

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

**CWP No.18837 of 2013  
Date of decision:16.02.2017**

Kheta Ram and another

... Petitioners

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Aakash Singla, Advocate  
for the petitioners.

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

Mr. Ashok Verma, Advocate  
for respondent No.6.

**AMIT RAWAL J.**

The petitioners have knocked the door of this Court by invoking the provisions of Article 226 of the Constitution of India seeking quashing of the impugned orders dated 30.04.2007 (Annexure P-3), 23.07.2010 (Annexure P-5) and 10.07.2013 (Annexure P-5/A) passed by the District Collector-respondent No.4; the Commissioner - respondent No.3 and the Financial Commissioner- respondent No.2, respectively.

Mr. Aakash Singla, learned counsel appearing on behalf of the petitioners submitted that Khayali son of Dalloo of village Rupawas, predecessor-in-interest of the petitioners was in cultivating possession of the land measuring 46 kanals 5 marlas situated in the aforesaid village, District Sirsa. This fact was reflected in the jamabandi for the years 1951-52, 1963-64, 1968-69, 1973-74, 1978-79, 1983-84, 1988-89 and 1993-94. After the death of Khayali, the possession of the petitioners as tenants is

continuing since long.

He further submitted that one Bakhtawari Devi widow of late Sh. Jasraj, predecessor-in-interest of respondent no.6 was a big landlady and the aforesaid area in possession of the petitioners as tenants, vide order dated 28.02.1962 (Annexure P-6) was declared as surplus in the surplus case by the Sub-Divisional Officer-cum-Allotment Authority (SDCA), Sirsa, under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "1953 Act") and the petitioners continued to be in possession of the aforesaid surplus area as tenants, in essence, the tenants remained in possession. The authorities were enjoined upon an obligation under 1953 Act and Rules 1956, i.e., The Punjab Security of Land Tenures and Rules 1956 to determine the assessment of area with landowners and tenants in different forms, in essence, the Tenant's Permissible Area (hereinafter referred to as "TPA") under Section 9A was required to be determined. Though, if the tenancy commenced after the commencement of the Act, then tenants would not be entitled to such benefits. Owing to such fallacy, the petitioners since 1930 continued to possess the same as tenants. As a result thereof, the application dated 3.4.2006 (Annexure P-1) was submitted to the SDO for allotment of area measuring 41 kanals 2 marlas under category "A" as per the provisions of the Haryana Utilization of Surplus and Other Areas Scheme, 1976 (hereinafter referred to as "1976 Scheme"). The aforementioned authority after seeking the report from the surplus branch, vide order dated 30.06.2006 (Annexure P-2) held that since the petitioners being in cultivating possession as tenants since 1930 were entitled to be declared

TPA and ordered for allotment upon payment of amount of compensation under category “A” of Para 4 of 1976 Scheme.

He further submitted that owing to declaration of the land being surplus, the landlord did not have any jurisdiction to challenge the allotment of the tenant, yet respondent no.6 - Kheta Ram son of Jas Raj and as well as of Bakhtawari Devi challenged the order of allotment (Annexure P-2) by filing an appeal before the District Collector. In view of the settled law laid down by a Hon'ble Division Bench of this Court in **Dharam Pal vs. State of Haryana 2002(2) RCR (Civil) 37**; **Surja Ram vs. State of Haryana 2002(4) RCR (Civil) 18** and **Bharat Bhushan vs. State of Haryana and others 1980 PLJ 563**, the landowner has no locus standi to challenge the allotment *vis-a-vis* tenant, in essence, once the proceedings of declaration of the land being surplus had attained finality, it cannot be re-opened or revaluated by taking the benefit of the Haryana Ceiling On Land Holdings Act, 1972 (hereinafter referred to as “1972 Act”). However, the Collector, vide order dated 30.04.2007 (Annexure P-3) remanded the matter back to the allotment authority/SDO (Civil) for a fresh decision after inviting the claims from eligible persons, in view of the provisions of 1976 Scheme, afresh, by holding that the allotment can be done only under category “BB” and not under category “A”. The aforementioned order of District Collector was assailed before the Commissioner and the Financial Commissioner but the order of the Collector remanding the matter had been upheld, thus present petition.

