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

CWP-3897-1986

Date of Decision: 10.06.2025

Labh Singh and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. V.K. Jindal, Senior Advocate assisted by
Mr. Akshay Jindal, Advocate
for the petitioners.

Mr. Rajneesh Chadwal, AAG, Haryana.

None for respondents No.3(i) to 3(vi).

HARSH BUNGER J.

Petitioners have filed the instant writ petition under Article 226 of the Constitution of India, *inter alia*, seeking setting aside of order dated 09.03.1984 (Annexure P-3) passed by the learned Sub Divisional Officer (C)-cum-Allotment Authority, Ambala.

2. Briefly, it is claimed by the petitioners that they are the grand sons and legal representatives/successors of Sh. Paras Ram @ Parsa son of Sh. Udai Ram, resident of Village Mirzapur, Tehsil and District Ambala. It is stated that on 15.04.1953, when the Punjab Security of Land Tenure Act, 1953 (in short 'the Punjab Act') came into force, a total area equivalent to 37 standard acres and 11¼ unit stood recorded in the revenue records as the ownership of Sh. Paras Ram @ Parsa (predecessor-in-interest of petitioners). It is stated that the present petitioners were also the co-owners of the aforesaid area, although in the revenue records, the same stood in the name



of Sh. Paras Ram @ Parsa, who subsequently, transferred 10 standard acres and 13 units in the name of petitioner No.1 (Labh Singh) and others.

2.1 It appears that the proceedings under the Punjab Act were initiated against Sh. Paras Ram @ Parsa for determination of the surplus area under the Punjab Act. Vide order dated 15.06.1960 (Annexure P-1), passed by the learned Collector, Ambala, an area measuring 98 Kanal-9 Marla, equivalent to 7 standard acres and 11¼ units of Sh. Paras Ram @ Parsa in Village Mirzapur, was declared as surplus. Relevant extract of order dated 15.06.1960 (Annexure P-1) reads as under:-

“As per report of Naib Tehsildar, Ambala Shri Parsa S/o Udhe Ram of village Mirjapur possessed on 15-4-53 37 SA 11¼ U. Later he transferred land equivalent to 10 SA-13U through a gift. This transfer is, however not permissible. Shri Parsa has been summoned and his statement has been recorded. He has stated that he sold some land after 15-4-53 and now he possessed 26 SA-14 ¼ U. He has however, added that if this transfer is not allowed, fields Khasra Numbers 11/21, 22, 23, 24, 13/1, 2, 3, 4, 5, 12/5, 6/13/10, 9, 13/8 new west, 5/12/2 as reported by Naib Tehsildar measuring 98K-9M, belonging to him in village Mirjapur, he declared as surplus. Accordingly, fields Khasra Numbers given above measuring 98K-9M equivalent to 7 SA-11¼ of Shri Parsa in village Mirjapur area declared as surplus.”

2.2 Petitioners claim that while passing the aforesaid order dated 15.06.1960 (Annexure P-1), even the land which was ‘Banjar Kadim’ and ‘Gair Mumkin’, was also included, although the same was to be kept out of the consideration.

2.3 Petitioners state that subsequently the Haryana Ceiling on Land Holdings Act, 1972 (in short ‘the 1972 Act’) came into force, whereunder, every land owner was entitled to have a primary unit of 7.25 hectares and a



separate unit for his every adult son, according to which, Sh. Paras Ram @ Parsa was entitled to have a primary unit and a separate unit for his son Ishar Singh (father of petitioner).

2.4 It transpires that under the 1972 Act, an order dated 05.01.1978 (Annexure P-2) was passed by the Sub Divisional Officer (Civil)-cum-Prescribed Authority, Ambala, holding that there was no surplus area of Sh. Paras Ram @ Parsa.

2.5 It is the case of petitioners that till the death of Sh. Paras Ram @ Parsa on 04.08.1982, the land which was declared surplus under the Punjab Act, vide order dated 15.06.1960 (Annexure P-1), the same had not been utilized and consequently, when the succession to the Estate of Sh. Paras Ram @ Parsa opened, all the legal representatives, including the petitioners, became entitled to have their own primary units in terms of Section 8 of 1972 Act, however, the Sub Divisional Officer (Civil)-cum-Prescribed Authority, Ambala (exercising the powers of Collector and also the Allotment Authority under the Punjab Act as well as the 1972 Act), wrongly allotted the land comprised in Khasra Nos.13//8/1/2 (3-9), 9(8-0) and 10(8-0) in favour of respondent No.3 (Ajmer Singh), vide order dated 09.03.1984 (Annexure P-3).

