

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 10th, 2017

1. CWP No.14916 of 1993

Rajinder Singh (since deceased) through L.Rs

...Petitioner

Versus

State of Haryana & others

...Respondents

2. CWP No.10797 of 2009

Veena Rani & others

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.L.N.Verma, Advocate,
for the petitioner (in CWP No.14916 of 1993).
Mr.B.S.Bedi, Advocate,
for the petitioners (in CWP No.10797 of 2009)
Mr.Rajbir Singh, AAG, Haryana,
for the State.
Mr.Sandeep Goyal, Advocate,
for respondent Nos.16, 28 to 30 (in CWP No.10797 of 2009).
Mr.Sanjiv Gupta, Advocate &
Mr.Manoj Sharma, Advocate,
for respondent Nos.14, 34 & 35 (in CWP No.10797 of 2009).
Mr.V.K.Jindal, Senior Advocate with
Mr.Akshay Jindal, Advocate,
for respondent Nos.5,15,18,23 & 29 (in CWP No.10797-2009)

AMIT RAWAL, J.

This order of mine shall dispose of two Civil Writ Petitions bearing No.14916 of 1993 and 10797 of 2009 as the common questions of law and facts are involved in both the cases.

In CWP No.14916 of 1993, the petitioner has sought the following relief:-

“Petition under Articles 226 and 227 of the Constitution of India for the issuance of a writ of certiorari, or any other appropriate writ, order or direction, which this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the instant case, quashing the impugned orders annexures P-6, P-7 and P-8.”

Petitioners in second case, i.e., CWP No.10797 of 2010 are the legal heirs of Raminder Singh and Gajender Singh sons of Rajinder Singh, vendor, who had filed Civil Suit No.514 of 1959 for possession of the area sold by way of pre-emption at Karnal, which was decreed on 1.8.1959 and the decree-holders came in possession of the pre-empted land and in this backdrop of the matter, the petitioners had come to this Court for implementation of the judgment dated 26.2.1997 by asking the following relief:-

“CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of Mandamus directing the respondents to implement and comply with the terms of judgment dated 26.2.1997, Annexure P-1, passed in Civil Writ Petition No.4929 of 1982, by excluding the land in question from the surplus area while treating the said land to be holding of the petitioners;

AND

to issue a writ in the nature of mandamus directing the respondents to sanction the mutation of ownership in the name of petitioners in respect of the land measuring 431 kanals-1 marla, comprised in khewat No.4/33, situated in village Daha, Tehsil and District Karnal, as detailed in para No.2 of the petition;

OR

to issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper under the peculiar facts and circumstances of the case.”

The question in the present writ petitions arises whether the transfer of the land made prior to 30.7.1958, i.e., the cut off date, as per the provisions of Section 8 of the Haryana Ceiling on Land Holdings Act, 1972 (for short “1972 Act”) and the Punjab Security of Land Tenures Act, 1953 (for short “1953 Act”) would vest in the State with effect from the appointed date, though the aforementioned question, has already been decided by the Full Bench of this Court in **Shmt.Jaswant Kaur and another Versus The State of Haryana and another**, 1977 PLJ 230, i.e., the transfer effected before that would be included in the permissible area of the landlord for determination of the surplus area or not.

The further question arises whether in appeal or revision preferred by a party, the Court, while dismissing the appeal, could set-aside the previous orders in the absence of challenge by the State. In order to answer the aforementioned questions raised, it would be relevant to give brief preface/factual matrix of the case.

Rajinder Singh (since deceased) was owner of 100.5-3/4 standard acres of land situated in the revenue estate of Village Daha, District Karnal as on 15.4.1953. However, in consolidation, the aforementioned area concededly was reduced to 88.14 standard acres. Aforementioned Rajinder Singh had, prior to the cut off date, i.e., 30.7.1958, sold away land measuring 736 kanals 4 marlas. However, as noticed above, in other writ petition, Raminder Singh and Gajender Singh sons of Rajinder Singh had filed a civil suit bearing No.514 of 1959 for possession of the land sold vide sale deed dated 20.6.1958, i.e., 431 kanals 11 marlas out of 736 kanals 4 marlas by way of pre-emption at Karnal, which was decreed vide judgment and decree dated 1.8.1959 and the

decree-holders came in possession of the pre-empted land. Vide order dated 29.6.1960 (Annexure P-1), the Collector Surplus Area, Karnal decided the surplus case of Rajinder Singh.

