

(1992) 09 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1907 of 1980

Angrej Singh & Others

APPELLANT

Vs

State of Haryana & Others

RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Citation : (1992) PLJ 627 : (1993) 1 RRR 238

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

Advocate : A.K. Ahluwalia, Advocate, Baldev Singh, Advocate, J.R. Mittal, Sr. Advocate, Advocates for appearing Parties

Judgement

N.K. Kapoor, J.—The petitioners have filed this Writ Petition for issuance of a writ of certiorari, mandamus or any other appropriate writ, order or direction for quashing the order passed by respondent Nos. 1 and 2 vide which land in dispute which is in their possession has been allotted to respondent Nos. 8 to 12.

2. The case of the petitioners is that they are in cultivating possession of the land as tenants at will on payment of 1/3rd batai under respondent Nos. 3 to 7 who owned area beyond permissible limit in terms of the provisions of the Punjab Security of Land Tenures Act, 1953 (for short "the Act") since the year 1950. It is further the case of the petitioners that the area with them as owners as well as tenants at will is less than the permissible area under the Haryana Ceiling on Land Holdings Act, 1972, and so they are entitled to retain possession of the area, subjectmatter of this petition, and the same is not liable to be utilised under the Utilisation of Surplus Area Scheme by the State of Government. It is also the case of the petitioners that they had no notice of the allotment, if any, made in favour of respondent Nos. 8 to 12 and, in fact, learnt about the same on 8 to 12 and, in fact, learnt about the same on 16.5.1980 when proclamation by beat of drum was made in village Khokhar through Chowkidar of the village to the effect that the land, subjectmatter of this writ petition, would be allotted to respondent Nos. 8 to 12 and possession would be delivered to them as well. Thus, with a view to get rid of the step initiated by the respondent State to put

respondent Nos. 8 to 12 in possession of the land now in cultivating possession of the petitioners, they have approached this Court by means of the present writ petition.

3. This writ petition was admitted on September 20, 1980. The Additional Advocate General, Haryana, stated at the bar that the State of Haryana, has no interest in the matter and perhaps for this reason no written statement has been filed by respondent Nos. 1 to 2. Even out of the allottees, namely respondent Nos. 8 to 12, one Jugg Singh, respondent No. 9, has put in appearance and has filed written statement on 10.8.1992. According to the contesting respondent, land measuring 31 kanals 2 marlas was allotted to him by the allotment authorities on 16.5.1980.

4. The petitioners with a view to prove their continuous cultivating possession since the year 195051 have placed on record the copies of the jamabandi Annexures P1 to P7 by filing an application seeking permission to place on record the documents and order of allotment authority dated 16.5.1980, Annexures P8. These documents were allowed to be placed on record in the interest of justice. On perusal of the copies of jamabandi from the year 195051 onwards, it is clear that Inder Singh, father of petitioner No. 1, Gurbakash, Jot Ram having died during the pendency of the writ petition whose legal representatives have already been brought on record, are recorded as tenants at will and this entry has been repeated in subsequent copies of the jamabandi as well. Thus, this prima facie, proves the contention of the petitioners that they are tenants at will since the year 195051. This being the position, such tenants have prior claim visavis the category of tenants under the Haryana Utilisation of Surplus and Other Areas Scheme, 1976. According to the scheme of 1976, the allotment authority is to prepare villagewise list indicating the surplus area and the tenant's permissible area deemed to have vested in the State Government under subsection (3) of Section 12 of the Haryana Ceiling on Land Holdings Act, 1972. After preparation of this list, the same is to be displayed along with list of eligible persons at the office of the allotment authority as required by paragraph 5(1) of the scheme. Paragraph 4 gives inter se priority list of eligible persons i.e. persons entitled to allotment of surplus area under this scheme. The categories are A, B, BB, C, CC, D, E, F, G, H, and I. The petitioners case falls under category A or category BB i.e. in case their holding has been declared as the tenants' permissible area Punjab Law or the Pepsu Law, they would come within the purview of Category A, whereas, in case their holding has not been declared as tenant permissible area, their case can be processed under category BB. In the present case, no notice has been issued to the petitioners before allotting the land which was in their cultivating possession even before the coming into enforcement of the Punjab Security of Land Tenures Act, 1953. There is no averment by the respondents to the effect that they have better claim than that of the petitioners. It appears that the allotment authority without applying its mind has proceeded in a most casual manner. Since the allotment authority has proceeded without complying with the provisions of the Haryana Ceiling on Land

Holdings Act, 1972/Haryana Utilisation of Surplus and Other Areas Scheme, 1976, the steps initiated by the allotment authority by allotting the land to respondent Nos. 8 to 12 are per se illegal and consequently set aside. The allotment authority/Collector (Agrarian) will examine the matter in the light of the provisions of the Haryana Ceiling on Land Holdings Act, 1972 as well as Haryana Utilisation of Surplus and Other Areas Scheme, 1976, after bearing the petitioners and pass appropriate order in this regard. The petitioners, however, will not be dispossessed till the passing of the order by the concerned authority.

The parties are directed to appear before the S.D.O. (Civil) Exercising the powers of Collector (Agrarian)/Allotment Authority, Dabwali, on 19.10.1992. No costs.