
(2011) 06 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16376 of 1990

Baini Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 24A
Punjab Tenancy Act, 1887 — Section 84

Citation : (2011) 06 P&H CK 0047

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Gopal Sharma, for the Appellant; Mahavir Sandhu, Advocate for the Respondent Nos. 4 to 8 and Mr. S.S. Goripuria, DAG, Haryana, for the Respondent

Judgement

K. Kannan, J.—The petitioner's grievance in the writ petition is that in the consolidation proceedings, the petitioner had suffered a shortfall to his holding. Under the Punjab Security of Land Tenures Act, 1953, the petitioner's holding was protected to the extent of 30 standard acres and only the property in excess of the same, namely 14 standard acres, was to be treated as in surplus but in subsequent consolidation proceedings, a shortfall in extent of about 5 standard acres and one unit resulted and the petitioner had, therefore, filed an application before the Sub Divisional Officer (Civil)-cum-Prescribed Authority for allowing the petitioner to retain land upto permissible area of 30 standard acres. The issue involved in the petition is whether the petitioner could have any remedy under the Haryana Ceiling on Land Holdings Act, 1972 when there resulted a shortfall by independent proceedings under the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called as Consolidation Act). The matter would not require any detailed consideration, for the petitioner is surely knocking the door at wrong forum for reliefs. There is no denying the fact that when proceedings had been initiated under the Punjab Security of Land Tenures Act, 1953, the petitioner had been holding land in excess of the ceiling area and an order was passed on 3.11.1959 allowing 30 Standard Acres being

the permissible area for the petitioner and declaring the remaining extent as falling in surplus. In consolidation proceedings taken during the years 1961-62, some extent of property, which was held by the petitioner was ordered to be removed from the holding of the petitioner thereby resulting in reduction of his holding from 30 Standard Acres to 25 Standard Acres of one unit. If the petitioner was in any way aggrieved and if his contention was that there had been a mistake in taking any property from his permissible area and if at all, the Consolidation Officer could have taken the land only from the surplus pool, the party would have to take action in the respective higher tiers provided under the Consolidation Act itself and not through an independent application under the Haryana Ceiling on Land Holdings Act, 1972 for redetermination of the area in surplus. There was nothing to be determined since under the Punjab Security of Land Tenures Act, 1953, the petitioner had been declared entitled to retain upto 30 Standard Acres as permissible area. If the petitioner had come to any harm by reduction of his entitlement through the proceedings of an officer under the Consolidation Act, the petitioner could not have had a remedy under the Haryana Ceiling on Land Holdings Act itself. The application filed before the Collector, Agrarian, Jhajjar was, therefore, wholly untenable. The applicant has moved the application as late as on 9.11.1987 for what had happened through the consolidation proceedings under Consolidation Act in the year 1961-62. The Prescribed Authority had originally accomo dated such a plea and directed restoration of 5 Standard Acres and one unit that had fallen short of the petitioner's holding. One Faqira and four others, who were the subsequent allottees, felt themselves aggrieved against this order passed by the Prescribed Authority and preferred an appeal to the Collector, Rohtak. The Collector had also upheld the order of the Prescribed Authority. In a further revision to the Financial Commissioner, the Financial Commissioner held that no proceedings at all were pending under the Punjab Security of Land Tenures Act, 1953 at the time of the commencement of the Haryana Ceiling on Land Holdings Act, 1972 and thereafter, the applicability of the Punjab Security of Land Tenures Act, 1953 itself stood barred. He held that even if at all, the Prescribed Authority felt that the Punjab Security of Land Tenures Act, 1953 was still applicable, he could not himself review the order of the Collector in view of Section 84 of the Punjab Tenancy Act without assuming the role of the Collector and seeking approval of the Commissioner. He characterised the order of the Authority as perverse and held that no action could have been taken under the Haryana Ceiling on Land Holdings Act, 1972. The order passed by the Prescribed Authority was wholly without jurisdiction.

2. I find that the order of the Commissioner was perfectly justified, for there was no assessment anywhere under the Punjab Security of Land Tenures Act, 1953 or under the Haryana Ceiling on Land Holding Act, re-determining holding of the petitioner to fall beyond the ceiling area. There had been no error committed by the Authorities under the Act in determining the extent of the petitioner's holding initially as surplus over the ceiling area. If under the proceedings taken

independent of the Act by the Consolidation Authorities, the petitioner had come to any reduction of his alleged entitlement, the petitioner's remedy would be only under the said Act in the various quasi-judicial tiers available or at any rate by seeking an intervention through the Director of Settlement u/s 42 of the Consolidation Act. Learned counsel appearing for the petitioner relies on a judgment of this Court in *Rajinder Singh and others v. The Financial Commissioner (Revenue) Punjab and others* 1980 PLJ 154 that adverts to the power u/s 24A relating to decrease in reserve area of land only on account of consolidation and the entitlement of the landowner to be compensated from the surplus pool. In the said judgment, the Court was considering the effect of a sale by the big landowner where the sons had interdicted the same. When proceedings for determination afresh of the surplus area after consolidation was undertaken by the Collector u/s 24A, there had been no notice to the sons of the landowner when they were claiming rights of preemption. Referring to the particular Rules under the Punjab Security of Land Tenures Rules, 1956, the Court held that notice of hearing to the persons interested was bound to be given and as a matter of fact, the Court found that the persons interested were all along aware of proceedings and they were guilty of laches in not coming to contest the surplus area proceedings and they were not so far entitled to be heard on merits. The proceedings u/s 24A under the Punjab Security of Land Tenures Act, 1953 are attracted in case where the rights of co-owners are contested. It has no applicability at all to a situation arising in this case, for, if, after holding of the property is determined under the act, any action had been taken independently under the Consolidation Act and consequently the owner suffers any shortfall within the permissible area, the owner could have had a remedy under the Consolidation Act itself. There was simply no cause of action for the petitioner to complain before the authorities under the Haryana Ceiling on Land Holdings Act, 1972 that he had suffered a shortfall in extent. The petitioner could have no grievance for an action that was not of the Authorities of the Ceiling Act. As I have observed earlier, the petitioner is actually pursuing remedies before the Authorities who are not competent to reopen matters for redetermination of surplus area, for, at the time when the order passed under the Punjab Security of Land Tenures Act, 1953, the petitioner was entitled to 30 Standard Acres as falling within the permissible area and it was not the case of the petitioner that by any of the actions of the Authorities under the Act, the petitioner's holding was in any way reduced.

3. While disposing of the petition and holding that the Prescribed Authority had no power to reopen the issue of his surplus, the petitioner is entitled to approach the Authorities under the Consolidation Act, if so advised to secure redressal of his grievance that any property could have been taken only out of the surplus pool and not within his permissible area. These observations shall not be construed as any finding that the petitioner is in any way declared entitled to a favourable consideration. On the other hand, if any such petition is filed before the Consolidation Authority, it will be considered in the light of its own merits and

the Authority shall also consider the pendency of the proceedings before this Court for consideration of the issue on laches. The writ petition is disposed of as above.