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

CWP-13452-1998

Date of decision : 15.03.2017

Neelam and others

... Petitioner(s)

Versus

Financial Commissioner (Revenue), Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Daaria, Advocate for
Mr. Sharan Sethi, Advocate
for petitioner Nos.1 & 3.

Ms. Lavanya Paul, AAG, Punjab.

Mr. P.N. Aggarwal, Advocate
for respondent No.4.

AMIT RAWAL, J. (ORAL)

Prayer of the petitioner(s) in the present writ petition is for issuance of the writ in the nature of *certiorari* for quashing the order dated 10.11.1997 (Annexure P-6) rendered by the Financial Commissioner (Revenue), Punjab/respondent No.1, whereby the order passed by the respondent Nos.2 & 3 have been set aside and direction has been issued to decide the matter afresh as per the provisions of Punjab Land Reforms Act, 1972 (for short 'the 1972 Act').

Learned counsel for petitioner Nos.1 & 3 submits that the matter could not have been remanded back as the Financial Commissioner, Punjab has ignored the provisions of the Punjab Security of Land Tenures Act, 1953 (for short 'the 1953 Act') which would be applicable then instead

of the Punjab Land Reforms Act. Respondent No.1 has also lost the sight of the provisions of Section 28 of the 1972 Act, wherein it has been specifically provided that any proceedings which are pending immediately before the commencement of this Act, shall continue and disposed of, if the new Act has not been passed. For the sake of brevity, the provisions of Section 28 of the 1972 Act read as under:-

28. Repeal and Saving – (1) *The Punjab Security and Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955, in so far as these are inconsistent with the provisions of this Act, are hereby repealed.*

(2) *The repeal of the enactments mention in sub-section (1), hereinafter referred to as the said enactments, shall not affect-*

(i) the proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under either of the said enactments, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in and be utilized by the State Government in accordance with the provisions of the Act; Provided that such proceedings shall, as far as may be, be continued and disposed of, from the stage these were immediately before the commencement of this Act, in accordance with the procedure specified by or under this Act, [and the cases pending before the Pepsu Land Commission immediately before the date of commencement of this Act shall transferred to the Collector of the district concerned for disposal].

Provided further that nothing in this section shall affect the determination and utilisation of surplus area, other than the surplus area referred to above, in accordance with the provisions of this act;

(ii) the previous operation of the said enactments or anything duly done or suffered thereunder.

(iii) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments, in so far as such right, privilege, obligation or liability is not inconsistent with the provisions of this Act and any proceeding or remedy in respect of such right, privilege, obligation or liability may be instituted, continued or enforced as if this Act had not been passed. Provided that such proceedings or remedy shall, as far as may be, instituted continued or enforced in accordance with the procedure specified by or under this Act."

Mr. P.N. Aggarwal, learned counsel appearing on behalf of respondent No.4 submits that there is no illegality and perversity in the impugned order, under challenge and do not call for interference.

Be that as it may, the fact remains that once the matter has been remanded back, though there is a specific direction to decide the matter under the Punjab Security and Land Tenures Act, 1953, I am of the view that petitioner(s) is granted liberty to raise the plea of applicability of the 1953 Act i.e. one taken in the grounds of writ petition, over and above what has been already taken before the authorities.

Keeping in view the aforementioned facts, the writ petition petition is dismissed with the aforementioned modification, as indicated above.

15.03.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**