
(2005) 03 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 550 of 1983

Amarjit Kaur and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 12(3), 16(2)

Citation : (2005) 141 PLR 18 : (2005) 3 RCR(Civil) 586

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : R.D. Bawa, for the Appellant; Amol Rattan, D.A.G. and G.S. Bawa, for Respondent Nos. 5 to 13, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Bedi, J.—This order shall dispose of Civil Writ Petition No. 550 of 1983 (Amarjit Kaur and Anr. v. State of Haryana and Ors.) and Civil Writ Petition No. 1051 of 1983 (Bhagwan Kaur and Anr. v. State of Haryana and Ors.). The facts are being taken from C.W.P. No. 550 of 1983.

2. 16.43 standard acres of land belonging to Ganga Singh, father-in-law of the petitioners, was declared surplus on 30.11.1961 under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter called the "1953 Act"), vide Annexure P-1. It is the case of the petitioners that, Ganga Singh died (on 3.32.1973) and at the time of his death, the land had not been utilised either under the provisions of the 1953 Act or-under the Haryana Ceiling on Land Holdings Act, 1973 (hereinafter called the "1973 Act"). After Ganga Singh's death, the land was mutated in favour of the petitioners on the basis of a Will executed by him and it is virtually the admitted position that the petitioners continued to be in cultivation possession thereof. The Prescribed Authority under the Act took measures to evaluate the land holdings in the names of Nahar Singh and Gursevak Singh, husbands of the two petitioners and vide order dated 14.4.1978 held that the holding of the petitioners was within the prescribed limit.

Copies of the orders have been appended as Annexures P-2 and P-3 with the petition. The Sub-Divisional Officer (Civil), Dabwali, the Prescribed Authority, however, took measures to allot the land declared surplus under the 1953 Act and vide order dated 28.8.1980, Annexure P-4, directed that the land declared surplus on 30.11.1961 be utilised under the Utilization of Surplus and Other Areas Scheme, 1976 (hereinafter the "Utilisation Scheme") which had been framed under the provisions of the 1953 Act. It is the case of the petitioners that before the passing of the order, Annexure P-4 no notice had been issued to the petitioners or their husbands. The order, Annexure P-4, was challenged before the Collector, Sirsa, who vide his order dated 24.11.1981, Annexure P-5, held that as Ganga Singh had died after the coming into force of the 1953 Act, his death would not effect the rights of the State to utilise the surplus area declared thereunder. The petitioners still dis-satisfied, filed a revision petition before the Commissioner, Hisar, who dismissed the same in limine vide order Annexure P-7 dated 30.7.1982. The Orders, Annexures P-4, P-5 and P-7 have been impugned in the present writ petition.

3. A reply has been filed by the Respondent-State and the broad facts, as stated above, have not been denied. It has however, been stated that Ganga Singh had died in the year 1979 and not in 1973, as alleged in the petition.

4. Mr. R.D. Bawa, the learned counsel for the petitioners, has argued that as the land declared surplus on 30.11.1961 under the 1953 Act, had not been utilised upto the death of Ganga Singh and had remained in the possession of the land owners, the matter required to be re-opened after his death and the surplus area to be determined afresh. He has also pointed out that the impugned orders even otherwise were bad in law for the reason that the notice envisaged u/s 16(2) of the 1953 Act and paragraph 8 of the Utilisation Scheme had not been issued and that this issue went to the root of the matter.

5. Mr. Amol Rattan, the learned Deputy Advocate General, Haryana representing the State and Mr. G.S. Bawa, the learned counsel for the allottees have, however, argued that as per the provisions of Section 12(3) of the Act, the land declared surplus was also deemed to have automatically vested in the Government and no event subsequent to that could alter that situation. It has accordingly been contended that even assuming that Ganga Singh had died on 3.12.1973, this date, after the appointed day, would not clothe the owners with a right to a re-determination of the surplus area. It has also been urged that the notice envisaged u/s 16(2) and paragraph 8 of the Utilisation Scheme, reference of which has been made above, was only for the benefit of the allottees and that the land owners, whose land had been declared surplus, could make no grievance on that score.

6. I have heard the learned counsel for the parties and have gone through the record.

7. It is not disputed that the 16.43 standard acres land belonging to Ganga Ram,

had been declared surplus area on 30.11.1961 under the provisions of the 1953 Act. It is also admitted that Ganga Singh had died after the coming into force of 1953 Act, i.e. 24.1.1971 and also after the date on which Section 12(3) came into Force, i.e., 23.12.1972. It is, therefore, clear that as on the date of Ganga Singh's death, Section 12(3) had come on the Statute. Section 12(3) specifically provides that the area declared surplus under the Punjab Law (1953 Act) or under the Pepsu Law, which had not so far vested in the State, would be deemed to have vested in the State Government with effect from the appointed day. This deeming provision has been upheld by the Hon'ble Supreme Court in *Surinder Nath Dewan v. State of Haryana and Ors.*, (1994-2)107 Punjab Law Reporter 422, *Smt. Bhagwanti Devi and Another Vs. State of Haryana and Another*, and *Amar Singh and Others Vs. Ajmer Singh and Others*, . In these judgments, it has been laid down that by operation of Section 12(3), the surplus area stood vested in the State free from any encumbrance w.e.f. 23.12.1972.

8. Mr. R.D. Bawa has, however, placed reliance on *Ex. Capt. K.C. Arora and Anr. v. State of Haryana and Ors.* 1984 (2) S.L.R. 97 to argue that once valuable rights had been accrued, they could not be taken away by making amendment in law with retrospective effect. This argument is, however, not open to the learned counsel as *K.C. Arora's* case (*supra*) has no relevance to the present facts, whereas the judgments cited by Mr. Amol Rattan pertain to Section 12(3) of the Act.

9. Mr. R.D. Bawa has also cited *Naresh Saran and Ors. v. Financial Commissioner, Haryana and Ors.* 1990 P.L.J. 512 a Single Bench judgment to contend that as the land had not been utilised even after coming into force of Section 12(3), it had to be re-evaluated in the eyes of the land owners. To my mind, this judgment is contrary to the judgment of the Supreme Court, which have been cited above.

10. Mr. R.D. Bawa's second argument must now be examined. It has been argued that in view of Section 16(2) of the Act read with paragraph 8 of the Utilisation Scheme, a notice in the prescribed form had to be given to the land owners before the land could be allotted to private respondents. This argument has no merit. It is clear from a reading of Section 16(2) of the Act read with paragraph 8 of the Utilisation Scheme that the primary purpose of this was to ensure that the land owner was paid the correct compensation for the land that had been taken away from him and nothing more. Likewise, paragraph 8 of the Utilisation Scheme had been discussed for the purpose of determining the inter se claim of various claimants to the allotment of surplus area but a land owner, who had been deprived of his land by virtue of Section 12(3), could make any grievance on this score as well. I am, therefore, of the opinion that the writ petition has no merit.