

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

CWP No. 1874 of 1994. [O&M]
Date of Decision: 06th January, 2016.

Makhan Singh [deceased] through his Legal Representatives
Petitioners through
Mr. M.L.Saini, Advocate

Versus

State of Punjab & Ors. Respondents through
Mr. K.K.Gupta, Additional AG, Punjab.

***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?***

SURYA KANT, J. [ORAL]

The question that arises for consideration in this case is whether the surplus area case of late Jagir Singh is required to be re-opened to determine whether or not, the surplus land has to be seen in the hands of his legal heirs in view of the fact that the surplus land of late Jagir Singh was not utilised and continued to be in possession of the big-landowner till his death?

[2]. The facts are not in dispute.

[3]. The petitioner is adopted son of late Jagir Singh. The surplus area case of his father was originally decided by the Collector, Ferozepur, vide order dated 28.01.1966 declaring 4 Standard Acres and 6.4/1 Units as surplus. The appeal preferred against that order was accepted and the matter was remanded. Thereafter, the Collector, Agrarian, Ferozepur again determined the surplus area case on 25.01.1989. The big-landowner had admittedly

died on 19.05.1985, i.e., before passing this order. The possession of the land declared surplus in the year 1966 continued with Jagir Singh as the said order was set aside by the Appellate Authority and the matter was remanded. During his life time, Jagir Singh is said to have sold a part of his land holding.

[4]. The possession of surplus area continued with legal heirs of Jagir Singh even after the order of the Special Collector dated 25.01.1989 as the matter remained pending before the Appellate and Revisional Authorities and thereafter in this Court in which *ad-interim* stay against dispossession was granted.

[5]. The Special Collector as well as the Appellate and Revisional Authorities though have taken notice of the fact that Jagir Singh had died during pendency of the proceedings before the Special Collector but have still declared the land as surplus in his hands on the premise that the status of landholding has to be seen on the appointed day under the Act, i.e., '21.01.1971' and not on the date of death of the big-landowner.

[6]. It is profitable to refer to Section 8 of the Punjab Land Reforms Act, 1973 which deals with vesting of un-utilised surplus area in the State Government. It opens up with a *non-obstante* clause and provides that "*irrespective of any law, custom or usage for the time being in force, the surplus area declared as such under the Punjab Law or PEPSU law, which has not been utilised till the commencement of this Act, shall, on the date on which possession thereof is taken by or on behalf of the State Government, vest in the State Government free from all encumbrances.....*" It may thus be

seen that it is not the declaration alone but the utilization of the surplus area and taking possession thereof by or on behalf of the State Government has a direct bearing on the vesting of the surplus area in the State Government.

[7]. Not only the above said provision appears to have been over-looked, the Authorities have also failed to notice the authoritative pronouncement made by a Full Bench of this Court in **Ajit Kaur Vs. State of Punjab & Ors., 1980 PLJ, 354** as well as catena of other decisions having direct bearing. The Full Bench laid down as follows:-

“7. Before the commencement of the Act of 1973, if the total holding of a landowner was taken into consideration for the purpose of determination of permissible limit under the Punjab or the Pepsu Law and the surplus area was finally declared but before the same could be utilised by the Government he died, under Section 10-A and 10-B of Punjab Law, the said holding would cease to be the holding of the said landowner and will stand devolved and distributed between his heirs by operation of law as a result of succession and the authorities were required to re-determine the surplus area in the hands of each of the heirs. Legally and for all practical purposes, the order regarding surplus area in the hands of the original landowner was rendered non-existent. In this situation, either of the two contingencies could exist at the time of the enforcement of the Act of 1973 i. e., either the surplus area keeping in view the holding in the ownership of each heir separately was determined, or if no such decision had been taken, the question of determination of surplus area in the hands of each of the heirs was yet to be gone into. However, it cannot be disputed that the decision

regarding the determination of the decision regarding the determination of the surplus area in the hands of the original landowner after his death could not be considered to be still in existence at the time of the enforcement of the Act of 1973.....”

8. It has been argued by the learned counsel for the respondents, that in view of sub-section (7) of section 11, once surplus area was determined in the hands of a landowner by the authority concerned whether under the Punjab Law. Pepsu Law or the Act of 1973, his death subsequent thereto and succession by the heirs will not attract the exception as embodied in sub-section (5) and the diminution of land in the hands of the heirs in proportion to their shares will have no effect on the surplus area already determined. In fact, it was argued, that the exception envisaged in sub-section (5) regarding acquisition of land by heirs of a landowner has been withdrawn in sub-section (7). Thus if this interpretation of these two sub-sections is agreed to, it will have to be held that an important part of the provision in sub-section (5) relating to acquisition by inheritance by heirs has been deleted or repealed by sub-section (7). According to the learned counsel for the petitioner, such interpretation cannot be countenanced in view of the well established principles of interpretation.

11. Keeping the above principle of harmonious construction in view, the question of primary importance is as to how the two sub-section (5) and (7) of Section 11 be harmonised. The interpretation suggested by the learned counsel for the respondents will result in negating or deleting the substantial provision in sub-section (5) regarding acquisition of land by heirs in consequence of inheritance. Such an interpretation is obviously impermissible. Both these provisions can be

worked harmoniously by interpreting sub-section (7) that this provision will be attracted only in cases where the surplus area is declared by the Collector for the first time under the Act. of 1973. If surplus area in the hands of a landowner was declared under the Punjab Law or the Pepsu Law, but the landowner died before the enforcement of the Act of 1973, the acquisition by heirs will be saved under sub-section (5) and the surplus area will have to be redetermined in the hands of the heirs under the Punjab Law or the Pepsu Law or ever the Act of 1973, as the case may be. However, once the surplus area was determined by the Collector under the Act of 1973 whether for the first time because no such order had been passed under the previous laws or after the death of the landowner subsequent to the order regarding surplus area, the acquisition of land by the heirs will not be saved under sub-section (5) and sub-section (7) will be fully attracted. This interpretation is also borne out by the express provision in sub-section (7) which is in the following terms:-

"Where succession has opened after the surplus area or any part thereof has been determined by the Collector, the saving specified in favour of an heir by inheritance sub-section (5) shall not apply in respect of the area so determined".

[8]. The decision of the Supreme Court in **Bhagwan Singh Vs. State of Punjab, 1987[2] SCC, 117,** on the other hand, is distinguishable for the reasons that [i] there the surplus land stood allotted to different persons between 1967-1973; [ii] all the allottees had deposited appropriate installments of purchase price and secured actual possession of the allotted land; and [iii] had been in

possession thereof ever since. No such fact-situation happened in the case in hand.

[9]. For the reasons afore-stated, the writ petition is allowed to the content that the order dated 13.07.1993 [P-4] passed by the Financial Commissioner [Revenue], Punjab is set aside and the matter is remitted to re-determine the status of surplus land of the big-landowner - late Jagir Singh [in the hands of his legal heirs, namely, his daughters and adopted son] in the light of the binding decisions including the Full Bench decision, cited above. Needless to say that if any factual issue arises for consideration, then the matter may be referred to the Collector, Agrarian. The parties shall appear before the Financial Commissioner [Revenue], Punjab, on 23.02.2016.

[10]. Dispossession of the petitioner[s] shall remain stayed till the matter is decided by the Financial Commissioner [Revenue], Punjab.

[11]. Disposed of. Dasti.

**(SURYA KANT)
JUDGE**

**January 06, 2016.
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**(P.B.BAJANTHRI)
JUDGE**