He further submitted that the orders under challenge are illegal, arbitrary, non-speaking, much less non-sustainable on the premise that the

TPA had, rightly, been declared by the Collector entitling the petitioners for allotment under category 'A', for, copies of the jamabandi and *khasra girdawari* available on the file reveal that since 1930 till date, the land remained in cultivation of the tenant and successor-in-interest. The landowner had no right to challenge the order of determination of TPA and in this regard relied upon the ratio decidendi culled out by this Court in **Megh Raj and others vs. Manphool and others 2008(3) RCR (Civil) 241.**

He further submitted that as per the ratio decidendi culled out by a Hon'ble Division Bench of this Court in **Hari Chand (dead) through LRs vs. Financial Commissioner, Revenue, Punjab 2000 (2) RCR (Civil) 547**, the land which has been declared surplus either under the Punjab Law or Pepsu Law, remained un-utilized and the landowner continues to be in possession thereof, has to be re-computed after introduction of 1972 Act, in essence, once the tenant had occupied the land and the landowner was not in possession, it stood utilized the day it was declared to be TPA. As per the provisions of Section 15 of the Punjab Land Reforms Act, 1972 (hereinafter referred to as "Land Reforms Act"), tenant's right to purchase the land cannot be taken away, in essence, he can make the application for purchase within one year of commencement of Land Reforms Act, though which was not done in the present case. The authorities enjoined upon an obligation while declaring the land as surplus to determine TPA, in essence, the tenants were never issued any notice at the time of declaration of the area as surplus.

It is established on record that the land has not been utilized and therefore, it should have deemed to be allotted to the sitting tenants in

terms of 1953 Act and the Land Reforms Act. The landowner ceased to have any right after the land in possession being declared as surplus, though being vested with the Government but in the absence of possession, the tenants deemed to have been allotted the land and thus, urged this Court for setting aside the impugned orders by maintaining the order dated 30.06.2006, Annexure P-2.

Per contra, Mr. Ashok Verma, learned counsel appearing on behalf of private respondent no.6 submitted that the land has been declared surplus in the year 1962, whereas, surplus area case of Bakhtawari Devi, landlady was decided by the prescribed authority, Sirsa under Section 9 of 1972 Act, on 12.07.1980 & 1983 and by that time, 1972 Act had come into existence, thus, as per the provisions of sub-section 3 of Section 12, the area declaring surplus or TPA under the Punjab Law or Pepsu Law did not so having been vested in State Government, in essence, shall deem to have been vested in the State Government w.e.f. appointed date, i.e. 23.12.1972, thus, the application (Annexure P-1) of the petitioners filed in the year 2006 was not maintainable.

He further submitted that the land under the old tenancy may not necessarily be declared as TPA while deciding the surplus area of big landowners under the Punjab Act, inasmuch as that the tenant of such land has to certify certain other conditions for the purpose of declaring TPA. The language used in Section 4 of 1976 Scheme entitling a person for category "A" only deals with the tenants whose area has been declared as TPA. Since there was no order, therefore, rightly so the Collector remanded the matter back to the Assistant Collector.

He further submitted that in fact, after 12.07.1980 (Annexure P-7), the surplus area of Bakhatawari Devi was finalized, vide order dated 18.06.1983 (Annexure P-8) and not by the Collector (Surplus Area), vide order dated 28.02.1962, Annexure P-6 as sought to be contended, thus, the petitioners have deliberately set up a totally false claim for allotment of the entire land in dispute as all the joint tenants constitute one tenancy and would be entitled to allotment of one unit of surplus area in terms of Clause V(bb) of para 7 of 1976 Scheme and area of 41 kanals 2 marlas was allotted to the petitioners by allotment authority but in fact, they were not entitled to allotment of any surplus area, for, they vide order dated 21.02.2006 as indicated in the Collector's order dated 30.04.2007 (Annexure P-3) had already been allotted area of 165 kanals by the allotment authority and the correctness of the same was never questioned.

