



RSA-438-1995 (O&M)

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

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Judgment reserved on 12.11.2025

Judgment pronounced on 30.01.2026

STATE OF HARYANA

... APPELLANT

VERSUS

CHANDER BHAN

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Abhinav Mahant, AAG, Haryana.

Mr. Nischal Chetanya Manchanda, Advocate
for the respondents.

PARMOD GOYAL, J.

1. The State of Haryana, being aggrieved by the judgment and decree dated 07.02.1992 passed by the learned Additional Senior Sub Judge, Bahadurgarh, and the judgment and decree dated 15.09.1994 passed by the learned Additional District Judge, Rohtak, has filed the present Regular Second Appeal. Vide judgment and decree dated 07.02.1992, the suit filed by the plaintiff Chander Bhan for declaration and permanent injunction was decreed, and the first appeal preferred by the appellant–State was dismissed.

2. The gist of the facts, on the basis of which the plaintiff claimed declaration and permanent injunction, is that the plaintiff and one Daya Kaur, widow of Sukh Lal, were owners in possession of agricultural land fully described in the plaint. The Collector, Jhajjar, vide order dated 23.10.1959, had declared 4 standard acres and 12½ units of land belonging to the plaintiff and

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Daya Kaur as surplus under the Punjab Security of Land Tenures Act, 1953. Thereafter, consolidation took place in the village in the year 1959; however, the area allotted to the plaintiff and Daya Kaur was substantially reduced after consolidation, and the land was not utilized up to the consolidation operations. The land comprised in Rectangle and Killa Nos. 32/14, 15, 16, 17, 18, 19/1, 23, 24, 25; 13/21, 22, 23; 25/1, 2; and 54/20, 21, measuring in total 110 kanals and 18 marlas, situated in the revenue estate of village Chhudani, was allotted to the plaintiff and Daya Kaur.

3. It is the case of the plaintiff that he was never given any opportunity to select the permissible area after consolidation, which was mandatory under the law. It was asserted that Mutation No. 2025 dated 12.07.1978 was recorded after the consolidation proceedings in favour of the defendant–State, which is totally illegal, void, and not binding upon the rights of the plaintiff and the said Daya Kaur. The plaintiff also claimed to have inherited the share of Daya Kaur upon her death. Accordingly, the plaintiff claimed his right as owner in possession over the suit land and sought a declaration that the order dated 23.10.1959 passed by the Collector, Jhajjar, and Mutation No. 2025 dated 12.07.1978 are illegal, void, without jurisdiction, and not binding on his rights.

4. The factum of ownership, declaration of surplus land, and consolidation were not denied by the defendant–State. It was, however, asserted that after consolidation, the plaintiff was given full opportunity to select the permissible area. It was further pleaded that the plaintiff and Daya Kaur had duly handed over the land declared surplus on 10.10.1968, for which Mutation No. 2025 was sanctioned. That the order of the Collector dated 23.10.1959 and Mutation No. 2025 are legal and binding upon the plaintiff. It was further

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pleaded that after consolidation, the land (mentioned in para 4 of the plaint) was allotted to the plaintiff and that he had obtained possession thereof, whereas the land in dispute had vested in the Haryana Government in accordance with law. It was also asserted that subsequently the said land was allotted to allottees vide order dated 24.11.1977. The Civil Writ Petition No. 3228 of 1978 as well as SLP No. 1611 of 1989 before the Hon'ble Supreme Court were dismissed vide orders dated 09.11.1978 and 11.01.1982, respectively.

5. From the pleadings of the parties, the following issues were framed:

- “1. Whether plaintiff is owner in possession of the property in dispute as alleged in the plaint? OPP.*
- 2. Whether mutation no. 2025 dated 12.7.1978 is illegal, void honest and without jurisdiction and not binding upon the right of the plaintiff ? OPP.*
- 3. Whether the suit of the plaintiff is time barred? OPD.*
- 4. Whether the suit has not been properly valued for the purposes of court fee? OPD.*
- 5. Whether the suit is barred under Section 25 of the Punjab Security of Land Tenure Act and Section 26 of Haryana Celling on land holding Act 1972? OPD.*
- 6. Whether plaintiff has no locus standi to file the suit? OPD.*
- 7. Whether the suit is not maintain able ? OPD.*
- 8. Whether the suit is bad for mis-joinder and non-joinder of necessary party ? OPD.*
- 9. Relief.”*

6. Facts in present case are not in dispute. Land in the hands of plaintiff and Daya Kaur was declared surplus by competent authority vide order dated 23.10.1959. Consolidation of land proceedings took place in village in 1959. Possession of land as per case of State was not taken prior to 10.10.1968

