(1988) 10 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8585 of 1988, and Civil Miscellaneous No. 13022 of 1988

Bhag Singh and anr. APPELLANT

Vs

Financial Commissioner Appeals, Punjab & ors. RESPONDENT

Date of Decision : 05-10-1988

Acts Referred:

Citation : (1989) PLJ 541 : (1988) 2 RRR 510

Hon'ble Judges : M.M.Punchhi, J and Ujagar Singh, J

Judgement

M.M. Punchhi, J.

1. Before the claim of the petitioners in this petition under Articles 226 and 227 of the Constitution is appreciated, it would be essential to draw a backdrop from whatever material is available from this vague writ petition and the attendant orders challenged or tagged therewith, due to the unusual persistence of the learned counsel for the petitioners.

2. It is undenied that Satpal son of Mukand Lal of Abohar, district Ferozpur, was a big landowner as the term is known to the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Old Act). It is not certain on the present record if ever the surplus area of Satpal was declared under the Old Act and what was that area. Then came the Punjab Land Reforms Act with effect from April 2, 1973. and for certain purposes was made applicable from the appointed day which was fixed as 24th day of January 1971 (hereafter referred to as the New Act). From the order dated July 20, 1976, which the learned counsel for the petitioner filed later at our askance, it is clear that his surplus area case was decided under the New Act because he had furnished a declaration as required under section 5(1) of the New Act. There is a narration in this order that the land already declared surplus (presumably under the Old Act) shall remain surplus and shall not be affected by the provisions of the New Act. As a result of the aforesaid order 9.51 65 hectares in the band of Satpal was declared surplus. This was followed by another order dated July 26 1976, wherein the details of the

surplus area were approved and it was ordered that the landowner be asked to deliver possession of the surplus area to the State. Satpal did not appeal against that order.

3. There were three qualities of areas which emerged as a consequence of the Old Act, when applicable to a big landowner. He would get a permissible area; if he had tenants settled on some area with effect from April 15, 1953, those tenants would get their tenants'' permissible area (for short TPA) and the remaining was surplus area capable of being utilised by the State for resettlement of tenants. The tenants already sitting and the tenants inducted by the State on utilisation of surplus area could purchase their tenancies under section 18 of the Old Act provided the tenancy had continued for six years or more; the only impediment being that the land so sought to be purchased be not included in the reserved area of the landowner. The procedure prescribed therein warranted for such a tenant to make an application to the Assistant Collector Ist Grade who after giving notice to the landowner and to all other persons interested in the land could make an enquiry and determine the value of land which was the average of the price obtaining for similar land during 10 years immediately preceding the date on which the application was made. Further the purchase price was 3/4th of the land so determined and the tenant could pay it in instalments. On the payment of first instalment, the tenant was deemed to have become owner of the land.

4. Section 18 of the Old Act was only enabling. There was nothing compelling in the old Act for a tenant to ask for a purchase of his tenancy, one of the objects of the old legislation being the removal of intermediaries. The said enabling provision did not fully carry out the object and while framing the New Act the Legislature had in mind to remedy that situation. By enacting Section 15 of the New Act, whereunder a tenant who was entitled under section 18 of the Old Act to purchase the land under his tenancy, was required to opt for purchase within one year from the date of the commencement of the New Act. The concessional rates were further brought down and the number of instalments were enhanced. The relevant portion, with which we are concerned, is extracted below :

"Saving of certain rights of tenants to purchase land

15(1) Notwithstanding anything contained in this Act, a tenants who was entitled to purchase the land comprised in his tenancy, under section 18 of the Punjab Law or section 22 of the Pepsu law, as the case may be, immediately before the cormmencement of this Act, shall be entitled to purchase such land from the landowner on the same terms and conditions, as were applicable immediately before such commencement : provided that

(i) the amount payable by the tenant for the land shall be equivalent to ninety times the land revenue (including rates and cesses) pavable for such land or five hundred rupees perhectare, whichever is less; and

(ii) the procedure for purchase of such land shall be as is specified hereinafter and the period of limitation for exercise of such a right shall be one year from the date of commencement of this Act.

Now here comes on scene one Jhanda Singh. He claiming to be a tenant eligible to purchase his tenancy under section 15 of the New Act filed an application in the Court of the Assistant Collector Ist Grade, Abohar, on March 29, 1974 (the date of institution is shown in Annexure P 1) within one year of the date of the commencement of the Act (this being 2nd April, 1973) against Satpal, big landowner. The big landowner had the proceedings in the application, for purchase adjourned sine die on November 27, 1275, on the ground that his surplus area case had not been decided by that date. It is by now evident that the surplus area was decided on July 27, 1976.

5. It is in this background that the petitioners appeared on the scene. They claim to have purchased some area from the big landowner Satpal in the year 1976 including the tenanted land of Jhanda Singh, with regard to which he had already made a purchase application. The petitioners have nowhere specifically said as to whether the purchase was made before the declaration of the surplus area or after the declaration of the surplus Area. Now they were all set to resist the application of purchase of Jhanda Singh. Sometimes later Jhanda Singh tenant died and was succeeded by his grandsons who are respondents Nos. 3 to 6. In the year 1981 the big landowner Satpal too died and was succeeded by respondents No. 7 and 8. Under the orders of July 20, 1976 and July 27, 1976, the tenanted area of Jhanda Singh was put in the surplus pool.

