

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.14417 of 1992
Date of decision : 17.05.2017

Harinder Singh (through LRs) and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Binderjit Singh, Advocate for the petitioners.

Mr. Indresh Goel, Addl. A.G. Haryana.

AMIT RAWAL, J. (Oral)

The petitioners-LRs of Gurbax Singh are in the writ petition challenging the order dated 23.06.1989 (Annexure P-4) rendered by the Sub Divisional Officer (Civil) exercising the powers of Collector Surplus Area, Dabwali, District Sirsa.

Mr. Binderjit Singh, learned counsel appearing on behalf of petitioners submits that petitioners being sons of Gurbax Singh big landowners having an agricultural land in the Villages Ganga and Gider Khera, Tehsil Dabwali, District Sirsa. The land at the hands of Gurbax Singh was declared surplus on 20.09.1961 vide order (Annexure P-1) under the Punjab Security of Land Tenures Act, 1953 (hereinafter to be referred as 1953 Act). The Financial Commissioner vide order dated 20.08.1964 set aside the order and remanded the matter back to Collector. There was again

reassessment of the land having declared surplus and the area of 455.23 ordinary acres/141.61 standard acres was declared as surplus. In the year 1970, a decree came to be passed in a suit preferred amongst the family members of Gurbax Singh, whereby it was held that property at the hands of Gurbax Singh was ancestral and mutation in this regard (Annexure P-3) was entered into in the name of Gurbax Singh and the petitioner. The petitioner had also purchased certain land on 23.11.1956 from Bhag Singh. The Haryana Ceiling On Land Holding Act, 1972 (hereinafter to be referred as Act No.26 of 1972) came to be promulgated and appointed date is 24.01.1971. The possession of the land at the hands of Gurbax Singh and the petitioner was never taken, in essence, on coming into force of the aforementioned Act was never utilized. Many attempts were taken to take the possession which compelled the petitioner to approach this Court and status quo had been granted. However, on 13.03.1978, Collector while invoking the power as per the provision of Section 33(2)(iii) of the Act No.26 of 1972 sought suo motu reference regarding the certain defects in the record of the case and referred the same to the Financial Commissioner and ultimately vide impugned order dated 23.06.1989, it was found that the landowners had given the selection, about his reserved area through his counsel who was present and Form 'F' was ordered to be prepared. It was also held that if some other area is found with the landowner, the same shall also be considered as surplus. The petitioners submitted application (Annexure P-5) for re-determination of the separate permissible area to each of the petitioners as per Sections 4 and 7 of 1972 Act. This application is not decided and it is in these circumstances, petitioner has approached this

Court.

He further submits that in view of the settled law laid down in *Mahabir Parshad and another Vs. Financial Commissioner, Haryana and others i.e. Division Bench judgment of this Court, 2014(2) L.A.R. 329*, the rights of the legal heirs of landowners on demise of landowners would continue to accrue and, therefore, in case if the land has not been utilized, the surplus area has to be redetermined and also relied upon ratio decidendi culled out in *Puran Singh Vs. State of Haryana, 2014(3) LAR, 642*, to contend that since possession has not been taken away and the entry made in the roznamcha effected by the Patwari would not be conferring a title or vesting of the land in the State, the suo motu powers should be taken within a reasonable time and not belatedly.

He further submits that the petitioner had purchased the land from Bhag Singh and same could not vested with the State and should have been given under the Punjab Land Reforms Act and in this regard, has relied upon judgment rendered in *Paramjit Singh and others Vs. State of Punjab and others, 2015(1) L.A.R. 651* and also relied upon judgment rendered in *Ranjit Ram Vs. The Financial Commissioner, Revenue, Punjab and others, 1981 PLJ 259, Ujjagar Singh (dead) by LRs Vs. The Collector, Bhatinda, 1996 (3) RCR (Civil) 446, Smt. Ajit Kaur and others Vs. The Punjab State and others, 1980 PLJ 354*.

Per Contra, Mr. Indresh Goel, Addl. A.G. Haryana submits that ratio in respect of the vesting of the land having declared surplus under 1953 Act is no longer res integra in view of the judgment rendered by Hon'ble Supreme Court in *Sampuran Singh Vs. State of Haryana and*

others, 1994(3) RRR 113, reiterated by Single Bench of this Court in *Megh Raj and others Vs. Manphool and others, 2008(3) RCR (Civil) 241*, wherein ratio decidendi culled out by this Court in *Jaswant Kaur and another Vs. The State of Haryana and another, 1977 PLJ 230*, has also been reiterated.

He further submits that ratio decidendi culled out in Ujjagar Singh's case, much less, Ranjit Ram's case, is not applicable as it pertains to the provisions of the Punjab Land Reforms Act. As per 1955 Act, there is specific provision under Section 32 (E) of the Act where specific Notification, for the purpose of taking over the possession is required to be caused, in essence, the provision of 1955 Act is not para materia to the Haryana Ceiling On Land Holding Act, 1972. By virtue of Sub-Section 3 of Section 12 of the Act, the land deemed to have been vested in the State, even if it is not utilized and, therefore, State is at liberty to dispose off the land under the Haryana Evacuee Properties Management and Disposal Act, 2008 and thus urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Binderjit Singh, Advocate, for, the applicability of the aforementioned Act and the effective date being 24.01.1971 is not in dispute. As per Sub-Section 3 of Section 12 of the Act, all the properties which are rendered as surplus would vest in the State of Haryana. The Department, thus, would not have a jurisdiction to deal with the properties in view of ratio decidendi culled out in Sampuran Singh's case, Megh Raj's case, Jaswant Kaur's case and others (Supra).

The question of the land having been declared surplus came to

be decided on 20.05.1965 (Annexure P-2). The chapter was closed. A new cause of action would not have arisen in favour of petitioner in view of the clarified application/suo motu reference sought before the Financial Commissioner. It was an internal arrangement, thus, even if Gurbax Singh had died during the pendency of the writ petition, his LRs would definitely have cause of action for redetermination i.e. had the question of surplus land is pending adjudication, but facts reveals that this is not the case in hand. Non-taking of the possession would not give a cause of action to the petitioner for redetermination as per the provision of Sections 4 and 7 of 1972 Act. Even otherwise as per Section 8(1) of 1972 Act, no transfer or disposition of land in excess of the permissible area after the appointed date shall affect the right of the State Government. The provision of sub-Section 3 of Section 12 need not to be reproduced.

In my view, the petitioner had no cause of action to submit application (Annexure P-5) of seeking redetermination.

For the reasons aforementioned, no ground for interference in order dated 23.06.1989 (Annexure P-4) rendered by the Sub Divisional Officer (Civil) exercising the powers of Collector Surplus Area, Dabwali, District Sirsa, is made out.

Accordingly, present writ petition stands dismissed.

17.05.2017

Pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No