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as possession was handed over by plaintiff- respondent on 10.10.1968. Though this assertion is being denied by plaintiff who are claiming possession till date. It is also not in dispute that at the time of consolidation new khasra Nos. were allotted to plaintiff of which plaintiff had taken possession, however, said allotment after consolidation was less than permissible area allowed to plaintiff and Daya Kaur vide order date 23.10.1959. However, it is the common case that this area was never utilised as such and continued to be in the possession of the petitioner till 10.10.1968, whereas consolidation proceedings commenced and concluded in village with regard to his holding in year 1959. Therefore, on day when consolidation took place land was not utilised. Further, both the courts after appreciation of evidence led by both the sides have concluded that no notice of consolidation to choose permissible area was given to plaintiff.

7. Concurrent finding of fact recorded by both the courts below goes to show that defendant- appellant State has failed to rebut assertion of plaintiff that no notice of consolidation proceedings was ever given. The finding of fact recorded by courts below could not be shown to be perverse by Ld. State Counsel. Perusal of evidence of PW-1 (plaintiff) shows that he had duly asserted that prior to consolidation, plaintiff and Daya kaur had 1086 kanal 15 marlas land which was reduced by 27 kanals 9 marlas after consolidation as they were allotted only 1059 kanal 6 marla and no notice to choose permissible area was given. DW Ram Kishan Patwari has admitted that in his records no notice under section 24 A (2) was available. Therefore, both the courts have rightly held that no notice was given to plaintiff land owner to select permissible area u/s 24 A (2) at the time of consolidation.

8. Section 24 A of Punjab Security of Land Tenures Act, 1953 is



reproduced for ready reference:-

24-A. Power to separate share of landowners in joint lands. - (1)

Where a landowner owns land jointly with other landowners and his share of such land or part thereof, as ascertained from the record of rights, has been or is to be declared as surplus area, the officer competent to declare such area, or, where such area has been declared, the officer competent to utilize it, may on his own motion, after summary enquiry and affording to the persons interested in such land an opportunity of being heard, separate his share of such land or part thereof in the land owned by him jointly with other landowners

(2) Where after the declaration of the surplus area of any person and before the utilization thereof, his land has been subjected to the process of consolidation, the officers referred to in sub-section (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation.]

9. Actual dispute in present case is not regarding declaration of surplus area but effect of consolidation on land already declared permissible area qua the rights of landowner. Admittedly in present case area owned by the landowner was declared surplus area, thereafter consolidation proceedings had taken place in the village. Permissible area was reduced on account of consolidation of land holdings. The case of respondents-plaintiff is that at the time of allotment of land during consolidation, the consolidation authorities ought to have served landowner with notice in order to give option to choose permissible area while allotting permissible area after consolidation. It is the case of plaintiff respondents that no such opportunity was given as no notice was issued.



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10. Issue in present case is whether landowner would be entitled to claim that new area be taken into consideration for determining his permissible area on diminution of area due to consolidation before the surplus area proceedings are completed. This issue is not res-integra. Full Bench of this court in **Harchand Singh Vs. The Collector, Agrarian, Bhatinda**, 1979 AIR Punjab 129 had held as under:

“5. Now it deserves highlighting that within this Court there is a long time of unbroken precedent that in case of the diminution of an area of a landowner due to consolidation before the surplus area proceedings are completed and finalized, he would be entitled to claim that his new area be taken into consideration for determining his permissible area and not that held by him prior to the consideration. This was apparently so held by Harbans Singh, J. (as he then was) in *Bachan Singh and another v. The Financial Commissioner, Punjab*, C.W.P. No. 1366 of 1962, decided on the 14th of February, 1963. This view found favour with H.R. Khanna, J. (as his lordship then was) in *Maghar Singh v. State of Punjab and another*, 1964 PLJ 155, and it was observed as follows:-

"Perusal of the different provisions of the Act goes to show that the occasion for the declaration of the surplus area would arise only if a landowner holds land in excess of the permissible limit. Further, it is plain that it is only the area which is in excess of the permissible limit that can be declared to be surplus. In case the proceedings under the Act are still pending and in the meanwhile as a result of consolidation proceedings the total area to which a landowner becomes entitled, is less than the area previously held by him, it is, in my opinion, that new area which should be taken into consideration and not the area which was held by him before the consolidation. There is nothing in the Act which prohibits the Collector from taking into account the reduction brought about in



the area held by a landowner by consolidation. The Act in question is a piece of legislation which results in expropriation and as such its provision should be construed strictly, and unless a case falls within the express provisions of the Act the benefit must go in favour of the landowner."

The judgment aforesaid was subjected to appeal and the Letters Patent Bench in State of Punjab and another v. Maghar Singh, 1969 PLJ 323, reaffirmed the ratio thereof with even greater vigour.