3. In the aforementioned circumstances, petitioners have filed the present writ petition before this Court, seeking relief(s) as noticed hereinabove.

4. Learned counsel for the petitioners has reiterated the contentions made in the instant petition.

5. On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioners, by stating that the instant writ petition is liable to be dismissed as the petitioners have not come



to the Court with clean hands as they have concealed the material fact that the area measuring 98 K-9 M, which was declared surplus, vide order dated 15.06.1960 (Annexure P-1), under the Punjab Act, was challenged by Sh. Paras Ram @ Parsa by way of filing an appeal, which was dismissed, and ultimately, Sh. Paras Ram @ Parsa filed a writ petition (CWP-1381-1966) before this Court, which was also dismissed vide order dated 22.07.1974 (Annexure R-1). It is submitted that the order dated 15.06.1960 (Annexure P-1) declaring 'surplus area' of Sh. Paras Ram @ Parsa has attained finality up to this Court and the same having not been challenged by Sh. Paras Ram @ Parsa during his lifetime, who is stated to have expired on 04.08.1982; there is no question of any fresh determination of 'surplus area' as the area of Sh. Paras Ram @ Parsa, which was declared surplus vide order dated 15.06.1960 (Annexure P-1) under the old Act came to be vested in the State Government in terms of Section 12(3) of the 1972 Act. It is also submitted that the surplus area declared vide order dated 15.06.1960 (Annexure P-1), already stood utilized on 09.11.1977, 30.11.1977 and 09.03.1984. It is further submitted that 19K-9M area out of 98K-9M land which was declared surplus vide order dated 15.06.1960 (Annexure P-1), came to be allotted to respondent No.3 (Ajmer Singh) and even the possession was delivered to him on 10.04.1984; however, respondent No.3 was forcibly dispossessed by petitioners; whereupon, proceedings under Section 22 of the 1972 Act have already been initiated against the petitioners.

5.1 With the aforesaid submissions, learned State counsel has prayed for dismissal of the instant writ petition.

6. Heard.

7. Before dealing with the case in hand, it would be gainful to



refer to few judicial pronouncements.

7.1 In “*Jaswant Kaur v. State of Haryana*”, 1977 PLJ 230, a Full Bench of this court considered the inconsistency between Section 8 and Section 12(3) of the 1972 Act and observed as under:-

"7. Coming now to the attack based upon inconsistencies between the various provisions of the Act, it was directed almost exclusively against Section 12(3) (introduced by Act XVII of 1976), which provision, it was said was in conflict with Section 4(1) and Section 8 of the Act. Section 4(1) provides for the determination of permissible area in relation to a landowner as well as a tenant. Section 8 has the effect of saving certain transfers from the operation of the Act. It is useful to extract the whole of Section 8(1). It is as follows :-

*"8. Certain transfers or dispositions not to effect surplus area. -
(1) Save in the case of land acquired by the Union Government or State Government under any law for the time being in force or by a tenant under the Pepsu Law or the Punjab Law or by an heir by inheritance, no transfer or disposition of land in excess of :-*

(a) the permissible area under the Pepsu Law or the Punjab Law after the 30th day of July, 1958 and

(b) the permissible area under this Act, except a bona fide transfer or disposition, after the appointed day,

shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer :

Provided that any person who has received an advantage under such transfer or disposition of land shall be bound to restore it, or to pay compensation for it to the person from whom he received it."

Section 12(1) provides that the surplus area of a landowner shall be deemed to have been acquired by the State Government for a public purpose from the date on which it is declared as such and that all rights, title or interest of all persons in such area shall stand



extinguished, all such rights vesting in the State Government free from encumbrances. Section 12(2) provides that the right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished. Section 12(3) against which, as we said, the attack was concentrated is as follows :-

"The area declared surplus or tenant's permissible area under the Punjab Law and the area declared surplus under the Pepsu Law which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared in pending proceedings to be decided under the Punjab Law or Pepsu Law shall be deemed to have vested in the State Government with effect from the date of such declaration".

