**(2013) 10 P&H CK 0255**

**In the Punjab And Haryana At Chandigarh**

**Case No :** C.W.P. No. 1369 of 1994

Chiman Lal APPELLANT

Vs

State of Haryana and Another RESPONDENT

**Date of Decision :** 29-10-2013

**Acts Referred:**

**Citation :** (2013) 10 P&H CK 0255

**Hon'ble Judges :** Ajay Tewari, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

Ajay Tewari, J.—By this petition the petitioner has challenged the order of the Financial Commissioner dated 24.5.93 whereby he remanded the surplus area case of the petitioner. At the very outset learned counsel for the petitioner has very fairly stated that the Commissioner had remanded back two matters, one regarding a compromise/collusive decree dated 26.12.1969 and the second regarding the sales made by the petitioner. As regards the collusive decree dated 26.12.1969 learned counsel for the petitioner has stated that the land under the said decree has rightly been decided to be added to the holding of the transferee and she has no objection to that. Consequently as regards the land transferred by the decree dated 26.12.1969 the surplus area case of the transferee be reexamined after including this transferred land in his holding. With regard to the land which was sold away learned counsel has argued that the petitioner was a sonless widow and had sold various parcels of land between 1973 and 1979 for the marriage of her daughter and to maintain herself since the land could not be properly utilised by her. In fact the prescribed authority personally went to the village Ahmedpur Darewala and came to the conclusion after examining not only the record but witnesses that the sales made by the petitioner were bona fide sales. She has further argued that this order was passed on 30.08.1982 but the State challenged the same in a revision after more than 5 years and the Financial Commissioner by the very cryptic impugned order has remanded the case back for fresh decision. Learned AAG has argued that if sales made after the appointed day are permitted to be ignored the entire ceiling law would be defeated.

2. Section 8 of The Haryana Ceiling on Lands Holding Act, 1972 is as follows:--

8. Certain transfer or dispositions not to affect surplus area-

(1) Save in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the pepsu law or Punjab law or by an heir by inheritance no transfer or disposition of land in excess of-

(a) the permissible area under the Pepsu law or the Punjab law after the 30th day of July, 1958; and

(b) the permissible area under this Act, except a bona fide transfer, or disposition after the appointed day, shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled out for such transfer or disposition.

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

(2) The burden of proving the transfer or disposition to be a bona fide one shall be on the transfer.

(3) If any person transfer or disposes of any land after the appointed day in contravention of the provisions of sub-section (1), the land so transferred or disposed of shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer or disposition is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area. If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the promotion to the land transferred or disposed off to them.

3. Consequently the blanket proposition canvassed by the learned AAG that if sales made after the appointed day are permitted to be ignored the entire ceiling law would be defeated cannot be accepted because the statute has itself provided for exemption of ''bona fide transfers''.

4. Learned counsel for the petitioner has relied upon two judgments of the Hon''ble Supreme Court in Bhupendra Singh Vs. State of U.P. and Others, and Brijendra Singh Vs. State of Uttar Pradesh and Others, . In both these cases their lordships were dealing with analogous provisions of the U.P. Imposition of Ceiling on Land Holdings Act and held as follows:- ........We have held in that case that

 

"once it is established by the transferring tenure-holder that the transfer in question was effected in the course of ordinary management of his affairs and was made for adequate consideration and he has genuinely, absolutely and irrevocably divested himself of all right, title and interest(including cultivatory possession) in the land in favour of the transferee, the onus under Explanation II to Proviso (b) of Section 5(6), in the absence of any circumstances suggestive of collusion, or an intention or design to defraud or circumvent the Ceiling Act, on the tenure-holder to show that the transfer was effected in ''good faith'', will stand discharged, and it will not be necessary for the tenure-holder to prove further that the transfer was made for an impelling need or to rise money for meeting a pressing legal necessity............

Viewed against this exposition of law and the finding of fact of the Prescribed Authority it has to be held that the sales made by the petitioner were bona fide transfers. In the circumstances the impugned order in so far as it remands back the case relating to sales made by the petitioner after the appointed day is set aside. The writ is allowed to the above extent.

 