Mr.L.N.Verma, learned counsel representing the petitioners in CWP No.14916 of 1993 submitted that in the aforementioned orders, all the sales, including the sale deed 20.6.1958, which had been pre-empted by the sons of the landowners, were ignored and the entire sold area computed towards his total holding and declared 58.14 standard acres of area as surplus and it was ordered that the surplus area in possession of the landowner and remaining area from the vendees be taken. The appeal preferred against the aforementioned order before the Commissioner, Ambala Division, Ambala was dismissed vide order dated 2.1.1961 (Annexure P-2), wherein it was held that the transfers made after 15.4.1966 had rightly been ignored as land landowner's ownership, as on 15.4.1966, was required to be taken into consideration.

He has further submitted that on 17.7.1962, the Collector again decided the surplus area case of the landowner in compliance of the remand order of the Commissioner and assessed the total area under old tenants as 2-15/2 standard acres and under old garden as 10.11 standard acres and the balance area with the landowner came to 75-3/2 standard acres and out of which, 30 standard acres of area was allowed to the landowner being his permissible area and the remaining area of 45.3-1/2 acres was declared surplus. He further submitted that vide order, Annexure P-3, the authority below did not exclude the total area of 736 kanals 4 marlas sold by the aforementioned landowner prior to the cut off date. The aforementioned order dated 17.7.1962, Annexure P-3, was reviewed by the Collector vide

order dated 21.2.1963, Annexure R-1 and the surplus area of the landowner as 53.13-3/4 standard acres instead of 45.3-1/2 standard acres was determined.

He has submitted that the landowner submitted an application dated 27.1.1981 under Section 8 of the Haryana Ceiling on Land Holdings Act, 1972 (for short "Haryana Act") before the Prescribed Authority seeking exemption from the surplus pool of the area sold from time to time, including the area of 431 kanals 11 marlas sold vide sale deed dated 20.6.1958. The Prescribed Authority got the report from the Naib Tehsildar, Surplus Area and as per report dated 31.3.1981 the area of 58 standard acres had been declared surplus and the landowner sold away 434 kanals 1 marlas of land to one Rajpal Singh on 20.6.1958 and, thus, suggested that 48 kanals 14 marlas remained surplus with the landowner. Vide order dated 2.4.1981, Annexure P-5, on the basis of the aforementioned report, the Prescribed Authority decided the application under Section 8 of Haryana Act by exempting from the surplus pool the area sold as also the area of 69 kanals 16 marlas included in the permissible area of the landowner, but also by mistake shown in the surplus pool and, thus, held that 48 kanals 14 marlas would remain surplus.

The aforementioned order was challenged by filing an appeal before the Collector on the premise that there was a well run farm and some of the land had been acquired, the benefit of which has not been given to the appellants and that certain area, which was reserved, had erroneously been declared surplus.

He further submitted that as per the instructions of the State Government, the land sold prior to 15.4.1966 is also exempted from the

utilisation, which has been upheld by the Hon'ble Apex Court and, thus, the Prescribed Authority rightly granted the exemption, but the same has been withdrawn. The Collector, vide order dated 14.12.1982, Annexure P-6, set-aside the order dated 2.4.1981, Annexure P-5, and ordered that the land measuring 48 kanals 14 marlas will remain in surplus pool and other piece of land measuring 69 kanals 16 marlas, which had been exempted from surplus pool, by treating to be the reserved area will also remain in the surplus pool and with regard to area measuring 356 kanals 16 marlas, which had been sold/transferred prior to 15.4.1966, the Prescribed Authority had been directed to make a detailed enquiry strictly as per the instructions of the Haryana Government.