The submission of the learned counsel was that there was glaring inconsistency between Section 12(3) and the two earlier provisions of Section 12(1) and Section 8. It was said that while Section 4(1) provided for the determination of the permissible area of the tenant also, Section 12(3) prescribed that the tenant's permissible area under the Punjab Law which had not so far vested in the Government shall be deemed to have vested in the State Government with effect from the appointed day. The argument was if the land vested in the Government what was the point of determining a tenant's permissible area under the Act ? It was again said that while Section 8 saved certain transfers from the operation of the Act, Section 12(3) made no such exception in favour of those transfers. For example; it was said that land which was declared surplus under the Punjab Security of Land Tenures Act but which was unutilized and later acquired by the Central Government would vest under Section 12(3) in the State Government notwithstanding the acquisition by the Central Government. Similarly, land purchased by a tenant under the provisions of Section 18 of the Punjab Security of Land Tenures Act would vest in the State Government under Section 12(3) notwithstanding the purchase by the tenant. So also, in the case of transfers by inheritance. Even transfers made before 20th July, 1958 (the date mentioned in Section 8(1)(a), it was argued, would not be



saved if they were made after the declaration of surplus area or tenant's permissible area under the Punjab Security of Land Tenures Act.

8. The provisions of Sections 4 and 8, particularly Section 8; on first impression to be inconsistent with the provisions of Section 12(3) but, as we said earlier, it is our first duty to seek to avoid conflict by endeavouring to harmonise and reconcile every part so that each shall be effective. A closer and critical examination of the provisions shows that they are not irreconcilable and all of them fit well into the general scheme of the Act. Section 8 has not been repealed expressly, by Section 12(3) of the Act, nor can it be said, in the view that we are taking, that it was repealed by necessary implication. Section 12(3) was introduced by way of amendment by Act XVII of 1976. By Section 1(2) of the Amending Act, it is deemed to have come into force on 23rd December, 1972. A harmonious way of construing Sections 8 and 12(3) would be to give full effect to Section 8(1) upto 23rd December, 1972, that is to say, to exclude from the operation of Section 12(3), the transfers made upto 23rd December, 1972 which are protected by Section 8(1) of the Act, namely, (1) acquisition of land by the State or Central Government, (2) acquisition by a tenant under the Pepsu Law or the Punjab Law, or (3) acquisition by an heir by inheritance. Other transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law would be protected if the transfers were made prior to 30th July, 1958. We see no reason why Sections 8 and 12(3) should not be construed in this harmonious manner so as to give effect to both the provisions. We find from the instructions issued from time to time that the Government has also construed the provisions in a similar manner. In Memo No. 5726-AR (IA)-76/28819, dated 15th September, 1976, addressed by the Financial Commissioner and the Secretary to Government, Haryana, Revenue Department, to the Commissioners of the Ambala and Hissar Divisions etc., it is said :-

"The surplus area already purchased by the eligible tenants/ Persons under Section 18 of the Punjab Law and Section 22 of the Pepsu Law should be considered to have been lawfully



utilised and should not, therefore, be vested in the State Government under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. Only such unutilized surplus area which was not purchased by the eligible tenants/persons under the Punjab Law or Pepsu Law should be deemed to have been vested in the State Government from the appointed day under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, and may be mutated in favour of the State Government immediately and necessary action to allot such area to the eligible persons may be taken in accordance with the provisions of the Utilisation of Surplus and Other Areas Scheme, 1976."

Again in Memo No. 6632-AR(II)-76/33309, dated 29th October, 1976, it is said :-

"It has come to the notice of the Government that there is some lack of understanding in correctly interpreting the provisions of Section 8 and Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. In this regard it is clarified that Section 8 of the Haryana Ceiling on Land Holdings Act, 1972, inter alia prohibits transfers and dispositions of land in excess of the permissible area under the old Acts made after the 30th July, 1958. Therefore, transfers or dispositions of surplus area under the Punjab Law or the Pepsu Law made before the 30th July, 1958 stand regularised by law or in other words they would affect the surplus pool. As a result of this, the surplus area which had been transferred or disposed of by the landowners before 30th July, 1958, shall not vest in the State Government under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, and, therefore, such area cannot be utilised in accordance with the Utilisation of Surplus and Other Areas Scheme, 1976."

