



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

101

CWP-8750-1993
Date of decision: 28.10.2024

DONA RAM AND OTHERS
Vs.
STATE OF PUNJAB AND OTHERS

....PETITIONERS
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sandeep Khunger, Advocate and
Mr. Saksham Khunger, Advocate
for the petitioners.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of orders dated 31.03.1992, 23.11.1992, 22.02.1993 (Annexures P-3, P-4 and P-5 respectively) whereby Revenue Authorities have held that petitioners purchased land contrary to Punjab Land Reforms Act, 1972 (for short '1972 Act') and cannot retain the said land.
2. The Collector, Ferozepur under The Patiala and East Punjab State Union Security of Land Tenures Act, 1953 (for short '1953 Act') vide order dated 26.06.1967 declared 83 Standard Acre land of Smt. Amarwanti (respondent No. 3) surplus.
3. The petitioners purchased a piece of land from respondent No. 3 on 30.05.1963. It is apt to notice here that Revenue Authority at the first instance had declared land of respondent No. 3 'surplus' on 31.01.1962 and it was finally settled on 26.06.1967.



4. The petitioner's land fell in the surplus land after passing of order dated 26.06.1967. The surplus land was never taken over by Competent Authority and petitioners approached Authorities seeking declaration that their land may not be taken over. The Authorities below have rejected claim of the petitioners on the ground that they have purchased land in violation of 1972 Act.

5. The petitioners claim that their case falls within the purview of 06.03.1967 circular issued by respondent-State. The respondent-State has rejected claim of the petitioners on the ground that said circular is contrary to explicit provisions of Land Laws. The circular dated 06.03.1967 for the ready reference is reproduced as below:-

“Subject: Certain area declared surplus under the provisions of Punjab Security of Land Tenures Act, 1953-not to be utilised.

Reference: This department circular No. 4006-AR(II)-66/1854 dated 19.7.1966.

In continuation of this department memorandum referred to above, it has further been decided by the Govt. that the area which has been declared surplus in the Erstwhile Punjab under the provisions of Punjab Security of Land Tenures Act, 1953 but which had been purchased by landless persons or small landowners till 1st February, 1967 should not be utilised for resettling tenants thereon and allowed to remain with the purchasers subject to the following conditions:-

- a) That the vendee is not a relation of the vendor-landowner.*
- (b) That the surplus area purchased with other area owned by the persons does not exceed 10 Standard Acres.*
- (c) That the surplus area purchased has not been utilised by allotment to eligible tenants.*

Please acknowledge receipt.”



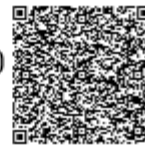
6. The Financial Commissioner, Revenue (respondent No. 2) has refused to rely upon circular dated 06.03.1967 forming an opinion that circular is contrary to explicit provisions of the Act. The findings recorded by Financial Commissioner, Revenue are reproduced as below:-

"I have considered the position as stated by the counsel for the parties and have also gone through the papers filed with the revision petition. I agree with the learned Senior State Counsel that this revision petition is covered by my decision dated 3.11.1992 passed in "R.O.R.No.823 of 1985-86-Krishan Lal and others Vs. The State of Punjab" wherein I have held that the Punjab Government instructions of 6-3-1967 run counter to the explicit provisions of law. As such these instructions are not helpful to the petitioners who are vendees of the surplus area which they have purchased after commencement of the Old Act. i.e. after 15-4-1953. Moreover the facts of the case in which the learned Financial Commissioner(Appeals) has allowed relief on the basis of Punjab Government Instructions of 6-3-1967 are not known to me and nor has the relevance of that case been argued in these proceedings before me. The revision petition, is therefore, dismissed in limine."

7. Mr. Sandeep Khunger, Advocate submits that case of the petitioners squarely falls within the purview of 19.07.1966 circular and it is settled proposition of law that Authorities cannot travel beyond the circulars.

8. Mr. Aman Dhir, DAG, Punjab submits that petitioners had purchased land in question on 30.05.1963 whereas land of landlord was declared surplus on 31.01.1962, thus, land was purchased after passing of order by Revenue Authorities. The said order is not under challenge, thus, writ is not maintainable.

9. It is trite law that Revenue Authorities are bound by its circulars, though, these circulars are not binding on Courts. The respondent being Revenue Authority was bound by circular unless and until it is withdrawn by Competent



Authority. The petitioners fall within aforesaid circular, thus, respondent has wrongly ignored the circular. It is pertinent to mention here that respondent has not pointed out any statutory provision which is overriding or contrary to the circular.

10. The petitioners concededly purchased land prior to 01.02.1967 and there is no finding recorded by Authorities to the effect that petitioners do not fall within the purview of circular dated 06.03.1967. The respondent has simply held that said circular is contrary to statutory provisions.

