

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

C.W.P.No.11603 of 2017

Date of Decision: May 25, 2017

Randhir Singh

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Rajesh Kumar Moudgil, Advocate,
for the petitioner.

AMIT RAWAL, J.

Petitioners (legal heirs of Jage Ram) have sought quashing of the order dated 22.12.2016 (Annexure P-4) rendered by the Financial Commissioner, Revenue, Haryana, whereby the ROR No.92/2007-2008 has been dismissed, which was directed against the orders dated 5.10.2006 passed by the Commissioner, Rohtak, 4.4.2005 of the Collector, Sonapat and order dated 20.2.2002 passed by the Sub Divisional (Civil)-cum-Prescribed Authority, Sonapat under the Haryana Ceiling of Land Holdings Act, 1972 (for short "Haryana Act"), whereby the application under Section 8 of the Haryana Act has been dismissed.

Mr.Rajesh Kumar Moudgil, learned counsel appearing on behalf of the petitioner submitted that in the year 2001, the petitioner moved an application for setting-aside the order dated 22.5.1960, whereby the land situated in Village Bidhlan, Tehsil Kharkhoda, District Sonapat at the hands of big landowner was declared surplus and as indicated above, all the authorities have dismissed the application. It has been submitted that Jage

Ram, the big landowner, had five sons, detail of which has been given in

Para 4(i) of the writ petition, but despite land having been declared surplus, possession of the same was never taken and, therefore, it could not vest in the State of Haryana as per the provisions of the Haryana Act, whereby the date of applicability is 24.1.1971. In support of his contention, relied upon the judgment rendered by the Full Bench of this Court in **Jaswant Kaur Versus The State of Haryana and another, 1977 PLJ 230** to contend that there has to be a harmonious construction of Section 8 and 12(3) of the Haryana Act as Section 8 should be given effect upto 23.12.1972. In fact, the father of the petitioner, by way of inheritance decree, transferred the land in favour of the petitioner and his brothers and, therefore, cause of action accrued for re-determination of the surplus land. The Collector (Agrarian) failed to consider, that the land measuring 23 kanals were either recorded as Banzar Quadim, Banzar Zadid or Gair Mumkin and, therefore, could not be considered within the definition of land or the land holdings of Jage Ram, much less could not be subject matter of surplus proceedings.

He further submitted that in the absence of utilization of the land by the State, the surplus proceedings are required to be re-determined. Jage Ram expired on 1.3.1992 and owing to the non-utilization of the land, the surplus area was required to be re-determined, in essence land measuring 17 kanals 15 marlas, previously declared surplus, could not be considered to be surplus any longer and the findings of the Authorities below that the land had been previously allotted in the year 1986 and 1987 is without basis. The authorities below have also taken into consideration the previous order of 1978 for re-determination of the land as the present application could not fall in the doctrine akin to *res judicata* and, thus, urges this Court for setting-aside of the aforementioned order.

I have heard the learned counsel for the petitioner, appraised the paper book and of the view that there is no merit and force in the submissions of the learned counsel for the petitioner on the following reasons:-

- a) A very guarded language has been used in not disclosing the date of application purportedly submitted under Section 8 of the Haryana Act. On specific query, learned counsel showed copy of the application, which is dated 11.6.2001. This Court called upon the counsel for the petitioner as to what action was taken after declaration of the land as surplus. The answer was that the petitioner was minor and attained majority in the year 1970;
- b) No explanation has come forth as to what the petitioner has been doing after attaining the majority;
- c) There is already a decision rendered in 1970 declining the claim of the petitioner, which has not been assailed and had become final;
- d) No revenue record has been placed on record for utilization of the land giving right to the petitioner for re-determination;
- e) Section 12(3) of the Haryana Act deals with the deemed vesting of the land in favour of the Haryana State. A perusal of the impugned order shows that the land was allotted in the year 1963, but no particulars of the share or the allottees have been given;

f) The ratio decidendi culled out in Jaswant Kaur's case (supra), has been reiterated in Sampuran Singh Versus State of Haryana & others, 1994 (3) R.R.R. 113, wherein it has been held that even if the surplus land remained in the possession, but the same stood vested in the State would not create any right and title in him to claim fresh computation. The relevant portion of the findings rendered reads thus:-