The petitioners preferred a revision before the Commissioner, who, vide order dated 28.3.1984 (Annexure P-7) dismissed the revision petition. Thereafter, another revision under Section 18(6) of Haryana Act was preferred by the petitioners before the Financial Commissioner. Vide impugned order dated 22.10.1993, Annexure P-8, it, while setting-aside all the orders of the revenue authorities, held that the Prescribed Authority had no jurisdiction and power to review the order of predecessors. The aforementioned orders are, thus, not sustainable in the eyes of law in view of the ratio decidendi culled out by the Full Bench of this Court in **Jaswant Kaur's case (supra)**, wherein it has been held that since Section 12(3) came into force from 23.12.1972 and, therefore, the transfer of three categories, i.e., (i) Acquisition by State or Central Govt., (ii) Acquisition by a tenant (by purchase) under PEPSU or Punjab Law; and (iii) Acquisition by an heir by inheritance, if made before 30.7.1958, would be excluded from the operation of 1972 Act and the transfers of land in excess of the permissible

area under the Punjab or Pepsu Law would be protected, in essence he submitted that the land sold before the cut off date could not have been included in the landowners shall for the purpose of determination of the permissible area, but should have been excluded from the proportionate from the permissible area, therefore, outcome of the same would have been different. This is what in Annexure P-5 has been done, which had attained finality, i.e., not challenged by either of the parties to lis, but instead of addressing the aforementioned issue, different dimensions have been taken by the authorities, therefore, the orders are not sustainable in the eyes of law.

Reference has also been made to the judgment rendered in **The State of Haryana and others Versus Chandgi**, 1981 P.L.J. 494 (Para 6), wherein, while dismissing the petition, the Full Bench of this Court has held that the land sold prior to 30.7.1958 and pre-empted by son of a landowner, the land acquired by pre-emption decree whether can be taken into consideration, the answer was/is that it is protected if made before 30.7.1958, in essence transfer made prior to 30.7.1958 of land in excess of permissible area under Punjab Security of Land Tenures Act or Pepsu Tenancy and Agricultural Lands Act are protected and cannot be ignored while determining surplus area and on similar lines, view of the Hon'ble Supreme Court in **Jodha Ram (dead) by Legal Representatives Versus Financial Commissioner Haryana and others**, 1994 PLJ 28 and also qua pre-emption decree.

He also submitted that the area sold by the big landowner would not vest in the State Government under Section 12(3) of the Act even if the sale is pre-empted by his son, as Rajpal Singh was a total stranger and

in his report relied upon the ratio decidendi culled out in **Harpal Singh Versus The State of Punjab and others**, 1970 PLJ 159 to contend that the sale successfully pre-empted by the sons of the original landowner cannot be ignored, i.e., the land sold is to be taken out of the consideration in determining the surplus area and on similar lines, Division Bench judgment of this Court in **Chattar Singh and another Versus The Financial Commissioner, Revenue, Haryana and others**, 1970 PLJ 487 and, therefore, as the area of 431 kanals 11 marlas sold vide sale deed dated 20.6.1958 before the cut off date could not have been included towards the total holding of the landowner.

In order to further buttresses his argument, submitted that even if the area sold by the landowner is not protected by any provisions of the Statute, though can be taken into surplus area, it cannot be included in the landowner's permissible area as the landowner has to be allowed requisite permissible area. In support of such contention, relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Lajpat Rai and others Versus The State of Punjab and others**, 1981 P.L.J. 316. Para 10 reads as under:-

“10. Nor do we see how any equities arise in favour of the appellants, such as would entitle them to have the land in question included in the permissible area of respondent No. 3. It is not their case that any representation to the effect that land would be so included was made to them by either respondent No. 3 or respondent No. 4. Furthermore they must be credited with full knowledge of the extent of the land owned by respondent No. 3 and of the consequences flowing therefrom in view of the provisions of the Act. Thus they acquired the land with their eyes open and subject to all the liabilities and defects from which it suffered in the hands of

their transferor (and also their transferor's transferor). In the absence of word of mouth of respondent No. 3 or his conduct to the contrary; they cannot now be heard to say that if respondent No. 3 exercises a right of selection of his permissible area which the Act confers on him, that right must be modified to suit their convenience."

Even the area acquired by the State Government could not have been included in the total holding of the landowner in view of Section 8(1) of 1972 Act and in the instant case, vide awards dated 28.4.1977 and 21.9.1973, land measuring 63 kanals 15 marlas and 14 kanals 16 marlas respectively were acquired by the State Government, in essence total 78 kanals 11 marlas, therefore, the area 54 kanals was out of the reserved area of the landowner, required to be excluded. All these factors were to be weighed by the authorities below, but having failed to address aforesaid issues, the orders are required to be set-aside and the matter requires to be re-visited and re-addressed.

