

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3870 of 1993
Date of decision: 27.08.2016

Balraj Singh (deceased) through LRs

... Petitioners

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.N. Aggarwal, Advocate
for the petitioners.

Mr. Pawan Jhanda, AAG, Haryana.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 15.06.1991 (Annexure P-3) passed by the Financial Commissioner, Haryana, whereby he set aside the order dated 26.06.1980 (Annexure P-1) passed by the Prescribed Authority, Sirsa, declaring the petitioner-Balraj Singh as small land owner, petitioner has filed the instant writ petition under Article 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned order.

Writ petition was admitted and operation of the impugned order (Annexure P-3) was stayed by a Division Bench of this Court, vide order dated 19.04.1993. Written statement on behalf of the respondents has been filed.

Heard learned counsel for the parties.

It is a matter of record that petitioner claimed himself to be major on the appointed date i.e. 24.01.1971 and claimed a primary unit for himself,

during the proceedings, whereby land was sought to be declared surplus in the hands of his father Sh. Chanda Singh. Contention raised on behalf of the petitioner was accepted by the Prescribed Authority vide its order dated 26.06.1980. He was granted the benefit claimed by him. However, said order dated 26.06.1980 was set aside by the Financial Commissioner vide impugned order dated 15.06.1991 (Annexure P-3), exercising his suo motu powers under Section 18(6) of the Haryana Ceiling and Land Holdings Act, 1972. It was this order which came to be challenged before this Court, by way of present writ petition.

As noticed above, writ petition was admitted and operation of the order dated 15.06.1991 was stayed by a Division Bench vide order dated 19.04.1993. It is also a matter of record that during pendency of the present writ petition, petitioner Balraj Singh died and vide order dated 04.09.2014 passed by this Court in CM No.9181-CWP of 2014, his legal representatives were permitted to be brought on record. Having said that, this Court feels no hesitation to conclude that the proceedings of surplus area case remained pending at one or the other stage and finally before this Court by way of present writ petition.

During the pendency of the present writ petition, petitioner Balraj Singh died. In such an undisputed fact situation, Full Bench judgment of this Court in **Sardara Singh and others Vs. The Financial Commissioner and others, 2008 (2) RCR (Civil) 744**, would squarely cover the present case in favour of the petitioners. Learned counsel for the State could not advance any meaningful argument in this regard and rightly so, it being a matter of record.

The ratio of the law laid down by the Hon'ble Full Bench in para 42 of its judgment in **Sardara Singh's** case (supra), which can be gainfully

followed in the present case, reads as under: -

“Resultantly, where the surplus area has not been finally determined, and the matter is pending in appeals or revisions before the Revenue Courts or before this Court under Article 226 of the Constitution, or before the Supreme Court of India, death of the landowner would cause affectation of surplus area which would be required to be redetermined in the hands of the heirs of the deceased landowner. Such an interpretation would harmoniously construct the provisions of Section 11(5) and 11(7) and also give a proper interpretation to both the views expressed in Ajit Kaur's case. However, we are unable to uphold the judgments of this Court in Jasbir Kaur's case because Ajit Kaur's case was not at all considered by the Hon'ble Division Bench. As regards Manjit Kaur's case, even though Ajit Kaur's case was considered, the majority view had been entirely overlooked.”

When the abovesaid law laid down by the Hon'ble Full Bench of this Court in **Sardara Singh's** case (supra) is applied to the facts of the present case, present writ petition deserves to be allowed, having been squarely covered by the Full Bench judgment in **Sardara Singh's** case (supra).

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned order is liable to be set aside and the present writ petition deserves to be accepted. Consequently, the impugned order dated 15.06.1991 (Annexure P-3) passed by the Financial Commissioner, is hereby set aside.

However, it is made clear that revenue authorities of the respondent State of Haryana would be at liberty to re-determine the surplus area case in the hands of present petitioners, who are legal representatives of original big land owner late Sh. Balraj Singh, in accordance with law and also keeping in view the abovesaid law laid down by the Hon'ble Full Bench of this Court in **Sardara Singh's** case (supra).

Resultantly, with the abovesaid observations made, instant writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

27.08.2016
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No