

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

**CWP No.12025 of 2005
Date of Decision.25.05.2017**

Rattan Chand Jain (since deceased) through LRsPetitioner

Vs

State of Punjab and othersRespondents

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. Amarjit Markan, Advocate
for respondent Nos.3, 5 to 9.

Mr. R.S. Chauhan, Advocate
for respondent No.10.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

The petitioner is aggrieved of the impugned order dated 17.12.2003 (Annexure P-7) rendered by the Financial Commissioner and the order dated 09.02.2004 (Annexure P-8) of Collector Agrarian, Malerkotla.

As per the facts culled out in the petition, it is borne out that the Collector Agrarian, Malerkotla vide order dated 12.8.1975 declared 24 Standard Acres 2 units of the land of the petitioner as surplus namely Rattan Chand Jain (since dead) represented by his legal representatives, who had been impleaded vide order dated 19.08.2009 passed in C.M. No.12119 of 2009. Against the aforementioned order, appeal was preferred before the Commissioner which was dismissed vide order dated 22.03.1980 and appeal

preferred against the same was also dismissed on 22.04.1982 by the Financial Commissioner.

On 7.1.1982, the petitioner stated to have moved an application to the Collector Agrarian, Malkerkotla on the premise that the during the pendency of the revision petition before the Financial Commissioner, having four adult sons, therefore, a separate unit be allotted to each of the adult sons, in view of the ratio decidendi culled out in **Ranjit Ram Vs. Financial Commissioner, Revenue, Punjab and others 1981 PLJ 259** whereby the dispossession of the petitioner was stayed. Thereafter, the Punjab Land Reforms Act, 1972 came to be promulgated.

Since an attempt was being made to dispossess the petitioner, he approached this Court in Civil Writ Petition bearing No.2008 of 1982 tagged along with CWP No.2213 of 1981, wherein the application under Order 1 Rule 10 CPC and another application for vacation/modification of stay order on behalf of respondent Nos.3 to 9 namely Bhagwan Singh son of Laj Singh, Mohinder Singh son of Budh Singh (since deceased), Ranjit Singh and Gurmit Singh sons of Inder Singh, Harbhajan Kaur widow of Inder Singh, Charanjit Kaur daughter of Inder Singh and Kaur Singh son of Sham Singh, were moved. This Court vide order dated 2.9.1982 passed in the misc. application, modified the interim order dated 4.5.1982 by holding that it was not possible to decide as to which of the parties is in actual physical possession of the land declared surplus and ordered for status quo to be maintained. The aforementioned writ petition was decided by this Court vide order dated 02.12.1997 (Annexure P-1) where this Court had issued the direction to the concerned Collector to find out whether the land was not utilized at the commencement of the Punjab Land Reforms Act and

if that be so, fresh steps be taken for fixation of ceiling of the land owners and declaration of surplus area afresh.

Another application before the Collector Agrarian, Malerkotla was moved on 3.2.1999 (Annexure P-2) with a prayer for assessment of the surplus land, over and above the application moved on 7.1.1982. The Collector Agrarian, Malerkotla re-determined the question of utilization of area as well as fixation of unit of the petitioner and declaration of surplus area afresh, however, the unauthorized occupants delayed the matter in all possible manner till it was decided on 10.10.2000. To corroborate the aforementioned plea, copy of the proceedings is attached as Annexure P-3, in essence, vide order dated 10.10.2000 (Annexure P-4), the Collector Agrarian directed the Circle Patwari to initiated the fresh proceedings for fixation of the ceiling of the holding of the land owner Rattan Chand Jain and declaration of surplus area afresh i.e. in accordance with provisions of Punjab Land Reforms Act, 1972, owing to the factum of sons having become adults.

Bhagwan Singh and Mohinder Singh preferred an appeal, against the aforementioned order, before the Commissioner under Section 18 of the Punjab Land Revenue Act read with Section 39 of the Pepsu Tenancy Act, which was dismissed vide order dated 12.02.2003 (Annexure P-6), in pursuance of the order dated 02.12.1997. Against the aforementioned order, two revision petitions bearing ROR No.297 of 2003 and 298 of 2003 were preferred before the Financial Commissioner and the Financial Commissioner vide order dated 17.12.2003 (Annexure P-7) accepted the same and while setting aside the order dated 12.02.2003 (Annexure P-6) and 10.10.2000 (Annexure P-4), remanded the matter to the

Collector Agrarian, Malerkotla to decide the matter afresh in the light of the directions contained in the order dated 02.12.1997.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Kulwant Singh, Advocate appearing for the petitioner submitted that after remand, the Collector, Malerkotla vide order dated 09.02.2004 (Annexure P-8), consigned the matter to record room, in essence, did not adjudicate the matter afresh. In fact, the Financial Commissioner could have not remanded the matter.