On the contrary, Mr.Rajbir Singh, learned Assistant Advocate General, Haryana representing the State has relied upon the preliminary objection taken up in the written statement by submitting, that the orders under challenge are perfectly legal and justified. It is settled law that the provisions of Section 8 of Haryana Act cannot be sought in the proceedings which had been decided under 1953 Act. Besides that, since the surplus area of the landlord was decided on 21.2.1963 under the Punjab Security of Land Tenures Act and 53 standard acres $13\frac{3}{4}$ units of land was declared surplus and form 'F' was issued and no appeal was filed against the order in question, thus it became final and, therefore, there was no occasion for the landowner to file an application under Section 8 of Haryana Act for seeking exemption.

He further submitted that the land sold/mortgaged by the petitioner had rightly been ignored as these transactions were made after 15.4.1966 and for the purpose of declaring surplus land, the landowners' holding is to be seen as it stood in revenue record on 15.4.1966, thus, all the subsequent transactions have to be ignored under the provisions of Section 10-A(b) of the 1953 Act and, thus, urges this Court for dismissal of the writ petitions.

In the other writ petition, Mr.B.S.Bedi, learned counsel for the petitioners submitted that the petitioners have sought the indulgence of this Court for issuance of direction to the respondents to implement the order dated 26.2.1997 rendered by this Court in CWP No.4929 of 1982 titled as 'Raminder Singh & another Versus The State of Haryana & others', whereby this Court, on the following terms, disposed of the same:-

“Therefore, it is clear that the land which was the subject matter of pre-emption suit and which was acquired by the petitioners by virtue of the decree in pre-emption suit cannot be included in the surplus area of the 4th respondent. I am, therefore, of the opinion that the petitioners' claim to the land which was the subject matter of the pre-emption suit shall not be included in the holding of their father and the writ petition is to be allowed.

The writ petition is, therefore, allowed and it is decided that the land which was the subject matter of the pre-emption suit filed by the petitioners cannot be included in the holding of the 4th respondent and the authorities are directed to decide the surplus land of the 4th respondent after excluding land which the petitioners obtained by virtue of the decree in pre-emption suit filed by them. However, there will be no order as to costs.”

But no action has been taken so far. Petitioners No.1 to 4, being the legal heirs of Raminder Singh and Gajender Singh, filed an

application for restitution of possession under Section 144 CPC before respondent No.2, i.e., the Collector Karnal in compliance of the order aforementioned, but the proceedings in the aforementioned application have been adjourned sine-die, to await the decision of Civil Writ Petition No.14916 of 1993. Petitioner Nos.1 and 2 approached this Court by challenging the aforementioned order in Civil Revision No.3928 of 2005, wherein this Court was pleased to relegate the petitioners to pursue the matter on revenue side. Thereafter, they filed a revision petition before the Commissioner and the same was dismissed vide order dated 20.7.2006. Thereafter the revision was preferred before the Financial Commissioner. However, in the meanwhile, Gajender Singh had died and petitioner Nos.5 to 8, are his legal representatives and, therefore, are seeking indulgence of this Court to direct the respondents to implement and comply with the judgment by excluding the land in question from the surplus area of Rajinder Singh.

Mr.Verma, in rebuttal, has also raised one more point to contend that by setting-aside all the revenue orders, even order Annexure P-1 also tantamounts to have been set-aside, thus, for all intents and purposes, the pith and substance of the order Annexure P-8, if construed would mean the surplus area matter of the landowner and the Surplus Area Authorities would have to decide the surplus area matter afresh as original landowner had already died and in view of the death of the original landowner, the surplus area is required to be re-determined as per decision rendered by the Full Bench in **Sardara Singh and others Versus The Financial Commissioner and others, 2008 (2) RCR (Civil) 744.**

I have heard the learned counsel for the parties, appraised the

paper book and of the view that there is force and merit in the submissions of the learned counsel representing the petitioners.

