

RSA-436-1989 (O&M)

303

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

RSA-436-1989 (O&M)

Date of decision : 25.02.2019

Girdhari Lal (since deceased) through LRs

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. L.N. Verma, Advocate
for the appellant in RSA No.436 of 1989.

Mr. Sanjeev Gupta, Advocate
for the appellant in RSA Nos.621 to 625 of 1989.

Mr. P.S. Jammu, Advocate for the private respondents.

Mr. Rohit Arya, AAG, Haryana.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of six regular second appeals, at the instance of the various plaintiffs, bearing **RSA No.436 of 1989** titled as **“Girdhari Lal (since deceased) through LRs V/s State of Haryana and others”** arising out of the Civil Suit No.195 of 1983, **RSA No.621 of 1989** titled as **“Amar Singh (deceased) through LRs V/s State of Haryana and others”** arising out of the Civil Suit No.194 of 1983, **RSA No.622 of 1989** titled as **“Gobind (since deceased) through LRs V/s State of Haryana and others”** arising out of the Civil Suit No.193 of 1983, **RSA No.623 of 1989** titled as **“Nikku V/s State of Haryana and others”** arising out of the Civil Suit No.190 of 1983, **RSA No.624 of 1989** titled as **“Birbal V/s State of Haryana and others”** arising out of the Civil Suit No.196 of 1983 and **RSA No.625 of 1989** titled as **“Mangtu V/s State of Haryana and others”**

RSA-436-1989 (O&M)

arising out of the Civil Suit No.198 of 1983.

The plaintiffs instituted the suits for injunction claiming possession in respect of various parcels of land relying revenue record. It was averred that a year before filing of the suit, they acquired the knowledge that the Collector Surplus, Sirsa, while deciding the case of the big landlord Mansa Ram, vide order dated 10.12.1962, declared the land surplus,, but the plaintiffs sitting in capacity as tenants, were not heard, thus, sought the declaration of the order dated 10.12.1962.

The defendants opposed the suit by raising objections qua maintainability and jurisdiction of the trial Court to try and entertain the suits with regard to the assailment of the order of 1962, by invoking the provisions of Section 26 of the Haryana Ceiling on Land Holdings Act, 1972 (in short 'the 1962 Act') and Section 25 of the Punjab Security of Land Tenures Act, 1953 (in short 'the 1953 Act'). The trial Court was also disclosed that the landlord had already assailed the order of declaring the land surplus, in this Court and dispossession had been stayed. The possession of the plaintiffs were also denied, by supporting the order dated 10.12.1962. However, defendant Nos.3 and 4 did not deny the possession of the plaintiffs, but averred to be more than their permissible area.

Both the parties led evidence in support of their respective cases.

The trial Court, after taking into consideration the long and settled possession, in few suits, held the order dated 10.12.1962 to be nullity and in part, to be beyond the permissible area, but the pith and substance of the judgment and decree was that the tenants were not heard before passing of the order of 1962 and decreed Civil Suit No.1, in part, by restraining the

RSA-436-1989 (O&M)

defendants from interfering into possession of the plaintiffs, in respect of suit land measuring 46 kanals 1 marla only and dismissed with regard to the land measuring 131 kanals 16 marals and in connected civil suits Nos.2 & 3, injunction was granted in entirety. Civil Suit Nos.4 and 5 were dismissed.

Before the lower Appellate Court, total 12 (twelve) appeals were filed by the plaintiffs, whose suits were partly decreed or dismissed or dismissed in toto and also assailed by the State. The lower Appellate Court by noticing the provisions of Section 26 of the 1972 Act, with regard to the jurisdiction of the Civil Court and judgment rendered by the Full Bench of this Court in **“State of Haryana and others V/s Vinod Kumar and others” 1986 PLJ 161**, noticed that the order of 1962 had only dealt with declaration of the land being surplus at the hands of big landlord, but there was no order with regard to determination of tenants' permissible area and in these circumstances, held the surplus order to be nullity, for, permissible area of tenants was not determined. Before parting with the judgment, issued directions to the State to consider the case of the allotment of land under their possession, who had already been allotted the land for resettlement in some other lands by protecting their possession for a period of four months.

Learned counsel for the appellants-plaintiffs submitted that revenue record placed on record established that the appellants-plaintiffs were tenant since 1995. In view of the law laid down by the Division Bench of this Court in **“Amar Singh V/s State of Punjab and another” 1967 PLJ 38**, Section 18 of the 1953 Act, override the provisions of Section 10-A.