In support of his contention, he relied upon the following case law:-

- i) **Dharam Pal and others vs. Ganesh Dass and others 1985 PLJ 88** to contend that successors-in-interest of tenants are collectively entitled to allotment of land equivalent to land comprised in tenancy, in essence, each of them individually is not entitled.
- ii) **Lal Chand and others vs. Sub Divisional Officer (Civil)-cum-Assistant Collector and others 2000(2) PLJ 478** to contend that in the absence of declaration as TPA in favour of the tenant, tenant cannot become a proprietor of the land in the absence of allotment and his status would be only of tenant.

In other words, he submitted that as per paragraphs 4, 7 and 9 of 1976 Scheme, TPA has to be specifically declared by the competent authority. In case, the petitioners have been shown to be old tenants, it will not make the land in their possession as TPA. He, thus, urged 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 submissions of Mr. Aakash Singla.

For the sake of brevity, paragraphs 3, 4 and 7 of 1976 Scheme read as under:-

*“ 3. PREPARATION OF LISTS OF SURPLUS AREA.--The Allotment Authority shall prepare Village-wise lists indicating the surplus area and the tenants' permissible area deemed to have vested in the State Government under sub-section (3) of Section 12, excluding the surplus area or other area in respect of which the purchase applications under Section 18 of the Punjab Law or Section 22 of the Pepsu Law are pending since before the 23rd day of December, 1972 and are to be disposed of in terms of clause (i) of sub- section (2) of Section 33 of the Act, and shall thereafter prepare such lists of the surplus area as and when acquired under subsection (1) of Section 12 in form U.S.I mentioning therein (i) filed (Khasra) numbers in serial numerical order; (ii) name of the landowner; (iii) area of every filed (Khasra) number; and (iv) kind of soil in respect of each field (Khasra) number as entered in the latest khasra Girdawari.*

*4. CATEGORIES OF ELIGIBLE PERSONS AND INTER SE PRIORITY THEREIN. - -The categories of eligible persons shall be as follows, namely:*

*CATEGORY A. - a tenant holding land declared as the tenant's permissible area, under the Punjab Law or the Pepsu Law as the case may be;*

*CATEGORY B.- a tenant who was allotted and given possession of land in the surplus area by the State Government under the Punjab Law or the Pepsu Law and is holding the same; . CATEGORY BB.-a tenant who has been in possession of land since 15th April, 1953 or prior to that date and such land is not included in the permissible area of the landowner.*

*CATEGORY C.-a tenant liable to ejectment as a result of an ejectment order of decree passed against him under clause (i) of sub-section (1) of Section 9 of the Punjab Law or sub-section (1) of Section 7 A of the Pepsu Law; CATEGORY CC. - a tenant on the permissible area of the landowner or have been a tenant of the small landowner, on or before the appointed day and the land under his tenancy falls in the surplus area of the landowner under the Act.*

*CATEGORY D. - a tenant who has been on the permissible area of the landowner or a tenant of a small landowner since before the appointed day. against whom no ejectment order or decree has been passed under clause (i) of sub-section (1) of Section 9 of the Punjab Law or subsection (1) of Section 7 A of the Pepsu law.*

*CATEGORY E. - a tenant, settled on the surplus area by the landowner before Kharif, 1968 who is not (i) the landowner's relation of the category specified in clause (9) of Section 2 of the Punjab Law or the rules made thereunder; or (ii) the landowner's relation of the category specified in the rules made under sub-clause (ii) of clause (g) of Section 2 read with Section 52 of the Pepsu Law; or (iii) the landowner's relation of the category specified in the rules made under clause (s) of Section 3 read with Section 31 of this Act;*

*CATEGORY F. - an agricultural worker.*

*CATEGORY G. - A landless person; CATEGORY H. - An ex-servicemen; CATEGORY I.-A person owning land measuring less than two hectares of C Category or land of its equivalent value.*

*EXPLANATION 1. The Eligible person, entitled to the allotment of surplus area in the village, falling in any of the Categories E, G, H and I means a person who has been residing in the Village, wherein the surplus area applied for by him is situate, since the 24th Day of January, 1971, and whose annual household income doe~ not exceed two thousand and four hundred rupees.*