To buttress his arguments, he submitted that the Financial Commissioner had decided the matter in utter haste, as the argument of the respondents before the Financial Commissioner that the Collector did not comply with the direction of this Court was totally off the record, as the said averment was not supported by any affidavit nor it was stated in the grounds of appeal, much less, no such point was taken in appeal before the Commissioner.

In order to appreciate the controversy, the Financial Commissioner ought to have summoned the record, which was not done and having failed to do so, the order is not sustainable. The petitioner was not given an effective opportunity, as the case was fixed for preliminary hearing on 17.12.2003 to a specific objection qua the summoning of the record. The finding rendered by the Financial Commissioner that no opportunity of hearing was given to the respondents (petitioners before the Financial Commissioner) only on the statement of the counsel cannot be a ground for recalling or setting aside the entire proceedings. It is nothing else but an attempt to delay the adjudication of the matter, as the respondents are in illegal possession of the land taken forcibly, as the respondents are branding

themselves to be allottees. The order of this Court and that of order dated 10.10.2000 of the Collector Agrarian, giving direction to the revenue officials for fixing of the surplus land, is perfectly legal and justified. The private respondents, being allottees, have not been able to establish their possession, whereas the possession of the petitioner had been admitted in the reply filed by way of counter affidavit of Jaspal Singh, PCS, SDM (Collector Agrarian, Malerkotla) by giving reference to para 7, which reads as under:-

“7. That contents of para No.7 of the civil writ petition are admitted to the extent that after declaration of surplus area in the hands of the petitioner, till the commencement of the Punjab Land Reforms Act on 2.4.1973, the petitioner was in possession of the land held by him.”

He has drawn attention of the Court to the proceedings/zimni orders at page 35 and 36 of the paper book, in order to belie the finding rendered by the Financial Commissioner regarding non-service of the allottees, which read as under:-

“30.04.99

Present: Sh. M.L. Sharma, N/T Agrarian, Sangrur for respondents no.1, 2, 3 and respondent No.6 in person.

Rest of the respondents are not present. Unserved summons have been received back. They be summoned again and file be put up on 10.5.99.

Collector Agrarian 30.4.99.

10.5.99

Present: Sh. M.L. Sharma, N/T Agrarian, Sangrur for

respondents no.1, 2, 3. Respondent no.4 through L.R. Bhagwan Singh-Harbhajan Kaur, Ranjit Singh, Gurmeet Singh, Charanjit Kaur and Mohinder Singh.

Rest of the respondents are not present. They be summoned again and file be put up on 14.5.99.

Collector Agrarian 10.5.99.

14.5.99

Present: Sh. M.L. Sharma, N/T Agrarian, Sangrur for respondents no.1, 2, 3 and Respondent no.4 through L.Rs. Bhagwan Singh; Harbhajan Kaur, Ranjit Singh, Gurmeet Singh, Charanjit Kaur and Mohinder Singh through their counsel.

Remaining respondents are not present nor their summons have been received back after service. They cannot be served through ordinary process. Therefore, they be summoned through affixation of notice and by way of proclamation and case be put up on 27.5.99.

Collector Agrarian 14.5.99.

27.5.99

Present: Sh. M.L. Sharma, N/T Agrarian, Sangrur for respondents no.1, 2, 3. Respondent no.4 through L.Rs. Bhagwan Singh-Harbhajan Kaur, Ranjit Singh, Gurmeet Singh, Charanjit Kaur and Mohinder Singh through their counsel.

N/T Agrarian is not present. He be summoned again. Respondents No.7 and 8 are not present. They have been served through Chaspangi (pasting) of notice and munadi (proclamation). Respondents No.7 and 8 are not present. Names of respondents No.7 and 8 have been called and waited but neither respondents No.7 and 8 have come present nor any body else has appeared on their behalf. Therefore, respondents No.7 and 8 are proceeded against ex parte. N/T Agrarian be summoned and old file of the Agrarian be requisitioned and file be put up on 8.6.99.

Collector Agrarian 27.5.99.”

The proceedings of the Collector clearly show that the private respondents were duly served i.e. process initiated for redetermination of the area of surplus, owing to the judgment rendered in **Ranjit Ram's** case (supra). Reference has been made to the zimini order dated 14.5.1999 and 27.5.1999 as extracted above with regard to presence of Bhagwan Singh, Harbhajan Kaur, Ranjit Singh, Gurmeet Singh, Charanjit Kaur and Mohinder Singh i.e. legal representatives of respondent No.5. Even respondent Nos.7 and 8 were served through affixation of notice and proclamation, reflected from the zimini order dated 27.5.1999.

