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

CWP-2789-1995

Date of decision : 24.05.2017

Sher Singh and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Ms. Ramneeq Kaur, Advocate
for the petitioners.

Ms. Monica Chhibber Sharma, DAG, Punjab.

AMIT RAWAL, J. (ORAL)

The petitioners have sought the quashing of the impugned orders dated 01.09.1993 (Annexure P-13) passed by the Financial Commissioner, 29.01.1985 (Annexure P-11) of the Commissioner, Ferozepur Division and as well as order dated 16.06.1983 (Annexure P-9) passed by the Special Collector, Agrarian, Faridkot and further prayer for issuance of writ of mandamus directing the authority under the Punjab Land Reforms Act, 1972 (for short 'the 1972 Act') by restraining them not to take out the proceedings under Section 9 of the 1972 Act and also not dispossess the petitioners from the land, in question.

Mr. Sumeet Mahajan, learned Senior Counsel assisted by Ms. Ramniq Kaur, learned counsel appearing on behalf of the petitioners submits that as per the plaint, Gurdev Singh son of Kaka Singh/respondent

No.2 owned the land measuring 318 kanals 7 marals situated in Villages Jandwala (211 kanals 10 marals), Gulam Rasul (40 kanals 3 marlas), Kabbar Wala (23 kanals 11 marlas), Woroke (5 kanals 1 marla) and Village Golewala (36 kanala 2 marlas). Since the petitioners and respondent No.2 owned the area more than the permissible area, the proceedings under the 1972 Act for determining the excess permissible area for the purpose of declaring it surplus area, were initiated in the year 1976. As per the provisions of the 1972 Act, respondent No.2 was required to make a selection of the permissible area by declaration upto 20.11.1973, but having failed to do so and in the absence of the same, the revenue authorities, under the provisions of Section 6 of the 1972 Act, can obtain the requisite information in the prescribed manner and make the determination of the surplus at their own level, in essence, in the absence of the selection made by the landowners, the Collector under Rule 6 of the Punjab Land Reforms Rules, 1973 (for short the 1973 Rules'), can cause the necessary entries in Form 'A'. Prescribed procedure for such purpose is envisaged under Sections 5, 6, 7 (i) of the 1972 Act and Rules 5(1), (2), (2-A), (4), 6 and 7 of the 1973 Rules, resultantly, the area was declared surplus vide order dated 27.05.1976 (Annexure P-1), but respondent No.2/big landowner was not given opportunity for selection and thereafter, the Collector vide order dated 08.07.1976 (Annexure P-2) ordered that the land measuring 1.9954 Hectares equivalent to 39 kanals 9 marlas, description of which described in para 9 of the writ petition, situated in Village Jandwala, Tehsil and District Ferozepur was placed in the surplus pool. Notice under Sections 9(1) of the 1972 Act was given to respondent No.2, directing him to deliver the possession of the land within 10 days of the receipt of the notice.

Respondent No.2 preferred an appeal before the Commissioner, Ferozepur Division, Ferozepur, under Section 18 of the 1972 Act, against the order dated 27.05.1976 (Annexure P-1) and the same vide order dated 24.08.1977 (Annexure P-3) was accepted and the matter was remanded to the Collector Agrarian, Ferozepur to pass the fresh observations. At that time point of time, respondent No.2 had only challenged the quantum of land declared as surplus and not the selection of the land thrown in the surplus pool as per order dated 08.07.1976 (Annexure P-2).

He further submits that the Commissioner, Ferozepur basically remanded the matter on the point that the mode of conversion of different classes of land into first quality of land had not been incorporated in the order of the Collector. The Collector Agrarian, Ferozepur, vide order dated 25.02.1980 (Annexure P-4), decided that the total land owned by respondent No.2 of first quality was 7.5284 Hectares and after allowing 7 Hectares as permissible area, 0.5284 Hectares of the first quality land was, at the hands of respondent No.2, declared surplus. Though, as per the provisions of the 1972 Act, there was no occasion for granting fresh opportunity to respondent No.2, yet granted the opportunity to make selection regarding the land to be thrown in surplus pool upto 09.04.1980, but despite that no such selection was conveyed by respondent No.2 to the Collector and subsequently, notice was issued to respondent No.2 and he suffered a statement on 16.07.1983 the land in Village Golewala be thrown in the pool of surplus area.

He further submits that the Collector Agrarian, Ferozepur vide order dated 16.02.1983 (Annexure P-6) granted the opportunity to respondent No.2, to make the selection under Rule 5 of the 1973 Rules

within a period of 4 months and 15 days from the commencement of the Rules or within 30 days from the commencement of the Land Reforms (Amendment) Act, 1976 i.e. upto 30.05.1976. The statement of Gurdev Singh is Annexure P-5.

