

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

CWP No.15356 of 1993
Date of decision : 24.05.2017

Banwari

...Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: None for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

Mr. S.P.S. Tinna, Advocate for respondent No.4.

AMIT RAWAL, J. (Oral)

There is no representation on behalf of the petitioner.

Position was not different on the last date of hearing and on few other date i.e. on 30.09.2015. Though at one point of time, request was made that petitioner had expired and sought time to bring on record his LRs. Even no steps has been taken. As per the Code of Civil Procedure, provisions of the High Court Rules and Regulations and as per the provision of Order 22 Rule 3 CPC, even if the party dies, contract between the lawyer remains continue. The amendment reads as under:-

“(2) where within the time limited by law no application is made under sub Rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced

notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.”

On merits, Banwari Lal son of Jora Singh has challenged the orders (Annexures P-1 to P-5). As per the facts revealed from the pleadings that the surplus area in favour of big landowner-Ram Rakha (deceased) now been represented through LRs namely Daulat Ram, Krishan Kumar impleaded vide order dated 17.04.1995 and are represented in this Court through Mr. Tinna, Advocate, had been declared surplus vide order dated 27.07.1966 (Annexure P-3) i.e. land measuring 7 standard acres and 2 ½ units. Resultantly, the proceedings under Section 13 of the Punjab Land Reforms Act, 1972 i.e. which deals with separating the share of the landowners in joint land, were initiated and order (Annexure P-4) dated 23.05.1984 came to be passed and in this regard, Special Collector (Agrarian) District Ferozepur Headquarters at Fazilka (Camp Abohar) ordered for initiation of the proceedings under Section 9(2) of the Act i.e. for delivering the possession of the land to the CRO. For taking the possession of the land situated in Village Rajanwali, Tehsil Fazilka, District Ferozepur, the aforementioned notice was issued to the respondent No.4-Ram Rakha (since deceased) to deliver the possession. Resultantly, order dated 19.10.1984 (Annexure P-5) by the Special Collector, Aggragian was passed. The relevant portion of the order reads thus:-

“Present:- N.T. (Agr.) Abohar for the State.

ORDER

The lands measuring 67 kanals 13 marlas of Village

Rajanwali was declared surplus vide the order dated 23.5.84 of Collector Agrarian Ferozepore belonging to big landowner Ram Rakh son of Ram Kishan resident of Village Rajanwali, Tehsil Fazilka, District Ferozepore. Notice u/s 9 (1) of the Punjab Land Reforms Act, 1972 was given to the landowner and others concerned.

The counsel for the landowner came present and he did not raise objection. No action can be taken on this subject at this stage as the objection raised is not according to law. Counsel for the tenant came present and submitted objection that he has been in possession of the said lands as tenants since before _____ and for this the area be left as T.P.A.

Arguments heard. Record was also seen. Naib Tehsildar Agrarian was also heard. So far as the right of the tenant is concerned, his right will be seen at the time of allotment, as the objection made by the tenant is not correct according to law. So the land measuring 44 kanals 12 marlas is proceeded u/s 9(2) of the Act. C.R.O. be intimated that he should taken possession of the khasra numbers given below in favour of the State and after taken the possession, mutation for this land be entered in favour of the State Govt. so that this be allotted to the eligible persons.

Order announced.

Sd/-

*Special Collector, Agrarian,
District Ferozepore Headquarters*

Dated: 19-10-1984

at Fazilka (Camp Abohar)

Rajanwali

189	4	4-4
	5	8-0
	7	6-4
190	10	4-0
188	24	2-14
	25	8-0

157	21	8-0
Total		44-12"

From the aforementioned order, it is axiomatic that the landowners did not raise any objection. As regards the objection of the tenant, it was observed that the same shall be considered at the time of allotment. Resultantly, warrant of possession was issued by respondent No.3, for the aforementioned land, in favour of the State of Punjab and entry regarding the same in the revenue record was recorded on 02.11.1984. At this stage, petitioner filed an appeal before the Commissioner in 1985 raising a plea that his Tenant Permissible Area is not within the statutory provisions of law as he has been in possession of the land from 1953 to 1984 onwards and, therefore, entire proceedings had been done at his back. As per the settled law, notice to the tenant and to the big landowners has to be given after affording opportunity of hearing. Reference on this ground has been made to *Dharam Singh Vs. The Financial Commissioner, Haryana and others, 1980 PLJ 93* and *Abhe Ram (Deceased) represented by Ram Pal Singh and others Vs. The Financial Commissioner, Haryana and others, 1979 PLR 337*.

