

CWP-15660-1992 (O&M)

Bishana

....Petitioner

VS

State of Haryana and others

....Respondents

CWP-15836-1992 (O&M)

Jangir Singh and others

....Petitioners

VS

State of Haryana and others

....Respondents

CWP-15837-1992

Ram Piari and others

....Petitioners

VS

State of Haryana and others

....Respondents

CWP-15835-1992

Hari Singh

....Petitioner

VS

State of Haryana and others

....Respondents

CWP-15838-1992

Pritam and others

....Petitioners

VS

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Jagdish Manchanda, Advocate
for the petitioner

Mr. Rajneesh Chadwal, AAG Haryana

Mr. Puneet Jindal, Sr. Advocate with
Ms. Navroop Jawanda, Advocate
for respondent No. 5

SUDHIR MITTAL, J.

This judgment will decide all the aforementioned cases as common questions of fact and law are involved. For ease, facts are being extracted from CWP No. 15660 of 1992 titled as ***Bishana vs. State of Haryana and others.***

2. One Jaipal son of Sarda Ram was a big land owner. His holding was to the extent of 221.72 standard acres and was part of revenue estate of village Kheri, Shishgran, Tehsil Guhla, District Karnal (Erstwhile). After coming into force of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as '1953 Act'), his surplus area case was decided vide order dated 28.07.1960. The Collector determined 191.72 standard acres as surplus in his hands. Appeal against the said order was dismissed on 14.11.1960 and revision petition filed there against met with the same fate. The revisional order is dated 01.05.1961. These orders were challenged by aforementioned Jaipal in CWP No. 639 of 1961 which was allowed vide judgment dated 12.03.1962 and the appropriate authorities were directed to re-decide the surplus area case. Meanwhile, the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as '1972 Act') came into force. Surplus area case of Jaipal was still pending. During its pendency sale deed dated 22.02.1971 was executed in favour of the petitioner in respect of 37 Kanals and 10 Marlas of land. This fact is being taken from the written statement filed on behalf of respondent No. 5 wherein complete details have been mentioned while denying the averments in the writ petition that the sales in favour of the petitioner were

dated 11.07.1966 and 22.07.1971. There is no counter to this assertion made in the written statement. Finally, surplus area case was decided vide order dated 12.05.1978 and only 36.47 standard acres were declared surplus. Details of the land declared surplus were given in order dated 20.05.1978 and the land sold to the petitioner was included therein. Thus, a notice for utilisation was issued to the petitioner whereafter an application was filed for exempting the same from utilisation. It was urged that the petitioner was an old tenant and was entitled to purchase the land in his possession. The land in his possession is within his permissible limit. The Collector (Agrarian) Gulha did not agree with the submission and rejected the application vide order dated 31.03.1982. Appeal was dismissed vide order dated 17.05.1983. Revision against the appellate order was also dismissed vide order dated 26.08.1992. It was held that the plea of tenancy was not proved. Plea of bonafide purchaser deserved to be rejected as the sale was after 30.7.1958. Thus, the present writ petition has been filed.

3. Like the petitioner, one Mohan Singh was also purchaser from Jaipal *pendente lite*. He had purchased 125 Kanals and 8 Marlas through sale deeds dated 18.06.1974. After passing of the order of declaration of surplus area he was also sought to be dispossessed as the land sold to him was also declared to be part of the surplus area. His application for exemption was rejected vide order dated 11.10.1983 and, thus, an appeal was filed by him before the Collector. The appeal was accepted vide order dated 06.02.1984. This order was challenged by the widow of Jaipal (he having died meanwhile) before the Commissioner, Ambala Division, who allowed the appeal. Further, revision filed by Mohan Singh was dismissed vide order dated 18.02.1987, forcing him to file CWP No. 2979 of 1989. The writ petition was allowed by a learned Single Judge and the orders of the Commissioner and Financial Commissioner were set aside. The case was remanded for re-determination of the surplus area after giving benefit of Section

8(3) of 1972 Act. This judgment was challenged in LPA filed by the legal heirs of Jaipal. The same was allowed and the judgment of the learned Single Judge was set aside vide judgment dated 21.04.2010. It was held that as the proceedings for declaration of surplus area were pending when the 1972 Act came into force, the provisions of 1953 Act were to apply, thus, Section 8(3) of 1972 Act was not applicable. This judgment was challenged by successor of the vendee Mohan Singh vide Civil Appeal No. 356 of 2020 which was dismissed vide judgment dated 28.01.2020.

4. Learned counsel for the parties have been heard in detail. They have also filed their written submissions.

5. Learned counsel for the petitioner has submitted that the petitioner had remained in possession of the land in dispute through his predecessor-in-interest since the year 1910, being tenant. He was, thus, entitled to be heard before passing of the order of declaration of surplus area. He was also bonafide purchaser and was entitled to benefit of Sections 8(1)(b) and 8(3) of 1972 Act. The same having not been done, the order of declaration of surplus area is illegal. It has further been submitted that order of declaration of surplus area dated 12.05.1978 is void having been passed in violation of the principles of natural justice. Thus, even though the same was never challenged by the petitioner he is entitled to avoid the same.

6. Learned senior counsel for respondent No. 5 has only submitted that in view of judgment dated 28.01.2020 passed in Civil Appeal No. 356 of 2020 ***Kirpal Singh vs. Kamla Devi*** the writ petition deserved to be dismissed as provisions of 1972 Act have been held to be inapplicable. Section 8(3) of the said Act can not be applied to the facts of this case. The said judgment having been passed in the case of an identically situated vendee as the petitioner, he can not wriggle out of the same.

“8(1) Save in the case of land acquired by the Union Government of 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 bonafide 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 but for such transfer or disposition.

Provide 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.

(2) the burden of proving the transfer or disposition to be a bonafide one shall be on the transferer.

(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 disposes of 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 shall be made up from each of the transferees in the proportion to the land transferred or disposed of to them.”

8. A perusal of the above provision shows that clause (b) of sub-section (1) thereof exempts a bonafide transfer after the appointed day from declaration of surplus land. Sub-section (3) thereof stipulates that while declaring surplus area, the land transferred in violation of sub-section (1) shall be included in the permissible area of the big land owner and shall be excluded from the surplus area. Only if the remaining land is not sufficient to complete the surplus area calculated, deductions would be made from the permissible area. Thus, the case of the petitioner–vendee is that the sale in his favour was in violation of sub-section (1) of Section 8 having been made after the appointed day. Accordingly, it should form part of the permissible area of the big land owner and can not be included in the surplus pool.

9. In *Kirpal Singh (supra)* the Hon'ble Supreme Court has rejected the aforementioned submission based upon interpretation of Section 33 of the 1972 Act. Sub-section (2) thereof provides that in case of surplus proceedings pending before the commencement of 1972 Act, they shall be decided under the statute under which they were initiated. It has accordingly been held that 1972 Act was not applicable to the surplus area proceedings of the big land owner namely Jaipal. The appeal was, thus, dismissed and the Division Bench judgment was upheld.

10. The aforementioned judgment is squarely applicable to the present case.

11. Plea of tenancy taken in the writ petition cannot be accepted as the same has been denied on behalf of respondent No. 5 with reference to Khasra Girdawaries from Kharif 1966-67 to Rabi 1971. The plea has not been countered

by filing a rejoinder. Thus, the petitioner was not entitled to grant of any opportunity of hearing while deciding the surplus area case. Accordingly, order dated 12.05.1978 can not be said to be void.

12. No other argument has been raised.
13. The writ petition has no merit and is dismissed.

02.12.2022
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No