It was also next contended that the lower Appellate Court failed to consider the fact that the order dated 10.12.1962 dealt with the order of

RSA-436-1989 (O&M)

declaration of land surplus at the hands of big landlord, but the authorities below did not pass the order in correct perspective, without noticing the status of the appellants-plaintiffs, who were tenants. The statutory provisions of 1953 Act declaring the plaintiffs to be tenants had not been looked into. The suits were maintainable in view of the judgment rendered in Vinod Kumar's case (supra) as no opportunity of hearing was given. The lower Appellate Court remained oblivious of fact that the authorities cannot simpliciter pass the order declaring the surplus area of big landlord, in the absence of any determination of share/tenant's permissible area, in view of the Rule 6 of the Punjab Security of Land Tenures Rules 1956 (in short 'the 1956 Rules')

By noticing the direction of the lower Appellate Court, this Court, vide order dated 29.01.2019 called upon the State to file the affidavit with regard to the directions contained in the judgment and decree dated 02.01.1989.

Mr. Rohit Arya, AAG, Haryana, appearing on behalf of the defendants/State/respondent filed the affidavit dated 21.02.2019 of SDO (C)-cum-Prescribed Authority-cum-Allotment Authority, Ellenabad, District Sirsa, Haryana, in RSA No.436 of 1989, wherein it has been stated that Allotment Committee was not in existence, in such circumstances, allotment case filed by the appellant-Girdhari Lal, vide order dated 22.05.1997 (Annexure R1), was adjourned *sine die*, by the then SDO(C)-cum-allotment committee. He further submitted that no action was taken owing to the non-constitution of the allotment committee.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the

RSA-436-1989 (O&M)

following "Substantial Questions of Law" arise for determination:-

1. *Whether the order dated 10.12.1962 pertained to declaration of surplus area of the big landlord or not?*
2. *Whether the separate order for tenants permissible area was required to be passed?*
3. *Whether the order dated 10.12.1962 was passed at the back of the tenants?*
4. *Whether the judgments and decrees of the Courts below particularly of the lower Appellate Court suffer from illegality and perversity?*

It would be in the fitness of things to refer the definition of landowner, permissible area, surplus area and tenant, as defined in sub-Sections 1, 3, 5A & 6 of Section 2 of the 1953 Act as well as Rule 6 of the 1956 Rules, which read as under:-

"Sub-Sections 1, 3, 5-a & 6 of Section 2 of the 1953 Act

(1) "Landowner" means a person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and shall include an "allottee" and "lessee" as defined in clauses (b) and (c), respectively, of section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949).

(3) "Permissible area" in relation to a landowner or a tenant means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceeds sixty acres, such sixty acres:

Provided that – (i) no area under an orchard at the commencement of this Act, shall be taken into account in computing the permissible area ;

(ii) for a displaced person –

(a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case maybe,

(b) Who has been allotted land in excess of thirty

RSA-436-1989 (O&M)

standard acres, but less than fifty standard acres, the permissible area shall be equal to his allotted area;

(c) Who has been allotted land less than thirty standard acres the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition.

(5-a) “Surplus Area” means the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected 2 [under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C) 3 [and includes the area in excess of the permissible area selected under section 29-B]; but it will not include a tenants permissible area:

Provided that it will include the reserved area, or part thereof, where such area or part has not been brought, under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant from it, whichever is later, or if the landowner admits a new tenant, within three years of the expiry of the said six months.]

(6) “Tenant” has the meaning assigned to it in the Punjab Tenancy Act, 1887 (Act XVI of 1887) and includes a sub-tenant, and self cultivating lessee, but shall not include a present holder as defined in section 2 of the Resettlement Act.

Rule 6 of the Punjab Security of Land Tenures Rules, 1956

[6. Assessment of surplus area, with landowners and tenants. -

(1) Every patwari shall prepare, in duplicate, statements in Forms D and DD for every landowner and tenant, respectively, who owns or holds land in excess of the permissible area in his circle, and shall retain one copy of each such Form himself and forward the other to the circle kanungo.

(2) The circle kanungo shall, after personal examination, test all entries made by the patwari in Form D or Form DD and forward it to the circle revenue officer.

- (3) The circle revenue officer, shall, after holding such enquiry as he thinks fit and after giving the persons concerned, an opportunity of being heard, forward his report to the Collector.*
- (4) Where, in the case of a landowner, Forms A, C and E, and in the case of a tenant, Forms B and C, have been received by the Collector, from the Special Collector, under rule 4-C, the Collector shall, after holding such enquiry, as he thinks fit, return them to the Special Collector, along with Form D, in the case of a landowner and Form DD in the case of a tenant.*
- (5) In the case of a landowner or tenant who has furnished his Form to the Special Collector, under rules 3 and 4, the Special Collector shall [after giving the landlord or tenant an opportunity of being heard and] after such enquiry as he thinks fit, assess his surplus area. In doing so, he shall hear any objections made by the landowner or tenant, and in a [] written order decide such objections. In case no objections are made or the person affected does not appear, the fact shall be stated in the order.*
- (6) In the case of a landowner or tenant who has furnished his Forms of the Collector, under rules 3 and 4, the Collector shall [after giving the landlord or tenant an opportunity of being heard and] after such enquiry as he thinks fit, assess his surplus area. In doing so, he shall hear any objections made by the landowner or tenant, and in a [] written order decide such objections. In case no objections are made or the person affected does not appear, the fact shall be stated in the order.*
- (7)(i) The Collector or the Special Collector shall prepare a statement in Form F and forward immediately a copy thereof to the landowner or tenant concerned under cover of an endorsement prescribed in the Form and it shall be served upon the landowner or tenant as if it were a summons in the manner prescribed in section 90 of the Punjab Tenancy Act, 1887.*

