
(1980) 10 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4795 of 1975

Chhota Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 01-10-1980

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 32DD
Punjab Land Reforms Act, 1972 — Section 9

Citation : (1981) 3 ILR (P&H) 20

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Advocate : Ajmer Singh, for the Appellant; H.S. Bajwa, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Gokal Chand Mital, J.—Chanan Singh, Respondent No. 4, was the owner of land which was declared surplus by order of the Collector dated 2nd July, 1960 (copy Annexure P1). Mutation of the surplus area in the hands of Chanan Singh was sanctioned on 22nd February, 1975 (copy Annexure P-2) in favour of the State and from that date the State of Punjab was shown as the owner of the land instead of Chanan Singh. After the mutation was sanctioned in favour of the State, the Petitioners four son of Chanan Singh and three of his grandsons who were sons of his fifth deceased son, filed the present writ petition in this Court to challenge the order of declaration of surplus area, annexure P. 1, as also the sanctioning of mutation in favour of the State annexure P. 2 and the proceedings which the State wanted to take in pursuance of mutation, annexure P. 2, to obtain possession of the surplus area. The basis for challenging the orders, annexure P-1 and P-2, is that they filed a suit against Chanan Singh before the Civil Court on the ground that they were owners in possession and Chanan Singh admitted them to be the owners in possession with the result that a decree was passed in their favour on 15th April, 1971 (copy Annexure P. 3). After the decree was passed in their favour, their ownership was recorded vide mutation No.

2222, sanctioned on 27th February, 19/2 (copy annexure P. 4). Therefore, on this basis it was urged that neither the order of declaration of surplus area could stand nor the mutation, with the result that they could not be dispossessed.

2. After hearing the counsel for the parties, I do not find any substance in the writ petition. The order of declaration of surplus area, annexure P. 1, was binding on Chanan Singh. Section 32DD of the Pepsu Tenancy and Agricultural Lands Act, 1955, provides that any judgment, decree or order of a court obtained, after the commencement of the Act and having the effect of diminishing the area of a person which could have been declared as his surplus area shall be ignored. In the present case the surplus area had been declared about eleven years before the passing of the decree and according to the statement of law, even if surplus area had not been declared, such a decree had to be ignored while declaring the surplus area. Therefore, the Petitioners cannot claim to have derived any benefit under the decree. A reading of the facts which culminated in decree, annexure P-3, shows that it was a collusive suit between father and sons simply to avoid the taking over of the possession of the surplus area by the State.

3. Counsel for the Petitioners wanted to place reliance on a decision of the Supreme Court in *Gurdit Singh and Ors. v. State of Punjab and Ors.* 1974 PLJ 374. A reading of the facts of that case would show that the same is clearly distinguishable from the present case. There in the year 1939, two grandsons of the owner inherited the land under a will and mutation thereof was sanctioned in their favour. Somewhere, in 1944, the father of the aforesaid two persons wanted to get a gun licence and in order to obtain such a licence he had to show that he was owner of certain property. To facilitate the same, a mutation was got sanctioned in favour of the father of those two persons which continued to show the ownership of the father till the Agrarian Law came into force. In surplus area proceedings the land was considered to be of the two grandsons who had originally inherited the property and both of them were allowed permissible area. While doing so, the authorities, under the Pepsu Tenancy and Agricultural Lands Act had taken notice of a decree obtained by the aforesaid two persons against their father about their ownership. After Section 32DD was inserted in the Act, the authorities wanted to reopen the case and in view of Section 32DD reviewed the earlier orders and after ignoring the Civil Court decree in favour of the two heirs, considered the land in the hands of their father and declared surplus area. While doing so, no notice was issued to the heirs in whose favour orders had already been passed. On those facts, it was ruled by the Supreme Court that they were entitled to a hearing and Section 32DD of the Act could not be construed in such a way that the two grandsons who originally inherited the property in 1939 were deprived of saying that in fact they were the owners of the property and not their father. In the present case, the Petitioners have not been able to show as to what is the basis of their claim which they laid in the suit to claim ownership of the property which culminated in a decree in their favour. It is not disputed that Chanan Singh had all along been owner of the property and at no point of time before the surplus area was declared on 2nd

July, 1960, the Petitioners were recorded as owners thereof. Hence, such a collusive decree can never be given effect to nor would entitle the Petitioners to a hearing before the sanctioning of the mutation because that is the only proceeding which has taken place so far after they obtained the decree.

4. It was then contended by the counsel for the Petitioner that the Punjab Law Reforms Act, 1972, has come into force and even if it is assumed that the land in dispute is surplus, by virtue of Section 9 of the said Act, the Collector before taking possession has to issue notice to the landowner or tenant or any other person In possession A reading of Section 9 ibid shows that provision has been made for giving notice of ten days to the occupant of the surplus area so that he may deliver possession thereof within that period failing which the Collector can take possession by use of such force as may be necessary. The underlying object of this section is to provide some time to the occupant to remove his things there from and to deliver peaceful possession and if the occupant fails to deliver peaceful possession, then the Collector can use such force as may be necessary. The Petitioners are still in possession, according to their averment and if they have not been dispossessed already, no harm will be caused if they are given notice u/s 9 of the Punjab Land Reforms Act, so that they may be able to remove their agricultural implements etc. from the land in dispute failing which the Collector would be entitled to take possession by force.

5. With the aforesaid observation, this writ petition is dismissed with costs. Counsel's fee Rs. 100/-.