He also referred to the copy of Raznamcha of the year 1981-82 enclosed with the replication filed to the written statement of respondent Nos.3 and 5 to 9 that the possession of the land had not been taken by the allottees on 30.4.1982. In fact, it shows that Tek Chand, Patwari had completed age of 58 years after noon on 30.4.1982 and he has been relieved from his service after noon on 30.04.1982. Therefore, could not have given possession to the allottees and gave the charge to the new incumbent i.e. Krishan Kumar Patwari at 4.30 pm. Once they were busy in handing over and taking over the charge, possession could not have been handed over to the allottees, of course, later on had, forcibly, taken the possession.

In support his contentions, relied upon paras 7, 35 and 36 of the ratio decidendi culled out in the judgment rendered by Full Bench of this Court in **Ranjit Ram Vs. The Financial Commissioner, Revenue, Punjab and others**, which reads as under:-

“7. As already observed, even if the land of a landowner has been declared surplus, either under the Punjab Law or under the Pepsu Law, and if the land of landowner has not been utilized and further has not

been purchased by the tenant in case of Punjab Law, and if the landowner has not been dispossessed by the Government under the provisions of the Pepsu Law, he continues to be a landowner of the land and also holds the same even though his land has been declared surplus, till he is divested of its ownership by taking possession of the land under Section 8 of the Reforms Act, where it has been provided that the surplus area declared as such under the Punjab Law or the Pepsu Law which has not been utilised till the commencement of the Reforms Act, shall on the date on which the possession thereof is taken by or on behalf of the State Government, vests in the State government free from all encumbrances. It would thus be seen that such landowners surplus area shall vest in the State Government on the date of taking of possession by the State Government under Section 8 of the Reforms Act and till then the landowners are not divested of the ownership of the surplus land. Thus, if a landowner owns or holds land which is beyond the permissible area as defined under Section 4 and 5 of the Reforms Act, his case shall have to be processed again by the Collector and the determination of the permissible area and the surplus area has to be according to the mandate of Section 4 and 5 of the Reforms Act, Sub-Sec (1) of Section 4 of the Reforms Act contains a clear bar that no person shall own or hold land in excess of the permissible area and when the case is re-processed by the Collector, the permissible area as provided for in Section 4 and 5 of the Reforms Act has to be allowed to the landowner. It may be observed that the permissible area as defined under sub-section (2) of Section 4 of the Reforms Act is subject to the provisions of S. 5 of the Reform Act. This is so because a clear provision has been made to this effect in sub-section (1) of Section 4 of the Reforms Act. Under Section 5 of the Reforms Act if a landowner has an adult son, he shall also be entitled to select separate permissible area in respect of such son out of the land owned or held by him, subject to the condition that the land selected together with the land already owned or held by such son, shall not exceed the permissible area of each such son. It would thus be seen that merely because the case of a landowner had already been processed under the Punjab Law or the Pepsu Law would not be a bar for the application of the provision of [Section 4](#) read with Section 5 of the Reforms Act. The provisions of sub-section (1) of Section 5 of the Reforms Act entitle the landowner to select permissible area for his adult son from the land owned or held by him in addition to the permissible area of the family. It is clear that the rest of the provision made in sub-section (1) and (2) of Section 5 of the Reforms Act are procedural. A landowner has been given option to furnish a declaration containing his

selection of permissible area in which he is bound to include, firstly, land mortgaged with possession and secondly, land under self-cultivation. However, under the provision of sub-section (2) of Section 5 of the Reforms Act a landowner cannot have preference to include the land declared surplus under the Punjab Law, the Pepsu Law other than the area which was exempt from utilisation by the State Government immediately before the commencement of the Reforms Act. The contention raised by the learned counsel for the State that since the area which has been declared surplus under the Punjab Law or Pepsu Law, other than which was exempt from utilisation, cannot be preferred to be included in the declaration for reservation of the permissible area, for his adult son from the land so declared surplus, is really without any merit. As already observed, the permissible area of a landowner as defined in sub-section (2) of the Section 4 of the Reforms Act, is subject to the provision of Section 5. Section 5 entitles the landowner to select permissible area for his adult son in addition to the permissible area of his family. The right of the landowner to get permissible area for his adult son in addition to the permissible area of the family cannot held to be taken away merely by his not filing a declaration under Section 5 of the Reform Act. If such landowner fails to make a declaration under Section 5 of the Reforms Act, the Collector has been enjoined upon to obtain requisite information in the prescribed manner in accordance with the provision of section 6 of the Reforms Act. Section 7 of the Reforms Act enjoins duty on the Collector to pass an order determining the permissible area and the surplus area of a landowner or a tenant, as the case maybe. It cannot be successfully contended that in case a landowner fails to make declaration under Section 5 of the Reforms Act, his adult son will not be given permissible area by the Collector when an order is passed under Section 7 of the Reforms Act. The failure of a landowners to furnish the declaration under Section 5 of the Reforms Act has been made an offence under the provision of sub-section (2) of the Section 7 of the Reforms Act and a landowner is liable to be imprisoned for a term which may extend to two years or with fine, which may extend to two thousand rupees, or with both. If the Legislature intended that in a case where the landowner fails to make declaration, he will not be entitled to get permissible area for his adult son when so determined under Section 7 of the Reforms Act, it would have clearly made provision to this effect in sub-section (2) of [Section 7](#). Since landowner has been given right to get permissible area for his adult son as well omission of the landowner to file the declaration would not take away the right of his entitlement to get

