

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

RSA No.3001 of 1996(O&M)

Date of Order:25th February, 2019

Haryana State and others

..Appellants

Versus

Rajender Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Girdhar, AAG, Haryana
for the appellants.

Mr. Arun Jain, Sr. Advocate, with
Mr. Abhishek Dhull, Advocate,
for respondent no.1 to 4, 6 and 7

Mr. Amit Jain, Advocate and
Mr. C.B.Goel, Advocate,
for LR's of respondent no.9.

ANIL KSHETARPAL, J.

Defendants-State of Haryana is in appeal against the concurrent findings of fact arrived at by the Courts below decreeing suit filed by the plaintiffs.

Some facts are required to be noticed. Late Smt. Sarbati was declared big land owner and the land in dispute was declared surplus in her hands vide order dated 14.03.1961 under the provisions of the Punjab Security of Land Tenures Act, 1953. Smt. Sarbati died in the year 1964 and her property was inherited by Smt. Chandan Devi, sister of her late husband. Chandan Devi also died in the year 1965. On the death of Chandan Devi, property was inherited by her children Jugal Kishore, Madan Lal, Shanti

Sarup, Mohinder and Sumitra. These five persons sold the land by two registered sale deeds dated 13.07.1972 in favour of Ramphal, Shamey Singh and Raj Singh, who in turn sold the property to the plaintiffs vide registered sale deed dated 24.02.1980 and 20.12.1981. These purchasers(plaintiffs) had filed the present suit which was contested by the State of Haryana as well as defendant no.4 Pehlad, who has since died, represented by his heirs.

The question which arises for consideration is “whether inheritance of the property by natural succession before utilisation of the surplus land would require re-determination of the property in the hands of heirs or not as per the provisions of the Punjab Security of Land Tenures Act?

At the relevant time, Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the Act of 1953') was applicable. Section 10-A of the Act of 1953 prescribes that the State Government or any officer empowered in this behalf shall be competent to utilize the surplus area for re-settlement of the tenant. Clause (b) of Section 10-A provides that notwithstanding anything contained in any other law for the time being in force, no transfer or other disposition of the land which is part of the surplus area at the commencement of this act shall affect the utilization thereof in clause (a) except when the land is acquired by the state government or by an heir by inheritance. Thus, Clause(b) provides that in case the land is inherited by an heir or heirs, it would affect declaration of the surplus area. Section 10-B of the Act of 1953 rather makes it more explicit as it has been provided that saving by inheritance shall not apply after utilization of the surplus area. Thus, it is obvious on co-joint reading of Sections 10-A and 10-B of the Act of 1953 that if big land owner dies and the properties

inherited by heirs before utilisation of land declared surplus, it would affect the order of declaration of the surplus area.

For utilization of the land, rules have been framed i.e. The Punjab Security of Land Tenures Rules, 1956 (hereinafter referred to as 'the Rules of 1956'). Rules 20-A, 20-B and 20-C of the Rules of 1956 provide for a procedure to utilise the land which has been declared surplus. A careful reading of Rule 20-C(c) of the Rules of 1956, it is apparent that a tenant who is re-settled under this part, shall in respect of the land upon which he is re-settle execute a *Qabuliyat (contract) or a Patta* as given in Annexure 'C' appended to the Punjab Security of Land Tenures Act, 1953.

For convenience, Sections 10-A, 10-B of the Act of 1953 and the Rules 20-A, 20-B and 20-C of the Rules of 1956 are extracted as under:-

The Punjab Security of Land Tenures Act, 1953.

Section 10-A(a) *The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause(i) of sub section (1) of section 9.*

(b) Notwithstanding anything contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).

Explanation— *Such utilization of any surplus area will not affect the right of the land-owner to receive rent from the tenant so settled.*

*(c) For the purpose of determining the surplus area of any person under this section. any judgement decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored]*1

10-B. *Saving by inheritance not to apply after utilisation of surplus area - Where succession has opened after the surplus area or any part thereof has been utilised under clause (a) of*

section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that section shall not apply in respect of the area so utilised.

The Punjab Security of Land Tenures Rules, 1956

20A. Issue of certificates. - Every tenant shall be given a certificate in Form K-6 describing clearly the land allotted to him. A copy each of the certificate shall be sent to the Patwari concerned as well as the landowner on whose land the tenant is to be resettled, and another copy shall be retained on the file for record.

20B. Delivery of possession - (1) After orders of allotment of any surplus area have been passed the Circle Revenue Officer, shall move the Collector for passing necessary orders directing the landowner or the tenant, as the case may be, to deliver possession of the land in his surplus area to the Circle Revenue Officer, who shall be deemed to be an officer empowered by the Government, under section 19-C, for the purpose of delivery of possession..

(2) Every tenant resettled on the surplus area shall be bound to take possession of the land allotted to him within a period of two months of the date on which demarcation of the land is made at site in his presence or within such extended period, as may, for reasons to be recorded in writing, be allowed by the Circle Revenue Officer. The possession of the land shall be delivered to the tenant by the Circle Revenue Officer himself.

(3). The possession of the land on which a tenant is resettled shall ordinarily be given after the crops are cut. If, however, the Circle Revenue Officer deems it necessary to deliver possession of the land to any tenant before the crops are cut a statement showing the crop and the area under the same shall be prepared by the Patwar before the possession is taken by the tenant. A copy of the statement shall be furnished to the landowner as well as to the tenant.

20C. Conditions of resettlement. - The tenant, who is resettled under this Part -

- (a) shall be the tenant of the landowner in whose name the land in question stands in the revenue records;
- (b) shall be liable to pay the same amount of rent as is customary in that estate for such lands subject to the maximum fixed under section 12 of the Act; and
- (c) shall in respect of the land upon which he is resettled execute a Qabuliyat or a Patta as given in Annexure 'C' appended to the Punjab Security of Land Tenures Rules, 1953, in favour of the landowner before he is put in possession of the land.

