
(2002) 11 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1519 of 1993

Amarjit Kaur and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Punjab Land Reforms Rules, 1973 — Rule 5

Citation : (2003) 134 PLR 16 : (2003) 1 RCR(Civil) 653

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Sarjit Singh and Vikas Singh, for the Appellant; Salil Sagar, Addl. A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—This order will dispose of two writ petitions 1279 and 1519 of 1993 in which similar questions of law and fact arise.

Counsel for the parties are agreed that the decision in civil writ petition 1519 of 1993 will govern the other writ petition as well. Since the

arguments were addressed in civil writ petition 1519 of 1993, the facts are being taken from this case.

2. Prem Inder Singh- was a big landowner. He filed a declaration in Form-A under Rule 5 of the Punjab Land Reforms Rules, 1973 before the

Collector (Agrarian, Samana. As per this declaration he and his family owned and held 551 kanals-5 marlas and 5 acres of land in villages

Tambuwalla and Additiwalla respectively in District Patiala. The Collector after making the necessary verifications through the field staff and taking

note of the various transfers made by landowner through sale mortgage and gifts clubbed the land held by all the family members and came to the

conclusion that the landowner along with his family members owned and held 10.61 Hectares of first quality land in the two villages on the

appointed day i.e. 24.1.1971. Since he was entitled to retain 7 Hectares as his permissible area according to the provisions of the Punjab Land

Reforms Act, 1972 (for short the Act), the Collector by his order dated 18.6.1976 declared 3.61 Hectares of first quality land as surplus in his

hands. The details of khasra numbers so declared surplus were given in the order. The landowner filed an appeal before the Commissioner, Patiala

Division which was allowed on 18.12.1978 and the case was remanded to the Collector with the following observations:

"" Under the circumstances, I accept the appeal, set aside the order dated 18.6.1976 passed by the Collector, Agrarian, Samana and remand the

case to him for fresh decision according to law and in light of observations made above after affording an opportunity to the landowner, the State

representatives and all others concerned with this case of being heard and of adducing their evidence. The parties have been directed to appear

before the Collector, Agrarian, Samana on 28.2.1979.

After remand, it was urged before the Collector that the land gifted by the father of the landowner in favour of his grand-daughter could not be

clubbed with that of the landowner. The valuation of the land as earlier made by the Collector was also challenged. The Collector did not accept

the contentions raised before him and by his order dated 3.3.1982, 3.61 standard Hectares of land was again declared surplus in the hands of

Prem Inder Singh landowner. He again filed an appeal before the Commissioner, Patiala Division and urged that different transfers made by the

landowner could not be ignored for the purpose of determining the surplus area in his hands and, therefore, it was contended that the appeal be

allowed and the case again remanded for fresh determination. Learned Commissioner considered all the contentions advanced before him and

rejected the same. He, however, found that the Collector was not justified in specifying khasra numbers for inclusion in the surplus area pool.

According to him, it was the landowner alone who was entitled to choose the land he wanted to retain with him and it was for him to indicate

specific khasra numbers he wished to part with. The appeal was accepted to this limited extent and the case was again remanded to the Collector

with a specific direction that landowner should be given a choice to select khasra numbers he intended to give up for the surplus area pool. The

Commissioner while allowing the appeal made the following observations in his order:

The case had already been delayed by litigation on various points which have now all been dealt with. No other points old or new need be

entertained by the Collector, Agrarian while giving the choice to the landowner lest the proceedings be further delayed.

Still not satisfied, the landowner filed a revision petition before the Financial Commissioner, Punjab which was dismissed on 15.12.1992 and the

Collector was directed to carry out the directions issued by the Commissioner. It may be mentioned that during the pendency of the revision

petition before the Financial Commissioner Prem Inder Singh landowner died on 5.1.1992 and the petitioners herein who are his heirs were

substituted as petitioners in that petition and they have filed the present writ petition challenging the orders passed by the Financial Commissioner,

Commissioner and the Collector declaring surplus area in the hands of Prem Inder Singh deceased. 3.I have heard counsel for the parties.

4. It was strenuously urged by the learned senior counsel appearing for the petitioners that the Collector and the Commissioner were in error in

clubbing the land owned by members of the family and that the wife and the daughter of the landowner were entitled to a separate permissible

area. He also urged that wife was a landowner within the meaning of this term and, therefore, she ought to have been heard during the surplus area

proceedings. The argument is that the Commissioner, Patiala Division while remanding the case on 18.12.1978 had specifically given a direction

that wife of the landowner be afforded an opportunity of hearing and since that was not done the impugned order stands vitiated. I am unable to

accept these contentions. By my order passed today in Smt. Paramjit Kaur v. State of Haryana and another Civil Writ Petition 2293 of 1981, I

have held that land of all family members has to be clubbed for the purpose of declaring the surplus area in the hands of the landowner and that the

wife has no right to be heard in the surplus area proceedings. In this view of the matter, the Commissioner, Patiala Division was not justified in

issuing directions to the Collector to afford an opportunity of hearing to the wife. I have, therefore, no hesitation in rejecting the contention of the

learned senior counsel.

5. It was then urged that since the State Government has not taken possession of the surplus area declared in the hands of Prem Inder Singh

deceased, the same has not vested in the State Government and, therefore, it has to be redetermined in the hands of the heirs of the deceased. He

has relied upon a Full Bench judgment of this Court in Smt. Ajit Kaur and others v. Punjab State and others 1980 P.L.J. 354, I find force in this

contention. 3.61 Hectares of first quality land had been declared surplus in the hands of Prem Inder Singh deceased but since the case stands

remanded to the Collector (Agrarian) for allowing the landowner to specify the land he wished to part with as surplus area, it is obvious that the

State Government has not yet taken possession of the surplus land and, therefore, in view of the law laid down in Ajit Kaur's case (supra) the

surplus land in the hands of the deceased has not vested in the State Government and it has to be redetermined in the hands of the heirs of the

deceased landowner. A similar view has been taken by a Division Bench of this Court in Jasbir Kaur and another v. Financial Commissioner

(Appeals), Punjab and another 1996 PLJ 205 wherein it was held that the land will not vest in the Government until landowner exercises his right

to select the permissible area and the Government takes possession of the surplus area after selection of the permissible area by the landlord and

till the land has been utilised by the Government.

In the result, the writ petitions are allowed, the impugned orders passed by the revenue authorities set aside and the case is remanded to the

Collector (Agrarian), Samana to redetermine in accordance with law the surplus area in the hands of the heirs of the original landowner. There is

no order as to costs.