permissible area for his adult son in addition to the permissible area of the family. Collector is duty bound while passing an order under Section 7 of the Reforms Act to allow permissible area for the adult son as well. It is clear that the entitlement of the land owners to get permissible area for his adult son is out of the land of the landowner held or possessed by him whether already declared surplus or not. Sub-section (2) of Section 5 of the Reforms Act is only procedural section and an omission by the landowner of not filing a declaration under Section 5 of the Reforms Act would not take away his right for getting permissible area for his adult son when the Collector has been enjoined upon under Section 7 of the Reforms Act to pass an order determining the permissible area and the surplus area of a landowner. It may be appropriate observed at this place that the permissible area and surplus area is to be determined keeping in view the provision of Section 4 read with the provisions of sub-Section (1) of the 5 of the Reform Act. The combined reading of the said provision would provide guidelines to the Collector to determine the permissible area or the surplus area of the landowner, I have already come to the conclusion that the remaining provision of [Section 5](#), which deal with the procedure for selection are procedural and the same cannot be made use of by the Collector under [Section 7](#), so as to nullify the mandatory provisions of [Section 4](#) and [Section 5\(1\)](#) which define permissible area and surplus area. If the Legislature intended to exclude the land which has already been declared surplus from the operation of the provisions of the Reforms Act, a clear provision would have been made to that effect in S. 5(1) of the Reforms Act, but on the contrary, I find that the landowner has been entitled to select separate permissible area in respect of his adult son out of the land owned or held by him. As already observed till the landowner is divested of the rights of ownership, he continues to hold and own the land.

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35. For the reasons recorded above, I summaries the following in editable conclusions:--

(i) That the surplus area declared under the Punjab Law or the Pepsu Law, or any part thereof, of which possession was not taken by the State before the Commencement of the Act (the Land Reforms Act), can be taken possession of under [Section 9](#) of the Act and the moment possession is taken over by the State, it would vest in the State from that date by virtue of [Section 8](#) for being utilised under [Section 11](#) of the Act;

(ii) that a landowner who owns land more than the permissible area under the Act on its commencement would be entitled to select permissible area for himself as also for his adult son as provided in 5(1) of the Act but while making such selection, the landowner shall not be entitled to include any area declared surplus under the Punjab Law, the Pepsu Law or this Act, as provided by Section 5(2);

(iii) that in cases where out of the surplus area some area was exempted from utilisation by an order of the State Government, the landowner would be entitled to make selection from the exempted surplus area;

(iv) that while determining the permissible area under Section 7(1), even if a landowner fails to file a declaration, as required by Section 5(1) of the Act, yet the collector will have to follow the mandatory provision of Section 5(1) and 5(2) and would provide permissible area to the landowner as also to his adult sons;

(v) that the penalty provided in Section 7(2) of the Act would operate while determining the permissible area of the landowner;

(vi) that in case a landowner dies after the determination of the surplus area under the Punjab Law or the Pepsu Law but possession of the same is not taken over by the State before his death, there will be fresh determination of the surplus area in the hands of the heirs and in that eventuality, the State would not be entitled to take possession of the surplus area declared under the Punjab Law or the Pepsu Law, under Section 9 of the Act. however in cases of determination of surplus area under the Act, the aforesaid exception would not apply because of section 11(7) of the Act and notwithstanding the death of the landowner the surplus area can be taken possession of by the state and utilised according to law;

(vii) that while the surplus area is in possession of the landowner, whether declared under the Punjab Law, the Pepsu Law or the Act, if the State Government acquires any part of the land out of the permissible area under any law for the time being in force, which has the result of reducing the permissible area of the landowner, the State will not be able to take possession of the surplus area until surplus area is determined afresh. After the permissible area is allowed to the landowner, the balance would be declared surplus of which alone the State would be able to take possession.

