IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22358 of 2014
Date of decision: 07.04.2016

Jai Dayal and others

....Petitioners

Versus

The State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

1) Whether Reporters of the 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 ?

Present: - Mr. Hemant Bassi, Advocate, for the petitioners.
Mr. Sandeep S. Mann, Sr. DAG, Haryana.

PARAMJEET SINGH DHALIWAL, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of *certiorari* for quashing the order dated 27.10.2005 (Annexure P-7) passed respondent No.2 – Commissioner, Rohtak Division, Rohtak, and order dated 12.02.2013 (Annexure P-8) passed by respondent No.1 – Financial Commissioner, Haryana.

Brief facts of the case are that one late Sheo Ram father of petitioners No.1 to 3 and grandfather of petitioners No.5 to 11 along with one late Mange Ram father of petitioners No.12 to 15 had purchased the land measuring 16 bighas 15 biswas situated in Village Bathera, Tehsil and District Jhajjar from big land owners, namely, Arisal and Bani Singh sons of Jai Narain residents of Village Bathera comprised in khasra Nos.716, 728, 729, 732, 734, 736 and 738 vide registered sale deed dated 11.11.1957 (Annexure P-1). As such Sheo Ram and Mange Ram had become owners in possession of the aforesaid land and mutation of the land purchased by them was sanctioned on 17.03.1959. Vide order dated 03.11.1959 Collector Agrarian, Jhajjar declared 29 standard acres and 8 units of land belonging to Arisal and Bani Singh as surplus under the provisions of the Punjab Security of Land Tenures Act, 1953 (for short 'the Act'), including the land purchased by the predecessors-in-interest of the petitioners vide registered sale deed dated 11.11.1957 (Annexure P-1) without giving any notice to predecessors-in-interest of the petitioners. On conversion of the area during consolidation, the land purchased by the predecessors-in-interest of the petitioners fell in khasra Nos.14/1, 23/4, 8, 9/2, 11, 12, 13, 5 and 24/1 measuring 52 kanals. However, vide order dated 11.07.1968 (Annexure P-4), Tehsildar, Jhajjar exempted the land comprised in killa Nos.22/6, 23/8, 9, 11, 12, 13, 14, 4, 5, 24/1/1, 14/2, 17, 24/10, 21/1 measuring 75 kanals 3 marlas belonging to Arisal out of the surplus area declared on 03.11.1959 by Collector (Agrarian), Jhajjar. Killa Nos.23/8, 9/2, 11, 12, 13, 14/2, 17 situated in Village Bathera were stated to have been allotted to Badlu Ram etc. by Collector (Agrarian), Jhajjar on 31.01.1968, however, physical possession of the land remained with the predecessors-in-interest of the petitioners and petitioners from the date of purchase of land i.e. 11.11.1957. On the basis of the report of Girdawar Halqa dated 3/5.6.1990, SDO(C)-cum-Prescribed Authority, Jhajjar, exempted the land of the predecessors of the petitioners from the surplus pool vide order dated 25.06.1990 (Annexure P-5). However, after a delay of ten years, respondents No.4 to 21, successors-in-interest of Badlu etc., challenged the order dated 25.06.1990 by way of appeal before the Collector, Jhajjar, which was dismissed by the Collector being time-barred vide order dated 28.04.2003 (Annexure P-6). Against the order of the Collector, respondents No.4 to 21 filed revision petition before the Commissioner, Rohtak Division, Rohtak. Commissioner vide order dated 27.10.2005 (Annexure P-7) set aside the orders passed by the SDM and Collector and remanded the case back to SDM-cum-Prescribed Authority, Jhajjar to ascertain as to whether the area was under the tenants permissible area or of the surplus pool. Aggrieved against the order passed by Commissioner, petitioners, filed revision petition before the Financial Commissioner, which has been dismissed vide order dated 12.02.2013 (Annexure P-8). Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that the impugned orders are illegal, arbitrary and not sustainable in the eyes of law. Learned counsel for the petitioners contended that application before the Collector by respondents No.4 to 21 was filed after a period of ten years, which was rightly dismissed being time-barred. Learned counsel for the petitioners further contended that predecessors-in-interest of the petitioners purchased the land on 11.11.1957. In view of the provisions of Section 8 of the Haryana Ceiling on Lands Holdings Act, 1972 (for short the 'Act of 1972'), petitioners are entitled to retain the land which they had purchased before 30.07.1958. Thus, the land will not vest automatically in the State of Haryana in terms of provisions of Section 12 of the Act of 1972. In support of his contention, learned counsel for the petitioners placed reliance on the judgment of this Court in ***LPA No.77 of 2013*** titled '***Ram Karam and another v. State of Haryana and others'*** decided on 30.07.2013.

On the other hand, learned counsel for the State vehemently contended that Commissioner has rightly remanded the case to SDM. The provisions of Section 8 of the Act of 1972 will be applicable only in those cases where determination of surplus area was not made under the provisions of the Act and the land was declared surplus for the first time under the provisions of the Act of 1972.