11. Besides aforesaid fact, it is pertinent to mention here that respondent till date has not taken over possession of the land in question.

12. A five-judge Bench of Supreme Court in **Ujjagar Singh (dead) by LRs vs. Collector, Bhathinda and another, (1996) 5 SCC 14** has considered scope of Pepsu Act vis-à-vis 1972 Act. The Court has held that as per Section 32-E and 32-F of Pepsu Act, land which has been declared as surplus shall be deemed to be surplus when State Government takes over possession of the land. If possession of any surplus area of landowner has not been taken by or on behalf of the State Government, it shall not be deemed that such surplus area has been acquired and title of the land owner has been extinguished. The relevant extracts of the judgment are reproduced as below :

“3. Section 3 of the Pepsu Act fixed the permissible limit for holding the land at thirty standard acres. Sub-section (2) of Section 3 provided the procedure for computing the permissible limit under sub-section (1) of Section 3. In view of Section 5 every landowner owning land exceeding thirty standard acres was entitled to select for personal cultivation from the land held by him as a landowner which was to be reserved for his personal cultivation. Section 6 required the Collector to notify in such form and manner as may be prescribed the particulars of all lands so reserved for personal



cultivation of the landowner concerned under Section 5 aforesaid.

Section 32-E which is relevant provided:

“32-E. Vesting of surplus area in the State Government.— Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, and subject to the provisions of Chapter IV, as from the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, then—

(a) in the case of the surplus area of a landowner, or in the case of the surplus area of a tenant which is not included within the permissible limit of the landowner, such area shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest including the contingent interest, if any, recognised by any law, custom or usage for the time being in force of all persons in such land shall be extinguished, and such rights, title and interest shall vest in the State Government free from encumbrances created by any person; and

(b) in the case of the surplus area of a tenant which is included within the permissible limit of the landowner, the rights and interest of the tenant in such area shall stand terminated:

Provided that, for the purposes of clause (a), where any land falling within the surplus area is mortgaged with possession, only the mortgage rights shall vest in the State Government.”

Section 32-F enabled the Collector to take possession of the surplus area so declared:

“32-F. Power to take possession of surplus area.—(1) The Collector may by order in writing at any time after the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, direct the



landowner or the tenant or any other person in possession thereof within ten days of the service of the order on him to such person as may be specified in the order.

(2) If the landowner or the tenant or any other person in possession of the surplus area refuses or fails without reasonable cause to comply with the order made under subsection (1), the Collector may take possession of the surplus area and may for that purpose use such force as may be necessary.”

On a plain reading of clause (a) of Section 32-E aforesaid it appears that in case any surplus area of the landowner which is not included within the permissible limit of such landowner “such area shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired” by the State Government for public purpose and all rights, title and interest of all persons in such land shall be extinguished and such rights, title and interest shall vest in the State Government free from encumbrances. In other words, in view of the aforesaid statutory provision, only when the possession of the land which has been declared as surplus area is taken over by the State Government, then only it shall be deemed that such surplus area has been acquired by the State Government and all rights, title and interest of person concerned in such land are extinguished and vest in the State Government. As such if the possession of any surplus area of landowner has not been taken by or on behalf of the State Government, it shall not be deemed that such surplus area has been acquired and title of the landowner has been extinguished.

4. The stand of the appellant is that in view of the admitted position that the possession of the land which had been declared surplus in the year 1961-62 under the Pepsu Act had never been taken till the Punjab Act came into force in the year 1973 and as the appellant continued in possession thereof throughout, the respondent-authorities or the State Government was not entitled to take possession of such surplus area after the coming into force of



the Punjab Act and the ceiling has to be determined afresh in accordance with the provisions of the Punjab Act. It appears that there is no dispute that when the Punjab Act came into force, the appellant had four adult sons and if the ceiling is fixed afresh in accordance with the provisions of the Punjab Act, the appellant had no surplus land.”

13. The Supreme Court while passing aforesaid order has noted various judgments including a full Bench judgment of this Court in **Ranjit Ram vs. Financial Commissioner Revenue, AIR 1981 P&H 313.**

14. The order whereby land in question was declared surplus was passed under 1953 Act and till date respondent has not taken over possession of surplus land. As per afore-cited judgment of Supreme Court, the proceedings could not continue after commencement of 1972 Act.

15. In the wake of above discussion and findings, the impugned order deserves to be set-aside and accordingly set-aside. The respondent is at liberty to proceed against petitioners and their legal heirs in accordance with 1972 Act.

16. It is made clear that if respondent decides to proceed under 1972 Act, it shall grant opportunity to petitioners including their legal heirs to put forth their stand.

17. The petition stands allowed accordingly.

28.10.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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