Since no notice was issued upon tenant for delivering the possession, for, notice under Section 9 of the Act was only issued to the landowners. When warrant of possession were issued, cause of action accrued to the petitioner to seek vindication. The khasra girdawri brought on record reveals that the petitioner being tenant since 1953 and, therefore, he has right in the land as it could not have been vested in the State as per the provision of Section 8 of the Punjab Land Reforms Act. Appeal has

erroneously been dismissed and revision filed before the Financial Commissioner also met with the same fate. In fact, the area of khasra No.458 is 12 kanals, as evident from the khasra girdawri and land in dispute is 44 kanals 12 marlas, so the claim of the petitioner would lie. The controversy raised in the present writ petition is with regard to the khasra Nos.457 and 458. The Financial Commissioner has erroneously dismissed the revision petition on the premise that petitioner has failed to show his possession since 15.04.1953 but as per the ground No.(f), it has been stated that petitioner has not to prove their possession only but have to show that the land is in cultivating possession of tenant on 15.04.1953 and continue to be under tenant, in essence, never reverted to the landlord for self-cultivation thus without giving any opportunity of hearing to the tenant, the surplus area cannot be determined and, therefore, prayer has been made for setting aside the aforementioned orders.

Mr. S.P.S. Tinna, learned counsel appearing on behalf of respondent No.4 submits that once the matter with regard to the surplus area remained alive and the landowner died, the right accrued to the LRs and there has to be redetermination of the surplus area at the hands of the legal heirs as per the decision rendered by Full Bench, *Ranjit Ram Vs. Financial Commissioner, Punjab and others*, 1981 PLJ 259.

Ms. Monica Chhibber Sharma, DAG, Punjab submits that tenant has kept silent even after having taken the possession on 02.11.1984 and chose to file appeal only after 11 months and has not been able to prove the possession, much less, show the ingredients of Section 15 of the Punjab Land Reforms Act as he has to establish on record that he had been tenant

since 1956 and cut off date being 15.04.1953. In the absence of the same, the area at the hands of the tenant would not have been determined and rightly so, appeal and revision preferred therein have been dismissed.

I have heard learned counsel for the parties and appraised the paper book and also the orders under challenge.

The Commissioner before whom the appeal was preferred had an occasion to go through the copy of khasra girdawri from 1953 to 1959-60, 1962-63 to Kharif, 1963, 1964-65 to 1966-67, 1970-71 and 1981-82 to 1983-84. The latest crop for which khasra girdawri is of Rabi, 1984. The possession of the land admittedly had been taken on 02.11.1984. Section 8 of the Punjab Land Reforms Act, 1972 which reads as under:-

“8. Vesting of utilized surplus area in the State Government – Notwithstanding anything contained in any law, custom or usage for the time being in force, but subject to the provisions of section 15, the surplus area declared as such under the Punjab Law or the Pespu Law, which has not been utilized till the commencement of this Act and the surplus area declared as such under 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 and in the case of surplus area of a tenant which is included within the permissible area of the landowner, the right and interest of the tenant in such area shall stand terminated on the aforesaid date:

Provided that where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government.”

leads to an irresistible conclusion that once the possession has

been taken by following the due procedure, it vests in the State Government and is treated to be utilized. Notification qua the possession has been issued and the land vests in the State of Punjab.

Even otherwise, as the Section 15(1)(ii) of the Land Reforms Act, which reads as:-

“15(1)(ii) the procedure for purchase of such land shall be as is specified hereinafter and the period of limitation for exercise of such a right shall be one year from the date of commencement of this Act.”

the right of tenant to purchase the land also arises from the date of commencement of the Act. Having failed to move the application, after 1956, in my view, tenant could not have raked up his issue. Taking of the possession and the proclamation has not been refused in the entire pleading. Khasra Girdawri for the year 1952-53 would have been clincher for determining the controversy by taking the reckoning date as 15.04.1953 but for the reasons best known has not been placed on record. The petitioner has been shown to be unauthorized occupant of the land and not as a tenant. Even report of C.R.O. shows that four villages of Kherpur, Rajanwali, Himatpura and Bishanpur owned by landowners and there was no area of the tenancy except in Village Rajanwali. Copy furnished by the petitioner shows that the land was under cultivating possession of tenant instead of his father-Jora Singh. All these factor had weighed in the mind of the Financial Commissioner and Commissioner, thus, order under challenge do not call for interference and based upon appreciation of the documentary evidence on record.

As regards the plea of the landlord with regard to the

redetermination, I am of the view that landowner has not taken up any issue after passing of the order on 27.07.1966 and, therefore, after vesting of land in the year 1984, cannot seek redetermination as no proceedings were pending at the behest of the landlord. Even the issue raised by the tenant is only in the year 1985.

No ground for interference is made out.

Resultantly, present writ petition is dismissed.

Let this order be communicated to the concerned authority for further action.

24.05.2017

Pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No