It would be apt to reproduce the relevant paragraph of the order (Annexure P-5) and that of the Financial Commissioner setting-aside all the revenue proceedings:-

“3. I have heard the learned counsel for the applicant and have thoroughly perused the record. The contention of the learned counsel is that benefit of the land sold by the applicant and transferred in pursuance of the orders of the Civil court may be given to the applicant. But I do not agree with this contention. So far as the question of benefit of the land sold by him is concerned, only benefit of that land can be given which he has sold before 15.4.1966, out of his reserve pool. It becomes clear from the report of the Naib Tehsildar Agrarian that the land sold before 15.4.1966 and the land acquired by the Government, which is surplus, and that surplus sold land has not been utilised. Therefore, only the benefit of this land measuring 356 kanals 16 marlas can be given to the applicant. The applicant is not entitled for the benefit of the land transferred vide orders of the civil court in 1970. Because the learned counsel for the applicant has not been able to cite any provision of law under which the applicant could avail benefit of the land sold after 30.7.1958. Hence, I do not agree with this contention of the applicant. The learned counsel for the applicant pleaded that while submitting their list of reserve area they have included killa Nos 32/16, 25, 39/3, 4 min, 5, 6,, 7, 13, 15 min in orchard and reserve area but the same have been shown in surplus pool by the revenue officials, which have been included in their reserve area. On this point, Naib Tehsildar Agrarian has admitted that the perusal of surplus list and surplus file, it becomes apparently clear that the applicant has included the aforesaid area in his reserve area which bears the signatures of the Collector, Agrarian, whereas the

area declared surplus shown in the property register does not bear the signatures of any official. Hence, it is appropriate to exclude this area of the applicant land from the surplus land.

In view of the foregoing discussion, I exempt 356 kanals 16 marlas of surplus declared land of the applicant from the surplus pool, which has either been sold before 15.4.1966 or acquired by the Government. I also order to exclude the number of the land measuring 69 kanals 14 marlas from the property register, which was included in the reserve area of the applicant, but which due to mistake, was shown in the list of surplus land in the property register. In this respect, Naib Tehsildar, Agrarian is sent with the direction that he should get the change effected in the property register and the allotment order dated 15.1.1981 of this court is cancelled and killa Nos.44/18 to 20, 23, 40/16/3, 43/5, 6, comprising 48 kanals 14 marlas of land shall remain in surplus pool as before.”

The pith and substance of the order Annexure P-5 reveals that the Prescribed Authority has exempted 356 kanals 16 marlas of surplus land from the surplus pool, which has been sold before 15.4.1966 or acquired by the Government. He further ordered to exclude the number of land measuring 69 kanals 14 marlas from the property register, which was included in the reserve area of the applicant and the aforementioned order was challenged by the petitioners on the ground that in some piece of land, there is a well run farm and some has been acquired, the benefit of which has not been given to the appellant. In fact, the application of the petitioners under Section 8 of the Act was not in consonance with the decision rendered by Full Bench of this Court in **Jaswant Kaur's case (supra)**, wherein it has been held that all the sale deeds executed before the cut off date, i.e., 13.7.1958 have to be excluded for the purpose of determination of tenant's

permissible area, but Annexure P-5 had taken into consideration the area by taking the date 15.4.1966. Order Annexure P-5 was assailed, but as noticed above, the Financial Commissioner (Annexure P-8) has set-aside all the orders, the operative part of which reads as under:-

“I have heard the counsel for the parties and have gone through the records. The counsel for the petitioner has argued that it has been mentioned in the order of the prescribed authority that the Naib Tehsildar had admitted that certain khasra numbers which had been included in the reserved area by the land-owner, had been shown as part of the surplus pool. He has pleaded that in view of the admission by the department before the prescribed authority, the Collector should not have rejected this plea. He has also argued that the land was acquired by the State Govt.in 1966 and 1980 and the area acquired should be excluded from the holdings of the landowner. It was argued by the counsel for the respondents that 69 kanals 14 marlas could not be excluded from the surplus pool, as it had been included in form F issued in 1963. The District Attorney, appearing on behalf of the State, has argued that part of the land declared surplus in 1963 had been utilized by allotment to eligible tenants and, therefore, could not be again included in the reserved area of the land- owners. He has relied on ruling of Division Bench of Punjab and Haryana High Court report as 1979 PLJ 103. He has also argued that protection of Section 8 of the Haryana Act cannot be sought in proceedings which had been decided under the Punjab Act and has relied on 1978 PLJ 53. He has argued that section 8 benefit cannot be given as no declaration had been filed under the Haryana Act. He has also argued that land acquired by the State Govt.after 23.12.1972 cannot be excluded as no benefit of this acquisition can be given to the land-owner in view of the ruling in 1977-PLJ 230 (Para 8).

