

(2001) 11 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16517 of 2001

Amar Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-11-2001

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 12, 18(6)

Citation : (2001) 11 P&H CK 0116

Hon'ble Judges : N.K. Sodhi, J; Jasbir Singh, J

Bench : Division Bench

Advocate : Rakesh Nagpal, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—Jai Ram the predecessor-in-interest of the petitioners herein was a big land owner of village Fatehpur, Tehsil Kaithal, District Kurukshetra. The Collector, Agrarian by his order dated 15.9.1960 declared an area of 17.15 Standard Acres of land equal to 137 Kanals 12 Marlas as surplus in the hands of Jai Ram after leaving the permissible area of 30 Standard Acres. Jai Ram died on 8.11.1973. Thereafter his sons (petitioners herein) filed an application under Sections 10-A and 10-B of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Punjab Act) before the competent authority stating that their father had expired on 8.11.1973 and on his death the applicants (petitioners) had become small landowners and the area declared surplus in the hands of their father remained unutilised and, therefore, a request was made to release the same from the surplus pool. The competent authority without giving any reasons whatsoever by order dated 11.7.1980 allowed the application and released an area of 137 Kanals 12 Marlas of land from the surplus pool which had earlier been declared surplus in the hands of Jai Ram deceased. The State Government filed a revision petition before the Financial Commissioner, Haryana u/s 18(6) of the Haryana Ceiling on Land Holdings Act, 1972 (for short the Act) invoking his suo motu powers with a prayer that the

records be sent for and the order dated 11.7.1980 be quashed as, according to the State Government, the said order was contrary to the provisions of law. This petition was allowed on 31.3.1998 with the following observations:

"Interestingly and cryptically, the Prescribed Authority at the end of his order has said that since the land in question has vested in the State u/s 12(3), therefore, this decision is being made under the Haryana Act of 1972. The Prescribed Authority, however, did not indicate any section of law under which he made the decision.

In view of the clear position of law, I accept this revision petition and set aside the order of the Prescribed Authority dated 11.7.1980. Since these orders are clearly against the law and are of a shady character, I have no hesitation in setting them aside even after a few years of delay. The Collector, Surplus Area is directed to take back the possession of the surplus land involved within a period of two months."

2. Feeling aggrieved by the order of the Financial Commissioner the petitioners filed Civil Writ Petition No. 9959 of 1998 in this Court, it was urged before this Court that the revision petition was filed by the State of Haryana after 8 years of the passing of the order by the competent authority and, therefore, the same should not have been entertained by the Financial Commissioner in view of the law laid down by the Apex Court in *Loku Ram v. State of Haryana* and Ors. 1999 3 P.L.R. 901 (S.C.). The writ petition was allowed, the order of the Financial Commissioner set aside and the case remanded to the Financial Commissioner for re-decision in the light of the decision in *Loku Ram*'s case (*supra*) with the following observations:

"In cited case it has been held that the words at any time occurring in Section 18(6) of the Haryana Ceiling on Land Holdings Act, 1972 could not be read in a mechanical manner and must be interpreted to mean within a reasonable time. As it appears that the learned Financial Commissioner was not cognizant of this judgment, this matter requires to be reconsidered by him once again. The order Annexure P-3 is accordingly quashed and the matter is remitted to the learned Financial Commissioner Haryana for re-decision in the light of the cited judgment."

3. The matter was reconsidered by the Financial Commissioner who by his order dated 16.8.2001 again allowed the revision petition filed by the State of Haryana and set aside the order of the Prescribed Authority dated 11.7.1980. It is against this order that the present petition has been filed.

4. We have heard Shri Rakesh Nagpal counsel, for the petitioners and are of the view that the Financial Commissioner was justified in allowing the revision petition. We are in agreement with the learned Financial Commissioner that the order dated 11.7.1980 of the Prescribed Authority was against the express provisions of law. The land in dispute in this case as per the provisions of Section 12(3) of the Act vested in the State with effect from 23.12.1972 and the same

could not be inherited by the petitioners because the original owner died on 8.11.1973. It is by now well settled that if death of a landowner whose land was declared surplus under the Punjab Act occurred after 23.12.1972 the same will have no effect on the area declared surplus under the Punjab Act and Section 12 of the Act clearly provides that the land declared surplus under the Punjab Act shall be deemed to have vested in the State Government with effect from 23.12.1972. There was thus, no question of any inheritance on account of the death of the landowner because the land had already vested in the State Government before the death of Jai Ram. The order of the Prescribed Authority was palpably wrong and contrary to the provisions of the Act but nevertheless the prayer made by the petitioners was granted and a large chunk of area measuring 137 Kanals 12 Marias released from the surplus pool. The Prescribed Authority gave no reasons in the order as to why the prayer made by the petitioners had been granted nor did it refer to any provision of law under which the area could be released from the surplus pool. No doubt, there was a delay of 8 years on the part of the State Government in filing the revision petition but as observed by the Financial Commissioner the order of the prescribed Authority was of a shady character. It is true that in Loku Ram's case (*supra*) the Supreme Court while interpreting the expression "at any time" in Section 18(6) of the Act observed that the period cannot be indefinite and that the power has not be exercised within a reasonable time but it was also observed that the length of reasonable time must be determined by facts and circumstances of each case and the nature of the order that was being revised and reasons must be disclosed for holding a particular period as reasonable on the facts of the case. In the case before us, the Revenue Officer who passed the order on 11.7.1980 had gone out of his way to help the petitioners and the Financial Commissioner has rightly observed that such kind of orders do not easily see the light of the day and it is only when the Officer gets transferred or retires that the matter gets exposed and it is then that the proceedings are taken to set aside the order. A fraudulent decision which is against clear provisions of law should not be allowed to stand nor should a clever litigant be allowed to derive any benefit from such an order. In the circumstances, we are of the view that the revision petition filed by the State of Haryana before the Financial Commissioner was within reasonable time keeping in view the nature of order which was sought to be revised. No fault can, thus, be found with the impugned order of the Financial Commissioner.

5. In the result, the writ petition fails and the same stands dismissed. Sd/- Jasbir Singh, J.