

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.17308 of 1995
Date of Decision.15.03.2017

Jagjit Singh and others

.....Petitioners

Vs

State of Haryana and others

.....Respondents

Present: Mr. Suvir Sehgal, Advocate with
Mr. Jeevan Gautam, Advocate
for the petitioners.

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

Mr. S.S. Dinarpur, Advocate
for respondent Nos.5 to 14.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

The challenge in the writ petition is to the order dated 12.05.1995 (Annexure P-7) passed by the Financial Commissioner dismissing the revision filed by the petitioner against the order dated 20.08.1993 (Annexure P-6) passed by The Commissioner, Hisar Division, Hisar-respondent No.3 in appeal.

Mr. Suvir Sehgal, learned counsel appearing for the petitioners submits that the petitioners are the sons and daughters of Amarjeet Kaur (deceased) under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter called as the "1953 Act") proceedings for declaring the land surplus at the hands of Amarjeet Kaur were initiated. The report dated 30.10.1961 of the Circle Revenue Officer was submitted to respondent No.4 along with Form 'D' prepared by the Patwari. On the basis of the report, respondent No.4 namely The Collector, Surplus Area, Dabwali, District

acres/46.87 standard acres as surplus area in the hands of Amarjeet Court. This land fell under village Odhan, Ram Nagar, Salam Khera and Maleka.

Respondent Nos.5 to 12, being tenants, filed an appeal before the Commissioner-respondent No.3 alleging that they were tenants and their share was neither determined nor they were given any opportunity of hearing at the time of declaring the land of big landlady as surplus. Vide order dated 20.08.1971 (Annexure P-2), the Commissioner accepted the appeal and set aside the order, remanding the matter back to respondent No.4-Collector that the case should be decided afresh after visiting the spot and hearing all the parties concerned (emphasis supplied).

During the pendency of the surplus proceedings in the appeal before the Commissioner, Ambala Division, respondent Nos.5 to 12 filed an application under Section 18 of the 1953 Act before the Assistant Collector Ist Grade Sirsa to purchase the land measuring 62 kanals 4 marlas in their possession as tenants. The Assistant Collector 1st Grade vide order dated 9.3.1970 allowed the application of the tenants to purchase the land and ordered to pay the worked out price in seven equal installments payable half yearly.

He further submitted that the application of the tenants was allowed erroneously without declaration of surplus area in the hands of Amarjeet Kaur and therefore, appeal filed against the aforementioned order dated 09.03.1970 was preferred before the Collector Sirsa. The Sub-Divisional Officer (C) with powers of Collector vide order dated 25.01.1971 accepted the appeal and set aside the order dated 09.03.1970 and remanded the case back to the Assistant Collector. In the meantime, order dated 20.08.1971 (Annexure P-2) was passed by the Commissioner allowing the

appeal. Thereafter, vide order dated 23.05.1977, the Collector took a view that the appeal of Amarjeet Kaur against the order dated 09.03.1970 could be decided only after the decision on her surplus area case. It is pertinent to mention here that the aforementioned order referred to above had not been placed on record.

After remand by the Commissioner, the Collector-respondent No.4 afforded opportunity of hearing only to the tenants, in essence, did not give any opportunity of hearing to the petitioners being successors-in-interest of Amarjeet Kaur. The Collector passed the impugned order dated 28.07.1978 (Annexure P-3) which was challenged in appeal before the Commissioner in appeal. The Commissioner accepted the appeal vide order dated 18.06.1981 (Annexure P-4) and remanded the matter back to the Collector.

After remand, during the pendency of the case before the Collector, Amarjeet Kaur died on 27.11.1989. On her death, mutation No.2867 dated 21.4.1990 was sanctioned where her sons and daughters were recorded as owners. The Collector, Surplus Area-respondent No.4 afforded all the parties opportunity of hearing to adduce evidence. The petitioner claimed the benefit of Section 10-B of the 1953 Act and requested to be declared as small land owners. However, the Collector vide order dated 09.10.1992 (Annexure P-5) held that death of Amarjeet Kaur does not affect the surplus area already determined.