The 1963 order was not appealed against and had become final. The landlord at that time did not point out the

alleged mistake in inclusion of certain area in the surplus pool and, therefore, cannot ask for correction now.

However, the basic point is that prescribed authority had no jurisdiction in review or revise the order of his predecessor. The Haryana Act does not give any power of such review to any of the revenue officer below the Financial Commissioner. Therefore, the order of the prescribed authority itself is without jurisdiction and is void and must be set aside. I, therefore, set aside the orders of all the revenue authorities below and reject this revision petition.”

I am of the view that the order of the Financial Commissioner is not sustainable as concededly the sale deeds as mentioned in the writ petitions are prior to 30.7.1958. Two sons of the landowner, who had sold away an area of 431 kanals 11 marlas vide sale deed 20.6.1958, filed a pre-emption suit and got the decree and restitution application, as indicated in the other writ petition has been adjourned sine-die, i.e., to await the decision of the writ petition and the present controversy is also required to be decided as the same has also to be excluded for the purpose of determination of the tenant's permissible area.

For the sake of brevity, paragraph 9 of **Jaswant Kaur's case (supra)**, Paras 6 and 7 of **Chandgi's case (supra)**, and Paras 2 to 4 of **Chattar Singh's case (supra)** reads thus:-

“Para 9 of Jaswant Kaur's case

9. Shri Naubat Singh, the learned Assistant Advocate General, also agreed that we should harmonise [Section 8](#) and [Section 12](#) (3) in the manner that we have done but he suggested that the date up to which transfers of the three categories specified by us earlier as (1), (2) and (3) should be recognised, should be the appointed day (24-1-1971) and not the date on which [Section 12](#) (3) came into force. We do not agree. [Section 1](#) (2) of Act XVII of 1976 expressly provides that the Act shall

come into force on 23-12-1972. We must give some meaning and effect to it. In our view, the effect of [Section 12](#) (3) coming into force from 23-12-1972 on [Section 8](#) is that transfers of the three categories specified by us made up to 23-12-1972 would be excluded from the operation of [Section 12](#) (3), that transfers of land in excess of the permissible area under the Punjab or Pepsu Law would be protected if made before 30-7-1958 and that all other land not excepted by [Section 8](#) would vest in the State Government with effect from the appointed day.

Paras 6 & 7 of Chandgi's case

“6. A bare perusal of the aforesaid observations of the Bench clearly go to show that besides the transfers which are protected by section 8(1) of the Act, other transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law, would be protected if the transfers were made prior to 30th July, 1958. In view of the law laid down by the Bench in Shmt.Jaswant Kaur's case (supra), it would be futile for the learned Additional Advocate General to argue that the sale made by Chandgi in favour of Teka on 10th December, 1957, has to be ignored. Mr.R.S.Mittal, learned counsel for the respondent, is right in contending that the Collector by his order dated 27th November, 1975, has done nothing else than giving effect to the provisions of section 8(1) of the Act. Thus, in view of the law laid down in Shmt.Jaswant Kaur's case, I hold that the sale made in favour of Teka by Chandgi could not legally be ignored and that the surplus area of Chandgi had to be determined taking into consideration the said sale. In this view of the matter, the judgment of the learned Single Judge resulting in allowing the petition of Chandgi respondent and in setting aside the order of the Financial Commissioner, dated 16th August, 1977, is perfectly legal and no exception can be taken to the same.

