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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 15.03.2017

1.

CWP-594-1990

Rameshwari Devi (Deceased through LRs)

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

2.

CWP-1048-1990

Ranbir Singh (deceased through LRs) and others

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the petitioner(s).

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two writ petitions bearing
CWP No.594 of 1990 titled as **“Rameshwari Devi (Deceased through
LRs) V/s State of Haryana and others”** and **CWP No.1048 of 1990** titled
as **“Ranbir Singh (deceased through LRs) and others V/s State of
Haryana and others”**.

The petitioner(s) are aggrieved of the impugned orders dated

01.05.1985 (Annexure P-6), 07.01.1986 (Annexure P-8) & 15.11.1989 (Annexure P-10), whereby in pursuance to the order dated 08.09.1982 (Annexure P-5) passed in CWP No.410 of 1974 at the instance of Manbir Singh @ Tejpal Singh and Krishan Gopal, the mortgagees of Rameshwari Devi of land measuring 210 bighas 2 biswas, the Collector was directed to afford an opportunity with regard to the examination of permissible area.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Amit Jain, learned counsel appearing on behalf of the petitioner(s) submits that Rameshwari Devi was a big landlord of land measuring 768 bighas and 6 biswas. On promulgation of the Punjab Security of Land Tenures Act, 1953 (for short 'the 1953 Act'), the matter with regard to the declaration of land as surplus at the hands, was taken up and vide order dated 24.01.1968 (Annexure P-1), the land measuring 7 standard acres and 13 ½ units was released. In this regard, he has drawn the attention of this Court to the calculations which reads as under:-

<i>"Total area owned on 15.04.1953</i>	<i>93 S.A. 1 Unit</i>
<i>Area under mortgage</i>	<i>25 S.A. 11 ½ Unit</i>
<i>Area under tenancy on 15.04.1953</i>	<i>17 S.A. 15 ½ Unit</i>
<i>Area under Orchard</i>	<i>0 S.A. 12 ½ Unit</i>
<i>Area acquired by State Govt.</i>	<i>3 S.A. 2 Unit</i>
<i>Banjar Quadim</i>	<i>7 S.A. 10 Unit</i>
<i>Permissible area</i>	<i>30 S.A. 0 Unit</i>
<i>Surplus</i>	<i>7 S.A. 13 ½ Unit</i>

Keeping the above figure in view I declared 7-13 ½ S.A. area surplus with Smt. Rameshwari Devi land owner. The list of surplus khasra nos. produced by the land owner is at "A". Form "P" be prepared and issued accordingly."

therefore, the total area owned on 15.04.1953 at the hands of Rameshwari Devi was held to be 93 standard acres and 1 unit, in essence, the area under mortgage, tenancy, orchard, *banjar quadim* was excluded and thereafter, permissible area determined was 30 standard acres which is the requirement of law of Section 2 (3) of the 1953 Act. The aforementioned order came to be passed in view of the earlier litigation at the instance of Rameshwari Devi, whereby at earlier point of time, 36 S.A. 12 $\frac{3}{4}$ units were declared surplus.

He further submits that the order dated 24.01.1968 (Annexure P-1) attained finality, in essence, neither the State nor Rameshwari Devi challenged the same. Manbir @ Tejpal Singh and Krishan Gopal, as indicated above, approached this Court vide CWP No.410 of 1974 i.e. after 5 years and sought the setting aside of the aforementioned order on the premise that they have not been heard, in essence, the order has been passed at their back and this Court vide order dated 08.09.1982 remanded back the matter to the Collector, who vide order dated 01.05.1985 (Annexure P-6) by taking into consideration the land as on 15.04.1953 as the cut off date according to the 1953 Act as 30.07.1958, determined the permissible area by taking the land in the year 1985, which fact is evident from the impugned order. In this regard, he has drawn the attention of this Court to the impugned order which reads as under:-

"As per report of the Naib Tehsildar, Surplus, Smt. Rameshwari Devi land owner possessed 93 S.A. 1 Unit of land on 15.04.1953. And as per the present position, this land owner possesses 133 S.A. 5 $\frac{1}{2}$ unit of area.

