225

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13546-2015
Date of decision : 21.04.2017

Harwinder Singh and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Singh, Advocate
for the petitioners.

Ms. Monica Chhibber Sharma, DAG, Punjab.

****

AMIT RAWAL, J. (ORAL)

The challenge in the present writ petition is to the orders dated 17.12.2014 (Annexure P-5) passed by the Financial Commissioner, Punjab and 26.11.2002 (Annexure P-2) passed by the Commissioner.

Mr. Vikas Singh, learned counsel appearing on behalf of the petitioners submits that Sher Singh was a big landowner. The land measuring 3.09 S.A., at his hands, was determined by the Collector to be surplus under the Pepsu Tenancy & Agricultural Lands Act, 1955. The petitioners are the successors-in-interest of Sher Singh, who challenged the aforementioned order before the Commissioner and the Commissioner vide order dated 15.02.1971 allowed the appeal and remanded back the matter to the Collector for determination of the matter afresh. The Collector vide order dated 29.11.1973 reiterated the previous order by declaring the same very land as surplus. In appeal, the Commissioner vide order dated 09.09.1974 reduced the area and held only land measuring 1.70 S.A. to be surplus. The matter was taken up before the Financial Commissioner, who vide order dated 18.04.1974 dismissed the revision bearing ROR No.13 of 1975 and the matter reached upto this Court vide CWP No.3436 of 1975 and this Court vide order dated 18.01.1980 remanded back the matter. Thereafter, the Collector vide order dated 25.05.2001 held that there was no surplus area. Since the State being aggrieved of the aforementioned order, preferred an appeal before the Commissioner, who vide order dated 26.11.2002 (Annexure P-2), allowed the appeal. The revision preferred by the landowner before the Financial Commissioner was dismissed vide order dated 05.08.2008 and the matter again reached upto this Court vide CWP No.17001 of 2008 and this Court vide order dated 04.03.2009 remanded back the matter to the Financial Commissioner, who vide order dated 17.12.2014 (Annexure P-5) rejected the claim of the petitioners on two accounts, one there was a confusion with regard to the overlapping of the provisions as per the *ratio decidendi* culled out by the Full Bench of this Court in ***"Smt. Ajit Kaur and others V/s The Punjab State and others" 1980 PLJ 354*** and ***"Sardara Singh and others V/s The Financial Commissioner and others" 2008 (2) RCR (Civil) 744***.

and other that during the pendency of this matter, Sher Singh had died and therefore, fresh cause of action had accrued in favour of the LRs for determination of the surplus area by assigning the units.

He also referred to the provisions of Section 28 of the Punjab Land Reforms Act, 1972 (for short 'the 1972 Act') to contend that by Repeal and Saving Clause of the Act including the Punjab Security of Land Tenures

Act, 1953, much less, Pepsu Tenancy and Agricultural Lands Act, any action thereon has not been taken away, once the proceedings had initiated before the Act, even if the order of this Court is contained a direction to decide the matter in terms of the Section 4(2) of the1972 Act would not take away statutory rights, in essence, direction cannot be construed to have been confined to only applicability of the 1972 Act. The Authorities below were required to decide the matter in a most reasonable and objective manner, thus, the impugned orders, under challenge, are not sustainable in the eyes of law and urges this Court for setting aside the same.

Ms. Monica Chhibber Sharma, DAG, Punjab, submits that the orders under challenge are perfectly legal and justified. Once there is a specific direction to the Financial Commissioner to decide the matter in view the provisions of Section 4(2) of the 1972 Act, the petitioners cannot take the benefit of Repeal and Saving Clause, as indicated above.

She further submits that it would only the *ratio decidendi* culled out in "Smt. Ajit Kaur's case (supra) would apply and not "Sardara Singh's case (supra), thus, urges this Court for dismissal of the present writ petition.

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. Vikas Singh, for, the matter requires to be re-visited in view of the provisions of Section 28 of the 1972 Act, which reads 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 repeated.*
>
> *(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." .

In view of the aforementioned facts, the Financial Commissioner should not have strictly construed the applicability of the provisions of Section 4(2) of the 1972 Act as the factum of initiation of the proceedings for declaring the land as surplus was prior to the coming into effect of the 1972 Act as cut of date was 24.01.1971. In that situation, the findings rendered in paragraph 42 of the Full Bench's Judgment in "Sardara Singh's case (supra) would definitely apply. For the sake of brevity, the said findings read 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."*

Keeping in view the aforementioned facts, the impugned orders dated 17.12.2014 (Annexure P-5) passed by the Financial Commissioner, Punjab and 26.11.2002 (Annexure P-2) passed by the Commissioner, are hereby set aside and the matter is remitted back to the Collector to examine the matter afresh, but keeping in view the fact that Sher Singh in the meantime had died, in essence, the land is in the hands of the legal heirs. It is expected that the Collector shall decide the controversy as expeditiously as possible preferably within a period of six months from the date of the receipt of the certified copy of this order.

The parties as well as their counsels are directed to appear before the Collector on 08.05.2017.

The petitioners shall be at liberty to take all possible pleas and render assistance to the Collector in support of the grounds.

With the aforesaid observations, the present writ petition stands allowed.

(AMIT RAWAL)
JUDGE

21.04.2017
Yogesh Sharma

	✓
Whether speaking/reasoned	**Yes/ No**
	✓
Whether Reportable	**Yes/ No**