

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

LPA-390-2023 (O&M)
Reserved on 17.04.2023
Date of Decision:25.04.2023

Bishana (deceased) through LRs.

. . . . Appellant

Vs.

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR

Present: Mr.Jagdish Manchanda, Advocate, with
Mr. Nishchal Chetanya Manchanda, Advocate, for the appellant.

M.S. RAMACHANDRA RAO, J.

1. This appeal is filed challenging the judgment dt.01.12.2022 passed by learned Single Judge in CWP-15660-1992
2. The appellants are the Legal Representatives of the original appellant Bishana.
3. The said Bishana had filed the said Writ Petition to quash orders dt.26.08.1992 in ROR-279/1982-93 passed by the respondent No.2 under Section 24 of the Punjab Security of Land Tenures Act, 1953 read with Section 18 of the Haryana Ceiling of Land Holdings Act, 1972, confirming order dt.17.05.1983 passed by the respondent No.3.
4. Respondent No.3 in his order dt.17.05.1983 had in turn confirmed the order dt.31.03.1982 of Collector Agrarian, Guhla passed under Section 80 of the Punjab Tenancy Act, 1887 in Appeal No.180 of 1971-82.

5. The original appellant had approached the Collector Agrarian, Guhla along with others claiming that he had purchased certain land from one Jai Pal s/o Sharda Ram, who was a big landowner, and sought exemption of the purchased land from the surplus pool under the Act. He had contended that he is a small landowner and had less than 10 acre area and is not related to the big landowner. There was also a pleading that he was cultivating the land as a tenant.

6. The Naib Tehsildar, Agrarian refuted the same and contended that the area of the big landowner Jai Pal had been declared surplus under the Punjab Security of Land Tenures Act, 1953 on 28.07.1960 and 12.05.1978; that the purchase by the original appellant and others was on 11.07.1966 and 22.02.1971; and as per certain instructions of the Government issued on 15.04.1966, the said area cannot be released from surplus pool.

7. The Collector held in his order dt. 31.3.1982 that since the sales were effected after 15.04.1966 and since only buyers of land before the said date could be given exemption of 10 standard acres each, the area cannot be exempted from the surplus pool and rejected the applications filed by the original appellant.

8. The original appellant then preferred an appeal to the Commissioner, Ambala Division (respondent No.3) by filing Appeal No.180 of the year 1971-82 on 22.04.1982. He confirmed the order of the Collector Agrarian, Guhla made on 31.03.1982.

9. Before the Appellate Authority the original appellant and others contended that the land in dispute was in a reserved area of the landowners and had not even been declared as a surplus, but the appellate authority held

that he could not prove that the land in dispute was under the reserved area of the big landowner. He also held that the Assistant District Attorney argued that the appellants themselves in their application had requested the Collector Agrarian, Guhla to exempt the land in dispute from the surplus area from the big landowners, and so the land in question cannot be said to be under a reserved area.

10. Accepting the said contention, respondent No.3 held that the land in dispute cannot be released from the surplus area as the original appellant and others had purchased it after 15.04.1966.

11. The original appellant then filed ROR-279/1882-93 before the respondent No.2 under Section 24 of the Punjab Security of Land Tenures Act, 1953 and Section 18 of the Haryana Ceiling of Land holdings Act, 1972.

12. The said revision was also dismissed by order dt.26.08.1992. Respondent No.2 in the said order held that the original appellant's contentions that he and others were tenants on 15.04.1953, and they should have been given a notice before the surplus case was decided cannot be accepted since the Collector Agrarian had held on 12.05.1978 that the big landowner had surplus land and the said order had attained finality.

13. He further held that the original appellant had not produced any evidence to show that he was a tenant and this Court had held in a decision reported in *AIR 1975 Punjab and Haryana 369* that notice to the purchaser of the land was not obligatory under the law.

14. He further held that the original appellant had been taking contradictory stands i.e. before the Collector Agrarian, Guhla he and the

other parties had urged that the land should be exempted from the surplus pool as they were owners, but before the respondent No.3 they had taken a different plea that the disputed land was part of the permissible area of the big landowner.

15. He further held that the original appellant and others had failed to produce evidence to establish that they or their fore-fathers were actually tenants on the land on 15.04.1953 and that they were in possession of the land in dispute as tenants from 1966. He held that since the purchases of the land were made on 11.06.1966 after 15.04.1966, the purchases have to be ignored.

