
(2004) 09 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1439 of 1983

Chet Ram

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Constitution of India, 1950 — Article 14
Haryana Ceiling on Land Holdings Act, 1972 — Section 12

Citation : (2005) 139 PLR 552 : (2005) 1 RCR(Civil) 390

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : R.S. Mittal and Sudhir Mittal, for the Appellant; Raghbir Chaudhary, D.A.G. for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, J.—By this judgment, I propose to dispose of five Civil Writ Petitions (Nos. 1439 to 1443 of 1983) as concededly the legal position which obtains in all these petitions is the same "as to whether the Haryana Ceiling on Land Holdings Act, 1972 does or does not envisage the concept of Tenants Permissible Area? The facts are taken from Civil Writ Petition No. 1439 of 1983.

2. The petitioners were tenants under Kanwar Bhan-respondent No. 5. The Sub Divisional Magistrate (Civil) Fatehabad, exercising the powers of Prescribed Authority vide order dated 26.5.1979 copy Annexure PI, declared 607 Kanals 2 Marias of land of respondent No. 5 under "C category as surplus area under the Haryana Ceiling on Land Holding Act, 1972 (in short the Ceiling Act or Haryana Act). The said order was passed ex parte. The petitioners moved application for getting the ex parte order set-aside. The said application was also dismissed by the above said Prescribed Authority. However, the Additional Collector, Hissar accepted the appeal filed by the petitioners and remanded the case vide his order dated 31.3.1982 for fresh decision after affording an opportunity to the petitioners. Thereafter, the Prescribed Authority after hearing both the sides, vide

order dated 15.10.1981, copy Annexure P4 declared 598 Kanals 7 Marias of "C category as surplus land with the land owner Kanwar Bhan instead of 607 Kanals 2 Marias for the reason that a sale of 5 Kanals 11 Marias on 4.4.1972 was treated as a genuine sale by the land owner as it was sold before his land was declared as surplus and as such ".he same was taken out of the purview of surplus area. The matter then came up in appeal before the Coliector,Hissar, which was also dismissed vide order dated 30.6.1982, Annexure P5. Vide order dated 13.9.1982, Annexure P7, the review filed by the petitioners also met the same fate. Hence the present petitions under Article 226 of the Constitution of India for quashing the orders Annexure P2, P4, P5 and P7 re- spectively passed by respondents No. 2 to 4.

3. The case as set up by the petitioners in the instant petitions is that they had led oral as well as documentary evidence to prove their old tenancy and claim for leaving their tenancy area under them as tenant's permissible area; that the provisions of the Ceiling Act as contained in Sections 3(r) and (s), 4 and 7 are equivalent to the provisions of the Punjab Land Reforms Act, 1973;that respondents No. 2 to 4 have rejected the aforesaid claim of the petitioners without assigning any reason.

4. Pursuant to the notice, Sub Divisional Officer, Fatehabad has filed the written statement on behalf of respondent No. 1 to 4. The stand taken by the respondents is that the petitioners are not entitled to the tenant's permissible area as there is no such provision in the Ceiling Act; that respondent No. 5 was not a big land owner under the Ceiling Act; that the petitioners fall in category "C under the Haryana Utilization of Surplus Area and other Scheme, 1976 (for short the Surplus Area Scheme) and have already been allotted the land to which they were entitled.

5. Kanwar Bhan/respondent No. 5 has filed his separate written statement asserting therein that the order passed by respondents No. 2 to 4 are quite legal and deserve to be upheld.

6. I have heard Mr. R.S.Mittal, learned Senior counsel for the petitioners and Mr. Raghbir Chaudhary, learned Senior Deputy Advocate General, Haryana. With their assistance I have gone through the available record. However, none has appeared on behalf of respondent No. 5.

7. Mr. Mittal vehemently contends that the petitioners are admittedly old tenants under respondent No. 5 much prior to 24.1.1971, the appointed date the Ceiling Act and their claim has been wrongly declined by the authorities on the ground that there is no provision in the Ceiling Act about allowing tenant's permissible area. Dwelling upon his arguments, the learned counsel contends that the provisions of Ceiling Act are part materia with the provisions of Punjab Land Reforms Act as Sections 3(r)(s), 4 and 7 of the Haryana Act correspond to Sections 4, 5 and 7 of the Punjab Land Reforms Act and a Division Bench of this Court in Jagraj Singh and Ors. v. State of Punjab and Ors., 1978 P.L.J. 59 while

deciding a similar question under the Punjab Land Reforms Act has held that a person, who does not otherwise own land, is entitled to reserve and retain the land in his occupation as a tenant and tenant's permissible area. According to Mr. Mittal, the tenant can thus assert claim qua land of the land owner as tenant's permissible area. The learned counsel further relying upon another judgment of Full Bench of this Court in *Jaswant Kaur v. State of Haryana*, 2 1977 P.L.J. 230 asserts that while deciding the case under the Ceiling Act, this Court had held that the determination of tenant's permissible area u/s 4 is not an exercise in futility as it is intended to secure to him under the scheme land to the extent of permissible area under the Act out of the area held by him and ultimately effect of the allotment under the Scheme is to convert tenancy rights which he previously possessed in the land into the rights of ownership. The learned counsel further contends that Section 50 of the Ceiling Act also envisages that the permissible area has to be secured to a tenant vide proviso to Section 15(2) of the Act.

