

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

**RSA No.4002 of 2001 (O&M)
Date of Order:15.03.2019**

State of Haryana and others

..Appellants

Versus

Chanan Singh and others

..Respondents

Civil Writ Petition No.14848 of 2004 (O&M)

Ujagar Singh (dead) through his LRs

...Petitioner(s)

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Girdhar, AAG, Haryana

**Mr. P.K.Ganga, Advocate,
for respondent no.1(in RSA No.4002 of 2001)**

**Mr. Ashok Verma, Advocate,
for the legal heirs of the petitioner**

ANIL KSHETARPAL, J(Oral)

By this judgment, Regular Second appeal No.4002 of 2001 and Civil Writ Petition No.14848 of 2004 shall stand decided as both are inter-connected.

In regular second appeal, State of Haryana has come up against the concurrent findings of fact arrived at by the courts below. The basic dispute between the parties in the appeal is “whether the tenants in possession are entitled to be heard while deciding the case of declaration of surplus area in the hands of big land owners?”. Under the Punjab Security

of Land Tenures Act, 1953 (hereinafter referred to as 'the Act of 1953') tenants have been given right to get a declaration with respect to Tenants Permissible Area under Section 18 of the Act of 1953. As far as the case of the big land owners, namely, Balwant Singh and Dalip Singh with regard to declaration of surplus area has become final. Plaintiff-respondent claims that he was entitled to notice because he claims that he is entitled to purchase the property under his possession being tenant's permissible area.

Both the courts on appreciation of the evidence have found that no notice was given to the tenants before finalizing the case of declaration of the surplus area. It may be noted that the surplus area declaration is under the Punjab Security of Land Tenures Act, 1953.

Learned counsel for the State of Haryana has submitted that the courts below have committed an error in setting aside the orders declaring surplus area, as at the most, the rights of the tenants could be protected. He while elaborating submitted that tenant is only interested in tenant's permissible area which can be decided afresh as no notice has been given to him. However, he submits that the case of the big land owner cannot be permitted to be opened under the garb of setting aside of the order declaring surplus area.

On the other hand, learned counsel appearing for the tenant has submitted that he was entitled to move an application under Section 18 of the Act of 1953 to make a prayer for declaring land in his possession as tenant's permissible area. However, he submitted that the order qua the big land owners can be kept intact but that should be without affecting the rights of the tenants.

In view of the submissions made, this court has considered the

arguments of learned counsel for the parties and with their able assistance gone through the judgments by the courts below and the record.

There is merit in the argument of learned counsel for the State of Haryana that the rights of tenant can be protected by directing the authorities to examine entitlement of the tenant to tenant's permissible area as provided under Section 18 of the Act of 1953. However, State of Haryana has rightly contended that under this context the surplus area which has been declared at the hands of big land owners cannot be allowed to be re-opened.

Accordingly, the regular second appeal is disposed of with a direction to the authorities to decide the rights of the tenants in the context of Section 18 of the Act of 1953. However, such order would not be used for the benefit of the big land owners. The judgments passed by the courts below are modified.

In Civil Writ Petition, the writ petitioner prays that he has been allotted 40 kanals land vide order dated 21.03.1994 being an ejected tenant. The grievance is that out of 40 kanals land, 28 kanals 15 marlas is in the possession of the tenant-respondent in Regular Second Appeal No.4002 of 2001. His further grievance is that the possession of the remaining land has not been delivered.

In view of the decision by this court in Regular Second Appeal No.4002 of 2001, the prescribed authority/allotment authority under the Haryana Ceiling of Land Holding Act, 1972 would take steps to deliver possession of the undisputed area if there is no further restriction in accordance with law. With regard to 28 kanals and 15 marlas of land, which is in possession of the plaintiff-respondent in regular second appeal, the

authority would proceed in accordance with the order passed while deciding the claim of the plaintiff-respondent in appeal.

Needless to observe that the allottee would have right to be heard in the proceedings for determination of tenants permissible area.

Both the cases are disposed of accordingly.

C.M.No.4102 of 2019 in CWP No.14848-2004

Prayer in this application is for bringing on record the legal representatives of Bachan Singh(since deceased) son of Ujagar Singh, petitioner No.1(i).

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 2 of the application are brought on record for the purpose of prosecuting this writ petition only.

Amended memorandum of parties filed along with the application is taken on record.

March 15, 2019
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(ANIL KSHETARPAL)
JUDGE

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