<i>Present land</i>	<i>S.A.</i>	<i>Unit</i>
	<i>133</i>	<i>5 $\frac{1}{2}$</i>

<i>Reserve area of the land owner</i>	<i>30</i>	<i>00</i>
<i>Land under garden</i>	<i>0</i>	<i>12 ½</i>
<i>Banjar Qadim</i>	<i>0</i>	<i>3 ½</i>
<i>Land acquired by Government</i>	<i>3</i>	<i>2</i>
<i>Total land</i>	<i>34</i>	<i>2</i>

After leaving 34 S.A. 2 units of land 99 S.A. 3 ½ Unit area is declared surplus. Because Smt. Rameshwari Devi has already sold land out of her permissible area, now she owns only 17 S.A. ¼ unit of land. After taking this land in surplus remaining 82 S.A. 3 ½ units of land is taken in surplus pool from vendees Ranbir Singh etc. List of reserve area and surplus Area, 'A' & 'B' is attached herewith. According to this Form 'F' be issued."

thus, the impugned order has not taken into consideration the land already sold prior to the aforementioned cut of date, much less, gift and other mortgaged area and tenants' permissible area, thus, the order is not in consonance with the provisions of the 1953 Act. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court of India in **“Ajmer Singh and others V/s State of Haryana” 1990 (1) SC 109** and as well as by this Court in **CWP No.15182 of 1993** titled as **“Gopal Ram and others V/s State of Haryana and others”** decided on 23.03.1995.

The aforementioned order was assailed before the authorities, but the authorities have also upheld vide orders dated 07.01.1986 (Annexure P-8) & 15.11.1989 (Annexure P-10), thus, the orders under challenge are against the settled law, much less, canon of justice and urges this Court for setting aside the same.

Per contra, Mr. Sandeep Singh Mann, Sr. DAG, Haryana has

drawn the attention of this Court to para Nos.3 and 4 of the written statement to contend that the area which has already been sold by Rameshwari prior 30.07.1958, cannot be excluded in view of the fact that the 1953 Act did not envisage any provisions. For the sake of brevity, the para Nos.3 and 4 reads as under:-

"3. In reply of para 3 of the petition, it is submitted that the Collector Agrarrian, Jagadhri while deciding the surplus area case of the land owner under the Punjab Security of Land Tenures Act 1953 (herein after called the Punjab Act) had excluded the land which had been mortgaged by the land owner with possession to the mortgaged by the land owner with possession to the mortgagee by his order dated 24.01.1968.

4. In reply to para No.4 of the petition, it is submitted that under the Punjab Act there is no provision which provides for exclusion of the land transferred by the land owner in any manner, including the gift, prior to 30th July 1958, out of holding of the land owner while determining the surplus area. However, the date of 30.07.1958 is relevant under Section 19-B of the Punjab Act which deals with the fresh acquisition after 15.04.1953. The averments of the petitioner relating to the exclusion of land gifted by the land owner prior to 30.07.1958 are therefore not correct."

thus, there is no illegality and perversity in the orders under challenge and do call for interference.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit and force in the submissions of Mr. Arun Jain, learned Senior Counsel, for, it is a settled law that for determination of the permissible area for the purpose of nature of the land, the date is to be seen as on 15.04.1953 in view of the *ratio*

decidendi culled out in Ajmer Singh's case (supra), in essence, the sale deeds and gift deeds have to be excluded for the purpose of determination of the permissible area as per Section 2(3) of the 1953 Act and this was actually done vide order dated 24.01.1968 (Annexure P-1). The written statement supporting the action of the authorities is not in consonance with the settled law, in essence, the stand taken in the written statement with regard to the non-exclusion of the transferred land is not only illegal, but perverse. Even such stand is not in consonance with the determination of the permissible area, as indicated in order dated 24.01.1968 (Annexure P-1).

In my view, it would be totally farcical exercise in remanding back the matter as neither the State nor Rameshwari Devi challenged the order dated 24.01.1968 (Annexure P-1), even the transferees have also approached this Court for assailing the impugned orders, under challenge.

Keeping in view the aforementioned facts, the impugned orders dated 01.05.1985 (Annexure P-6), 07.01.1986 (Annexure P-8) & 15.11.1989 (Annexure P-10) are not sustainable in the eyes of law being erroneous and arbitrary and accordingly, the same are set aside. The order dated 24.01.1968 (Annexure P-1) is ordered to be restored.

The writ petitions are allowed.

15.03.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**