6. The successor tenants filed an appeal before the Commissioner, Ferozepur Division, Ferozepur, against the orders 20/27th July. 1976, of the Surplus Area Collector whereby their tenanted land was put in surplus. Their claim was that the tenants were necessary parties before the declaration of the surplus area and that their grandfather Jhanda Singh was a tenant over 86 Kanals 19 Marlas of land which had to be declared tenant''s permissible area. Now the concept of tenant''s permissible area was not specifically incorporated in the New Act, unlike the Old Act, but a Division Beach or this Court in Jagraj Singh and others v. The State of Punjab and others, 1978 P.L.J. 59 spelled out such a concept and extended the concept to the New Act to conclude that a tenant must be in occupation of land on the appointed day i.e. January 21, 1971, in order to claim a tenant''s permissible area. So the Commissioner vide order dated February 19, 1983 (filed by the petitioners learned counsel later) allowed the appeal, set aside the order of the Collector and remanded the case to him for a fresh decision after recording a finding that the entries in the revenue record clearly established the status of the tenants and they had been condemned unheard without any notice. On remand, the Collector, Surplus Area, on July 26, 19,34 (vide copy of order appended later) kept aside the permissible area of the tenants and passed the order declaring surplus area of Satpal but in the hands of his heirs. As stated in paragraph 6(1) of the writ petition, the order was appealed against (it being not certain whether by the landowners or their vendees) and the operation of the

impugned order of the Collector dated July 26, 1934 was stayed. Ultimately the appeal was dismissed and as has been stated in para P 6 (ii) a revision was preferred before the Financial Commissioner dated July 31, 1986 and which statedly has been admitted and the operation of the inpugned order was ordered to be stayed. This revision avowedly is at the instance of the present writ petitioners Copies of the aforesaid two orders were, however, not placed on record.

7. At this juncture, the tenants moved an application before the Assistant Collector Ist Grade for the revival of their application for purchase. This was allowed vide order dated June 7, 1985, Annexure P1. The vendeepetitioners filed an appeal against the said order before the Collector, Ferozepur, who dismissed the same on March 6, 1986, Annexure P2. The petitioners carried a revision petition to the Commissioner, Ferozepur Division, Ferozepur, who to dismissed the same on January 11, 1988, vide order Annexure P3. And finally their second revision petition before the Financial Commissioner (Appeals) was dismissed on June 3, 1988, vide order Annexure P4. Thus the petitioners are here to challenge the aforesaid four orders.

8. Learned counsel for the petitioners was vehement and emphatic that when the old landowner had died, entire case had become open and the surplus area had to be redetermined in the hands of his heirs and the benefit thereof could be derived by the vendees too. He was further emphatic that surplus area proceedings would now reflect on proceedings under section 15 of the New Act and may even wipe them off.

9. We are clear that the argument is totally misplaced. Chapter 11 of the New Act describes `Ceiling on land and an elaborate procedure has been provided to cull out the permissible and the surplus area of the landowner. The death of a land owner may or may not cause an affectation thereto, for we are not going to pronounce on this aspect of the case. What we are concerned with here is that the petitioners want that the proceedings in section 15 application should be stopped by issuance of a writ of prohibition against the Assistant Collector Ist Grade. This we are not prepared to do in view of the nonobstante clause occurring in section 15 which says notwithstanding anything contained in this Act". The paramountly of section 15 is so patent that it overrides all other sections in the Act. What was an enabling right in the old Act is now a positive and assertive right and the tenant in the exercise of that right is absolutely safe even if the big landowner were to die during the pendency of the proceedings. We would, however hasten to add that some room may be there to entertain such an argument within one year from the date of the commencement of the New Act, within which an application under section 15 is entertainable, but, once the landowner survives that date, the claim of the tenant under section 15 is water tight and not defeasible by death of the big landowner. It is as good as saying that the tenant would got the relief on the day he asked for. Therefore, in these circumstances we do not find any occasion to apply either the decision of

an Hon''ble Single Judge of this Court in Smt. Santosh v. Financial Commissioner, Haryana and others, 1982 P.L.J. 278. wherein it was held that the purchase application must remain state till the finalisation of the surplus area proceedings under the Act (Old), or the Full Bench decision of this Court in Smt. Ajit Kaur and others v. The Punjab State and Others, 1980 P.L.J. 354, interpreting subsections (5) and (7) of Section 11, which get employed while determining the surplus area of a deceased landowner in the hands of his heirs, or the Supreme Court decision in Kanaya Ram and others v. Rajinder Kumar and others, 1985 P.L.J. 167 : 1985 R.R.R. 436 which is a decision defining the enabling right of tenant under section 19 of the Old Act. We have section 15 of the New Act before us, under which the claim of the tenant is being revived and agitated before the Assistant Collector Ist Grade. As we read the provision, the New Act is utterly intolerant of the intermediary and that is why it has made it incumbent on the tenant to apply for purchase within one year from the date of the commencement of The Act and never the rafter. Care has otherwise been taken of the ones who fail to avail of the opportunity under the statutory schemes for utilising the surplus area.

10. Additionally, we are of the view that since the proceedings are pending before the Assistant Collector, it is open for the petitioners to fight that case on facts as also on law, but not on the basis that the surplus area case of the big landowner might require reopening. It also cannot be forgotten that the petitioners came on the scene when the purchase application was already pending. Further it cannot be overlooked that the legal heirs of the big landowner are not before us. as aggrieved. The present petitioners thus cannot stop purchase proceedings in the narrow arena of this case.

11. For the foregoing reasons, we have no doubt in our mind that the effort of the petitioners in forestalling the hearing of the purchase application was rightly rejected. Dismissed in limine.

