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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15685-1993 (O&M)
Date of Decision: 12.11.2024

Joginder Singh (Deceased) through LRs

....Petitioner(s)

Versus

State of Punjab and others

....Respondents

CORAM: HON’BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amit Jain, Senior Advocate assisted by
Mr. Aryaman Thakur, Advocate
for petitioner No.1 (ii to iv).

Mr. Navneet Singh, Sr. D.A.G., Punjab.

HARSH BUNGER, J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India *inter alia* seeking a writ in the nature of Certiorari for setting aside the order dated 05.08.1993 (Annexure P-7), passed by the learned Financial Commissioner (Appeals), Punjab.

2. Briefly, the land holding of one Sh. Sardara Singh s/o Sh. Sunder Singh was subjected to proceedings as regards determination of surplus area under the Punjab Land Reforms Act, 1972, wherein Sh. Sardara Singh submitted his declaration in Form ‘A’.

2.1 The learned Collector (Agrarian), Zira vide its order dated

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18.02.1977 (Annexure P-1), declared 2.44.59 hectares of first quality land as surplus in the hands of Sh. Sardara Singh.

2.2 On an appeal filed by Sh. Sardara Singh, learned Commissioner, Ferozepur Division, Ferozepur vide order dated 31.01.1979 (Annexure P-2) remanded the matter to the learned Collector (Agrarian), Zira for fresh decision only on the point of the tenants permissible area.

2.3 Upon remand, the learned Collector (Agrarian), Zira vide its order dated 23.05.1979 (Annexure P-3) declared an area measuring 0.9564 hectares of first quality land as surplus with Sh. Sardara Singh.

3. Thereafter, vide order dated 23.05.1983 (Annexure P-4), the original petitioner in the present Writ Petition, namely Sh. Joginder Singh, was allotted land to the extent of 20 *kanals*-6 *marlas* in the revenue estate of Village Manu Chahal out of the land which was declared surplus in the hands of Sh. Sardara Singh and one Sh. Avtar Singh. The consequent mutation was also effected in the revenue record.

4. It appears that one Sh. Mehar Singh s/o Sh. Gurdial Singh, who claimed to be the grandson of the big land owner Sh. Sardara Singh, preferred an appeal before the learned Commissioner, Ferozepur, challenging the order dated 23.05.1979 (Annexure P-3), whereby only 0.9564 hectares of land was declared surplus and also order dated 23.05.1983 (Annexure P-4), whereby 20 *kanals*- 6 *marlas* was allotted to Sh. Joginder Singh, *inter alia* on the plea that there was a Civil Court decree dated 11.08.1970, whereby Sh. Sardara Singh had transferred land in his favour, therefore, the said land could not be included in surplus area of Sh. Sardara Singh.

5. The learned Commissioner (Appeals), Ferozepur Division,

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Ferozepur vide order dated 06.01.1986 (Annexure P-6) dismissed the appeal filed by Sh. Mehar Singh.

6. Thereafter, the aforesaid Mehar Singh preferred a Revision Petition (ROR No.515 of 1985-86) before the learned Financial Commissioner (Appeals), Punjab, which came to be allowed vide order dated 05.08.1993 (Annexure P-7) by holding as under:

“3. I have considered the pleas of the parties and have perused the record of the case. A fact which stands out clearly is that a part of the land which has been declared surplus with Sardara Singh along with some other land had been decreed in favour of the petitioner on 11.8.1970 i.e. before the appointed day. For this reason alone this land cannot be considered as the holding of Sardara Singh while determining the permissible area of his family under the Punjab Land Reforms Act. This decree could be ignored on grounds of being collusive in the matter of utilising the area declared surplus with Sardara Singh under the Punjab Security of Land Tenures Act. This does not appear to have been done. I have, therefore, no option but to exclude this area from the Ownership of Sardara Singh. It also appears that the Collector in passing the orders dated 23.5.1983 has completely ignored the provisions of section 9 of the Punjab Land Reforms Act and those of the Punjab utilisation of surplus area scheme 1973. The revision petition is accepted and the impugned order is quashed. The case is remanded to the Collector Agrarian Zira with the direction that he should re-assessed the surplus area of Sardara Singh in the light of the above discussion. The parties are directed to appear before him on 12.10.1993.”

7. In the aforementioned facts and circumstances, the petitioner has filed the instant Writ Petition before this Court, for the reliefs as noticed above.

8. Learned senior counsel representing the petitioner contends that

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neither before the learned Commissioner nor before the learned Financial Commissioner any Civil Court decree dated 11.08.1970 as claimed by Sh. Mehar Singh has been produced on record and therefore, there was no occasion for learned Financial Commissioner to have accepted the Revision Petition at the instance of Sh. Mehar Singh to remand the matter for reassessment of the surplus area of Sh. Sardara Singh.

8.1 It is further submitted that even if there was any such decree dated 11.08.1970, the same would have been produced by big land owner Sh. Sardara Singh at the time when the surplus area was under determination by the competent Authority, however, no such steps were taken by Sh. Sardara Singh, therefore the impugned order is unsustainable in the eyes of law.

9. On the other hand, learned State counsel, while referring to para No. 14 of the written statement filed on behalf of the State, has admitted that in fact no copy of decree was produced before the learned Commissioner (Appeals), Ferozepur or before the learned Financial Commissioner, Punjab, Chandigarh and therefore, it shall be presumed that there was no decree in favour of Sh. Mehar Singh.

10. In view of the aforesaid stand taken by the learned State counsel that no decree was produced before the learned Commissioner (Appeals), Ferozepur or before the learned Financial Commissioner (Appeals), Punjab, Chandigarh; the impugned order dated 05.08.1993 (Anneuxre P-7) is not sustainable. I also find force in the plea raised by learned senior counsel representing the petitioner that in case any such decree dated 11.08.1970 as claimed by Sh. Mehar Singh was in existence, then the same would have been put forth by the big land owner himself at the time of determination of



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surplus area. Since no such steps were taken, accordingly, no fault can be found with the determination of surplus area as carried out by the prescribed authority under the Punjab Land Reforms Act, 1972.

11. Keeping in view the aforementioned facts and circumstances, the present Writ Petition is allowed and the impugned order dated 05.08.1993 (Annexure P-7) is set aside.

12. All pending application(s), if any, shall stand closed.

12.11.2024
Himani

(HARSH BUNGER)
JUDGE

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