36. To conclude, my answer to the three questions is as follows:--

(i) Disagreeing with B. S. Dhillon, J., my answer in the negative.

(ii) Agreeing with B. S. Dhillon, J., my answer is in the affirmative.

(iii) Agreeing with B. S. Dhillon, J., my answer is in the negative.

S.S. Sandhawalia, C.J. I have the privileges of perusing the exhaustive and lucid judgments recorded by my learned brothers B. S. Dhillon and G. C. Mital, JJ. With due deference and G. C. Mital, J., I agree with Dhillon, J.

ORDER OF THE FULL BENCH

S.S. Sandhawalia, C.J., B.S. Dhillon and G.C. Mital, JJ. In accordance with the majority view it is held as under:--

(1) That a landowner whose land has been declared surplus under the Punjab Security of Land Tenures Act 1953, or under the Pepsu Tenancy Agricultural Land Act, 1955, who has not been divested of the ownership of the surplus area before the (enforcement of the) Punjab Land Reforms Act, 1972, is entitled to select the permissible area for his family and for each of his adult sons in view of the provision of [Section 4](#) read with Section 5(1) of the Punjab Land Reforms Act.

It is further unanimously held:--

(2) That the exemptions granted under the Pepsu Tenancy and Agricultural Land Act, 1955, and under Rule 8 of the Punjab Security of Land Tenures Rules, 1956, not stand repealed by the Punjab Land Reforms Act, 1972.

(3) That the tenant, who purchased the land under the provision of [Section 18](#) of the Punjab Law is not entitled to resist the recovery by way of arrears of land revenue for the amount yet due under the orders passed under Section 18 of the Punjab Security of Land Tenures Act on the plea that the amount of the compensation so awarded is in excess than the one now provided under the provision of Section 15 of the Punjab Land Reforms Act.”

Ujjagar Singh (dead) by LRs. Vs. The Collector, Bathinda

1996(5) SCC 14 to contend that in case after the land having declared surplus remained unutilized, the possession has to be as per the provisions of Section 32E of the Pepsu Tenancy and Agricultural Lands Act, 1955. and the land has to be re-determined at the hands of the land owners. In other words, he submitted that the State Government has to take possession of the land after coming into force of the Punjab Land Reforms Act by causing a separate notification, as in those cases where the possession of the land having declared surplus remained with big land owners.

As regards determining right of LR's on account of death of land owner and redetermination of the surplus area at their hands, reference has been made to para 8 of the judgment rendered by Division Bench of this Court in **Chet Singh Vs. State of Punjab and others 1972 PLJ 440**, which reads as under:-

"8. The last argument which has been made by the learned counsel for the appellants is that the deceased landowner died during the pendency of the appeal and the surplus area has not been taken possession of under Section 32-E of the Act. As Chet Singh had died and the total area in the hands of his legal heirs is not in excess of the permissible limit of each of the heirs, the collector cannot utilize the said area. According to him, the vesting of surplus land in the State or in the person to whom the surplus land is allotted can take place only on such day when the possession of the land is taken. He further submits that now no area can be declared surplus in the hands of the heirs. In support of his contention, the learned counsel for the appellants relies on [Bhagwan Singh and others v. The State of Punjab and others](#), 1965 PLJ 124 wherein it has been observed thus'-

"The vesting of surplus land in the state or in the person to whom the surplus area is allotted under the Utilisation of Surplus Area Scheme must be held to have taken place only on the day the possession of that land is taken.

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Since the possession was taken after the death of the landowner, it is obvious that the land had not vested in the State during the landowner's lifetime and before its possession could be taken by the State entire land owned by the land owner including the area that had been declared surplus, had vested in the heirs. The question whether any part of the land held by the heirs was surplus has to be decided with reference to the heir's individual holding. In that view of the matter the land not having vested in the State Government during the lifetime of the landowner, it could not be allotted to the landless persons. The mere fact that the persons allotted surplus land had paid one instalment of compensation due in respect of the land allotted to them does not give them title to the land. If the land never vested in the State it could not be allotted to the landless persons and the payment of the first instalment of compensation assessed by the State in respect of the land cannot confer any title on them."