He further submits that the file though was confined, however, the Collector, on inspection, noticed that the opportunity was not given to the landowner for giving declaration and resulting into, notice was issued and the landowner suffered a statement declaring the land surplus from his holding situated in Village Golewala, which stood in the name of his wife Smt. Jail Kaur. Vide order dated 16.02.1983, the Collector declared the land measuring 30 kanals 15 marals *barani*, equivalent to 0.5284 Hectares of first quality of land as surplus. In fact, vide sale deed dated 05.07.1977 (Annexure P-7), petitioner No.1 and respondent No.3, had purchased the land measuring 31 kanals 2 marals bearing Khasra No.3021/2 (15-11) and No.3002/1 (15-11) and came into possession of the aforementioned land. However, a notice under Section 9(1) of the 1972 Act was issued to respondent No.2, directing him to deliver the possession of the land, in question i.e. subject matter of the sale deed. On receipt of the notice, the petitioners raised the objections (Annexure P-8). The pith and substance of the objections was that the land could not be declared surplus by Gurdev Singh, on the premise, that there was no mention in the jamabandi for the year 1979-80 of the Village Golewala, Tehsil and District Ferozepur, that the land, aforementioned, came under surplus pool. Vide order dated 16.06.1983 (Annexure P-9), the Special Collector, Agrarian Faridkot, dismissed the aforementioned objections. The said order was challenged by filing an appeal (Annexure P-10) before the Commissioner, Ferozepur, who

vide order dated 29.01.1985 (Annexure P-11) dismissed the appeal. The matter was taken up before the Financial Commissioner by filing a revision petition under Section 18 of the 1972 Act read with Section 84 of the Punjab Tenancy Act and the Financial Commissioner vide order dated 01.09.1993 (Annexure P-13) dismissed the same and hence, the present writ petition.

In order to assail the aforementioned order, he summarized his arguments by asserting that i) no fresh selection could be made by respondent No.2 as he had failed to make selection within the stipulated period, in essence, he did not exercise selection under Section 5 of the 1972 Act read with Rule 5 of the 1973 Rules; ii) The Collector Agrarain was also enjoined upon an obligation under Sections 6 and 7 of the 1972 Act, to give the selection and declared the area to be surplus and having failed to adhere to, all the orders, under challenge, are not sustainable in the eyes of law particularly the area is in ownership of the petitioners i.e. subject matter of the sale deed; iii) The question of surplus area could not be opened again after 08.07.1976 on the premise that respondent No.2 had only challenged the order dated 27.05.1976 and not order dated 08.07.1976; iv) While declaring the land measuring 0.5284 Hectares as surplus vide order dated 25.02.1980, no fresh opportunity was required to be given to respondent No.2 to make selection upto 09.04.1980; v) No such notice was given to the petitioners, who had purchased the land from wife of respondent No.2 vide registered sale deed dated 05.07.1977, the entire proceedings, thus, are liable to be set aside, having passed at the back of the petitioners; vi) The period for which the selection, has been prescribed therein to make selection and surplus,

thus, the orders of the revenue authorities are not sustainable in the eyes of law as the petitioners claim the right on the property having purchased vide sale deed 05.07.1977, situated in Village Golewala and the same could not have been thrown in surplus pool as the same was owned by his wife Jail Kaur.

Ms. Monica Chhibber Sharma, DAG, Punjab submits that the orders under challenge, are perfectly legal and justified and do call for interference as the orders of the authorities are based upon the merits and consideration of the provisions of the 1972 Act and 1973 Rules, thus, urges this Court for dismissal of the present writ petition as the orders of quasi judicial authorities do not fall within the ambit of interference by exercising the powers 'Judicial Review' under Article 226 of the Constitution of India.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and substance in the submissions of Mr. Mahajan, for, the foremost question raised in the present writ petition is that the date of the sale deed. Concededly the date of sale deed is 05.07.1977, after promulgation of the 1972 Act, when the land had already been declared, as surplus, in 1976. The sale has taken place after the declaration of the land being surplus and therefore, it was not in the ownership of the vendor. The vendees have not made any reasonable enquiry to fall within the provisions of Section 41 of the Transfer of Property Act as the principles of "Caveator Emptor" was applicable. After declaration of the land as surplus, only the quantum of calculation was to be assessed and on earlier round of litigation, the matter was remanded back. It is a matter of record that the big landowner had failed to exercise any *bona fide* by giving any declaration. On promulgation of the Act, the land is

deemed to be vested in the State for utilization who is at liberty to utilize surplus area after commencement of the Act. The petitioners Nos.2 to 5 are the subsequent transferees from petitioner No.1 and they cannot raise the plea of having not given any opportunity. Any transfer of the land, which affects the utilization of surplus area after the commencement of the Act, is to be ignored. The sub-transferees have no right to assail the order declaring the land as surplus, but at the best, they are entitled for compensation on damages from the vendors. All the revenue authorities have noticed the aforementioned facts and therefore, in my view, all the orders are in consonance with the provisions of the 1972 Act and 1973 Rules and do not, at any stage, fall within the realm of illegality and perversity, enabling this Court to exercise the powers of 'Judicial Review' under Article 226 of the Constitution of India.

Keeping in view the aforementioned facts, the orders, under challenge, cannot be said to be vitiated in law, arbitrary, much less, opaque and do not call for interference and the same are hereby upheld.

Accordingly, the present writ petition stands dismissed.

Stay as granted by this Court is also vacated.

24.05.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No