IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No477 of 2015 (O&M)
Date of Decision: May 26, 2015

Bhagat Singh (since deceased) through his LRs and others
.....Appellants

versus

State of Haryana and others .....Respondents

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

Present: Mr.H.N.Mehtani, Advocate, for the appellants.

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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?

Surya Kant, J. (Oral)

This letters patent appeal impugns the order dated 03.12.2014 whereby learned Single Judge has dismissed the writ-petition filed by the proforma respondents with whom the appellants have common interest. As a sequel thereto, learned Single Judge has upheld the orders passed under the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as '1972 Act') declaring the land of Smt.Jagjit Kaur, measuring 350 kanals 16 marlas, as surplus. The appellants and proforma respondents are legal heirs of two brothers of Smt.Jagjit Kaur.

[2] The facts are broadly admitted. Chanda Singh had three children, i.e., two sons, namely, (i) Bhagat Singh and (ii) Gurmukh Singh (both have now died and are represented through their legal representatives) and a daughter (iii) Smt.Jagjit Kaur.

[3] Smt.Jagjit Kaur was owner in possession of land measuring 782 kanals 16 marlas of 'C' category as on 24.01.1971, namely, the 'appointed day' as defined in Section 3 (c) of 1972 Act. Section 7 of the Act says as follows:-

> "......7. Ceiling on land:- Notwithstanding anything to the contrary contained in any law, custom, usage or agreement, no person shall be entitled to hold whether as landowner or tenant or as a mortgagee with possession or partly in one capacity or partly in another, land within the State of Haryana exceeding the permissible area on or after the appointed day......"

[4] It may be seen that no person is entitled to hold land in any capacity exceeding the 'permissible area' on or after the appointed day of 24.01.1971.

[5] It is the conceded position that should Smt.Jagjit Kaur be accepted as owner in possession of land measuring 782 kanal 16 marlas of 'C' category as on 24.01.1971, then her land measuring 350 kanal 16 marlas was liable to be declared surplus as it was exceeding the 'permissible area' which a land-owner was entitled to retain as per Section 4 of the 1972 Act.

[6] While Smt.Jagjit Kaur did not challenge the action of Authorities under the 1972 Act declaring the part of her estate as 'surplus land', the appellants and proforma respondents questioned the same as according to them Smt.Jagjit Kaur was not a big land-owner and the land in question was indeed owned by them in the circumstances explained hereinafter.

[7] The case, as pleaded by proforma respondents (supported by appellants) was that their predecessor-in-interest-Chanda Singh during his life-time had allegedly executed a Will on 28.05.1956 before he died on 17.11.1957. On the basis of that Will, the predecessors-in-interest of the appellants filed a Civil Suit in the Court at Ludhiana (Punjab) on 29.12.1973 in which finally, a consent decree was passed as Smt.Jagjit Kaur is said to have admitted their claim.

[8] Relying upon the alleged Will of late Chanda Singh dated 28.05.1956 and the Civil Court decree dated 18.04.1977, it was claimed by predecessors-in-interest of the appellants and proforma respondents that they are the owners of land in dispute which was no longer owned by Smt.Jagjit Kaur and hence, could not be declared surplus in her hands.

[9] The Collector, Agrarian, Appellate Authority as well as the Financial Commissioner (Revenue) repelled the above-stated plea, holding as follows:-

(i) the so-called Will was shrouded by suspicious circumstances;

(ii) it had never seen the light of day till the 1972 Act came into force;

(iii) Chanda Singh was well a educated person who used to maintain regular diary even for his day to day expenses. He had knowledge of law. It is unbelievable that he would have executed a Will in a diary instead of getting it subscribed as per legal format and then get it registered;

(iv) Even the hand-writing of the alleged testator late Chanda Singh, so far as the Will is concerned, was doubtful;

(v) The Will was claimed to have been written on page 126 of the diary in which accounts entries were made upto page 22 only and rest of the pages were blank;

(vi) The Will surfaced after 17 years.

[10] As regard to the binding nature of Civil Court decree, the authorities held in the light of consistent view taken by this Court and the mandate contained in Section 12 (4) of the 1972 Act, such like civil court decree having the effect of reducing the surplus area, if passed after the Act had come into force, was liable to be ignored.

[11] On the question of denial of hearing to the appellants or proforma respondents, the authorities held that the so-called Will was never acted upon; there was no entry of the Will in the revenue record; the predecessors-in-interest of the appellants or proforma respondents were never recorded as owners of the subject-land as per the so-called Will; Smt.Jagjit Kaur continued to be described as owner in possession of the land; she was duly heard; no notice thus, was required to be given to the legal heirs of two brothers.

[12] The Financial Commissioner meticulously examined every aspect of the case including the legality of Will. He also considered the question of enforceability of the civil court decree relied upon by the predecessors-in-interest of appellants and proforma respondents.

[13] Learned Single Judge very exhaustingly considered the entire material and has rightly held that the Will was shrouded by suspicious circumstances; even the date of death of Chanda Singh was not brought on record and it was only in

1990 that his death certificate was secured and placed on record.

[14] We have heard learned counsel for the appellants at a considerable length. He vehemently contends that the question of genuineness of the Will ought to have been left to the domain of civil court which has already accepted the same while passing the decree in the year 1974. He relies upon Section 12 (3) of the 1972 Act which reads as follows:-

> "12. Vesting of Surplus Area: (1) xx xx xx
>
> (2) xx xx xx xx
>
> (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 the Pepsu law after the appointed day, shall be deemed to have vested in the State Government with effect from the date of such declaration............"

[15] Having given our thoughtful consideration to the submissions, we do not find any merit therein. We say so for the reasons that it was the predecessors-in-interest of the appellants and proforma respondents who relied upon the Will in question with a view to get reduced the 'surplus area' of Smt.Jagjit Kaur. The authorities were thus obligated to consider the genuineness and validity of that Will. As regard to Section 12 (3) of the 1972 Act, it may be mentioned that

according to Section 12 (1) of the 1972 Act, the surplus area of the land-owner, 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 and thus vests in the State free from all encumbrances. Section 12 (3) states that where the area is declared surplus under the Punjab Security of Land Tenures Act, 1953 or under the Pepsu Law, namely even before the 1972 Act came into force and if such land has not vested in the State Government so far (because there was no provision of automatic vesting of land under the Punjab Law or the Pepsu Law), such land shall be deemed to have vested in the State with effect from the appointed day, namely, 24.01.1971, of the 1972 Act. It further provides that the area which may be declared surplus under the Punjab Law or the Pepsu Law after the appointed day, i.e., 24.01.1971, then it shall be deemed to have vested in the State Government with effect from the date of such declaration.

[16] In the instant case, the land of Smt.Jagjit Kaur was not declared surplus under the Punjab Law or the Pepsu Law. Hence, the date of vesting such land in the State in terms of Sub-section (3) of Section 12 of the 1972 Act is irrelevant. Factually, the land of Smt.Jagjit Kaur has been declared surplus under the 1972 Act and it stands vested in the State Government automatically under Section 12 (1) of the 1972 Act. These provisions, in any case, have to be read in conjunction with the legislative object, especially Section 7 of the 1972 Act as the land in the hands of a person cannot exceed the 'permissible area' on or after the appointed day.

[17] For the reasons afore-stated, we do not find any merit in this appeal.

[18] Dismissed.

[SURYA KANT]
JUDGE

May 26, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE