



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

223(1)

**RSA-1448-2000 (O&M)
Reserved on :23.03.2026
Pronounced on :15.05.2026**

STATE OF HARYANA AND OTHERS

...APPELLANTS

VERSUS

SHYAME

...RESPONDENT

223(2)**RSA-2343-2000 (O&M)**

NAWABUDDIN AND OTHERS

...APPELLANTS

VERSUS

KUMEDDIN AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Abhinav Mahant, Asst. A.G., Haryana
for appellant in RSA No.1448 of 2000.

Mr. Saurabh Garg, Advocate
for appellant in RSA No.2343 of 2000.

Mr. Piyush Aggarwal, Advocate
for respondents in both appeals.

PARMOD GOYAL, J.

Present regular second appeals have been preferred by appellants-defendants being aggrieved by judgment dated 18.04.1995 passed by learned Additional Senior Sub Judge, Nuh, whereby suit for declaration with permanent injunction preferred by respondent-plaintiff was decreed and by judgment and decree dated 01.10.1999 passed by learned District Judge, Gurguram, whereby first appeal preferred by appellants-defendants was dismissed. Since the dispute involved in both the appeals is identical, they are being decided by way of this common judgment. For the sake of reference, the facts, albeit briefly, are being taken from RSA No. 1448 of

2000 titled “*State of Haryana and Others Vs. Shyame.*”

2. Appellants have challenged findings recorded by learned Courts below that order dated 21.08.1969 passed by Surplus-cum-Agrarian Collector declaring land as surplus in the hands of landowner was *void ab initio* as same was against the provisions of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as ‘**1953 Act**’) and that challenge to order dated 21.08.1969 by way of suit filed on 28.10.1986 is maintainable and not barred by limitation.

3. It is argued that learned Courts below have erred in giving above-noted findings without considering evidence available on record. Reference has been made to affidavit/application made by respondent-plaintiff-landowner before the Collector on 21.08.1969 choosing his permissible area and it is argued that once the respondent-plaintiff-landowner himself had chosen his permissible area, he is estopped from denying the same and choice made by him before the Collector before passing of order dated 21.08.1969 is binding and therefore the conclusion drawn by the learned Courts below is erroneous and perverse.

4. Learned counsel for respondent-plaintiff on the other hand has argued that on appointed date i.e. 15.04.1953, respondent-plaintiff was not big land owner in view of definition of land under Section 8 of 1953 Act. It is asserted that land under the tenants, under mortgage or land which is *Banjar Kadim, Banjar Jadi* and *Gair Mumkin* cannot be taken into

consideration and has to be excluded while determining surplus land. Whereas Surplus-cum-Agrarian Collector while passing order dated 21.08.1969 had erred by including such land and on the basis of inclusion of such land, respondent-plaintiff-land owner was declared big landowner. Wrong inclusion of areas against the mandate of 1953 Act makes the order dated 21.08.1969 *void ab initio* and *null* as same was against the specific provisions of 1953 Act.

5. In present case, both the Courts below have duly noted evidence led by respondent-plaintiff in the shape of Ex.P1 to P4, revenue records i.e. is *Goshwara* and *Jamabandi* pertaining to the land owned by respondent-plaintiff. It is the case of respondent-plaintiff that he owned land in three villages namely Sanghel, Jajuka and Partap Nagar. At village Sanghel, respondent-plaintiff had 92 bighas 03 biswas in his name at village Jajuka, he had 27 bighas and 16-1/2 biswas of land and at village Pratap Nagar, he had 09 bighas of land in his name. The Surplus-cum-Agrarian Collector vide order dated 21.08.1969 had taken the entire land in consideration and had concluded that respondent-plaintiff was in possession of 39 standard acres 12-1/2 units of land and had accordingly allowed 25 standard acres as permissible area and had declared 14 standard acres 12-1/2 units of land as surplus land.

6. It is also not in doubt, as is clearly made out by pleadings and evidence of both the parties that initially no declaration was made by land owner under Section 5-A of 1953 Act disclosing land under him to be

surplus. It was in 1969 for the first time, when a show cause notice dated 24.07.1969 was issued to respondent-plaintiff by the revenue authorities under Section 5-C of 1953 Act, respondent-plaintiff had admitted having concealed his land from being declared surplus. Since order dated 21.08.1969 was passed under Section 5-C of 1953 Act, the Collector had imposed a penalty of 05 standard acres and had allowed only 25 standard acres as permissible area to the respondent-plaintiff and had declared 14 standard acres 12-1/2 units of land as surplus area.

7. On one hand, respondent-plaintiff are claiming that determination of surplus area by Collector vide order dated 21.08.1969 is against the provisions of 1953 Act and therefore is *void ab initio* and *null*. On the other hand, it is the case of appellants-defendants that since respondent-plaintiff himself had chosen his permissible area by filing an affidavit, therefore, he is estopped from challenging the said order dated 21.08.1969.

8. Both the learned Courts have rightly concluded that act of filing affidavit by respondent-plaintiff landowner cannot operate as estoppel against rights of respondent-plaintiff. It is the primary duty of authorities to pass an order in line with provisions of statute under which authorities are exercising their powers. Therefore, the question that arises is that whether the order passed by Collector has been in accordance with provisions of 1953 Act or there was patent violation of the said Act.

9. As noted above, respondent-plaintiff had land in three villages namely Sanghel, Jajuka and Partap Nagar. At village Sanghel, respondent-plaintiff had 92 bighas 03 biswas in his name at village Jajuka, he had 27 bighas and 16-1/2 biswas of land and at village Pratap Nagar, he had 09 bighas of land in his name. In order to prove nature of land noted above, respondent-plaintiff had duly examined Om Parkash, Patwari Halqua Sanghel as PW-1, who had duly proved *Goshawara* and *Jamabandis* as Ex.P1 to P4 pertaining to land comprised in revenue estate of three villages namely, Sanghel, Jajuka and Partap Nagar.

10. On the other hand, it was the claim of appellants-defendants that the land was declared surplus on the report made by Patwari, however said report was not adduced in evidence before the learned Courts below. Therefore, the only material available on record is *Goshawari* and *Jamabandis* pertaining to land owned by respondent-plaintiff as on 15.04.1953, the appointed date when the right over land had crystallized. It is, therefore, to be seen whether on 15.04.1953, respondent-plaintiff was a big landowner or his land holding were within permissible limits.

11. As far as *Banjar Kadim*, *Banjar Jadi* and *Gair Mumkin* land are concerned, they do not fall within the purview of law defined under Section 2(8) of 1953 Act. Perusal of Section 2(8) of 1953 Act shows that land therein has been assigned the same meaning as in Punjab Tenancy Act 1987 (hereinafter referred to as '**1887 Act**'). Section 4(1) of 1887 Act has defined land as land which is not occupied as the site of any building in a town or

village and is occupied or has been left for agricultural purposes or for purposes subservient to agriculture or for pasture and includes the sites of building and other structures on such land. The provisions of Section 2(8) of 1953 Act read with Section 4(1) of 1887 Act was duly considered by Hon'ble Supreme Court in **Munshi Ram Vs. Financial Commissioner, Haryana**, 1979 PLJ 182 and **Ajmer Singh Vs. State of Haryana**, 1990(1) SCC 227. The Apex Court had held that *Banjar Kadim* and *Banjar Jadi* lands cannot be taken into account while calculating surplus area under the Act because not being occupied or let for agricultural purposes or for purposes subservient to agriculture. They were specifically found to be not covered by provision of Section 2(8) of 1953 Act, therefore, could not have been included in determination of surplus area.

12. Therefore, in present case, *Banjar Kadim*, *Banjar Jadi* and *Gair Mumkin* land could not have been included for determining surplus land by Collector while passing order dated 21.08.1969. No attempt was made to exclude such land by Collector while passing order dated 21.08.1969.

13. I am also in agreement with plea raised by learned counsel for respondent-plaintiff that in present case before imposition of penalty of 05 acres under the provisions of Section 5-C of 1953 Act, no notice for imposition of such penalty was given to landowner and therefore same was in violation of principles of natural justice. Notice issued under Section 5-C of 1953 Act was only for determination of surplus area and not for penalty.

Therefore, in present case penalty of 05 acres of land of permissible area as

imposed by Collector vide his order dated 21.08.1969 cannot be sustained as same is in violation of principles of natural justice and is *void ab initio*. In **Santa Singh Vs. State of Punjab and Ors.**, 1969 PLJ 547, it was held that notice regarding proceedings for surplus area is not a notice for imposing penalty. It was further held that before reduction in permissible area notice regarding penalty is mandatory requirement.

14. Therefore, in view of non-exclusion of land which was *Gair Mumkin* or *Banjar Kadim* as well as imposition of penalty without notice makes order dated 21.08.1969, declaring land surplus, liable to be set aside being *void ab initio*. There is breach of principles of natural justice while passing order dated 21.08.1969 and same is in violation of specific provisions of 1953 Act which excludes *Gair Mumkin* and *Banjar Kadim* land from its operation. From evidence led by respondent-plaintiff i.e. Ex.P1 to Ex.P4, it is clearly made out that large chunk of land was either *Gair Mumkin* or *Banjar Kadim* and was to be excluded for determination of surplus area in the hands of respondent-plaintiff. In village Sanghel, respondent-plaintiff had 92 bighas 03 biswas of land out of which 20 bighas 11 biswas was *banjar kadim* and 05 biswas of land was *gair mumkin*. Similarly in village Jajuka, respondent-plaintiff had 27 bighas and 16 ½ biswas of land out of which 09 bighas and 11 ½ biswas of land was *banjar kadim*, whereas in village Partap Nagar 08 bighas of land was *banjar kadim*. However, the land was wrongly included for determination of surplus area. In view of above noted facts duly proved by way of evidence, it is clearly made out that both the Courts have rightly come to conclusion that order

dated 21.08.1969 was liable to be set aside being *void ab initio* and against principles of natural justice as well as provisions of 1953 Act. However, the relief granted by Courts below needs to be modified as by setting aside order dated 21.08.1969, the determination of surplus area cannot come to an end. The same cannot be determined by Civil Courts and the matter needs to be re-appreciated by authorities and surplus area needs to be determined as per entitlement of landowner and accordingly while upholding setting aside of impugned order dated 21.08.1969, it is held that authority shall be free to determine surplus area in the hands of landowner in accordance with law after giving notice to all concerned as per provisions of 1953 Act/Haryana Ceiling on Land Holding Act, 1972.

- 15. Present appeals are disposed of in above terms.
- 16. Pending application(s), if any, stand disposed of. Photocopy of this judgment be placed on the file of connected case.

(PARMOD GOYAL)
JUDGE

15.05.2026
Sunil Chander

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