9. Shri Nanbat Singh, the learned Assistant Advocate General, also agreed that we should harmonise Section 8 and Section 12(3) in the manner that we have done but he suggested that the date upto which transfers of the three categories specified by us earlier as (1), (2) and (3) should be recognised, should be the appointed day (24th January,



1971) and not the date on which Section 12(3) came into force. We do not agree. Section 1(2) of Act XVII of 1976 expressly provides that the Act shall come into force on 23rd December, 1972. We must give some meaning and effect to it. In our view, the effect of Section 12(3) coming into force from 23rd December, 1972 on Section 8 is that transfers of the three categories specified by us made upto 23rd December, 1972 would be excluded from the operation of Section 12(3), that transfers of land in excess of the permissible area under the Punjab or Pepsu Law would be protected, if made before 30th July, 1958 and that all other land not excepted by Section 8 would vest in the State Government with effect from the appointed day.

10. We may mention here that though under Section 8, transfers out of surplus area declared under the Punjab Law are recognised upto 30th July, 1958 only, the Government by means of executive instructions have recognised, subject to certain conditions being fulfilled, transfers upto 15th April, 1966. Memo No. 5726-AR (LA)76/28819, dated 15th September, 1976 may be referred to in this connection.

11. In regard to the supposed conflict between Section 4 and Section 12(3), an examination of the other provisions of the Act would show that there is no conflict in truth and substance. Section 15(1) declares that the surplus area acquired or vested under Section 12 shall be at the disposal of the State Government. Section 15(2) enjoins a duty upon the State Government to frame a scheme for utilising the surplus area by allotment of land to various categories of persons which include tenants. The proviso to Section 15(2) expressly provides for the allotment of land to various categories of tenants.....”

7.2 The Hon'ble Supreme Court in **“Bhagwanti Devi and another v. State of Haryana and another”**, 1994(3) RRR 115 : 1994 PLJ 245, while considering the question of vesting of surplus area declared under the Punjab Act, held as follows :-

"However, it does not appear that the surplus area declared under the Punjab Law should be reopened and recomputed under 1972 Haryana Act. No such express provision was engrafted in 1972 Act.



Though the family of the appellants have swelled and some of the minors have become majors, the appellants are not entitled to have the surplus area which had become final reopened for re-computation under the 1972 Haryana Act. Thus considered, we find that the High Court was fully justified in dismissing the writ petitions. The appeals are, therefore, dismissed, but without costs."

7.3 In "**Amar Singh and others v. Ajmer Singh and others**", 1994 **Suppl.(3) SCC 213**, while considering the question of reopening of surplus area declared under the Punjab Act, after the enactment of the Haryana Act, the Hon'ble Supreme Court held as follows :-

*"Learned counsel for Ajmer Singh-respondent has contended that although the surplus proceedings against Maru Ram were finalised in the year 1961/1962 but the possession of the surplus land remained with Ajmer Singh-respondent, till 1981 when the same was handed over to the appellant. Simply because the surplus land declared under the Punjab Act was not utilised and it remained in possession of Ajmer Singh-respondent would not make any difference so far as the position in law is concerned. The language of Section [12\(3\)](#) is unequivocal and clear. According to it the surplus land declared under the Punjab Act stood vested in the State. The non-utilisation of surplus land till the date of vesting (23.12.1972) is of no consequence and makes no difference. The view we have taken is supported by the judgement of this Court in **Bhagwanti Devi v. State of Haryana, 1994 PLJ 245 SC**. We, therefore, allow the appeal, set aside the impugned judgement of learned Single Judge of the High Court dated 23.9.1987 and also the order of the Letters Patent Bench dated 3.11.1987. Civil Writ Petition No. 163 of 1986 filed by Ajmer Singh in the High Court stands dismissed. The appellant shall be entitled to his costs which we quantify as Rs. 11,000/-. Costs to be paid by respondent-Ajmer Singh."*

7.4 A Division Bench of this Court in "**Dharam Pal and others v. State of Haryana and others**", 2002(2) **RCR (Civil) 37 : 2002(1) PLJ 188** by relying upon the aforementioned judgement and after considering the



provisions of Section 8(1)(a) and 12(3) of the Haryana Act, held that proceedings which have attained finality under the Punjab Act, cannot be reopened by taking benefit of the Haryana Act. Section 8(1)(a) of the Haryana Act, would not, therefore, entitle a land owner to pray for reopening of an order of surplus area, passed under the Punjab Act.

