

2024:PHHC:117780



CWP-14466-1998 1

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

201

CWP-14466-1998
Date of Decision : 09.09.2024

RAM KAUR AND OTHERS PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS
.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present :- Mr.Kanwaljit Singh, Sr. Advocate with
Ms. Navyuggeet Brar, Advocate
for the petitioners.

Mr. G.S.Bhullar, AAG, Punjab.

Mr. I.S.Brar, Advocate
for respondents No.4 to 7.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 15.04.1998 (Annexure P/7) whereby Financial Commissioner Appeals II, Punjab has restored order of Sub Divisional Officer (Civil)-cum-Collector (Agrarian), Faridkot dated 03.08.1965.

2. The petitioners are legal heirs of Smt. Chandi. Before noticing facts, it would be relevant to mention here that Smt. Chandi passed away on 30.12.1987.

3. The Collector (Agrarian), Faridkot in terms of provisions of



Pepsu Tenancy and Agricultural Lands Act, 1955 (for short 'Pepsu Act') proceeded to assess surplus land of Smt. Chandi and declared her 15.7 standard acres of land as surplus. She filed an appeal before the Commissioner Patiala Division, Patiala who vide order dated 27.09.1960 accepted the appeal and remanded the matter back to the Collector for a fresh decision. The Collector passed a fresh order dated 28.12.1960 whereby he formed the same opinion as was formed vide order dated 05.05.1960. The co-owner (Karam Singh) of Smt. Chandi moved an application dated 18.06.1963 seeking review. The said application came to be rejected by Collector vide order dated 18.07.1963. An appeal against this order was filed by Karam Singh which was also dismissed vide order dated 16.06.1964. Karam Singh filed revision petition before the Financial Commissioner, Taxation, Punjab, (for short 'FCT') who vide order dated 23.02.1965 accepted revision and remanded the matter back to the Collector with a direction that he will declare only such of the land as surplus area as is in the actual possession of the big land owner and if that is not adequate for the purpose then the remaining land may also be taken over to make up the surplus area.

4. Pursuant to aforesaid order of FCT, the Collector (Agrarian), Bathinda, Camp Faridkot vide order dated 03.08.1965 declared specific khasra numbers of Smt. Chandi as surplus. Smt. Chandi filed appeal before the Commissioner, Patiala Division, Patiala who accepted appeal vide order dated 28.03.1966. The order of Collector dated 03.08.1965 came to be set aside and the matter was again remanded to the Collector



for a fresh decision. The Collector sat over the matter and passed a fresh order on 20.03.1987 i.e. after the expiry of 21 years from the date of remand. Smt. Chandi and her co-owner Naginder Singh again filed two appeals before the Commissioner, Ferozepur Division, Ferozepur who vide order dated 05.09.1988 rejected both the appeals and revision came to be filed before the Financial Commissioner Appeals II, Punjab who by impugned order dated 15.04.1988 restored order dated 03.08.1965 passed by the Collector (Agrarian). The Financial Commissioner Appeals strongly deprecated action of his department. He even observed that different officers have made mockery of Agrarian Reform Laws with their inertia, slothfulness, indifference and apathy.

5. Mr. Kanwaljit Singh, Sr. Advocate submits that Punjab Land Reforms Act, 1972 (for short '1972 Act') came into force w.e.f. 24.01.1971. On the said date, land was in the possession of Smt. Chandi and her co-owners. Section 32-E of Pepsu Act provides that land vests in Government on the date of taking possession. The State even today has not taken possession, thus, there was no question of possession of land with State on 24.01.1971. The impugned order repeatedly has noted the fact that possession of land was not taken under Pepsu Act and 1972 Act has come into force.

6. Mr. G.S. Bhullar, AAG, Punjab submits that the petitioners had played with the Agrarian Reform Laws. They kept on filing appeals one after another. Resultantly, authorities could not take possession of surplus land under Pepsu Act. As proceedings were pending under Pepsu



Act, the competent authority did not take action under 1972 Act.

7. I have heard the arguments of counsel for the parties and perused the record.

8. The conceded position emerging from record is that the Collector at the first instance passed order dated 05.05.1960 whereby 15.71 standard acres of land was declared surplus. Smt. Chandi was owner of surplus land. She and her co-owners one after another filed appeals/revisions before appellate/revisionary authorities. The matter time to time came to be remanded by appellate authorities. 2nd time, the matter was remanded by the appellate authority on 28.03.1961 and the Collector passed a fresh order after 21 years i.e. on 20.03.1987. In the interregnum, 1972 Act came into force. The authorities did not pass order under 1972 Act whereas continued to pass order under Pepsu Act.

9. 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 sub-section (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

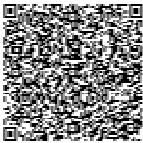


encumbrances. In other words, in view of the aforesaid statutory provision, only when the possession of the land which has been declared as surplus area is taken over by the State Government, then only it shall be deemed that such surplus area has been acquired by the State Government and all rights, 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.”*

10. 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.**

11. The impugned order has been passed in the wake of Pepsu Act whereas on account of non-taking over possession of surplus land, the proceedings could not continue after commencement of 1972 Act.



CWP-14466-1998 8

The authorities were bound to proceed under 1972 Act. 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 Punjab Land Reforms Act, 1972.

12. Disposed of.

(JAGMOHAN BANSAL)
JUDGE

09.09.2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No