*EXPLANATION II.-No person, falling in category A on Category B whose application for the purchase of land under his tenancy under Section 18 of the Punjab Law or' Section 22 of the Pepsu Law, as the case may be, is pending, shall be entitled land under Pepsu Law, as the case may be, is pending, shall be allotted land under Pepsu Law, as the case may be, is pending, shall be allotted land under this scheme during the pendency of such application.*

*7. PRINCIPLES AND PROCEDURE OF ALLOTMENT.-The allotment authority shall make allotment first of all the surplus area and the tenants' permissible area deemed to have vested in the State Government under sub-section (3) of Section 12 and thereafter the surplus area acquired from time to time under sub-section (1) of Section 12, in each village in favour of eligible persons after observing the following principles and procedure namely:*

*(i) inter se priority amongst the eligible Categories shall be in the same order in which these have been listed in paragraph 4, that is Category A will take precedence over Category B and Category B will take precedence over (Category BB) and so on;*

*(ii) eligible persons of category A will be allotted land to the*

*extent of permissible area under this Act out of the area held by them;*

*(iii) eligible persons of Category B will be allotted the areas held by them; .*

*(iv) inter se priority amongst the eligible persons category-wise falling in categories (BB, C, CC, D, E,F,H and I) shall be arranged in the same order as the extent of .area acquired for their resettlement with the smallest landowner coming on the top. Where several claimants are entitled to the same priority, the allotment authority shall prepare a list of their names in alphabetical order in Hindi (Devnagri Scrip and the allotment to them shall be made according to the serial number of the list so prepared. The same principle of alphabetical order shall be followed in the case of persons falling in Category G. The land owned by the claimants and the members of their families as on 1st day of January, 1976 shall be reckoned for the purposes of this paragraph;*

*(v) the extent of surplus are allotted to the various Categories mentioned in paragraph 4 will be as follows:(A) CATEGORY A.- to the extent of the tenants' permissible area or the permissible area under the Act, whichever is less; (B) CATEGORY B. - to the extent of the area allotted to and held by the eligible persons; (BB) CATEGORY BB.-Two hectares of C category land or land of equivalent value, provided that the total area of land, including the land already held by the allottee shall not exceed two hectares, of C Category land or land of its equivalent value; (C) CATEGORY C.-to the extent prescribed in Section 9A of the Punjab Law or Section 7 A of the Pepsu Law, and the rules made thereunder; (CC) CATEGORY CC.-two hectares of C Category land or land of equivalent value:*

*Provided that the total area of land, including the land already held by the allottee shall not exceed two hectares of C*

*Category land or land of its equivalent value";*

*(D) CATEGORY D TO I.- two hectares of C category land or land of equivalent value subject to the condition that the area allotted plus. the area, if any, already held by the allottee shall be exceed two hectares of C Category land or land of its equivalent value;*

*(vi) the allotment authority shall first satisfy the requirements of applicants. in a village, falling in Categories (A, B, BB, C and CC) in that order, by allotment to them of the area available in the same village;*

*(vii) after making allotment to persons falling in Categories (A,B, BB,C and CC), the allotment authority shall take the following steps, namely*

*(a) three separate lists of eligible persons belonging to Scheduled Castes, Backward Classes and others falling in Categories D,E,F,G,H. and I. shall be prepared for allotment of the remaining surplus area in the village to them;*

*(b) the remaining available surplus area in the village after satisfying the claims of Categories (A, B, BB, C and CC). shall be sub-divided into three lists for allotment to members of the Scheduled Castes, Backward Classes and other and each list shall contain the particulars mentioned in paragraph 3. Forty per cent of such surplus area shall first be earmarked. according to the numerical order of field (Khasra) numbers, for eligible persons belonging to the Scheduled Castes, the next ten per cent. according to the numerical order of field (Khasra) numbers, shall be earmarked for eligible persons belonging to the Backward Classes and the balance fifty per cent according to the numerical order of filed (Khasra) numbers shall be earmarked for the remaining eligible persons. Inter se priority within each of the lists mentioned in sub-clause (a) shall be according to the principles laid down in clause (1);*