Reference has also been made to Full bench judgment of this Court rendered in **Sardara Singh and others Vs. The Financial Commissioner and others 2008(2) RCR (Civil) 744**, para 42 of which reads as under:-

“42. Resultantly, where the surplus area has not been finally determined, and the matter is pending in appeals or revisions before the Revenue Courts or before this Court under Article 226 of the Constitution, or before the Supreme Court of India, death of the landowner would cause affectation of surplus area which would be required to be redetermined in the hands of the heirs of the deceased landowner. Such an interpretation would harmoniously construct the provisions of Section 11(5) and 11 (7) and also give a proper interpretation to both the views expressed in Ajit Kaur's case. However, we are unable to uphold the judgments of this Court in Jasbir Kaur's case because Ajit Kaur's case was not at all considered by the Hon'ble Division Bench. As regards Manjit Kaur's case, even though Ajit Kaur's case was considered, the majority view had been entirely overlooked.”

On the contrary, Mr. Amarjit Markan, Advocate and Mr. R.S. Chauhan, Advocate representing respondent Nos.3, 5 to 9 and 10 respectively had objected to the submission of application (Annexure P-2) for re-determination owing to the promulgation of the Punjab Land Reforms Act on the ground that the land at the hands of big land owner, had already been declared surplus, attained finality on 12.08.1975 as the appeal filed against the same culminated into dismissal upto higher revenue Court vide order dated 22.04.1982, discernible from the averments in paragraph 5 of the written statement. It has also been stated that after the dismissal of the appeal filed by the petitioner qua declaration of land having not surplus, the State Government had taken possession of the surplus area vide report No.114 of 23.1.1981. Subsequently vide order dated 17.12.1981 (Annexure R-1), the Collector Agrarian, Malerkotla on the basis of the report dated

15.12.1981, allotted the land measuring 39 kanals 19 marlas to Lal Singh son of Tara Singh of village Bhattan and 40 kanals 1 marlas to Inder Singh (deceased) son of Budh Singh of village Asdullapur alias Baur hai Khurd and 40 kanals 1 marla to Mohinder Singh (deceased-respondent No.4) son of Budh Singh village Asdullapur alias Baur hai Khurd under the provisions of Punjab Utilization of Surplus Area Scheme, 1973. All the aforementioned persons have taken possession of the aforementioned land vide Report dated 30.04.1982 (Annexure R-2 to R-4 respectively). The surplus land of the petitioner stood vested in the State as per the provisions of Section 32E of the Pepsu Tenancy and Agricultural Lands Act, 1955.

Reference has also been made to the order dated 22.4.1982 (Annexure R-6) passed by the Financial Commissioner whereby the petitioner Rattan Chand Jain had filed revision petition for getting the land released from the clutches of surplus. The petitioner in connivance with the revenue officials had manipulated and fabricated the alleged application dated 7.1.1982 which was attached with Civil Writ Petition bearing No.2008 of 1982. In fact, had seen light of the day for the first time.

Reference has also been made to the khasra girdawari for the year 1984-85 and jamabandi of the year 1988-90 in favour of the allottees (Annexures R-7 to R-12 respectively). Against the order dated 2.12.1997, respondent No.10 Bhagwan Singh and others filed LPA bearing No.121 of 1999 but the same was rendered infructuous owing to the fact that the present writ petition bearing No.12025 of 2005 against the order dated 17.12.2003 (Annexure P-7) is pending and handed over copy of the order dated 18.11.2015, which reads as under:-

“This intra-court appeal under Clause X of the Letters

Patent has been filed against the judgment dated 02.12.1997 passed by the learned Single Judge, while allowing Civil Writ Petition No.2008 of 1982 filed by Rattan Chand Jain. The matter was remanded to the Collector with a direction to find out whether the land in question was not utilized at the commencement of the Punjab Land Reforms Act and if that be so, first steps be taken for fixation of ceiling of landowners and declaring the surplus area afresh in accordance with the provisions of Punjab Land Reforms Act after giving the notice to all the concerned parties.

While admitting this appeal on 10.11.2005 no stay order was passed. Ultimately after the remand, the Collector vide order dated 10.10.2000 (Annexure P-4) decided the controversy while holding that there was no surplus land area in the hand of the land owners. The said order was upheld vide order dated 12.02.2003 by the Commissioner on revision filed by the respondent.

Admittedly, the allottees were not given any notice as per the remand order and before passing any order they must have been heard, therefore, the case was again remanded to the Collector for fresh decision vide order dated 17.12.2003. Against the said order, the civil writ petition filed by land owner is pending i.e. CWP No. 12025 of 2005.

In view of the aforesaid observations, the LPA filed by the present appellants has become infructuous, and it will be open for the appellants and all the concerned parties to raise their points, in terms of the order of the Financial Commissioner, before the Collector or before the learned Single Judge also.

Dismissed as having been rendered infructuous.”

He further submitted that factum of allottees being in unauthorized possession was denied with vehemence and urged that the possession is legal and as per the orders referred to above.

