

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

C.W.P.22286 of 2012 (O&M)

Date of Decision: May 24, 2017

Surinder Singh & others

...Petitioners

Versus

Financial Commissioner, Revenue, Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Mr.J.S.Saneta, Advocate,
for respondent Nos.4 to 8.

AMIT RAWAL, J. (Oral)

Petitioners (successors-in-interest of Charan Singh), claiming themselves to be tenants of a big landowner since 1956, are aggrieved of the impugned orders 16.10.2008, 27.4.2010 and 30.5.2012, Annexures P-2, P-3 and P-5, respectively.

Mr.Vikas Singh, learned counsel appearing on behalf of the petitioners submits that Charan Singh, being tenant of a big landowner, who died on 23.12.1986, had on 16.11.1963 submitted an application under Section 22 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (for short "1955 Act") for conferring proprietary rights. The aforementioned application kept pending owing to the fact that the landowner had challenged the declaration of the land being surplus and the matter was

subjudice in this Court. However, vide order dated 24.3.1982 (Annexure P-9), the Letter Patent Appeal was withdrawn. It is in this aspect of the matter, another application dated 20.4.1988 for restoring of the previous application was moved by the legal heirs. However, on 13.4.1987, prior to the aforementioned application, the private respondents also moved an application to the authorities for granting proprietary rights claiming the status of sub-tenancy on the basis of the agreement dated 30.5.1983. Vide order dated 17.1.1990, the Prescribed Authority conferred the proprietary rights. The appeal preferred against the said order was accepted vide order dated 20.7.2005 (Annexure P-1) and the matter was remanded back. It is in this backdrop of the matter, the aforementioned orders have been passed against the petitioners, but the fact remains that all the authorities below have not taken into consideration the provisions of Sections 7A, 20, 22, 30 of the 1955 Act, much less Section 15 (1), (i) & (ii) of the Punjab Land Reforms Act, 1972 (for short "1972 Act").

He further contends that the authorities were enjoined upon an obligation to ascertain the status of conferring the proprietary rights either to the petitioners or the private respondents by taking into consideration the revenue record whether the tenancy was subsisting in 1956 or not, but the jamabandies of the previous period have been taken into consideration, much less the limitation period provided under the provisions of Section 15 of 1972 Act. All these factors were required to be re-visited and redressed. Having failed to do so, the impugned orders are not sustainable in the eyes of law and are required to be re-probed.

Mr.J.S.Saneta, learned counsel for respondent Nos.4 to 8 submits that the orders of the quasi-judicial authorities are perfectly legal

and justified and cannot be interfered until and unless and there is a gross/glaring illegality and perversity as there is a limited scope of judicial review, in essence, until and unless the aforementioned ingredients are not made, this Court, while exercising the power under Article 226 of the Constitution of India, cannot interfere and, thus, urges this Court for dismissal of the writ petition by confirming the impugned orders.

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

Before I give decision on the aforementioned submissions, it would be apt to reproduce Sections 7A, 20, 22 and 30 of 1955 Act and Section 15 of 1972 Act:-

“Section 7A

(1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands(Second Amendment) Act 1956 may be terminated on the following grounds in addition to the grounds specified in section 7, namely :-

- a. that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter-II;*
- b. that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit :*

Provided that no tenant [other than a tenant of a landowner who is member of the Armed Forces of the Union or a Non-Resident Indian] shall be ejected under this sub-section-

- (i) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres, or*
- (ii) from an area of five stand acres, if the area under the*

personal cultivation of the tenant exceeds five standard acres, until he is allotted by the State Govt. alternative land of equivalent value in standard acres.

(2) No tenant, who immediately preceding the commencement of the President's Act had held any land continuously for a period of twelve years or more under the same landowner or his predecessor-in-title, shall be ejected on the grounds specified in sub-section (1)-

a. from any area of land, if the area under the personal cultivation of the tenant does not exceed fifteen standard acres, or

b. from an area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres:

Provided that nothing in this sub-section shall apply to the tenant of a landowner who, both, at the commencement of the tenancy and the commencement of the President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity.

Explanation:- *In computing the period of twelve years, the period during which any land has been held under the same ; landowner or his predecessor-in-title by the father, brother or son of the tenant shall be included.*

(3) For the purpose of computing under sub-section (1) and (2) the area of land under the personal cultivation of a tenant, any area of land owned by the tenant and under his personal cultivation shall be included."

