
(2001) 09 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 27 of 1998

Dharam Pal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 8

Citation : (2002) 2 RCR(Civil) 37

Hon'ble Judges : M.M. Kumar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Amit Jain, for the Appellant; Jaswant Singh, DAG and S.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is an appeal against order dated 17.9.1992 passed by the learned Single Judge in Civil Writ Petition No. 2147 of 1980. The appellants prayer for issuance of a direction to the official respondents that they may not utilise the land in dispute in pursuance to order dated 9.10.1979, as also their prayer for restraining the official respondents from entering the mutation of land in favour of the State, have been rejected.

2. Hardeva (deceased) was a big land owner. The appellants and proforma respondent Nos. 12 to 15 are his sons and daughters. Proforma respondent No.16 is the widow of late Shri Hardeva. By an order dated 12.12.1959, the Collector Agrarian, Rohtak declared 51 acres of land belonging to Hardeva as surplus under the Punjab Security of -Land Tenures act, 1958 (for brevity, Punjab Act). On account of consolidation of holdings, some short-fall was discovered and u/s 24-A(2) of the Punjab Act, the case of Hardeva was reopened but still land holdings measuring 39 acres 7-1/4 units was declared surplus vide order dated 18.8.1966. In the meanwhile, Hardev had transferred 4/5th of his holdings to his four sons, namely, Dharam Pal, Sukh Pal, Jai Parkash and Ram Rattan vide mutation No.733 dated 26.2.1955. It is appropriate to mention here that Shiva

Charan another son - Appellant No.4 was born in the year 1957-58 much after the mutation was sanctioned. Hardeva died on 25.9.1978 and the land owned and possessed by him was inherited by the appellants.

3. On the basis of mutation sanctioned in their favour, the sons of Shri Hardeva filed an application dated 27.4.1977 u/s 8 of the Haryana Ceiling on Land Holdings act, 1972 (for brevity, Haryana Act). They claimed that since the mutation was sanctioned before 30.7.1958 i.e. the date given u/s 8(1)(a) of the Haryana Act, they were entitled to be given the benefit of excluding 4/5th of the area declared surplus. The Prescribed Authority/Allotment Authority, Gohana accepted their application and recorded the findings that Dharam Pal, Sukh Pal, Jai Parkash and Ram Rattan were entitled to 4/5th share of the surplus area as the original land owner had transferred that area out of his total area before 30.7.1958 according to the provisions of Section 8(1)(a) of the Haryana Act. The authority concerned also ordered that mutation be entered in the name of State regarding the remaining area i.e. 7 standard acres, 13-1/4 units as mentioned in the order dated 9.10.1979. The relevant extract of the order passed by the Prescribed Authority reads as under:-

"After hearing both the parties and perusing the concerned file and the evidence on record the father of the petitioners Shri Hardeva s/o Ram Parshad transferred 4/5 share of his total area of his surplus area transferred vide mutation 733 in view of decision dated 26.2.55 to his sons Sukh Pal, Dharam Pal, Jai Parkash, Ram Rattan. It is therefore clear that out of his declared surplus area the land owner transferred his 4/5 share before 30.7.58. Therefore, this surplus land can not be utilised u/s 8 of the Haryana Ceiling on Land Holdings Act, 1972 nor it vested in the State of Haryana nor it can be utilised for settling the tenants. This matter has been clarified by the instructions of Haryana Govt. Revenue Department vide Memo No.6632-AR(11) 76/3309 dated 29.10.76.

Therefore, I accept this petition-to this extent and ordered that the declared surplus area situated and comprised in Killa No. 58-1 (7-12), 15(8-0), 16(5-9), 17(8-0), 25(8-) 59/10.2(3-12), 21(6-8) 20-24(9-14) 17 min(3-!!) 18(8-0) 19(8-0) total 86 kanais 17 marlas (7 std acres 13-1/4 units). The mutation of which be entered in the name of the Government and this area can be utilised for settling other tenants and the remaining surplus area can not vest in the Govt. nor the mutation of which can be entered in favour of the Govt. nor this area can be utilised for settling the other tenants."

4. The appellants challenged the order of the Prescribed Authority in Civil Writ Petition No. 2117 of 1980. The learned Single Judge rejected their plea that no part of the holdings belonging to Hardeva, the deceased owner of the land holdings declared surplus under the Punjab Act vide order dated 12.12.1959 was utilised and that the same was not even allotted under the Haryana Utilisation of Surplus Area Scheme before the specified date given in Haryana Act. The claim of the appellants that the allotment authority should have evaluated the respective holdings of each one of the appellants u/s 4 of the Haryana Act before

declaring 7 standard acres, 13-1/4 units as surplus area also did not find favour with the learned Single Judge.