It may be noted that after formation of State of Haryana,

Legislature enacted separate Act, namely, The Haryana Ceiling on Land Holdings Act, 1972, which provided that the surplus area of a landowner or tenants permissible area declared under the Punjab Law or Pepsu Law which has not so far vested in the State government shall be deemed to have vested in the State Government with effect from appointed day i.e. 24th day of January, 1971. The land in dispute is located in State of Haryana. However, it is to be examined that before Act of 1972 became applicable whether the land had been utilised or not or whether on coming into force of the Act of 1972 the land vested in the State Government under Section 12 (3) of the Act of 1972. On careful perusal of Section 10-A, 10-B and Rules framed under the Act, it is apparent that if surplus area land had not been utilised and because of death of the big land owner, the land had been inherited then the authorities under the Act of 1953 were required to re-determine the surplus area in the hands of heirs.

Still further Section 8 of the Act of 1972 also saves property received by an heir by inheritance under Section 8(1) of the Haryana Ceiling on Land Holdings Act, 1972, which is extracted as under:-

8. CERTAIN TRANSFERS OR DISPOSITIONS NOT TO AFFECT SURPLUS AREA. -

(1) Save in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the pepsu law or the Punjab law or by an heir by inheritance, no transfer or disposition of land in excess of-

(a) the permissible area under the Pepsu law or the Punjab law after the 30th day of July, 1958; and

(b) the permissible area under this Act, except a bona

fide transfer, or disposition after the appointed day,

shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled out for such transfer or disposition:

Provided *that any person who has received an advantage under such transfer, or disposition of land shall be bound to restore it, or to pay compensation for it, to the person from whom he received it. (Vide Act No. 17 of 1976)*

(2) The burden of proving the transfer or disposition to be a bona fide one shall be on the transfer.

(3) If any person transfers or disposes of any land after the appointed day in contravention of the provisions of sub-section (1), the land so transferred or disposed of shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer or disposition is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area. If the area left with him is less than the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area. If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the proportion to the land transferred or disposed of to them.

In view of mandate of law either under the provisions of the

Punjab Security of Land Tenures Act, 1953 or Rules framed thereunder as well as provisions of the Haryana Ceiling on Land Holdings Act, 1972, it is apparent that the inheritance by an heir has been saved if the land declared surplus had not been utilised by them. Attention of this court has not been drawn to any provision either in the Haryana Ceiling on Land Holdings Act, 1972 or Punjab Security of Land Tenures Act, 1953 which lays down that re-determination of the surplus area case in the hands of heirs who have inherited the property by natural succession would not be required once a big land owner dies before coming into force of the Act of 1972.

In the present case, the succession opened on the death of big land owner late Smt. Sarbati in the year 1964. Her heir late Smt. Chandan Devi also died in the year 1965 i.e. before the Act of 1972 came into force. Thus, the surplus area case was required to be re-determined in the hands of Jugal Kishore, Madan Lal, Shanti Sarup, Mahender and Sumitra.

Learned counsel appearing for the State of Haryana as well as legal heirs of Pehlad has submitted that allotment in favour of Pehlad was made in the year 1964. He referred to copy of the register Ex.D4 in support of his contention. On the other hand, learned counsel for the appellants has submitted that the aforesaid register does not fulfill the requirements of Rules 20-A, 20-B and 20-C of the Rules of 1956 or it does not prove that all the requirements were complied with, therefore, mere allotment, even if it is assumed, does not amount to utilization of the surplus area. He further drew attention of the court to Ex.D3, which is the allotment letter in favour of Pehlad, dated 23.12.1984 whereupon the amount representing the price of the land was deposited by Pehlad. He further submitted that Pehlad was ordered to be evicted in a petition under Section 9(1)(i) of the Act of 1953

vide order dated 21.08.1968 which was affirmed in appeal vide order dated 12.11.1968 and in execution of the aforesaid eviction order, Pehlad was dispossessed on 06.02.1969. He further submitted that in revenue record, Pehlad has not been recorded to be in possession continuously and it is the legal heirs of Chandan Devi who are recorded in possession.

Keeping in view the aforesaid contentions of learned counsel for the parties, it is apparent that the surplus area land was never utilised before coming into force of Act of 1972. Succession opened before coming into force of the Act of 1972. As such the surplus area case was required to be re-determined in the hands of heirs of Sarbati and thereafter Chandan Devi which has not been done.

Learned counsel for the State relied upon a judgment passed by the Hon'ble Supreme Court in the case of **Krishna Kumari and another State of Haryana and others (1999)1 SCC 338.**

In the aforesaid judgment, the Supreme Court assumed that once it is proved that possession of the land was delivered under Rule 20-B of the Rules of 1956, a presumption would arise that all antecedents formalities were duly complied with. Hence, the aforesaid judgment of the Hon'ble Supreme Court is on the facts of that case and does not as a ratio decidendi lay down that mere allotment of the land, if any, would result in utilization of the surplus area which is the word used in Section 10-B of the Act of 1953. The legislature has laid a procedure in the Act and the Rules for divesting of the property of the big land owner. Those steps have to be shown to have complied with in letter and spirit. Once the law prescribes that a particular step shall be performed in a particular manner it must be shown to have been performed in that manner. In the present case, State of

Haryana or heirs of Pahlad has failed to prove that the land has been utilized in accordance with the procedure laid down.

In view of the aforesaid, there is no ground to interfere with the concurrent findings of the fact arrived at by the courts below. Hence, the regular second appeal is dismissed.

25th February, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No