8. Coming to the case in hand, there is no dispute about the fact that 98K-9M land of Sh. Paras Ram (predecessor-in-interest of the petitioners) was declared as "Surplus" under the Punjab Act and the said declaration attained finality up to this Court vide order dated 22.07.1974 passed in CWP No. 1381 of 1966. The relevant extract of which reads as under:-

“ After giving my thoughtful consideration to the entire matter, I am of the view that there is considerable force in the contention of the learned counsel for the respondents. In the year 1960 when the matter was taken up by the Collector, the petitioner did not claim the benefit of the area which was banjar qadim and ghair mumkin. After the passing of the order of the Collector, the petitioner filed two appeals, one after the other, which were dismissed by the Commissioner. Then after the pronouncement of the judgment in Nemi Chand Jain V. The Financial Commissioner, Punjab and another, 1964 P.L.R. 218, the petitioner thought of challenging the legality of the order of the Collector by filing a third appeal before the Commissioner, which was dismissed on this ground, also that it was barred by limitation. In my view, the learned Commissioner was justified in not permitting the petitioner to raise the point that the land which was Banjar Qadim and Ghair mumkin should not have been taken into consideration at the time of the declaration of the surplus area as the third appeal that was filed against the order of the Collector, did not lie and was hopelessly time barred.



Similarly, the Financial Commissioner was fully justified in refusing to exercise the jurisdiction vested in him in favour of the petitioner in revision.

Mr. Mittal, learned counsel for the petitioner, submits that the petitioner is still in possession of the land and as such this court should grant the relief to the petitioner in view of the settled proposition of law that banjar qadim and ghair mumkin land has to be excluded while declaring surplus area. Every case has to be excluded while declaring surplus area. Every case has to be judged on its own facts. The petitioner did not take up the position before the Collector that the banjar qadim and ghair mumkin and could not be taken into consideration while declaring the surplus area. He raised this point for the first time in his third appeal before the Commissioner, which was rightly dismissed on the ground that the same did not be and was hopeless barred by time. In this view of the matter, I find no reason to interfere with the impugned orders.

No other point is urged.

For the reasons recorded above, this petition fails and is dismissed, but in the circumstances of the case, I make no order as to costs.”

8.1 It is also not disputed that Sh. Paras Ram remained alive up to 04.08.1982 and the aforesaid declaration of surplus area made by this Court vide order dated 22.07.1974 was never questioned by him.

9. Now, as per section 12(3) of the 1972 Act, the area declared surplus or tenant's permissible area under the Punjab law and the area declared surplus under the Pepsu law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab law or the Pepsu law after the appointed day shall be deemed to have vested in the State Government with effect from the date of

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such declaration.

10. Thus, the surplus area determined vide order dated 15.06.1960 (Annexure P-1) under the Punjab Act, attained conclusivity by virtue of the order dated 22.07.1974 (Annexure R-1) passed in CWP No. 1381 of 1966 and the said land shall be deemed to have vested in the State Government in terms of Section 12(3) of the 1972 Act.

11. Concededly, since Sh. Paras Ram expired on 04.08.1982, i.e. much after the passing of order dated 22.07.1974 (Annexure R-1) in CWP No.1381 of 1966, there is no question of any inheritance being opened while the proceedings of determination of 'surplus area' were pending under the Punjab Act. Resultantly, the petitioners have no right to claim relief in terms of Section 8 of the 1972 Act.

12. Further, upon vesting of the aforesaid 98K-9M surplus land in the State of Haryana in terms of Section 12(3) of 1972 Act; it became available for allotment under the Utilisation Scheme. The Allotment Authority, Ambala, therefore, was well within its jurisdiction, in proceeding to allot the land in favour of respondent No.3 vide impugned order dated 09.03.1984 (Annexure P-3) and the same is accordingly, maintained.

13. Resultantly, the instant writ petition fails and the same is accordingly, dismissed.

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

10.06.2025*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No