants willing to cultivate land personally or to landowners or tenants owning or holding land not exceeding 5 standard acres.

(26) Reference to Section 39 of Chapter-V may also be made as its sub-Section (1) enables a person aggrieved by any decision or order of the prescribed authority or the Assistant Collector of First Grade to file appeal before the Collector within thirty days and as per its sub-

Section (2) an aggrieved person, provided that the order is not passed under sub-Section (1), could file an appeal against the same within thirty days to the Commissioner.

(27) From the above noticed legislative scheme of the PEPSU Act, it may be seen that the 'surplus area' case of a landowner or tenant owning or holding land exceeding ten standard acres was required to be determined by the Collector (i) on the basis of declaration to be furnished by such landowner or tenant, duly supported with an affidavit and file within the stipulated period failing which (ii) the Collector was competent to declare the surplus area of such person(s); (iii) if the affected person was aggrieved by the order of the Collector passed on the basis of information furnished by him, namely, after a contest and on consideration of the material brought on record, such order was appealable before the Commissioner within thirty days under Section 39(2) of the PEPSU Act; (iv) if the Collector passed the order *suo motu* due to failure of the landowner or tenant to furnish the requisite information, such an order was also appealable within thirty days under Section 32-D(3) of the PEPSU Act.

(28) The order determining surplus area case of Bhale Ram was admittedly passed on 15.07.1961. He did not file any appeal though at that time he was the only 'aggrieved person'. In fact no appeal appears to have ever been filed against that order and thus it attained finality.

Whether order dated 15.07.1961 merged in the order dated 31.08.1967?

(29) The appellants' contention that the order dated 15.07.1961 merged in the order dated 31.08.1967 cannot be accepted for more than one reasons. Firstly, no express power of review is vested in the Collector under the PEPSU Act. Secondly, the order dated 31.08.1967 was not passed at the instance of big landowner (Bhale Ram). Thirdly, the order dated 31.08.1967 was set aside by the Appellate Authority on 23.06.1969 and thereafter this Court vide judgement dated 13.08.1980 passed in LPA No.178 of 1979 remanded the matter. The said order thus did not finally sustain. Similarly, the expression used by this Court in the judgement dated 13.08.1980 i.e. "whole matter" to be decided afresh, has to be construed in the context of the controversy which was the subject matter of adjudication. The only issue considered by this Court was the alleged 'civil death' of Bhale Ram on renunciation of the world. As the authorities under the PEPSU Act had not decided that question on merits that the 'whole matter' was remanded. In any case, the expression "whole matter" does not cut much ice, for the legal and factual position in the year 1980 was also the same as Bhale Ram was physically alive and the surplus area was liable to remain unaffected unless his plea of 'civil death' was accepted.

(30) We are thus of the considered view that failure to challenge the order dated 15.07.1961 sealed the fate of Bhale Ram's surplus area case.

(31) Adverting to question No.(ii), namely, whether Bhale Ram had renounced the world and became a *sanyasi*, we do not have even slightest doubt that renunciation was a guileful attempt to overcome the legal consequences which Bhale Ram was bound to suffer under the PEPSU Act. The findings returned in this regard by Financial Commissioner, Haryana in his order dated 03.11.1988 are well founded and deserve appreciation. Bhale Ram could not detach or distance himself from the materialistic world when he voluntarily came forward and deposed in favour of his children in the civil court on 21.01.1967. Renunciation was mere a deception to defeat and defy the agrarian reforms. No custom was proved; rituals were not performed and the sanyasi did not lead the life of aloofness, rather continued to actively participate in worldly affairs. He is said to have even initiated proceedings under Section 107/151 CrPC against Sarupa etc. on 16.08.1965. Needless to say that an ascetic order means severing all ties from the worldly affairs unlike Bhale Ram who continued to pursue civil or criminal proceedings for the personal gain of his family members.

