
(2014) 05 P&H CK 0148

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13432 of 1996 (O&M)

Bambi Bai and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 9

Citation : (2014) 176 PLR 156

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Kanwaljit Singh, Senior Advocate and Ashwani Talwar, Advocates for the Appellant; Kartar Singh, D.A.G, Advocates for the Respondent

Judgement

K. Kannan, J.—The challenge in the writ petition is to the order of the Financial Commissioner and the authorities constituted under the Haryana Ceiling on Land Holdings Act, 1972 (for short, "the 1972 Act"). The declaration under the Act was made on 16.08.1985 declaring 363 kanals 19 marlas as surplus after allowing for one unit as permissible area. The declaration which culminated in the order of the Financial Commissioner went through usual process of the original determination made by the Collector and still later, the Commissioner affirming the respective holdings that the landowner Fateh Chand had property in excess of the ceiling area. The properties were claimed by Fateh Chand as a person who along with his mother Bambi Bai succeeded to the estate of his father Mangu Mal alias Mangu Ram. Admittedly, no proceedings had been taken under the Punjab Security of Land Tenures Act and when the 1972 Act was passed on 23.12.1972, the landowner had given a declaration under Section 9 on 18.04.1977 setting out the extent of his holdings. In that declaration form, he had referred to his son's date of birth as 19.05.1953. Even before the declaration had been accepted and a final order was passed, the landowner had given a fresh application to amend his pleadings to state that he was illiterate and he had given his daughter's date of birth which was 19.05.1953 as the date of birth of his son. According to him, the son Naresh Kumar had been born on 16.01.1952 and the date of birth as

given already was erroneous. His contention was that his son had not been formally educated and he relied on a certificate issued by the Chief Medical Officer, Jind, dated 01.08.1984 to say that Naresh Kumar was aged between 22 to 35 years and by physical appearance, he was about 32 years. The determination of age by the physical examination or by ossification test are still not conclusive and there could be an error in quotient or plus or minus. The landowner had also given a janam patri to vouch for his contention that the boy was born on 16.01.1952. He sought to prove the error which had crept in with reference to the date of birth as on 19.05.1953 by producing the matriculation certificate of his daughter Veena Rani which showed that her date of birth was 19.05.1953. His contention was Veena Rani was younger to his son and the date of birth of Veena Rani had been wrongly given as date of birth of the son.

2. The date of birth assumed a serious consequence, for, if he had been indeed born on 16.01.1952, it would mean that on the date when the Act was notified to take effect, namely, on 24.01.1971, he would have completed 18 years of age. Consequently, a major son would be entitled to a separate unit which if duly provided would take the holding of Fateh Chand from out of the purview of the 1972 Act. If, in this case, the date of birth of Veena Rani had been shown to be the date subsequent to 1953, then it is possible to conjecture that the father could have made some changes only to bring the age of the son as beyond the date of majority when the Act came into force. In this case, since the age of the daughter which is *prima facie* to be taken as genuine, namely, as found in the matriculation certificate, the date of birth of Naresh Kumar could not have been later than 10 months prior to the date of birth of Veena Rani. It is far too much unnatural that the father could have fabricated the date of birth of the daughter as 19.05.1953 which is brought through the document of which he could never have control over. An entry of date of birth in matriculation certificate cannot be done overnight and if the document showed that it was on 19.05.1953, I will take it that the very same date given for the son who was said to be elder to the daughter ought to be taken as a genuine mistake.

3. Again, it must be noticed that the mistake in the date of birth was pointed out by the owner not after the order of the State authorities making a declaration under the Act vesting the property in the State. It was given by the landowner even before the order was passed by the Collector acting on the declaration made under Section 9 of the Act. The assessment of age is surely only a question of fact and if I am making an intervention to the order passed by the Collector or the authorities above, it is only because the authorities were not prepared to examine the correctness of the date of birth at all. This, in my view, was grossly unjust and when there was a document to show the date of birth of the daughter, there ought not to have been any serious difficulty for the authorities to see that the son who was stated to be an elder person ought to have been a major on the date when the Act was brought into force.

4. The declaration made by the State vesting the property on 16.08.1985 was

only by acting on the original declaration made by the landowner under Section 9 without providing for one unit which the major son was entitled to hold. There is also a document that he had transferred the property in favour of his daughter and decrees had been passed affirming the daughter's title on 05.05.1972 and 10.07.1972. The exclusion of bona fide transfers contemplate a transfer of right in immovable property which could be brought only if it was a registered instrument. A decree does not transfer any right to the property but merely acknowledges rights already inhering in parties. If a decree were purported to effect a transfer for the first time, it still cannot take effect without a registered instrument. I will discard the claim made by the daughter and the exclusion sought by the landowner on the basis of the decrees dated 05.05.1972 and 10.07.1972.

5. The impugned orders are set aside and I direct that the holdings of the landowner must be considered through a declaration as sought to be amended for giving reference to the age of the son on the basis that the son was born on 16.01.1952. The State is directed to take a declaration on such a basis and proceed to compute the holding admissible for the family of the father with the son who is a major at that time. The Collector shall undertake such a reckoning and if there is still a surplus found, the State will be at liberty to proceed in accordance with law. The writ petition is allowed with the above directions.