As regards the order dated 9.2.2004 (Annexure P-8), it has been submitted that the Collector Agrarian, Malerkotla had decided some misc. application on the surplus area, therefore, the petitioner cannot have grievance against the order dated 17.12.2003 (Annexure P-7) of remand.

Mr. R.S. Chauhan, learned counsel representing respondent No.10 also submitted that his client had also been delivered possession as

per warrant of possession issued on 11.03.1994, which fact is evident from the order dated 4.2.1994 (Annexure A-1) filed along with application for impleadment, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book.

Shown of the facts above, much less, emphasis laid down by respective counsels is, as to whether the private respondents in the proceedings initiated by the Collector Agrarian, Malerkota in respect of an application moved by the petitioner for re-assessment of the land having declared surplus, could be agitated, much less, heard or not. The zimni orders reflected aforementioned would reveal that the respondents had appeared. Even respondent No.10-Abdul Majid had also appeared and moved an application.

The genesis of the order of the Financial Commissioner (Annexure P-7) has been that the private respondents, who were petitioners before the Financial Commissioner, were not heard. The operative part of the order while accepting the revision petition by remanding the matter to the Collector, reads as under:-

“It is clear from the orders dated 10.10.2000 passed by the Collector (Agr) Malerkotla that the order dated 2.12.97 passed by the Hon'ble High Court has not been complied with in its letter and spirit. There is no finding recorded by Collector (Agr) Malerkotla in his order dated 10.10.2000 whether the service was ever effected upon the petitioners (Allottees) or not and what steps were taken by the Collector for effecting the service of the petitioners. I am fully

convinced with the contention of the counsel for the petitioners (Allottees) that petitioners have been condemned unheard before the Collector (Agr) Malerkotla. They should have served before passing an order by the Collector (Agr) Malerkotla. Thus, in the interest of justice, both the revision petitions are hereby accepted and the impugned order dated 12.2.2003 passed by the Commissioner, Patiala Division, Patiala and order dated 10.10.2000 passed by the Collector (Agr) Malerkotla are set aside and the case is remanded to the Collector (Agr) to decide the matter afresh in the light of directions issued by the Hon'ble High Court in its judgment dated 2.12.97 after providing due opportunity of being heard to all the concerned parties. Both the parties have been directed through their counsel to appear before the Collector (Agr) Malerkotla on 25.2.2004.”

Be that as it may be. Even if the Financial Commissioner remanded the matter to the Collector Agrarian, Malerkotla to decide the matter afresh, though according to the petitioner it should not have been, as vide order dated 10.10.2000, the Collector Agrarian, Malerkotla had remanded the matter to the revenue authorities to re-determine the surplus area, in view of the statutory provisions of law and as well as declaration of law by this Court and by various other Courts, the Collector Agrarian, Malerkotla vide order dated 9.2.2004 (Annexure P-8) without assigning any reason consigned the file. The order reads thus:-

“Photostat copy of the order dated 9.2.2004, File No.14/Misc/Surplus Razua 9.2.2004. Decision 9.2.04 D/W/Rattan Chand Jain regarding surplus area of land situated in village

Anaitpura. File has been consigned to the record room, Malerkotla vide Goshwara No.22/4.

Present: Counsel for the parties.

File presented by the counsel for the respondent in view of the orders of the Hon'ble Financial Commissioner Appeal (Punjab) dated 17.12.03 and as per photostat copy of the order dated 17.12.03 both the orders of the Lower Court i.e. Commissioner, Patiala Division, Patiala dated 12.2.03 and Collector Agrarian Malerkotla dated 10.10.2000 have been dismissed by the Hon'ble Financial Commissioner after accepting the revision petition and the case has been remanded to this Court for decision afresh after hearing both the parties in light of the orders of the Hon'ble high Court dated 2.12.97 for 25.2.04. In the light of the above orders, no proceedings are required on the present application. Same is consigned to the record room. Order has been pronounced. The file be consigned to the record room after necessary compliance. Dated 9.2.04.

*sd-
Collector, Malerkotla.”*

Such an approach of the Collector is incomprehensible, much less, not acceptable. On reading of the zimni orders and operative part of the order dated 10.10.2000 passed by the Collector Agrarian, Malerkotla, it reveals that the order is in consonance with the direction contained in the order dated 2.12.1997 of this Court. The relevant portion of the order dated 2.12.1997 of this Court and the order dated 10.10.2000 of the Collector Agrarian, Malerkotla read thus:-

“order dated 2.12.1997

*“.....The matter herein is, thus, clearly covered not only by a decision of the Full Bench of this Court in **Ranjit Ram's case** (supra) but also by the decision of the Supreme Court in **Ujjagar Singh's case** (supra). That being so, all the writ petitions are allowed and a direction is issued to the concerned Collector to find out whether the land was not utilized at the commencement of the Punjab Land Reforms Act and if that be so fresh steps be taken for*

fixation of ceiling of landowners and declaration of surplus area afresh in accordance with the provisions of Punjab Land Reforms Act after giving notice to all the concerned parties.