(32) It has been very aptly explained that only because "a person declares himself as Sanyasi or wears clothes worn by Sanyasis would not be sufficient to make him a Sanyasi. According to the

Smritis, the ascetic is qualified to hold no property; and whatever little he does, is subject to a special rule of devolution. A person renounces the world when he ceases to take any interest in worldly affairs or retires to a single room. In order to bring a person under the head Sanyas, it is necessary to show absolute abandonment by him of all secular property and a complete and final withdrawal from worldly affairs” [Ref. *Gulabrao Nathuji Marathe vs. Nagorao Visnaji Marathe*, AIR 1952 Nag. 102]

(33) As regard to question No.(iii), the claim of appellants rests upon Section 32-E(a), according to which the surplus area of a land owner shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose. It is contended that except a small portion of the surplus area delivered to the allottees and which was re-posessed by the appellants in June 1981, they continued to retain possession of the rest of surplus area hence their land cannot be taken to have been acquired or vested in the State. There can be no quarrel on this legal proposition, in view of the interpretation of Section 32-E(a) by the Constitution Bench in *Ujagar Singh (dead) by LRs. Vs. Collector, Bathinda (1996) 5 SCC 14*. However, on facts, the cited-principle is not attracted and is clearly distinguishable.

(34) At this stage, the repeal and saving clause contained in Section 33(2)(ii) of the Haryana Act which has also been relied upon by the appellants, may also be reproduced:-

“(ii) the proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under the provisions of either of the said enactments, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by the State Government in accordance with the provisions of this Act.”

(35) As a cumulative effect of the above referred two provisions, the appellants' contention is that since the 'surplus area' of Bhale Ram never came to be vested in State and it continued in the appellants' possession, the surplus area case deserves to be decided in accordance with the PEPSU Act only, even after the Haryana Act has come into force.

(36) On the other hand, it was urged on behalf of the respondents that once the surplus land stood allotted or the allottees had deposited the compensation amount, there is a presumptive delivery of possession in their favour. Further, Section 12(1)&(3) of the Haryana Act has been relied upon to contend that the 'surplus area' of Bhale Ram is deemed to have been acquired by the State Government for a 'public purpose'. Section 12(1)&(3) of the Haryana Act 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 a public purpose) (Vide Act No. 17 of 1976) 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.

(2) xxx xxx

(3) The area declared surplus or tenant's permissible area under the Punjab law and the area declared surplus under the Pepsu Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab Law or Pepsu Law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration. (emphasis applied)

(37) On a combined reading of the provisions relied upon from both sides, coupled with the dictum in **Ujagar Singh's** case (supra), it must be held that since the possession of entire surplus area was not taken over by the allottee(s) and the surplus area to the extent it

remained in possession of the big landowners, cannot be deemed to have been acquired or vested in the State. The said legal effect of Section 32-E(a) of PEPSU Act however, has been drastically diluted and holds no water in favour of appellants in view of Section 12(3) of the Haryana Act which has explicitly created a deeming fiction to the effect that the area declared surplus under the PEPSU law and **which has not so far vested in the State Government, shall be deemed to have vested in the State Government w.e.f. from the appointed day...** Since Section 12(3) specifically covers up a situation where Section 32-E failed to operate for want of delivery of physical possession and it intends to fill up that vacuum in the PEPSU Act, there can be no escape but to hold that by virtue of Section 12(3) of the Haryana Act, the surplus area of late Bhale Ram is deemed to have vested in the State Government. At the cost of repetition, it deserves mention here that Bhale Ram was very much alive on the “appointed day” defined in the Haryana Act.

(38) Section 33(2)(ii) of Haryana Act does not come to the appellants’ rescue for the reason as no proceedings for the determination of surplus area of Bhale Ram were pending on the date when that Act came into force. Such proceedings were finally concluded way back on 15.07.1961. The only issue which was pending consideration in the subsequent proceedings was whether Bhale Ram had renounced the world in February, 1964, and if so, was there any effect of such renunciation on his surplus area case?

