
(2015) 08 P&H CK 0131
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 2326 of 2011 [O&M]

Fakiria and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 12[3], 8
Punjab Security of Land Tenures Act, 1953 — Section 10-A, 12[3], 18, 18[1], 19-B

Citation : (2015) 4 RCR(Civil) 680

Hon'ble Judges : Surya Kant, J;P.B. Bajanthri, J

Bench : Division Bench

Advocate : Prem Nath Aggarwal, for the Appellant; Naveen Kaushik, Addl. AG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J—Two Letters Patent Appeal Nos. 2326 of 2011 and 128 of 2012 are being disposed of by this common order as both the appeals are directed against the judgment dated 03.08.2011 whereby learned Single Judge has dismissed the appellants' writ petitions challenging the order dated 21.08.1990 passed by the Financial Commissioner, Haryana. For the sake of brevity, the facts are being extracted from LPA No. 2326 of 2011.

2. The question that arises for consideration is as to whether the appellants were in continuous occupation of the subject- land as tenants and rightfully "purchased" it on 06.09.1967 under Section 18 of the Punjab Security of Land Tenures Act, 1953? If so, whether the purchase order is binding on the State of Haryana?, and if not, whether the "allotment" of surplus land by the State Government in favour of respondent No. 5 [an unsettled tenant] under the provisions of Haryana Ceiling on Land Holdings Act, 1972 is valid?

3. The controversy in this case revolves around the competing claims between the alleged tenants of the land who had "purchased" it vis-a-vis the unsettled tenants to whom the said land was allotted by the State. The brief facts are to

the following effect:-

4. Rao Pirthi Singh and his minor son, were big land- owners. Their surplus case was decided by the Collector, Agrarian, Naraingarh [Ambala] on 25.02.1965 and the land measuring 134 Standard Acres and 3 Units was declared as "surplus area" under the provisions of Punjab Security of Land Tenures Act, 1953 [for short "the 1953 Act"].

5. The predecessor-in-interest of the appellants [Mansa Ram] and one Teja filed applications on 09.09.1966 under Section 18 of the 1953 Act before the Prescribed Authority-cum-Sub Divisional Officer [Civil], Naraingarh for the purchase of the land declared as surplus area, claiming themselves to be old tenants thereon. Only the big landowner[s] were impleaded and State of Haryana was not made a party to these proceedings.

6. Section 18[1] of the 1953 Act, as amended by the Punjab Act No. 11 of 1955 entitles "the tenant of a landowner other than small landowner" to purchase "from the landowner the land so held by him but not included in the reserved area of the landowner" if such tenant has been in continuous occupation of the land for a minimum period of six years etc. etc.

7. A compromise was affected between the appellants" predecessor and the big landowner [Rao Pirthi Singh] and the latter admitted the claim of his tenants subject to the condition that Mansa Ram - tenant would surrender possession of a part of the land under his occupation. The A.C.I.G., Naraingarh thus allowed the tenant[s] to purchase the land vide his order dated 06.09.1967.

8. Another purchase application under Section 18 of 1953 Act was filed by one Lachman Singh against the big landowner[s] on identical grounds. He did not enter into any compromise, hence his application was dismissed by the ACIG, Naraingarh. That order was upheld by the Appellate Authority as well as the Revisional Authority [Financial Commissioner, Haryana] on 15.10.1975.

9. Lachhman Singh along with one Sri Chand then approached the Collector, Agrarian, Ambala to invoke his powers under Section 19-C and include the land "purchased" by Mansa Ram and Teja etc. in the "surplus pool" for its allotment to the unsettled tenants.

10. The afore said application of Lachhman Singh etc. was processed and the Prescribed Authority-cum-SDO [Civil], Naraingarh vide order dated 24.07.1980 [P-4] allowed the same. The Prescribed Authority categorically held that the subject land was claimed to have been purchased under Section 18 of the 1953 Act by old tenants but "according to the revenue records, Shri Mansa Ram etc. were not continuous tenants for six years on this land". The Authority further took notice of the fact that soon before the compromise the big landowner - Rao Pirthi Singh also had contended that "Mansa Ram etc. were not his tenants nor did they cultivate this land". The Prescribed Authority relied upon the order dated 15.10.1975 by the Financial Commissioner while rejecting the plea of

discrimination taken by Lachhman Singh etc., observing that if Mansa Ram etc. had illegally purchased the land, they did so "on their own responsibility".

11. The appellants' predecessor challenged the order of Prescribed Authority before Collector, Ambala but his appeal was dismissed on 15.06.1982 [P-5]. Thereafter, he filed a revision petition before the Commissioner, Ambala who allowed the same vide order dated 28.02.1985 [P-6] and set aside the orders of Prescribed Authority-cum-SDO [Civil] and of the Collector, Ambala, holding that "since the purchase order dated 06.09.1967 passed by the ACIG, Naraingarh had not been challenged till now by the State...., it will not be in the interest of justice to reconsider these orders regarding purchase of land by the appellants which have already become final.... He distinguished the claim of Lachhman Singh etc. as they were not existing tenants as on 15.04.1953.

12. It may be mentioned at this stage that after its purchase by the appellants' predecessor was declared illegal, the subject-land was included in the "surplus pool"; and allotted to unsettled tenants including predecessor-in-interest of respondent No. 5 and others. All of them, being aggrieved at the order dated 28.02.1985 of the Commissioner, Ambala Division, approached the Financial Commissioner, Haryana in ROR Nos. 3 and 4 of 1985-86 who vide order dated 21.08.1990 [P-7] allowed the Revision Petition and set- aside the order of Commissioner, Ambala Division.