“2. Shri Bansal, learned counsel for the appellant raised two-fold contentions. Firstly he contended that since the land, though declared surplus, having been allowed to be in possession and enjoyment of the appellant, that is, to remain otherwise unutilised, the appellant was entitled to seek the reopening of his declaration in which his sons had since become majors. Under ss.7 and 9 of the Haryana Act, computation of surplus land had to be done among himself and his three sons. We find no force in this contention. The Punjab Act while fixes 31 standard acres as ceiling area, the Haryana Act fixes 17-1/2 standard acres as ceiling area and permits under s.9, the determination of surplus land. If there was a major son living separately, his unit could be computed separately as his share. In that process, the surplus land is liable to adjustment under s.9 of Haryana Act. That does not, however, permit the surplus area declared under Punjab Act to be adjusted by reopening and recomputation. Neither the Haryana Act nor the Punjab Act contain any such provision. On the other hand the provision in S.33(2)(ii) that pending proceedings under Punjab Act should be completed under 1953 Act and the surplus land would vest in the State is a clear indication to the contrary. A full bench of the Punjab & Haryana High Court in Jaswant Kaur v. State of Haryana, A.I.R. 1977 P & H 221, interpreting s.12(3) of Haryana Act

held that the surplus lands on and from December 23, 1972 shall stand vested under Section 12(3) of the Haryana Act in the State. In other words, from that date the lands stand vested in the State of Haryana free from all encumbrances, becoming available under the Haryana Act for allotment of surplus land to the tenants and the landless labourers for cultivation. This Court also considered the effect of that judgment in Jodha Ram (dead) by L.Rs. v. Financial Commissioner, Haryana, Chandigarh & Ors., [1994] 1 S.C.C. 27, and held that by operation of [Section 8](#) read with s.12 and also of the [Punjab Act](#), any alienation made prior to July 13, 1958 alone was saved and the lands remaining undisposed of, till the date of vesting would continue to vest in the State and the surplus landholder' does not have any right, title or interest in the land and he cannot even seek eviction of any tenant inducted by the State into that land. In view of these decision, we have no hesitation to conclude that though the surplus land was allowed to remain in possession of the previous landholder, the title stood vested in the State free from all encumbrances on and from December 23, 1972. Further the mere enjoyment of surplus land allowed by the State to the previous landholder does not create any right in him to claim any tide in such land. Therefore, the question of fresh computation among the appellant and his three sons, who later became majors, does not arise.

3. It is next contended that the Act has been given retrospective effect and it effects the vested right of the appellant and that therefore it is ultravires. We find no force in the contention. It is now well settled that legislature is competent to enact law with retrospective effect even taking away vested rights in some cases by allowing retrospective operation of the law. In this case such question does not arise for the reason that by

statutory vesting of the surplus land; the pre-existing right, title and interest in the land of its holder stood vested in the State on and from December 23, 1972. When the constitutional validity of the provisions in the Act was challenged, this Court by a Bench of three Judges in W.P. Nos. 16018-21/84 and other cases entitled Mukhtiar Singh & Ors. v. State of Haryana & Anr., by judgment dated November 21, 1984 upheld their validity. Under these circumstances, we do not find any ground warranting interference with the order under challenge. The appeal is accordingly dismissed but in the circumstances without costs.”

- g) Similar is the findings of this Court in **Ujagar Singh and others Versus State of Haryana and others, 2012 (3) R.C.R. (Civil) 960** as by way of operation of Section 12(3) of the Act of 1972, the surplus land stood vested in the State free from all encumbrances on and with effect from December 23, 1972, irrespective of the fact whether the land was utilised or not. Conferring of a decree in 1970 in favour of the petitioner would thus, be meaning less.
- h) Once the surplus area stood finalised in 1960, the chapter was closed and w.e.f. 24.1.1971, the land was vested in the State, no benefit will accrue to the heirs of the landowner. This has been held by this Court in **Bharat Bhushan Versus State of Haryana and others, 1991 (1) R.R.R. 223 (paragraph 5)**, which reads as under:-

“5. In Shiv Narain's case (supra) also the matter was discussed and it was held that if the area is declared surplus under Punjab Security of Land Tenures Act and the landowner dies after coming into force of the

Haryana Ceiling on Land Holdings Act which came into force on 23.12.1972, heirs of the landowner had no interest whatever in the land on the appointed day 24.1.1971 and they cannot maintain that surplus area in their hands which devolved on them on the death of the landowner needs to be redetermined. Similarly, in Ram Singh's case (supra) it was held that the surplus area case stood finalised during the life-time of landowner and shall stand vested in the State with effect from 24.1.1971 and no benefit will accrue to heirs of landowner under provisions of Punjab Security of Land Tenures Act.

6. *Under the circumstances, there is no force in the appeals. The same fail and are dismissed with costs."*

h) There is no need of issuing any notice to the landowner, whose land has already been declared surplus before allotment to the landless persons. All these factors have weighed in the mind of the authorities below for declining the application. In my view, the filing of the application in 2001 was wholly misconceived.

For the foregoing reasons, no ground for interference is made out. Writ petition stands dismissed.

May 25, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No