

(1972) 04 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 23 of 1970

Chet Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 26-04-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 32

Citation : AIR 1973 P&H 55

Hon'ble Judges : Rajendra Nath Mittal, J; D.K. Mahajan, J

Bench : Division Bench

Judgement

1. This Letters Patent Appeal arises out of the judgment of the learned Single Judge dated march 2, 1967. from which a writ petition under Article 226 of the Constitution has been dismissed which was filed challenging the order of the Financial Commissioner, dated May 24, 1963, under the Pepsu Tenancy and Agricultural Lands Act, 1955, (hereinafter referred to as "the Act").

2. The facts which have given rise to the appeal are that Chet Singh was displaced person from Bahawalpur State in West Pakistan who also owned land measuring 42.79 standard acres in village Ajit Gill tehsil Faridkot, District Bhatinda. He in lieu of his land left in Bahawalpur state was allotted 23.28 standard acres of land in the same village. Subsequently, it was found that the land allotted to him was in excess to the extent of 7.14 standard acres and he was not entitled to the same. Consequently, the Managing Officer cancelled the allotment of land to the extent of 7.14 standard acres. Chet singh, however, was allowed to retain the excess land which was allotted to him on payment of Rs. 5315.62 paise. He by means of two sale deeds, dated January 18, 1958. and January 28, 1958. sold his total land measuring 42.79 standard acres which was his original holding in the village to his grandsons Harpal Singh and Avtar Singh sons of Zora Singh and Mohinder Singh, Joginder Singh and Jagtar Singh alias Bhupinder Singh sons of Gurdip Singh. After the said sale, he acquired the ownership rights in 7.14 standard acres on September 23, 1958. On October 10,

1958, the full proprietorship rights in the land measuring 16.14 standard acres were conferred on Chet Singh.

3. The proceedings for determination of surplus area under the Act were started by the Collector (Agrarian) Faridkot who allowed him 30 standard acres as his permissible area and declared 36.07 standard acres as surplus. An appeal was filed to the commissioner who dismissed the same. A revision petition was filed to the Financial Commissioner against the order of the commissioner which was also dismissed by him on May 24, 1963. A writ petition was filed in this Court for quashing the orders of the Revenue Authorities which was dismissed by the learned Single Judge on March 2, 1967. A Letters Patent Appeal has been filed against this judgment of the learned Single Judge.

4. It may be mentioned at this stage that during the pendency of this appeal, Chet Singh who was the original allottee died and his legal heirs, namely Harpal Singh, and Avtar Singh sons of Zora Singh and Mohinder Singh, Joginder Singh and Jagtar Singh alias Bhupinder Singh sons of Gurdip Singh were impleaded as appellants vide order dated September 10, 1970. Chet Singh shall hereinafter be referred to as "the deceased landowner."

5. The first contention of the learned counsel for the appellants is that the deceased landowner had transferred 42.79 standard acres to his grandson in January, 1958 and these sales should be excluded from consideration in assessing the surplus land in their hands. He takes his support for the said argument from the perusal of Section 32-FF which is in the following terms"-

"Save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance up to 30th July, 1958. by a landless persons. or a small land owner, not being a relation as prescribed of the person making the transfer or disposition of land for consideration into an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit, to transfer or other disposition of land effected after 21st August 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition.

Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation for it to the persons from whom he received it."

6. The learned counsel for the appellants submits that the vendees were small landowners and therefore, they were not hit by section 32-FF. He has also submitted that they were also had relations as prescribed on the date of transfer. Rule 23-A of the Pepsu Tenancy and Agricultural Lands Rules, 1958, which prescribes relations for the purposes of Section 32-FF of the Act was introduced on April 20, 1958. In these circumstances, he submits that for determination of surplus area the sale dated January 18, 1958, and January 28, 1958, in favour of the appellants should not be ignored. We are not in agreement with the said

argument, the matter has been settled by their Lordships of the Supreme Court in *Pritam Singh Chahil Vs. State of Punjab and Others*, . Wherein it has been observed that any land in excess of the permissible limit, that is, thirty standard acres, vests in the State. Under Act 3 of 1959, the Act was amended and for the purposes of ascertaining the surplus land, the land transferred after August 21, 1956. in favour of the persons mentioned in Rule 23-A of the Rules was added to his land and if the total thereof was above the permissible area, the surplus would vest in the State Government. In view of the above observations, this argument of the learned counsel does not hold good.

7. The second contention of the learned counsel for the appellants is that the deceased landowner had sold this area measuring 42.7 standard acres which shall hereinafter be referred to as "the local area" by means of two documents dated January 18, 1958 and January 28, 1958. in favour of his grandsons who are now appellants. He submits that the land measuring 7.14 standard acres was purchased by him subsequently on September 23, 1958. From this he argues that out of the permissible limit he had sold whole of his permissible limit and that he was left with no land except the surplus area. He could subsequently acquire land upto 30 standard acres which, according to the Act, was the permissible limit. In case, he subsequently acquired any land that could not be taken as a surplus area. This argument of the learned counsel for the appellants is tenable. After the sale of the permissible limit if he is not left with any area which was his permissible area, he could acquire area to the extent of his permissible limit, In view of the matter. we hold that 7.14 standard acres could not be taken as surplus area by the Collector which was acquired by him September 23, 1958.

8. The last argument which has been made by the learned counsel for the appellants is that the deceased landowner died during the pendency of the appeal and the surplus area has not been taken possession of u/s 32-E of the Act. As Chet Singh had died and the total area in the hands of his legal heirs is not in excess of the permissible limit of each of the heirs, the collector cannot utilize the said area. According to him, the vesting of surplus land in the State or in the person to whom the surplus land is allotted can take place only on such day when the possession of the land is taken. He further submits that now no area can be declared surplus in the hands of the heirs. In support of his contention, the learned counsel for the appellants relies on *Bhagwan Singh v. State of Punjab* 1965 PLJ 124 wherein it has been observed thus"-

"The vesting of surplus land in the state or in the person to whom the surplus area is allotted under the Utilisation of Surplus Area Scheme must be held to have taken place only on the day the possession of that land is taken.

xx xx xx

xx xx xx Since the possession was taken after the death of the landowner, it is obvious that the land had not vested in the State during the landowner's lifetime

and before its possession could be taken by the State entire land owned by the land owner including the area that had been declared surplus, had vested in the heirs. The question whether any part of the land held by the heirs was surplus has to be decided with reference to the heir's individual holding. In that view of the matter the land not having vested in the State Government during the lifetime of the landowner, it could not be allotted to the landless persons. The mere fact that the persons allotted surplus land have paid one instalment of compensation due in respect of the land allotted to them does not give them title to the land. If the land never vested in the State it could not be allotted to the landless persons and the payment of the first instalment of compensation assessed by the State in respect of the land cannot confer any title on them."

9. In the above case, the area of the landowner was declared surplus u/s 32-D of the Act and final statement of the surplus area in the prescribed form was published in the Government Gazette and subsequently the surplus land was allotted to the landless persons under the Utilization of Surplus area Scheme. In spite of this learned Bench came to the conclusion that the question of surplus area was to be decided with reference to the heirs of the individual holdings of the heirs. We are in respectful agreement with the above said observations, Applying the said principle, to the present case, we find that as no area has been utilized till today, therefore, no surplus area is now left in the hands of the heirs.

10. In view of our above said findings, we accept this appeal and quash the orders of the Revenue authorities declaring the surplus area. However, in the circumstances of this case, we leave the parties to bear their own costs.

11. Appeal accepted.