*Sd/-
V.K. Bali
Judge.”*

2.12.1997

order dated 10.10.2000

“xxxxx

xxxxx

xxxxxx

3. I have carefully considered arguments of the learned counsel for the petitioner as also that of the Naib Tehsildar Agrarian. Vide judgment dated 2.12.1997 the Hon'ble Punjab and Haryana High Court observed as under:-

“a direction is issued to the concerned Collector to find out whether the land was not utilized at the commencement of the Punjab Land Reforms Act and if that be so fresh steps be taken for fixation of ceiling of landowners and declaration of surplus area afresh in accordance with the provisions of Punjab Land Reforms Act after giving notice to all the concerned parties.”

The Circle Patwari was summoned, who has placed on record certified copies of jamabandi, I find that at the time of commencement of Punjab Land Reforms Act, 1972 i.e. 2.4.1973, land held by the petitioner had not been utilised and it was still in possession of the petitioner. It being so, in compliance of the orders dated 2.12.1997 passed by the Hon'ble Punjab and Haryana High Court in CWP no.2213 of 1981, fresh steps have to be taken for fixation of ceiling of the petitioner and declaration of surplus area afresh under the Punjab Land Reforms Act, 1972.

In view of above, the petition is accepted and notice issued to the landowner is vacated and the Circle Revenue Officer concerned is directed to initiate fresh proceedings for fixation of the ceiling of the petitioner/landowner Rattan Chand Jain and

declaration of surplus area afresh in accordance with the provisions of Punjab land Reforms Act, 1972 under which each adult son of the landowner is also entitled to a separate unit.

Announced.

-sd-

Collector Agrarian

October 10, 2000

Malerkotla.”

The aspect regarding the service of the private respondents and compliance of the order of the High Court in letter and spirit by the Collector Agrarian, Malerkotla, has not been appreciated by the Financial Commissioner, though the order of the Collector Agrarian was upheld by the Divisional Commissioner vide order dated 12.2.2003.

In fact, the pith and substance of the order of the Financial Commissioner has been on two counts namely (i) all the private respondents/allottees have not been heard and (ii) non-adherence to the order dated 2.12.1997 passed by this Court.

In view of the aforementioned finding and the extraction of the orders, there has been misdirection at the behest of the Financial Commissioner, Appeals-I, Punjab in not appreciating the orders aforementioned in correct perspective or letter and spirit, much less, order had been passed without summoning the record. Had it been done, perhaps the order would have been otherwise.

As I have already observed that the Collector had consigned the record whereas he was directed to undertake the exercise afresh. In my view, the right of the petitioner in view of the impugned order (Annexure P-8) has remained in lurch or in oblivion in the light of facts noticed above. Equally so, the respondents would have also right to raise the plea of

vesting of the land in the State by virtue of having taken the possession in 1984, that too by taking the benefit of Section 32E of the Pepsu Tenancy and Agricultural Lands Act, 1955, which deals with the procedure of taking the possession, much less, utilization of the land having declared surplus by referring to the provisions of the Punjab Utilization of Surplus Area Scheme, 1973.

There is no dispute to the proposition of law laid down in the judgment rendered by Full Bench of this Court and larger Bench of Hon'ble Supreme Court referred to above with regard to taking possession for utilization of the land and taking that possession has to be as per provisions of Section 32E of the Pepsu Tenancy and Agricultural Lands Act, 1955, much less, determination of the land afresh at the hands of the legal representatives, if the big land owner dies during the pendency of proceedings. This is what the scope of judgment rendered by Hon'ble Supreme Court in Ujjagar Singh's case (supra).

As an upshot of my finding, the order of the Financial Commissioner (Annexure P-7) and order of the Collector Agrarian, Malerkotla (Annexure P-8) consigning the proceedings, are not sustainable in the eyes of law and hereby set aside. The matter is remitted to the Financial Commissioner Appeals-I, Punjab to decide the ROR Nos.297 of 2003 and 298 of 2003 afresh after summoning the record and taking into consideration the rival contentions of the parties, much less, statutory provisions of law and the judgments cited supra, in accordance with law.

The writ petition stands allowed.

Parties are directed to appear before the Financial Commissioner Appeals-I, Punjab along with their counsel on 20/06/2017.

The entire exercise shall be done within a period of six months thereafter.

(AMIT RAWAL)
JUDGE

May 25, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No