*(c) allotment of land shall be made to the persons in the lists*

*mentioned in sub-clause (a) from the respective area earmarked for them as in sub clause (b);*

*(d) in case the surplus area reserved for allotment to Scheduled Castes or a portion thereof remains unutilised after such allotment, such unutilised area shall be added to the area earmarked for allotment to the Backward Classes. If the total area thus becoming available for allotment to the Backward Classes or a portion thereof remains unutilised after such allotment, such unutilised area shall be added to the area earmarked for the other eligible persons in the village. Likewise overflow of surplus area earmarked for allotment to the other eligible persons shall first be added to the area reserved for Scheduled Castes and the unutilised balance, if any, to the area earmarked for the Backward Classes;*

*(viii) the eligible persons falling in Category 0 shall be allotted land only in case they relinquish their existing tenancies; .*

*(ix) while making the allotment to eligible persons falling in Categories (C, CC, 0, E, F, G, H and I), the allotment authority shall confirm to the numerical order of field (Khasra) numbers mentioned in the lists prepared under paragraph 3 and sub-clause (b) of the clause (vii);*

*(x) where mortgage rights in respect of any land falling within the surplus area have vested in the State Government under the proviso to sub section (1) of Section 12 of the Act, such land shall not be allotted to any person, until the Government becomes its full owner. The Government may, however, give such land on lease to any person from year to year.”*

On perusal of the aforementioned Scheme, it is evident that a tenant who has been in possession of the land since 15<sup>th</sup> April, 1953 or prior to that date and such land has not been included in the permissible area of the landowner, then he would fall under category “BB” and not “A”. It is in

this backdrop of the matter, the Assistant Collector, vide order dated 30.04.2007, Annexure P-3 remanded the matter back. The operative part of the same reads as under:-

*“As far as the third issue is concerned, para 4 of the Utilization Scheme of 1976 defines a category 'A' tenant as a tenant holding land declared to be Tenant's Permissible Area under the Punjab Law or Pepsu Law as the case may be and a category 'BB' tenant as a tenant who has been in possession of land since 15.4.1953 or prior to that and as such land is not included in the permissible area of the land owner. The respondents/tenants have been recorded as tenants on the impugned land since the jamabandi of 1930. This has not been challenged by the learned counsel for the appellants. It is, therefore, an admitted fact that the respondent/tenants have been in possession of this impugned land prior to the cut off date i.e. 15.4.1953 and this land is not included in the permissible area of the land owner. The learned counsel of the appellants claims that the respondent/tenants are already in possession of the land of 118 kanals +47 kanals in village Dhukra and 24 kanals in village Nirban in addition to the impugned land so allotted by the order dated 21.2.2006 of the Allotment Authority. Para 7(bb) places a limit on the total land that can be held by an allottee under category 'BB' to be 2 hectares of 'C' category land or 40 kanals. The learned counsel for the respondents/tenants states that since the land was*

*declared as surplus under the Punjab Security of Land Tenures Act, 1953, it was incumbent upon the Prescribed Authority to also pronounce a finding on land to be designated as Tenant's Permissible Area. The failure of the Prescribed Authority to do so cannot adversely affect the rights and interest of the respondents/tenants. The learned counsel has cited a ruling in the case of 1989-PLJ-pp 519 to state that such land shall be deemed being to be Tenants' Permissible Area for all intents and purposes. However, a perusal of the order placed on the file indicates that the impugned land was firstly declared as surplus under the Punjab Security of Land Tenures Act, 1953 read with Rule 6(6) of the Punjab Security of Land Tenures Rules, 1956 by the then Collector (Surplus Area), Sirsa. However, this has subsequently been modified by the order of the Prescribed Authority-cum-S.D.O ( C) Sirsa vide order dated 12.7.1980 in which mention has been made of the appointed date, i.e., 24.1.1971 under the Haryana Ceiling on Land Holdings Act, 1972. Consequently, it appears from the record that the declaration of surplus area had acquired finality under the provisions of the Ceiling Act of 1972 and not under the Punjab Law of 1953. The respondent-tenants cannot claim allotment as a category 'A' tenant as no order expressed or implied, in relation to surplus area exists in relation to declaration of Tenants' Permissible Area under the Punjab Law of 1953 and the surplus area declaration has been made*