(ii) The Special Collector shall also forward a copy of Form F prepared by him to the Collector of every district in which the surplus area of the landowner or tenant is situate.

[(8) Any person aggrieved by a decision of the Collector or the Special Collector, may within [60 days] from the date of communication of the decision to such person, to be computed after excluding the time spent in obtaining a copy of such decision, appeal to -

(a) the Commissioner of the Division where the person resides, in case the person resides in Ambala or Jullundur Division;

(b) the Commissioner of the Division where the largest portion of the holding of the person is situate, in case the person resides outside Ambala and Jullundur Divisions;

and the decision of the Commissioner which shall be duly communicated by the Commissioner to the Collector or Collectors concerned shall be final.].

(9) The Collector or the Special Collector or the Commissioner shall not while deciding any case under this rule, entertain any claim from a landowner for the exemption of any area on any of the grounds set forth in sub-rule (1) of rule 10.]

On juxtaposition of the aforementioned provisions, I am of the view that the finding recorded by the lower Appellate Court upholding the order dated 10.12.1962 declaring surplus area is not a correct appreciation. This Court in **“Gutti V/s State of Haryana and others” 2009 (1) RCR (Civil) 494**, held that before declaring the land surplus area, tenants were required to be given notice. For the sake of brevity, para Nos.8 to 10 of the judgment read as under:-

"8. A tenancy, by its very nature, confers tangible civil rights upon a tenant that may only be abridged save by and in accordance with procedure established by law. The Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as

the '1953 Act') prescribes two types of permissible areas, one reserved by the landlord called the landlord's permissible area and the other reserved by a tenant called the tenant's permissible area. After reservation of the landlords and tenants permissible area, the balance land constitutes surplus area. The 1953 Act, empowers a tenant to file a separate return for declaring the area in his occupation, as tenants permissible area. Rule 6 of The Punjab Security of Land Tenures Rules, 1956 provides for the assessment of surplus area with landowners and tenants and places a statutory obligation on the Collector, to serve a notice upon persons interested in the estate of big land owner, including sitting tenants. Any violation of this statutory mandate would render the order passed non-est. A combined reading of the 1953 Act and the Rules framed thereunder makes it abundantly clear that surplus area proceedings, finalised without issuance of a notice to a sitting tenant, would be void, as regards the rights of a sitting tenant. The Collector was, therefore, required, before proceeding to determine the surplus area whether the land belonging to the big landowner was in occupation of a sitting tenant and if so, to issue notice to such a tenant.

9. It is apparent from the facts, that in the year 1953 land belonging to the big land owner, was admittedly in the possession of tenants. However while computing the holding of the big land owner for the purpose of determining his permissible and surplus area, no notice, whatsoever, was issued to or served upon the sitting tenants. The question, whether the petitioner was a tenant or his cousin Sudan was a tenant, is incidental as what is relevant is whether any tenant was in possession of the big landowners land. In Bahadur Ram and others V. State of Punjab and others, 1969 PLJ 372, while considering the rights of tenants it was held that the change of tenants will not affect the permissible area of the tenant if the land remained under one tenant or another from April 15,

1953 i.e. the date when the Act came to be enforced. The correctness of the aforementioned judgement was called into question and a reference was made to a Division Bench. The reference was answered in Nanak Chand's case (supra), by affirming the judgement in Bahadur Ram's case (supra) and holding that change of tenants, provided the land remains the same and the tenancy does not come to an end is immaterial for determining tenant's permissible area. In the case before the Division Bench, the learned Financial Commissioner modified the order passed by the Commissioner to the extent that the Collector, Surplus Area, Hisar was directed to include, in the tenants permissible area all such land, which was comprised in the tenants permissible area on 15.4.1953 and which was under the occupation of the tenants irrespective of the change of tenants. The observations of the Division Bench would necessarily require reproduction.