(39) Question No.(iv), namely, the effect of actual death of Bhale Ram on 12.11.1991 is in sequel to question No.(iii). Once it is held that the surplus area case of Bhale Ram got settled on 15.07.1961 and he never met with any 'civil death', there is no question of re-opening the surplus area case after his actual death on 12.11.1991. Admittedly, during the lifetime of Bhale Ram, the Haryana Act came into force and the benefit which Bhale Ram or his legal heirs would have drawn out of Section 32-E of the PEPSU Act due to retention of physical possession of the surplus area, has been legislatively snatched away from them by Section 12(3) of the Haryana Act. Bhale Ram being very much alive on the appointed day when Haryana Act came into force, his surplus area got vested in the State Government in the light of Section 12(1)&(3) of that later Act.

(40) It is true that ceiling laws are confiscatory legislations and have to be construed strictly, but when the provisions are neither obscure nor capable of two meanings, the judicial interpretation ought to be attune with the object of the Statute. The law relating to public policy cannot remain immutable. The contention of the appellants cannot therefore wipe out the effect of maxim "*solus populi suprema lex*" i.e. public welfare is the highest law.

(41) Though in view of our answer to question No.(i) to (iv), it is not necessary to dwell upon question No.(v) as the fate of these appeals does not rest upon the answer to that question. Having said that, we feel that the doubt, if any, on the said issue be also removed.

It is undeniable that in Civil Suit No.100 dated 16.07.1976, Sube Singh etc. sought a declaration of civil death of Bhale Ram and also questioned the legality of allotments made in favour of defendants. The Civil Court held that (i) there was no civil death of Bhale Ram; (ii) order of allotment in favour of defendants was illegal; and (iii) order dated 06.05.1964 declaring defendants as eligible tenants was null and void. Both parties felt aggrieved. The plaintiffs filed appeal, while the defendants filed cross-objections. The First Appellate Court dismissed the appeal as well as cross-objections. Sube Singh etc. – the plaintiffs who were aggrieved at finding No.(i) i.e. there was no civil death of Bhale Ram came to this Court through RSA No.2189 of 1980 which was dismissed on 13.10.1980. The above-stated finding of fact thus got the seal of approval and attained finality.

(42) The second RSA No.2510 of 1980 was filed by the defendants who were aggrieved at findings No.(ii) & (iii), namely, setting aside of their allotment and declaring them ineligible for allotment. There was no third issue to be gone into by this Court in the above-stated second appeal. The plaintiffs made a statement and withdrew their civil suit, rendering the second appeal infructuous. The said statement was apparently made to avoid any adverse finding by this Court on points No.(ii) & (iii), referred to above. The withdrawal of civil suit thus had no bearing on the order dated 13.10.1980 passed by this Court in RSA No.2189 of 1980. Following the doctrine of merger, the finding returned by Courts below on point

No.(i) stood merged in the order dated 13.10.1980 passed by this Court and that finding is the final determination of question No.(i). Thereafter, this Court became *functus officio* so far as RSA No.2189 of 1980 was concerned. The order passed in that second appeal was neither expressly reviewed vide later order dated August 6, 2001 passed in RSA No.2510 of 1980 nor it can be said to have been reviewed by implication. The resultant effect is that the Civil Court has finally determined to the effect that Bhale Ram never died a 'civil death' and such a finding is binding on the appellants with full force and they cannot wriggle out of it. *Albeit*, the finding(s) on the question of eligibility of the allottee-tenants or the validity of allotments made in their favour have wiped out.

(43) No separate substantial question of law was pointed out to have arisen in the accompanying regular second appeals.

(44) For the reasons afore-stated, we do not find any merit in the Letters Patent Appeal or the connected Regular Second Appeals which are accordingly dismissed, however, without any order as to costs.

(Surya Kant)
Judge

18.11.2015
vishal shonkar

(P.B. Bajanthri)
Judge