Thereafter, the petitioners filed Civil Suit bearing No.83-C of 09.04.1993 claiming declaration that they are owners in possession of land measuring 465 kanals 8 marlas and also owners of land measuring 61 kanals 6 marlas situated in village Odhan and that order dated 08.03.1970 passed

by the Assistant Collector Collector 1st Grade, Sirsa on an application under Section 18 of the 1953 Act filed by the tenant was sought to be declared as null and void. The Civil Court vide order dated 23.04.1993 ordered the status quo. The Collector vide order dated 09.10.1992 (Annexure P-5) did not give the benefit of inheritance to the petitioners on the death of Amarjeet Kaur. The aforementioned order was challenged in appeal and revision before the Commissioner and the Financial Commissioner, which were dismissed vide impugned orders dated 20.08.1993 (Annexure P-6) and 12.05.1995 (Annexure P-7) respectively. The aforementioned orders are not sustainable in the eyes of law, as the matter with regard to surplus area was claimed to be pending. The appointed date under the Haryana Ceiling on Land Holdings Act, 1972 was 24.01.1971 and therefore, there was no final order declaring the area surplus regarding the land in the hands of Amarjeet Kaur, thus, the claim of the legal representatives was alive. It would not be deemed vesting in the State of Haryana as per Section 12 (3) of the Haryana Ceiling on Land Holdings Act, 1972. The Financial Commissioner failed to appreciate that after the remand order, Amarjeet Kaur died on 27.11.1989, therefore, there was no final declaration made and the proceedings regarding declaration of surplus area on account of death of Amarjeet Kaur were required to be taken.

He further submitted that Section 8 (1) clearly saves the case of land acquired by an heir by inheritance in pending proceedings under the 1953 Act. In support of his contention, he relies upon the judgment rendered by this Court in **Balraj and others Vs. Financial Commissioner, Haryana and others 2016(4) RCR (Civil) 1037**. Even Form F had not been prepared, thus, the orders impugned are liable to be set aside.

On the contrary, Mr. S.S. Dinarpur, learned counsel appearing on behalf of the private respondents submitted that the case of the petitioners was crystalized way back in the year 1961, as they had not challenged the orders of surplus area at any point of time. It is only the tenants who were seeking the vindication of their grievance for determination of their Tenant's Permissible Area (hereinafter called as "TPA"), thus, the claim of the petitioners would not be alive, much less, succeed.

He relied upon the ratio decidendi culled out by Hon'ble Supreme Court in *Rameshwar and others Vs. Jot Ram and others 1975 PLJ 454* and as well as *Amar Singh Vs. Ajmer Singh 1995(3) RRR 90; Surjit Singh Vs. State of Haryana 1994(30 RRR 213; Megh Raj and others Vs. Manphool and others 2008(3) RCR (Civil) 241 (P&H)* to contend that on promulgation of the Haryana Ceiling on Land Holdings Act, 1972, particularly, Section 12(3) and 8(1)(a) of the Haryana Utilisation of Surplus and other Areas Scheme, 1976, the area declared surplus under the Punjab Security of Land Tenures Act would automatically vest in State Government w.e.f. 24.1.1971. It would not make any difference if land owner was still in possession, in essence, Section 8(1)(a) does not apply to the proceedings in the surplus area that have attained finality before coming into force of the Haryana Ceiling on Land Holdings Act, 1972, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the aforementioned submissions of Mr. Sehgal, as the land at the hands of Amarjeet Kaur was declared surplus way back on 30.10.1961. The matter was remanded back

on the ground that certain parties were not given opportunity of hearing, particularly, the tenants at the time of declaring the area surplus. It were the tenants, who were fighting for their rights whereas Amarjeet Kaur did not vindicate her right. Even the order regarding assailment of the declaration of surplus area at the instance of Amarjeet Kaur has not been placed on record. The mutation entered of the concerned party did not include name of the landlord/landlady. Even for the argument's sake it is assumed that it would contain the landlord/landlady, the fact remains that the order dated 30.10.1961 declaring the land as surplus had not been assailed.

The land regarding declaration of land surplus as per the 1972 Act w.e.f. 24.01.1971 is not longer re integra in view of the ratio decidendi culled out in the judgment of **Megh Raj's case** (supra) that such land would vest in State.

The claim of the owners has already been put at rest by holding that where the application on behalf of the tenants to purchase the tenancy land is pending and right of the landlord has been crystalized, it cannot be raked up in respect of the claim of tenants. This is what has been held in the judgment of Hon'ble Supreme Court in **Rameshwar and others Vs. Jot Ram and another** referred to above that where the land has been declared surplus under the 1953 Act and proceedings finalized, in essence, the land become available for allotment under the Utilization Scheme, even the possession remained with the owner, there is no provision given under the Haryana Act to reopen the proceedings.

The instant case is also on identical terms. The proceedings for declaration of surplus area have already attained finality and the present case, according to the respondents, cannot be reopened.

As per Section 12 (3) of the Haryana Act, if the land declared surplus has not been utilized and the same was in the possession of old tenants within the tenant's permissible area, it results into utilization. Such area cannot be made subject matter of re-determination under Section 12 of the Act.

For the foregoing reasons, particularly, noticing the fact regarding having not assailed the order of 30.10.1961 by Amarjeet Kaur qua declaring of land surplus at her hands, which has attained finality, the impugned orders under challenge cannot be racked up/reopened in proceedings under the 1953 Act.

No ground for interference is made out. The writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 15, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable Yes