
(1981) 04 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 781 of 1980

Dalip Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-04-1981

Acts Referred:

Punjab Land Reforms Act, 1972 — Section 3(1), 4, 4(1), 4(2), 5
Punjab Land Reforms Rules, 1973 — Rule 5(1)

Citation : (1981) 3 ILR (P&H) 503

Hon'ble Judges : S.S. Kang, J

Bench : Single Bench

Advocate : Sarjit Singh, for the Appellant; O.P. Arora, for the Respondent

Judgement

S.S. Kang, J.—Since common questions of law and fact are involved in Civil Writ Petition Nos. 278, 279, 399 and 781 of 1980, the learned Counsel for the parties are agreed that they should be disposed of together. I propose to dispose them off by this judgment.

2. In order to appreciate the controversy, it will be advantageous to recapitulate the facts mentioned in Civil Writ Petition No. 781 of 1980. Dalip Singh, Petitioner, owned 637 kanals 3 marlas of land in village Chak Paliwal. His wife owned 51 kanals 8 marlas of land in village Jandawalia. He furnished a declaration on form "A", as required by Rule 5(1) of the Punjab Land Reforms Rules, 1973 (hereinafter called the Rules") regarding the lands owned by him. He clearly mentioned the names of the tenants, who were cultivating his land. Ujagar Singh, Kartar Singh, Har Kaur and Mohinder Kaur were the persons cultivating the land under the Petitioner on the appointed date, that is, the 24th January, 1971. The Collector took up the case of the Petitioner for determination of the surplus area. The Petitioner, while appearing before the Collector raised inter alia the objection that the land which was comprised in the above-mentioned tenants permissible area and which belonged to the Petitioner, cannot be declared surplus with him under the Punjab Land Reforms Act. However, in view of the

two sets of instructions (Memo No. 6965-AR-5-76/38985 dated November 23, 1976 and D.O. No. AR-5-76/41143 dated December 13, 1976), issued by the State Government, the Collector did not go into this matter and did not treat the area in the occupancy of these tenants as their permissible area. He rather included this area in the holding of the Petitioner and determined his permissible area, taking into consideration all these areas. Consequently, he declared these areas, which were under the occupancy of the tenants to be the surplus area of the Petitioner.

3. The facts in the other four petitions are also similar and points canvassed are the same.

4. It has been vehemently argued on behalf of the writ Petitioners " that in view of the language of Sections 4, 5, 7 and 8 of the Punjab Land Reforms Act, it is manifest that the legislature has retained a concept of permissible area of tenants even under the Punjab Land Reforms Act. The contention of the learned Counsel for the Petitioners is indeed supported by the language of these sections. It is not necessary to dilate upon the matter any further since the matter is concluded by an authoritative pronouncement of Division Bench of this Court in Jagaj Singh and Ors. v. State of Punjab and Anr. 1978 P.L.J. 59. It has been held therein:

A plain reading of Sub-section (1) of Sections 4 and 7 leads to a clear conclusion the the Act does envisage the concept of tenant's permissible area and a person who does not otherwise own land, has a right to reserve and retain land in his occupation as a tenant as tenants' permissible area subject to the extent detailed in Sub-section (2) of Section 4. Under Sub-section (1) of Section 5 only such tenants of the land are to be recognised for the purposes of the Act who occupied it as such on the appointed day, which under Sub-section (1) of Section 3 is 21st of January, 1971. In view of these clear provisions in the Act, the argument of the learned Counsel for the State that the Petitioners cannot assert their claim qua any land of Respondents No. 3 to 5 as tenant's permissible area under the Act cannot be sustained.

It is clear from the report that the instructions issued by the State Government were struck down being contrary to the provisions of the Act. However, the impugned orders in these cases have taken the same line. It has been illegally held that the tenants can have no permissible area under the Punjab Land Reforms Act. These conclusions of the revenue authorities are not in consonance with the clear language of the statute. Respectfully, following the decision in Jagraj Singh case (supra), I allow these writ petitions, set aside the orders passed by the Collector, Additional Commissioner and the Financial Commissioner and remand these cases to the Collector to determine the surplus area of the Petitioners afresh. He shall also be not influenced by the instructions in light of the observations given in the judgment. It will be open to the Petitioners to raise whatever points they want to urge. No costs.