*under the Ceiling Act of 1972 wherein no such provision exists.*

*This would mean that the respondent-tenants can claim allotment only under category 'BB' and not under category 'A'.*

*In view of the discussion above the order dated 21.2.2006 of the Allotment Authority-cum-S.D.O ( c), Sirsa is hereby set aside and the case is remanded back for a decision after inviting claims from the eligible persons in accordance with the provisions of Haryana Utilization of Surplus & Others Area Scheme, 1976 afresh. The parties are directed to appear before the Allotment Authority/S.D.O. (Civil), Sirsa, for further hearing regarding the matter on 5<sup>th</sup> of June, 2007.”*

but the petitioners were not satisfied with the order and assailed the same before the Commissioner, much less the Financial Commissioner. The assailment of the order is a reflection of greed. Had those order not been challenged, an occasion would not have arisen to approach this Court and by this time, the Assistant Collector would have re-determined the entitlement of allotment of land either of the category indicated above.

I would be committing a fallacy, if I do not extract the provisions of Section 12 of 1972 Act which read as under :-

*“12. VESTING OF SURPLUS AREA. --(1) The surplus area of a landowner shall, (from the date on which it is declared as such shall be deemed to have been acquired by the State Government for a public purpose) (Vide Act No. 17 of 1976) and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the*

*time being in force) of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance:*

*Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.*

*(2) The right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished.*

*(3) The area declared surplus or tenant's permissible area under the Punjab law and the area declared surplus under the Pepsu Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab Law or Pepsu Law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration.*

*(4) For the purpose of determining the surplus area under this Act, any judgment, decree or order of a court or other authority, obtained after the appointed day and having the effect of diminishing the surplus area shall be ignored.”*

On perusal of the provisions of sub-section 3 of Section 12, it is irresistibly concluded that if the land remained un-utilized, it vests with the

State Government, in essence, it is prerogative of the State Government to deal with the land in any manner, it wants to. The application (Annexure P-1) of the petitioners was submitted in the year 2006, by that time, 1972 Act had come into force and therefore, the argument of Mr.Singla, qua continuation of the proceedings under the old Act, in view of the repealing provisions under Section 33 (Repealing and Saving) is wholly misplaced. The petitioners had the right to get declared the land surplus at the time when the land of Jas Ram was declared as surplus, much less in the years 1980 and 1983 in the case of Bakhatawari Devi. Having lost the right for declaration of TPA, the petitioners cannot be permitted to agitate the claim in the manner and mode as indicated above.

The aforementioned view of mine is reiterated from the judgment rendered by this Court in ***CWP No.2500 of 1984 titled as Gutti vs. State of Haryana and others decided on 14.08.2008***. There is no replication to the candid stand taken in the written statement on behalf of respondent no.6, whereby, the allotment of other area as indicated in favour of the petitioners has not been disputed or denied. In my view, the orders of Commissioner and the Financial Commissioner affirming the order of the Collector in remanding the matter back for categorization are perfectly legal and justified.

The fact remains that the application (Annexure P-1) was moved without impleading the landowner though he may not be having any interest in the property but in the interest of equity and for bringing it to the notice of the authorities, regarding the fallacy, no other person than the landowner or successor-in-interest would take up the issue.

It is in this backdrop of the matter, the order dated 30.06.2006, Annexure P-2 was assailed before the Collector. No person can be allowed to take the benefit of its own wrong. The gamut of the entire observations of mine revolves on a question of determination of TPA. Had the petitioners been successful in getting TPA, perhaps there would have been a case of entitlement under category "A".

For the reasons aforementioned, the impugned orders are perfectly legal and justified, much less do not call for any interference.

Accordingly, the writ petition stands dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**February 16, 2017**

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No