8. Mr. Mittal, otherwise, submits that where the tenants, who are either to be resettled on surplus land under the Punjab Law or were having tenant's permissible area under the Punjab Law, can retain their respective permissible areas under the Scheme, but such tenants of landowners whose surplus area cases are decided under the Haryana Ceiling Act, are being deprived of their permissible area. This in other terms would be violative of the principles of equality enshrined in Article 14 of the Constitution.

9. On the basis of the aforesaid submissions, the learned counsel contends that the impugned orders are liable to be quashed.

10. Opposing the submissions made by learned counsel for the petitioners, Mr. Chaudhary strenuously contends that though the petitioners were tenants earlier to 24.1.1971, yet their claim for tenant's permissible area was rightly declined as there is no provision in the Ceiling Act about the said area. He then contends that the provisions of the Ceiling Act are not *pari materia* with the provisions of Punjab Land Reforms Act as no provision of Ceiling Act corresponds to any Sections of the Punjab Land Reforms Act, as projected by Mr. Mittal and that even the judgments relied upon by the learned counsel for the petitioners are distinguishable on facts.

11. After giving my thoughtful considerations to the respective submissions of either side, I am of the view that the writ petitions deserve to be dismissed.

12. I have seen the relevant provisions of the Ceiling Act and Punjab Land Reforms Act with regard to the tenant's permissible area. May be, and as submitted by Mr. Mittal that they are in *pari materia* but in my considered view the provisions of both the Acts are not identical. In other sense, the purport of both the Acts is not the same. The Haryana Act does not expressly provide for tenant's permissible area as is done by Punjab Act. For this, reference can be made to Section 12 of the Ceiling Act, which reads thus:

"12. Vesting of surplus area.- (1) the surplus are of a landowner shall, (from the date on which it is declared as such shall be deemed to have been acquired by the State Government for a public purpose) (Vide Act No. 17 of 1976) and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance:

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.

(2) The right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished.

(3) The area declared surplus or tenant's permissible area under the Punjab Law and the area declared surplus under the Pepsu Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab Law or Pepsu Law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration. (Vide Act No. 40 of 1976)

(4) For the purpose of determining the surplus area under this Act, any judgment, decree or order of a Court or other authority obtained after the appointed day and having the effect of diminishing the surplus area shall be ignored."

13. The plain reading of the above Section leaves no room of doubt that an absolute and clear right is automatically acquired by the State which is free from all burdens and the right of the tenant within the permissible area of the landowners shall also stand extinguished. No interpretation or any other concept can be imported in it. This otherwise could tantamount to giving a forced incoming Punjab Law 1953 and Pepsu Law were quite in view when Haryana Act was drafted. Exclusion is a fact, there is not a husk of right of tenant. Tenants may feel hard hit but that too is not sufficient to give them any legal claim in the shape of tenant's permissible area. Punjab Act and Haryana Act are like twain, which shall never meet because they are quite opposite.

14. In my view, reference to Section 15 of the Haryana Act, which deals with disposal of surplus area is also necessary to resolve the controversy involved. Section 15 envisages that surplus area acquired or vested u/s 12 of the Act shall be at the disposal of the State government and by virtue of proviso to this Section, the tenant may be allotted land to the same extent but it does not anywhere provide the land to a tenant on 24.1.1971, the appointed day under the Ceiling Act. This fact is evident from the written statement filed on behalf of respondents No. 1 to 4 that the petitioners have already been allotted some

land under the Haryana Utilization of Surplus and other Area Scheme, 1976 by the Prescribed Authority, Fatehabad as "C category, out of the area already held by them. This, in my considered view, non provision of tenant's permissible area under the Ceiling Act does not hit Article 14 of the Constitution of India because eligible tenants are entitled to the land under Surplus Area Scheme, 1976.

15. The Division Bench judgment in Jagraj Singh's case (supra) relied upon by learned counsel for the petitioners is an authority on Punjab Land Reforms Act and does not relate to the provisions of the Haryana Ceiling on Land Holdings Act, 1972. There are distinct provisions regarding tenant's permissible area in the Punjab Land Reforms Act.

16. Similarly, the matter in Full Bench in Jaswant Kaur's case (supra) is not germane to the present issue. The Full Bench decision is pious in its field. It sets at rest the existing inconsistency in the express provisions of the Act. The State Government has made an alternative regular scheme of allotment to the tenants. The petitioners are covered thereunder.

17. As a sequel to the discussion hereinabove. In my view the concerned authorities have not transgressed or digressed from any specific provision of law while passing the impugned orders Annexures P4, P5 and P7. I do not find any intrinsic illegality or patent irregularity in the impugned orders, which would call for interference of this Court while exercising the powers under Article 226 of the Constitution.

18. Resultantly, finding no life, all the five writ petitions are dismissed. However, there shall be no order as to costs.