Equally it deserves notice that an identical view has been taken by A.N. Grover, J., in the case titled as Amar Singh v. The State of Punjab and others, 1966 PLJ 81, and Narula J. (as he then was) in Bhag Singh Vs. The State of Punjab and another, 1966 PLJ 238. In Jang Singh Vs. The State of Punjab, 1970 PLJ 93, to which I was a party, the writ petition was directly admitted to a hearing by the Division Bench which categorically expressed its agreement with the enunciation of the law by the Court earlier and allowed the petition in accordance therewith.

I must confess that we have not had the benefit of any serious debate on the point. Learned counsel for the petitioner inevitably relied on the catena of judgments noticed above and canvassed for their affirmance. What deserves notice, however, is that Mr. Syal appearing for the respondent-State frankly conceded his inability to challenge the correctness of the view enunciated therein and fairly stated that there was no single judgment to the contrary. Indeed, he ultimately himself took the stand that no flaw in the impeccable reasoning of the Single Bench and Division Bench judgments was discernible which could possibly merit any reconsideration. Nor can one fall to recall that the land reforms and agrarian legislation after independence was initiated by the Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955 in the two States of Punjab and Haryana. The settled view of this Court with regard to surplus area



under both these provisions in the context of consolidation proceedings has held the field without a discordant note. In the aforesaid context, we are unable to discern any reason whatsoever to deviate from the string of authorities on the point. Apart from a passing observation, the learned Judges of the Division Bench making the reference have not adequately indicated their reasons for the vacillating doubt raised therein. It appears that the matter was not adequately indicated their reasons for the vacillating doubt raised therein. It appears that the matter was not adequately canvassed before their lordships nor have they adverted in detail to the authorities noticed by them or sought to repel the reasoning thereof. With respect we are unable to hold that the settled view of this Court on the point calls for any reconsideration or deviation therefrom. We would, therefore, reaffirm the reasoning and the ratio of the judgments noticed above.

Coming to the second aspect of the case, it again appears that both the sides took the stands that the present case is not a matter of redetermination of the surplus area afresh either under the Pepsu Tenancy and Agricultural Lands Act, 1955 or the Punjab Land Reforms Act, 1972. The common stand taken was that in essence the matter now is the separation of the surplus area from the permissible area after the process of consolidation has taken place. In this context what calls for pointed notice are the provisions of sub-section (2) of section 32-MM of the Pepsu Tenancy and Agricultural Lands Act, 1955, which are as under :-

*"(1) * * * **

(2) Where, after the declaration of the surplus area of any person and before the utilisation thereof, his land has been subjected to the process of consolidation, the officers referred to in sub-section (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation."

It is not in dispute that analogous, if not identical, provisions thereto exist in section 24-A(2) of the Punjab Security of Land



Tenures Act, 1953 and Section 13(2) of the Punjab Land Reforms Act, 1972. A bare reference to these provisions would show that the authorities thereunder are entitled to separate the surplus area out of the area of land allotted to the landowner after the process of consolidation. This indeed, is what is required to be done in the present case as well and not a redetermination of the surplus area as such. Consequently, in our view the question whether the question whether the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955, or the Punjab Lands Act, 1955, or the Punjab Land Reforms Act, 1972, would govern the redetermination of the surplus area does not fall for determination here and, the more so, because of the common stand taken by the parties on this issue.”

11. Present case is squarely covered by above judgment of Full Bench of this court. Therefore, in present case landowner – plaintiff was entitled to choose permissible area at the time of consolidation as land was not utilised till 1968 whereas consolidation had taken place in 1959. This opportunity was not afforded to him. In absence of any opportunity to landowner, he is entitled to make good of land which was allowed as permissible area. However, this would not be redetermination of the surplus area. Again in **Gurpal Singh Vs. State of Punjab**, (Punjab & Haryana) : (2024) NCP PHHC 115771 wherein it was held that proceedings under Section 24-A of the 1953 Act, are not for declaring surplus area in the hands of a person but to separate surplus area of a person out of the area obtained by him after consolidation operation in the village. Therefore, there is no occasion for re-determination of surplus area of plaintiff.

12. Accordingly, appeal preferred by State is partly allowed. It is held that though landowner – plaintiff will be entitled to choose permissible area for

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redetermination of surplus area / permissible area so declared vide order date 23.10.1959. Out of available land State would allow plaintiff to make good land if any deducted in consolidation proceedings towards permissible area so determined vide order date 23.10.1959 and remaining land declared surplus on 23.10.1959 shall vest in state / allottees. The impugned judgments are modified to above extent. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

30.01.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No