Section 20

1[20. *In this Chapter, the expression ' tenant' means a tenant as defined in clause (k) of section 2 , who is not liable to be ejected.*

(a) Under clauses (a) and (b) of sub section (1) of section 7A ;
or

(b) Under clauses (a) and (b) of sub section (2) of section 7A:

Provided that this definition shall not apply to a tenant who is to be allotted by the State Government land under the proviso to sub-section (1) of section 7A]”

Section 22

22. (1) Subject to the other provisions contained in this Act, a tenant shall be entitled to acquire from his landowner in respect of the land comprising his tenancy the right, title and interest of the landowner in such land (hereinafter referred to as the 'proprietary rights)' in the manner and subject to the conditions hereinafter provided.

(2) Every tenant intending to acquire proprietary rights shall make an application in writing to the prescribed authority in the prescribed manner, containing the following particulars, namely:-

(a) the area and location of the land in respect of which the application is made;

(b) the name of the landowner from whom proprietary rights are to be acquired;

(c) such other particulars as may be prescribed.

(3) The right conferred upon a tenant to acquire proprietary rights in respect of any land under this section may, if such tenant has sublet the land, be exercised by the sub-tenant to the exclusion of the tenant

Section 30

30. If any tenant or sub-tenant dies before exercising his right to acquire proprietary rights in respect of any land under this Chapter such right shall, on his death, devolve upon his lineal made descendants in the male line of descent, if any, and shall be exercised by them in the like manner and subject to the like conditions as the tenant or the sub-tenant, as the case may be.

Section 15 of the Punjab Land Reforms Act, 1972

15. Saving of certain rights of tenants to purchase land – (1)

Notwithstanding anything contained in this Act, a tenant who was entitled to purchase the land comprised in his tenancy, under section 18 of the Punjab Law or section 22 of the Pepsu

Law, shall be entitled to purchase such land from the landowner on the same terms and conditions, as were applicable immediately before such commencement;

Provided that –

(i) the amount payable by the tenant for the land shall be equivalent to ninety times the land revenue (including rates and cesses) payable for such land or five hundred rupees per hectare, which ever is less; and

(ii) the procedure for purchase of such land shall be as is specified hereinafter and the period of limitation for exercise of such a right shall be one year from the date of commencement of this Act.

(2) An application for the purchase of land under sub-section (1), shall be made to the Assistant Collector of the first grade having jurisdiction who shall, after giving notice to the landowner and after making enquiry in the prescribed manner, determine the amount payable in respect thereof;

(3) The tenant may pay the amount determined under sub-section (2) either in lump sum or in half yearly instalments not exceeding fifteen in the manner prescribed.

(4) On the payment of the entire amount or the first instalment thereof, as the case may be, the tenant shall be deemed to have become the owner of the land and that Assistant Collector shall, where the tenant is not already in possession of the land, put him in possession thereof, subject to the provisions of the Punjab Tenancy Act, 1887.

(5) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall on, application by the person entitled to receive it, be recoverable as arrears of revenue.

(6) If the land is subject to mortgage at time of purchase, the land shall pass to the tenant unencumbered by the mortgage, but the mortgage amount shall be charge on the purchase price.”

On conjoint reading of clause (ii) of sub-section (1) of Section 15 of 1972 Act, it is clear that for the right, which had enured to the applicants under the provisions of the previous Act, 1955, i.e., under Section 22 of coming into force of new Act for purchasing the said land, the limitation for exercising such right would be “one year” from the date of the commencement of the Act. Concededly, the application was made on behalf of the private respondents on 13.4.1987.

The agreement, *ibid*, relied upon by the parties has also not been proved. On going through the provisions of Sections 7A and 20 of 1955 Act, all these provisions of law are conspicuously wanting, in my view, rendering the impugned orders to be nullity and void. Even Section 30 of 1955 Act also extends benefit to the heirs of the tenant. Even sub-tenants, as per 1956 Act are also provided a right to claim proprietary rights. In fact, for conferring the proprietary rights, all the aforementioned issues were required to be addressed. The approach of the authorities, in my view, had been narrow, opaque and not wider, much less objective.

Resultantly, the orders under challenge are set-aside. The matter is remitted back to the Assistant Collector 1st Grade, Patiala to re-probe and re-visit the controversy keeping in view the observations and the provisions of the law. The parties shall be at liberty to take all the pleas in support of their rival contentions

It is expected that the Assistant Collector will decide the matter in a most pragmatic and objective manner by taking into consideration the aforementioned law. Let this effort be made within a period of four months from the date of receipt of certified copy of this order.

The parties, through their counsel, are directed to appear before

the Assistant Collector 1st Grade, Patiala on 10.7.2017 to pursue the original application of Charan Singh.

Writ petition stands allowed.

May 24, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No