

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM No.9578-CWP of 2015 in/and
CWP No.5890 of 2004
Date of decision: 25.07.2016

Kalawanti (deceased) through her LRs and another

... Petitioners

Vs.

Financial Commissioner (Appeals-I), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.K. Ganga, Advocate
for the applicants-petitioners.

Mr. Yatinder Sharma, Addl. AG, Punjab.

RAMESHWAR SINGH MALIK, J. (ORAL)

CM No.9578-CWP of 2015

Applicants seek early hearing of the writ petition.

Application is allowed, as prayed for. Writ petition is taken on
board for final disposal.

CM stands disposed of.

CWP No.5890 of 2004

Learned counsel for the petitioners submits that since late Sh.
Sawant Ram, predecessor-in-interest of the petitioners died during pendency of
the proceedings for declaring the land in his hands as surplus, present case
would be squarely covered by a Full Bench judgment of this Court in **Sardara
Singh and others Vs. The Financial Commissioner and others, 2008 (2)
RCR (Civil) 744** and the same may be disposed of, accordingly.

When confronted with the above, learned counsel for the State
could not deny the abovesaid factual as well as legal aspect of the matter and
rightly so, it being a matter of record.

The relevant observations made by the Hon'ble Full Bench in para 41 and 42 of the judgment read as under: -

“We are, therefore, of the considered opinion that in order to harmoniously read the two views in Ajit Kaur's case and to give correct interpretation of the provision of Section 11(5) and 11(7) of this Act, we ought to take the aid of Supreme Court's judgment in Ajmer Kaur's case. We hold that until the surplus area has been finally determined by the Collector and appeals/revisions have been dismissed, the death of the landowner would certainly cause affectation to the surplus area which would be required to be redetermined in the hands of his heirs.

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.”

It has gone undisputed before this Court that Sh. Sawant Ram, original big land owner died during pendency of the proceedings initiated

against him for declaring the land surplus.

In view of the abovesaid undisputed fact situation, present writ petition has been found squarely covered by judgment of the Hon'ble Full Bench in **Sardara Singh's** case (supra). Accordingly, instant writ petition is allowed. Impugned orders are set aside. However, the respondent authorities shall be at liberty to re-decide the surplus area case afresh in the hands of successors-in-interest of late Sh. Sawant Ram i.e. petitioners herein.

With the abovesaid observations made and directions issued, present writ petition stands disposed of.

[**RAMESHWAR SINGH MALIK**]
JUDGE

25.07.2016
vishnu

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No