7. Consequently, this appeal fails and is dismissed, but in the circumstances of the case, I make no order as to costs.”

Paras 2 to 4 of Chattar Singh's case

2. The sole point argued by the learned counsel for the appellants is that the judgment of Shamsheer Bahadur J. has been over-ruled by a Division Bench of this Court (Harbans Singh and S.S. Sandhawalia, JJ) in Harpal Singh v. The State of Punjab and others, 1970 P.L.J.159. The case before the Division Bench related to the Pepsu Tenancy and Agricultural Lands Act and the observations of the learned Judges are as under:-

“On principle if a valid sale of land has been made by the original landowner which is protected by the exceptions given in section 32-FF, the property in the land passes from the date of the registration. From the date of the registration the original landowner is divested of all rights, title and interest in the land and if such a sale is protected under section 32-FF, the land in question would go out of the ambit of its liability to be declared surplus qua the original landowner. Once it is so held that the original transfer to the vendee is valid, it appears plain to us that the subsequent divesting of the vendee by the superior right of the pre-emptor would not for a second time bring the land again within the scope and mischief of the confiscatory provision under section 32-FF. If once a valid title has accrued to the vendee, his subsequent divesting at the latter point of time by operation of law in pursuance of a decree of pre-emption, cannot by any stretching of legal fictions be deemed to be a transfer by the original landowner in favour of the prescribed relations under the rules framed under the Pepsu Tenancy and Agricultural Lands Act, 1955”.

The same observations aptly apply to the present case although it is under the Punjab Security of Land Tenures Act, 1953.

3. The appellants were landless persons when they filed the suit for pre-emption of the land in dispute and this land cannot be taken away from them on the plea that once it formed part of the surplus area of their father. The land in dispute, when it

was sold to Dalip, ceased to be the land of Het Ram, the father of the appellants. It became the land of Dalip and till the decree for pre-emption was passed, it remained in his ownership. It was on the deposit of payment of the pre-emption money to Dalip that the appellants became the owners of the land in suit. The character of this acquisition is not that of the acquisition of the land of their father but the acquisition of land belonging to a stranger, as admittedly Dalip was a stranger to the family.

4. *In view of the fact that a Division Bench of this Court has overruled the judgment of Shamsher Bahadur J.on which the learned Single Judge relied, this appeal is accepted and the orders of the Collector, the Commissioner and the Financial Commissioner dated the 11th December, 1963, the 4th June, 1964, and the 1st November, 1964, respectively, copies of which are annexures 'C', 'D' and E' to the writ petition, are hereby quashed. There is no order as to costs because the judgment of the Division Bench was delivered during the pendency of this appeal."*

The petitioners, in my view, are also aggrieved of the order of Prescribed Authority Annexure P-5 as the total land sold was 736 kanals 4 marlas, but the Prescribed Authority, by taking the cut off date as 15.4.1966, had only included 356 kanals 16 marlas instead of the aforementioned land, wherein a chunk of 304 kanals 13 marlas was sold by separate ten registered sale deeds to ten different persons prior to 30.7.1958 and one chunk of land measuring 431 kanals 11 marlas vide sale deed dated 20.6.1958 to one Rajpal Singh, also a total stranger.

I cannot remain unmindful to the fact that any transfer of land

made under aforementioned categories upto 23.12.1972 stand regularised by Section 8 of 1972 Act and transfer made by any mode would be protected and excluded from the operation and applicability of sub-section (3) of Section 12 of 1972 Act, i.e., made prior to 30.7.1958.

There is another aspect of the matter. The original landowner had also died and, therefore, in view of the ratio decidendi culled out by the Full Bench in **Sardara Singh's case (supra)**, the matter qua determination of the permissible area at the hands of the legal heirs of a big landowner has to be determined afresh. In other words, in view of the pendency of the proceedings relating to determination of surplus area in the hands of the landowner, surplus area would have to be assessed afresh in the hands of the present petitioners, who are legal heirs of the big landowner.

Resultantly, the impugned orders Annexures P-6, P-7 and P-8 are set-aside the matter is remitted back to the Prescribed Authority, Karnal to consider the application of the petitioners under Section 8 of 1972 Act, afresh, keeping in view the observations made here-in-above.

This Court is also sanguine of the fact that the matter is hanging fire for so many years, therefore, the Prescribed Authority shall decide the matter as expeditiously as possible preferably within a period of six months from the date of receipt of certified copy of this order.

The fate of the case of the petitioners in other writ petition would also be decided on adjudication of application under Section 8 of the Haryana Act. They also are at liberty to appear and present their case before the Prescribed Authority and even the application seeking restitution, which has been adjourned sine-die, shall also be decided and afterward shall be clubbed and decided together.

The writ petitions are disposed of with the aforementioned observations.

May 10th, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No