

In the High Court of Punjab and Haryana at Chandigarh.

**CWP-28414 of 2013
Decided on 31.7.2017**

Om Parkash and others

--Petitioners

Vs.

Financial Commissioner, Haryana and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. R.S.Chauhan, Advocate for the petitioners

Ms.Tanisha Peshawaria, DAG, Haryana

Rakesh Kumar Jain,J: (Oral)

One Budhu Mal was a displaced person who was allegedly allotted 47 standard acres of land i.e.14-3/4 unit on 20.12.1949. He transferred 125 kanals of land to Lajpat Rai (his grand son). He died on 19.11.1966. After his death, the property was divided into two parts by natural succession in favour of Amara Mal and Bhagwan Dass to the extent of ½ share each. A mutation No.3225 to this effect was also entered on 27.6.1967. Amaramal, son of Budhu Mal was having four sons, namely, Om Parkash, Lajpat Rai, Dharamdev and Prem Chand. Amaramal died on 23.11.2001, whereas Bhagwan Dass predeceased his brother on 18.11.1985. There was a tenant on the land of Dharam Dev who filed an

eviction petition against the said tenant, namely Ranjit Singh on the ground of being a small land owner. This petition was allowed by A.C.Ist Grade, Bhiwani on 29.12.1976.

The land in the hands of Budhu Mal was never declared surplus. However, after coming into force of The Haryana Ceiling on Lands Holding Act, 1972 (for short, 'the Act'), the prescribed authority passed the order declaring the land surplus considering two issues:-

- (i) Whether in the event of death of Bhagwan Dass, landlord, his heirs can be given the benefit of the Punjab Security of Land Tenancy Act ?
- (ii) Whether the above noted landlord falls under provisions of penalty under the above noted Act ?

The prescribed authority came to the conclusion that since the landlord, namely, Amaramal died on 23.11.2001 but actually he was referring to Bhagwan Dass and the necessary declaration form was not submitted in time within the purview of Section 5 (C) of the Punjab Security of Land Tenure Act, 1953 (for short, 'the Act') to declare 38 Acre 6 kanals and 2 marlas of land as surplus.

An appeal was filed by the sons of Amaramal before the Commissioner which was dismissed on 05.7.2010 simply upholding the order of the prescribed authority and similarly, the revision petition filed before the Financial Commissioner also met the same fate on 13.2.2013.

Learned counsel for the petitioners has submitted that none of the Courts below much-less the Financial Commissioner has adverted to the holdings of Budhu Mal while declaring the land in question as surplus. According to him, Section 2 (3) (ii) (a) deals with the permissible area of a displaced person who would be a small landowner, if the allotted land is not in excess of fifty standard acres, the permissible area shall be fifty

standard acres or one hundred ordinary acres, as the case may be.

According to him, the land allotted to Budha Mal who migrated to India from Pakistan in the year 1949 was 47 acres i.e. 14-3/4/ unit which was less than 50 standard acres, therefore, the land in his ownership was less than the permissible area and, thus, he was a small land owner. This aspect of the matter perhaps escaped the notice of the Financial Commissioners while deciding the revision petition filed by the petitioners and others.

It is submitted by learned counsel for the petitioners that even from the order of the prescribed authority, it is not clear as to how the land has been declared surplus in the hands of Amaramal or Bhagwan Dass who had inherited the same from their father Budhu Mal. It is also submitted that if Budhu Mal was not a big land owner and was falling within the definition of a small land owner, then how the land inherited by his children would fall within the definition of surplus area.

Learned counsel for the respondents has submitted that the findings recorded by the revenue authorities are that Budhu Mal was a big land owner and after his death his land has been inherited by his two children who had also stepped into his shoes, therefore, the prescribed authority has rightly passed the order of declaring their land surplus.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the Financial Commissioners who had decided the revision petition against the petitioners have not taken into account this aspect of the matter much-less the issue as to whether Budhu Mal was the big land owner on the appointed date i.e. 15.4.1953 because according to the petitioners, he was a displaced person

and was allotted land less then 50 standard acres.

In view of the aforesaid discussion, this petition is hereby allowed and the matter is remanded to the Financial Commissioners, with a direction to decide the same after taking into consideration all the aspects of the matter and shall pass a reasoned order after framing specific issues, without being influenced by the earlier orders passed by them.

The parties are directed to appear before the Financial Commissioners, on 17.8.2017.

31.7.2017
rr

(Rakesh Kumar Jain)
Judge

Whether Speaking/Reasoned: **Yes/No.**

Whether Reportable: **Yes/No**