IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.233 of 2015 (O&M) in
Civil Writ Petition No.7092 of 2009
Date of Decision: July 30, 2018

Harpreetinder Singh

...Appellant

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

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Present: Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate,
for the appellant.

Ms. Anu Pal, DAG, Punjab.

Mr. Gursimranjit Singh, Advocate for
Mr. N.S.Bhullar, Advocate,
for respondent Nos.5 to 12.

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AMIT RAWAL, J.

The short question involved in the present Letters Patent Appeal is whether on demise of the landowner, i.e., Kuldeepinder Singh, who died on 30.08.1988, the land which had already been declared surplus during his life time at the hands of legal heir, i.e., appellant is required to be redetermined or not. The aforementioned question has been answered by the Full Bench of this Court in **Sardara Singh and others Versus The Financial Commissioner and others, 2008 (2) R.C.R. (Civil) 744.** In Paras 41 and 42 thereof, after noticing the provisions of the Punjab Land Reforms Act, 1972 and various judgments on the point, it was held as under:-

> "41. We are, therefore, of the considered opinion that in order to harmoniously read the two views in Ajit Kaur's case and to give correct interpretation of the provision of Section11(5) and 11(7) of this Act, we ought to take the aid of Supreme Court's judgement in Ajmer Kaur's case. We hold that until the surplus area has been finally determined by the Collector and appeals/revisions have been dismissed, the death of the landowner would certainly cause affectation to the surplus area which would be required to be redetermined in the hands of his heirs.
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> 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 judgements 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."

As per pleaded case of predecessors of landlord, after the land was declared surplus in the year 1976, the Financial Commissioner, vide order dated 03.07.1981, remitted the mater to the Collector. The Collector, vide order dated 31.08.1984 redetermined the surplus area at the hands of landlord. Appeal was preferred by the landlord before the Commissioner which was dismissed vide order dated 23.04.1986. However, during the pendency of the revision, i.e., ROR No.983 of 1985, landlord is stated to have died in the year 1988. In such circumstances, the ratio decidendi culled out in the judgment cited supra is clearly applicable to the present case as where the surplus area has not been finally determined and the matter is pending in appeals or revision before the revenue courts or writ under Article 226 of the Constitution of India or before the Supreme Court, death of the landowner would cause affectation of surplus area which would require redetermination at the hands of the heirs of the deceased landowner.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Abhishek Dhull, Advocate, representing the appellant submitted that the Financial Commissioner, much less learned Single Bench ought to have, by relying upon the aforementioned provisions of law, remitted the matter to the Collector for redetermination, for, the findings arrived at by the Financial Commissioner in upholding the orders of the Collector and the Commissioner after the first remand, were totally farcical.

Mr. N.S. Bhullar, learned counsel representing respondent Nos.5 to 12 submitted that the learned Single Bench rightly dismissed the writ petition holding that the petitioner was indulging into protraction of the litigation. On similar grounds is the argument of the learned Deputy Advocate General, Punjab.

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

On perusal of the aforementioned ratio decidendi culled out by the Full Bench and particularly when during the pendency of the revision before the Financial Commissioner, as noticed above, Kuldeepinder Singh had died on 30.08.1988, the Financial Commissioner ought to have remitted the matter to the Collector for redetermination of the surplus area at the hands of the legal heirs. This fact has not been noticed by the learned Single Bench as entire focus was on the point that the appellant had been trying to linger on the proceedings.

We are afraid, the aforementioned findings are not in consonance with the ratio decidendi as noticed above.

Resultantly, the impugned order dated 01.12.2014 passed by the learned Single Bench and the orders dated 31.08.1984, 23.04.1986 and 17.09.2008 of the revenue authorities assailed in the writ petition are hereby set-aside. The matter is remitted to the Collector- respondent No.4 to decide the question with regard to the surplus area at the hands of the legal heirs of landowner Kuldeepinder Singh afresh. Let this exercise be undertaken within a period of six months from the date of receipt of certified copy of this order.

Letters Patent Appeal stands allowed.

(RAJESH BINDAL) **JUDGE**	**(AMIT RAWAL)** **JUDGE**

July 30, 2018
ramesh

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