

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

RSA-851-1991

Date of decision: 29.02.2024

STATE OF HARYANA

..Appellant

Versus

RAM SINGH (DECEASED) THROUGH LRS & ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S. Pannu, AAG, Haryana.

Mr. V.K. Jindal, Sr. Advocate
with Mr. Akshay Jindal, Advocate
Mr. Ram Kumar Saini, Advocate
and Mr. Pankaj Gautam, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. On 31.01.2024, after hearing the learned counsel representing the parties, the following order was passed:-

“1. In this regular second appeal, the State of Haryana (defendant in the suit) assails the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for grant of decree of declaration that they are in possession of 719 kanals and 5 marlas of land and the order passed by the Collector on 13.11.1981, is illegal, null and void. 2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. 3. In the area of the State of Haryana, originally the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the 1953 Act') were applicable. The Collector vide order dated 19.12.1960, declared plaintiff no.2 to be big land owner and the land beyond permissible area was declared surplus. Subsequently, the State of Haryana enacted the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as 'the 1972 Act'). Section 33(2)(ii) of the 1972 Act provides that repeal of the 1953 Act shall not affect proceeding for determination of surplus area pending immediately before the commencement of the 1972 Act. On 13.11.1981, the Collector once again proceeded

under the 1953 Act and found that 32.37 simple acres of land is surplus area in the hands of plaintiff no.1. However, in the meantime, plaintiff no.2, son of plaintiff no.1, attained the age of majority. In the year 1976, the plaintiffs filed return under the 1972 Act and the Collector vide order dated 28.04.1977, declared that the plaintiffs are not big land owners. However, when the order passed on 13.11.1981, was sought to be implemented, the plaintiffs filed the present suit which has been decreed.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

*5. The learned counsel representing the appellant contends that as per Section 33 of the 1972 Act, the pending proceedings for determination of surplus area under the 1953 Act shall remain unaffected by the provisions of the 1972 Act. In support of his submissions, he relies upon the judgment passed in **Kirpal Singh and others Vs. Kamla Devi and others, (2020) 11 SCC 273.***

6. At this stage, the learned counsel representing the respondents (plaintiffs in the trial Court) prays for a short accommodation. This appeal is pending for the last 33 years which is required to be disposed of expeditiously. Hence, the case was ordered to be listed in the urgent list vide order dated 19.01.2024. On that day also, the case was adjourned at the request of the learned counsel representing the respondents.

7. Though, there is no justification, however, in the interest of justice, adjourned to 08.02.2024.

8. To be listed in the urgent list

9. It shall be open to the learned counsel representing the parties to file their respective synopsis containing the gist of their arguments after exchanging it amongst themselves.”

2. The learned counsel representing the parties have once again been heard.

3. The learned counsel representing the State of Haryana has submitted that the Civil Court has no jurisdiction to entertain the suit particularly when the respondent (plaintiff No.1) has already availed remedy of appeal against the order dated 19.12.1960.

4. This Court has considered the submissions of the learned counsel representing the parties.

5. It is evident that originally on 19.12.1960, the land was declared as surplus under the relevant provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the '1953 Act'). The aforesaid order was set aside by the Appellate Authority i.e. Commissioner, Hisar Division, Hisar on 09.04.1981, while directing the Collector (Surplus Area) to decide the matter afresh. As per Section 33(2)(ii) of Haryana Ceiling of Land Holding Act, 1972 (hereinafter referred to as the '1972 Act'), the repeal of the 1953 Act shall not affect proceedings for determination of surplus areas pending immediately before the commencement of the 1972 Act. Reliance in this regard can be placed on para 12 of a recent judgment passed by the Supreme Court in **Kirpal Singh and others Vs. Kamla Devi and others, (2020) 11 SCC 273**, which reads as under:-

“12. Section 33(2)(ii) thus clearly provides that repeal of 1953 Act shall not affect the proceedings for determination of surplus areas pending immediately before the commencement of 1972 Act under the provisions of 1953 Act which shall be continued and disposed of as if this Act had not been passed.”

6. As per the provisions of the 1953 Act, the vesting in the State takes place only on execution of 'kabuliyatnama' by the allottee, who has been allotted the surplus area. It is not the case of the appellant that the land, which was declared surplus was ever allotted to any deserving person.

7. This Court has also examined the order dated 23.11.1981, passed by the Collector (surplus area). It is evident that the Collector has failed to take into account that plaintiff No.2 namely Sh. Raj Roop @ Ram

Sarup had become major before November, 1981, entitling him to separate unit. This is what has been held by both the Courts below.

8. In this case, there was no subsisting order declaring the land to be part of the surplus pool on coming into force of the 1972 Act. Hence, the land belonging to the owner did not vest in the State on the appointed day under the 1972 Act. Fresh determination is required to be take place under the provisions of the 1953 Act. The question with respect to jurisdiction of the Civil Court to decide the matter in issue is covered by Five Judge Bench judgment passed in *State of Haryana and others Vs. Vinod Kumar and others, 1986 (1) PLR 222.*

9. Keeping in view the aforesaid discussion, no ground to interfere is made out with the concurrent findings of fact.

10. Dismissed accordingly.

11. All the pending miscellaneous applications, if any, are also disposed of.

February 29th, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

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