"If the tenant had completely abandoned the tenancy and there was no tenant left at all, in that case different consequences may follow. But in the present case, the direction given by the learned Financial Commissioner to the Collector is quite clear, as the Collector has been directed to include in the tenant permissible area all such land which was comprised in the tenants permissible area on April 15, 1953 and which continued to be so and was under the occupation of the tenants."

10. It is, therefore, apparent that where tenants are in occupation of land sought to be assessed for determining the landowners permissible/ surplus area, the Collector cannot proceed to determine surplus area without issuing a notice to sitting tenants. Admittedly tenants were in possession of a part of the estate of the big land owner but no notice was issued or served upon them. The Financial Commissioner, therefore committed an error of jurisdiction in dismissing the revision petition, on the ground that the petitioner's name did not

appear in the revenue record as a tenant in possession on 15.4.1953. It would necessarily require notice that prior to the appointed day, the petitioner's father is recorded in possession as a tenant. After the appointed day, the petitioner is recorded in possession and on the relevant date i.e. 15.4.1953, one Sudan, the petitioner's cousin is recorded in possession, thus, establishing the fact that on the coming into force of the Act, a part of the land comprising the big landowners estate was occupied by tenants. The above facts having been established the Collector was statutorily and mandatorily obliged to issue notices to the tenants and reserve a tenants permissible area whatsoever the identity of the tenant. The Financial Commissioner, therefore, committed an error in disregarding the law, as set out herein above and in failing to examine the matter with a greater degree of care and consideration." —

It would be apt to reproduce the relevant portion of the finding of the lower Appellate Court as well as relevant para Nos.2 and 3 of the affidavit dated 21.02.2019, which read as under:

"13. Before parting I may add that although neither the order of the declaring land as surplus nor the orders of allotment are bad but since all the plaintiffs were in possession of land for the last 20 years to 35 years, therefore, without going into the technicalities of applying, the State should consider their case for allotment of the land under their possession and the persons who have already been allotted land can be settled at some other land. It is directed that the plaintiff shall not be disposed from the land for at least another 4 months and during this period State shall try to accommodate them and initiate the decision taken to the tenants."

Para Nos.2 and 3 of the Affidavit dated 21.02.2019

2. That under the provision of Utilization scheme of 1976 the allotment only could be made in the presence of non-official members of Allotment Committee as prescribed under the

RSA-436-1989 (O&M)

scheme of 1976, as at that time the allotment committee was not in existence so the allotment case filed by appellant adjourned sine die by the then SDO (C)-cum-Allotment Authority, Ellenabad, vide its order dated 22-05-1997. Copy of order is attached herewith as Annexure RI.

3. *That by this time Govt. of Haryana has not constituted the Allotment Committee for Ellenabad Sub Division, so further proceeding could not be initiated in allotment case."*

From the cumulative reading of the provisions of law and affidavit, it is irresistibly found that the surplus land in specific killa numbers is available, but the State failed to constitute the allotment Committee. Keeping in view the such predicament of the appellants, particularly when they have been able to show their possession as tenants, the lower Appellate Court ought not to have confined the injunction only for a period of 4 (four) months as the Department, after having taken action, went into slumber. Such an impasse cannot be allowed to be perpetuated for infinite period. It is totally wrong to say that the order dated 10.12.1962 pertained to the declaration of surplus land at the hands of tenants and landlord. The procedure and rules provide the determination of both permissible area of landlord as well as tenants.

It is also a matter of record that tenants have not been given an opportunity of hearing. The law with regard to the maintainability of the suit, even if, there is a alternative remedy, in the absence of compliance of principles of natural justice, is no longer *res integra* in view of the *ratio decidendi* culled out by the Full Bench in Full Bench of this Court in **Vinod Kumar's case** (supra). This fact has not been controverted by the State Counsel.

RSA-436-1989 (O&M)

It was a suit for declaration as well as injunction. None of the parties have attempted to place on record the decision rendered in a matter assailed by the landlord, in fact, it remained a mystery, even affidavit do not disclose the same.

In order to prevent further miscarriage of justice, I am of the view that the possession of the plaintiffs, if already dispossessed, is required to be protected till the authorities take action by constituting the Allotment Committee for considering the case of the applicant/similarly situated plaintiffs/appellants, for determination of their tenant's permissible area, in accordance with law. Accordingly, till then, the possession of the plaintiffs shall not be disturbed.

Substantial Question of Law Nos.2 and 3 are answered in favour of appellants-tenants.

Resultantly, the judgment and decree of the lower Appellate Court is hereby modified to the aforesaid extent.

However, the defendant/State is directed to consider the cases of the plaintiffs by constituting committee within a period of two months from the date of receipt of certified copy of this order, in view of observations and directions made here-in-above, much less, in view of their affidavit, as expeditiously as possible in accordance with law.

With the aforesaid observations, the regular second appeals are disposed of.

25.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**