
(1986) 12 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3903 of 1980

Balwant Kaur and anr.

APPELLANT

Vs

State of Punjab and ors.

RESPONDENT

Date of Decision : 01-12-1986

Acts Referred:

Citation : (1987) 1 CurLJ 664 : (1987) PLJ 52 : (1987) RRR 28

Hon'ble Judges : M.M.Punchhi, J

Advocate : Sarjit Singh, Advocate., Advocates for appearing Parties

Judgement

M.M. Punchhi, J. (Oral)

1. This order shall dispose of Civil Writ Petitions Nos. 3903 of 1980 and 1269 of 1981 since parties thereto are almost the same and the relief sought is common.

2. Briefly stated, the facts as averred in these petitions are that Ude Singh son of Bhagwant Singh of village Moranwali owned 62.25 standard acres of land in villages Moranwali and Raju Majra before 21.8.1956. The area was to be regulated for surplus area purposes under the Pepsu Tenancy and Agricultural Lands Act, 1955. After 21.8.1956., Ude Singh apparently transferred to his wife Balwant Kaur 42.51 standard acres of land. The Surplus Area Collector, perhaps oblivious of the transfer, proceeded to determine the surplus area in the hand of Ude Singh permitting him to allow 30 standard acres of land as permissible area and the balance 32.25 standard acres was declared surplus. It is, however in dispute as to whether final statement was served on Ude Singh or not but the fact remains the Ude Singh died on 24.2.1970 and till his death or even thereafter the surplus area was not utilised. Thus, he remained in the eyes of laws the landowner thereof till his death and after his death his heirs which are now said to be his widow Balwant Kaur and her children from the loins of Ude Singh. The heirs of Ude Singh thus derived title to the land prior to the appointed day i.e. January 24, 1971, for the purpose of Land Reforms Act, 1972.

3. In order to undo the order of the Special Collector, Punjab dated 14.2.1963

(Annexure P.1 in both the petitions), Balwant Kaur the widow, filed a revision petition in the Court of the Commissioner, Patiala Division, Patiala unsuccessfully, as is apparent from order dated November 16, 1979 Annexure P.2) to Civil Writ Petition No. 3903 of 1980. Side by side, it seems she filed an objection petition to get reopened the order of the Special Collector (Surplus Area) but was unsuccessful, as is apparent from the decision dated 11.10.1974 made by the Collector (Annexure P.2 appended with Civil Writ Petition No. 1269 of 1981). She challenged that order before the Additional Commissioner, Patiala Division, Patiala unsuccessfully as the same was dismissed on 16.11.1979 vide order, Annexure P.3. Her revision petition to the Financial Commissioner joining with her two sons as copetitioners and widow of Ude Singh as respondent too was dismissed on 6.11.1980 vide Annexure P.4 appended with the aforementioned petition.

4. The main plea of the petitioners is that when the heirs of Ude Singh had become owners of the land in their own right, the rule laid down by a Full Bench of this Court in *Ajit Kaur v. State of Punjab*, 1980 PLJ 354, became attracted and thus there could do no utilisation of the surplus area or divestiture of title thereto as it still belong to Ude Singh deceased. Additionally, the claim of the petitioners that there is no surplus area in the hands of the heirs. The state in its return has not been able to deny that Ude Singh died on 24.2.1970 i.e. before the coming into force of the Land Reforms Act, 1972. The State further has not been able to deny that during the lifetime of Ude Singh, the surplus area was not taken possession of by the State and it never stood utilised. Thus, *Ajit Kaur's* case (*supra*) governs the field. The surplus area, if any, in the hands of the petitioners has to be determined afresh, for there is no material in the present record to conclude that the petitioners are by themselves small landowners and whether they form inter se a family as the concept under the Punjab Land Reforms Act, 1972.

5. Thus, these petitions are allowed, the impugned orders of the Revenue Authorities respectively challenged in both the petitions are set aside and the matter is remitted back to the Authority under the Punjab Land Reform Act, 1972 to determine the surplus area, if any, in the hands of the petitioners. There shall, however, be no order as to costs.