

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

Sr. No.102

LPA-1187-2015 (O&M)

Decided on : 30.10.2015

Raj Kumar and others

.... Appellants

VERSUS

**Commissioner, Hisar Division,
Hissar and others**

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
 HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr.Raj Kumar Gupta, Advocate, for the appellants.

RAJIVE BHALLA, J.

CM-3290-2015

CM is allowed as prayed for.

CM-3291-2015

CM is allowed and order dated 22.01.1960, passed by the
Collector, Rohtak (Annexurre P/A-2), is taken on record.

LPA-1187-2015

The appellants, apart from challenging the order dismissing their writ petition, in essence, lay challenge to an order dated 22.01.1960, passed by the Collector, Rohtak, declaring the land, in dispute, surplus.

Counsel for the appellants primarily contends that as the land stood partitioned amongst the big landowners and their sons in the year 1957 and a preliminary decree dated 29.04.1957 was drawn

to reflect this partition, the land could not have been declared surplus particularly in view of Section 8(1)(a) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the 'Act'. Counsel for the appellants contends that Section 8(1)(a) of the Act enables a landowner to seek reopening of surplus area proceedings. The land, in dispute, having been partitioned, could not be declared surplus. The order declaring the land surplus must, therefore, be set aside. In support of his arguments, counsel for the appellants relies upon a Full Bench judgment of this Court in **Jaswant Kaur and another Vs. State of Haryana and another**, 1977, PLJ 230, to contend that Section 8(1)(a) of the Act protects land acquired by inheritance or other transfer of land in excess of permissible area made prior to 30.07.1958.

We have heard counsel for the appellants and perused the impugned orders as well as the entire paper book.

Admittedly, the land, in dispute, was declared surplus on 22.01.1960, in the hands of the big landowners under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the “1953 Act”). The big landowners, who are the fathers of the present appellants, filed a writ petition which was admittedly dismissed, thereby affirming the correctness of the order declaring the land surplus. The big landowners did not agitate the matter any further. The Act came into force in 1972. The land that was declared surplus under the 1953 Act, came to vest in the State of Haryana under

Section 12(3) of the Act. The appellants still did not raise any objection but in 1987 filed an application, praying that as the land had been partitioned by a decree dated 19.04.1957, the land could not be included in surplus area. The prescribed authority allowed the application, the Collector affirmed this order but the Commissioner set aside the order. The writ petition filed by the appellants has been dismissed. A perusal of the order declaring the land surplus on 22.01.1960 as well as the judgment and decree referred to by the appellants, in our considered opinion, cannot enure to the benefit of the appellants particularly by reference to Section 8(1)(a) of the Act. The land, in dispute, was received by the appellants pursuant to a collusive decree to save the land from being declaring surplus. The big landowners who had suffered the decree, did not press the decree into service before the Collector when the land was declared surplus in 1960. The appellants cannot be allowed to reopen surplus area proceedings after a delay of more than three decades particularly when the land had already vested in the State of Haryana under Section 12(3) of the Act.

Consequently, finding no merit, the appeal is dismissed.

[RAJIVE BHALLA]
JUDGE

30.10.2015
shamsher

[AMIT RAWAL]
JUDGE