I have considered the contentions raised by learned counsel for the parties.

At this stage, it is necessary to mention that the 1972 Act was notified on 23.12.1972, to determine surplus land in the hands of big land owners. As per the provisions of Section 3(c) of the said Act, 24.01.1971 was fixed as an appointed date. The mode and manner to determine permissible area is mentioned in Section 4 of the Act. Section 5 gives detail of the lands on which the provisions of the 1972 Act were not made applicable. Section 5-A of the 1972 Act details lands exempted, belonging to religious or charitable institutions. With the provision of Section 6, over riding effect was given to the provisions of the 1972 Act. As per the provisions of Section 7, limitation was imposed upon a person, whether a land owner or a tenant or a mortgagee in possession, not to retain land exceeding the prescribed limit. Section 8 talks of some transfers or dispositions which will not affect surplus area to be determined under the 1972 Act. Above said provision reads thus:-

> "***8. Certain transfer or dispositions not to affect surplus area. -*** *(1) Save in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the pepsu law or the Punjab law or by an heir by inheritance, no transfer or disposition of land in excess of-*
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> *(a) the permissible area under the Pepsu law or the Punjab law after the 30th day of July, 1958; and*
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> *(b) the permissible area under this Act, except a bona fide transfer, or disposition after the appointed day, shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled out for such transfer or disposition:*
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> *Provided that any person who has received an advantage under such transfer, or disposition of land shall be bound to restore it, or to pay compensation for it, to the person from whom he received it. (Vide Act No. 17 of 1976)*
>
> *(2) The burden of proving the transfer or disposition to be a bona fide one shall be on the transfer.*
>
> *(3) If any person transfers or disposes of any land after the appointed day in contravention of the provisions of sub-*

> *section (1), the land so transferred or disposed of shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer or disposition is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area.*
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> *If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the proposition to the land transferred or disposed of to them. (Vide Act No. 17 of 1976)".*

As per the provisions of Section 9 of the 1972 Act, after determination of surplus area, liberty is granted to the land owner to select his holding and to file a declaration regarding surplus land . If he failed to do so, the process can be initiated to separate surplus area by the prescribed authority as per the provisions of Section 10 of the 1972 Act. Further process to determine surplus area is given in Section 11 of the 1972 Act. Section 12 of the 1972 Act describes the manner in which the land shall vest in the State. Qua the land declared surplus under the 1953 Act or to be declared surplus under the 1972 Act, the said provision reads thus:-

> "***12. Vesting of surplus area***. *--(1) The surplus area of a landowner shall, (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) (Vide Act No.17 of 1976) and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of all persons in such area shall stand*

extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance:

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee,only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.

(2) The right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished.

(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 day shall be deemed to have vested in the State Government with effect from the date of such declaration. (Vide Act No. 40 of 1976)

(4) For the purpose of determining the surplus area under this Act, any judgment, decree or order of a court or other authority, obtained after the appointed day and having the effect of diminishing the surplus area shall be ignored."

Section 13 of the 1972 Act provides the mode and manner to take possession of the surplus area declared. When we look into the provisions of Section 8, it talks of certain transactions which will not affect permissible area under the Pepsu Law or the Punjab Law (1953 Act) after 30.07.1958. It is also provided that permissible area under the 1972 Act shall not be effected except for a bona fide transfer or disposition made after the appointed date. Section 12 of the 1972 Act mandates that for area declared surplus under the 1953 Act, of which possession has not been taken by the Government, shall be deemed to have vested in the State Government with effect from the appointed dated i.e. 24.01.1971.

The main question in this case is whether purchase of land by predecessors-in-interest of the petitioners from the big landlords, out of the area so declared surplus in the year 1959, is saved in terms of the provisions of Section 8 of the 1972 Act or not.

This issue has elaborately been dealt with by the Division Bench of this Court in ***Ram Karam and another*** (supra). The land in question was purchased by the predecessors-in-interest of the petitioners on 11.11.1957. While placing reliance on the judgment of the Hon'ble Supreme Court in ***Smt. Jaswant Kaur and another v. State of Haryana and another,*** *1977 PLJ 230*, the Division Bench has specifically held that surplus area which was transferred or disposed of by a landowner before 30.07.1958 shall not vest in the State Government as per the provisions of Section 12 of the Act of 1972. As the land was purchased by the predecessors-in-interest of the petitioners on 11.11.1957, the judgment of the Division Bench in ***Ram Karam and another*** (supra) is fully applicable to the facts of the present case and the land of the petitioners is protected under Section 12 of the Act of 1972.

In view of above, present writ petition is allowed. Order dated 27.10.2005 (Annexure P-7) passed respondent No.2 – Commissioner, Rohtak Division, Rohtak, and order dated 12.02.2013 (Annexure P-8) passed by respondent No.1 – Financial Commissioner, Haryana, are quashed.

(Paramjeet Singh Dhaliwal)
Judge

April 07, 2016
R.S.