5. Shri Amit Jain argued that as the surplus land was not utilised before the promulgation of the Haryana act on 24.1.1971, the same should be re-evaluated by taking into account the claim of all the appellants. He further argued that the provisions of Sub-section (3) of Section 12 must be read with Section 8(1)(a) of the Haryana Act and if they are so read, it becomes clear that the land holdings to the extent of 4/5 share vide mutation sanctioned on 26.2.1955 has to be excluded for the purposes of considering the question of surplus area. He submitted that the mutation had been sanctioned before the specified date i.e. 30.7.1958 as provided by Section 8(1)(a) of the Haryana Act and, therefore, there was no necessity to transfer the land by way of registered sale deed as required by Section 54 of the Transfer of Property Act because transfers by words of mouth or by mutation were permissible as the Transfer of Property Act had been enacted on 1.4.1955.

6. Shri Jaswant Singh, learned Deputy Advocate General argued that u/s 12 of the Haryana Act, the area declared surplus under the Punjab Act is deemed to have vested and acquired by the State Government for a public purpose on the appointed date i.e. 24.1.1971. For this proposition, he placed reliance on a judgment of the Supreme Court in the case of Amar Singh and Others Vs. Ajmer Singh and Others,

7. Shri S.K. Jain, learned counsel for the non-official respondents argued that his clients had been allotted the land on 23.5.1980 and some of them have already deposited all the installments, whereas the others have paid the partial amounts. Shri Jain claimed that by virtue of Section 15(5) of the Haryana Act, the non-official respondents have become owner of the land. In support of his argument, Shri Jain relied on a judgment of the Supreme Court in the case of Smt. Bhagwartti Devi and Anr. v. State of Haryana and Anr. 1994 2 P.L.R. 423 (S.C.). and a judgment of this Court in the case of Gopal and Ors. v. State of Haryana and Ors. 1997 3 PLR 627.

8. We have considered the submissions of the learned counsel for the parties and are of the opinion that this appeal merits dismissal.

9. Sections 8 and 12(3) of the Haryana Act which have bearing on the decision of this appeal read as under:-

8. CERTAIN TRANSFERS OF 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 the 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 but 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 transferrer.

(3) if any person transfers 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 for or disposition is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area. If the area left with him is less than 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 proportion to the land transferred or disposed of to them.

12(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."

10. The question which requires consideration in this case is as to whether the proceedings which have become final under the Punjab Act with regard to declaration of surplus area, could be reopened by taking the benefit of Haryana Act. In our opinion, the controversy has been finally settled by the Supreme Court in Amar Singh's case (supra) on which reliance has been placed by the learned State counsel. In that case it was claimed that the land owners were entitled to re-evaluation of surplus area although proceedings against them were finalised in 1961/1962. It was asserted that the possession was not taken and the land was not utilised on the appointed day. Rejecting this argument, their Lordships of the Supreme Court observed as under:-

"Learned counsel for Ajmer Singh-respondent, has contended that although the surplus proceedings against Maru Ram was finalised in the year 1961/1962 but the possession of the surplus land remained with Ajmer Singh, respondent, till 1981 when the same was handed over to the appellant. Simply because the surplus land declared under the Punjab Act was not utilised and it remained in possession of Ajmer Singh-respondent would not make any difference so far as the position in law is concerned. The language of Section 12(3) is unequivocal and clear. According to it the surplus land declared under the Punjab Act stood vested in the State. The non-utilisation of surplus land till the date of vesting (23-12-1972) is of no consequence and makes no difference. The view we have taken is supported by the judgment of this Court in Bhagwanti Devi v. State of Haryana. We, therefore, allow the appeal, set aside the impugned judgment of learned Single Judge of the High Court dated 23.9.1987 and also the order of the Letters Patent Bench dated 3.11.1987. Civil Writ Petition No. 163 of 1986 filed by Ajmer Singh in the High Court stands dismissed. The appellant shall be entitled to his costs which we quantify as Rs.1 1,000. Costs to be paid by respondent-Ajmer Singh."

11. The other judgment of the Supreme Court in Bhagwanti Devi's case (supra) relied on by the learned counsel for non-official respondents also lends substantial support to the argument that the land once declared surplus under the Punjab Act, even if remained unutilised, would be deemed to have vested in the State or acquired for a public purpose.

12. We are further of the view that the appeal deserves to be dismissed because it is not properly constituted. A perusal of the record shows that application u/s 8 of the Haryana Act had been filed by appellant Nos.1, 2, 3 and 5 and the same was allowed by the Prescribed authority. The writ petition was filed by all the appellants and respondent Nos. 12 to 16, notwithstanding the fact that they were not parties in the application. Therefore, no relief could have been given to them by the learned Single Judge-No other argument has been advanced.

For the reasons mentioned above, this appeal fails and is dismissed.