16. Challenging the same, the original appellant had filed CWP-15660-1992.

17. The learned Single Judge had dismissed the same vide order dt.02.12.2022.

18. The learned Single Judge held that the Haryana Ceiling of land Holdings Act, 1972 had come into force on 24.01.1971 and the issue of what is the surplus area held by the big landowner Jai Pal was still pending, and during its pendency, the original appellant had obtained a sale deed dt.22.02.1971 in respect of 37 kanal and 10 marla of land; that surplus area case of the big landowner was decided on 12.05.1978 and only 36.47 standard acres was declared as surplus; and the land sold to the original appellant was included in the surplus area.

19. The learned Single Judge also referred to the case of one Mohan Singh, who was also a purchaser from the big landowner Jai Pal *pendent lite* whose exemption application was rejected on 11.10.1983. he noted that Mohan

Singh filed an appeal before the Collector which was accepted on 06.02.1984; that this order was challenged by the widow of Jai Pal (he having died meanwhile) before the Commissioner, Ambala Division, who allowed the appeal; further revision filed by Mohan Singh was dismissed on 18.02.1987; but CWP-2979-1989 was allowed by learned Single Judge and orders of the Commissioner and Financial Commissioner were set aside and the matter was remanded for redetermination of the surplus area after giving benefit of Section 8(3) of the Act.

20. He further held that the said judgment was challenged in an LPA filed by legal heirs of Jai Pal which was allowed and the judgment of the learned Single Judge was set aside on 21.04.2010 and it was held that as proceedings for declaration of surplus area were pending when the 1972 Act came into force, the provisions of the Punjab Security of Land Tenures Act, 1953 would apply and Section 8(3) was not applicable.

21. He also held that this judgment was challenged by the Successor of the vendee Mohan Singh in Civil Appeal No.356 of 2020 which was dismissed on 28.01.2020, and that the Supreme Court specifically rejected the submission based upon interpretation of Section 33 of the 1972 Act and held that 1972 Act was not applicable to the surplus area proceedings of big landowner Jai Pal.

22. He therefore held that since the original appellant was placed in the same position as Mohan Singh, the said judgment would equally apply.

23. He further held that the plea of tenancy taken in the Writ Petition cannot be accepted as the same had been denied on behalf respondent No.5 with reference to khasra girdawaris from Kharif 1966-67 to Rabi 1971, and

there was no rejoinder filed in the earlier round of cases i.e. CWP-15660-1992. He therefore held that original appellant was not entitled to grant of any opportunity of hearing while deciding the surplus area case.

24. Challenging the same, the LPA is filed.

25. Counsel for the legal heirs of the original appellant contended that the original appellant was a tenant of the big landowner and sought to place reliance on a copy of the jamabandi of the year 1975-76 filed as Annexure A-1 allegedly proving the said tenancy.

26. We may point out that in the hearing before the Collector Agrarian Guhla, the original appellant had pleaded primarily that he had purchased the land under registered sale deeds along with others on 11.06.1966 and 22.07.1971 (which plea had been negative), and only in passing he had argued about the tenancy without producing any material in support of the said plea.

27. In the Appeal filed against the order dt.31.03.1982 of the Collector Agrarian, Guhla with respondent No.3, the plea of tenancy was not even argued.

28. In the revision filed by the original appellant ROR-279/1982-93 before the respondent No.2, though the plea of tenancy was argued, it was rejected on the ground that no evidence was produced about the plea of tenancy of the original appellant, and it was held that there was no evidence produced by the original appellant that he was the tenant along with others on the land on 15.04.1953, and that he or his fore-fathers were in possession of the land in dispute as tenants from 1966.

29. In our considered opinion, it is not open to the original appellant or his legal heirs to produce evidence of the tenancy for the first time before this Court without establishing the said plea either before the Collector Agrarian, Guhla or the respondent No.3 or respondent No.2. In fact the said point does not appear to have been even argued before respondent No.3.
30. When the original appellant had an opportunity to place material before the said authorities and did not do so it is not permissible for this Court to permit the original appellant to produce evidence before this Court and get a finding on tenancy here in this Court.
31. Respondents No.2, 3 and the Collector Agrarian, Guhla and the learned Single Judge have given cogent reasons for not granting exemption to the original appellant of the land purchased by him. The said findings are based on evidence on record and cannot be said to be perverse or contrary to law.
32. Therefore, we find no merit in the present Letters Patent Appeal and the same is accordingly dismissed. No costs.
33. Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

25.04.2023

Vivek

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
Yes