13. The Financial Commissioner in his self-speaking order considered the rival submissions including the foremost plea of appellants that the purchase order dated 6.09.1967 had attained finality; they had already deposited the sale amount and the mutation too stood sanctioned in their favour on 27.1.1969 and that no challenge could be entertained against that order after a lapse of 23 years.

14. The Financial Commissioner took notice of the plea taken by State of Haryana that while declaring the "surplus area" of Rao Pirthi Singh and his minor son on 25.02.1965, the Competent Authority did not earmark any "permissible area" of the tenants. No appeal was filed by the tenants or big land-owner[s] against that order and it attained finality. If no "permissible area" was earmarked, then how could purchase application of an alleged tenant be entertained in the year 1966-67? The State of Haryana further contended that the purchase order dated 06.09.1967 was passed as a result of collusion between the alleged tenants and the big landowner, who presumably under the garb of its purchase by the tenants, wanted to physically retain the surplus land. It was further urged that once the land was declared surplus, it stood vested in the State and no application for its purchase could be entertained or decided without hearing the State. Admittedly, the State was not impleaded as a party-respondent.

15. The Financial Commissioner further held that [i] it was not a case of "purchase" of land under Section 18, rather the big landowner "sold" his surplus

land illegally; [ii] the State of Haryana had issued instructions whereby the vendees who had purchased the land out of surplus area upto 15.07.1966 alone were protected. In the instant case the application for purchase was moved only on 09.09.1966; [iii] once the land stood declared surplus, big landowner [s] had no authority to sell the same, be it through a consent or collusive order.

16. Learned Single Judge considered the matter exhaustively. The principal contention raised before the learned Single Judge was apparently on the point of inordinate delay in challenging the order dated 06.09.1967. Also, it was urged that the land purchased under Section 18 of the 1953 Act was excluded from the permissible area of the landowner. The State counsel on the other hand urged that the declaration of "surplus area" under the 1953 Act was final and could not be reopened on the basis of subsequent purchase order.

17. Learned Single Judge has held that the landowner never admitted the predecessor of appellants as tenant over the land for a period of six years and they also led no evidence to that effect. The purchase order dated 06.09.1967 was held to be a nullity as it was passed contrary to the law and it was liable to be ignored. Learned Single Judge further held that the tenants who have been allotted the surplus land by the State under re-settlement policy have got an indefeasible right and no order to their detriment could be passed without hearing them.

18. We have heard learned counsel for the parties at a considerable length and gone through the records.

19. It was reiterated on behalf of the appellants that the purchase order dated 06.09.1967 is valid and enforceable. It could not be set aside or challenged after a gap of 23 years. Reference was made to Section 8 of the 1972 Act to contend that by virtue of that provision the transfers made upto 23.09.1972 stand protected from the operation of Section 12[3] of the Act. Learned counsel further argued that in view of Rule 4[bb] of the Haryana Utilisation of Surplus and Other Areas Scheme, 1976, the land in dispute could not be allotted to private respondents as they were not tenants on it. Contrarily, the appellants had a preferential right for such allotment. He placed reliance on the decision of this Court in *Smt. Jaswant Kaur and Another Vs. The State of Haryana and Another*, AIR 1977 P&H 221 : (1977) 2 ILR (P&H) 26 in support of the first contention, whereas [i] *Banwari Vs. The Commissioner, Ambala Division, Ambala & Ors.* 1981 PLJ, 61; [ii] *Barkat & Ors. Vs. The Financial Commissioner, Taxation, Punjab & Ors.*, 1981 PLJ, 177 and [iii] *Loku Ram Vs. State of Haryana and Others* were cited to strengthen the other submissions.

20. On the other hand, counsel for the respondents relied upon the decision in *State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another*, AIR 1974 SC 994 : (1974) 2 SCC 70 : (1974) 3 SCR 152 and urged that the "purchase" of surplus land in somewhat similar circumstances, was held to be a device experimented by the landowner to take that land out of the surplus pool

and such like transactions even in bona-fide cases do not deserve sympathy since they damage the prospectus of the unsettled tenants from being settled. He further relied upon *Sher Singh and Others Vs. Financial Commissioner of Planning, Punjab and Others*, AIR 1987 SC 1307 : (1987) 2 JT 63 : (1987) 2 SCC 439 to maintain that the orders passed for utilisation of surplus area for re-settlement of the tenants are required to be given effect *Ram Swarup and Others Vs. S.N. Maira and Others*, AIR 1999 SC 941 : (1998) 8 JT 649 : (1998) 6 SCALE 603 : (1999) 1 SCC 738 : (1998) 3 SCR 617 Supp : (1999) AIRSCW 509 : (1998) 9 Supreme 438 was cited to urge that once the surplus land is allotted to different land-less persons, the allottees become necessary parties in any subsequent challenge to the determination of surplus land.

21. The core question that arises for consideration is whether the purchase order dated 06.09.1967 was validly passed in favour of the predecessor-in-interest of the appellants?

22. It will be beneficial at this stage to briefly notice the legislative scheme and provisions contained in the 1953 Act. Section 2[1] defines "landowner" which also includes a lessee, i.e., a tenant. Section 2[3] defines "permissible area" in relation to a landowner or a tenant to mean Thirty Standard Acres. Section 2[5-a] defines "surplus area" which means "the area other than the reserved area, and where, no area has been reserved, the area in excess of the permissible area selected under Section 5-B or the area which is deemed to be surplus area under sub-Section [1] of Section 5-C and includes the area in excess of the permissible area selected under Section 19-B, but it will not include a tenant's permissible area".

23. Section 5 of the Act deals with "reservation of land". It says that any landowner who owns land in excess of permissible area "may reserve out of the entire land held by him in the State of Punjab as landowner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form and manner to the Patwari..... or such authority as may be prescribed". Its Sub-Section [3] further provides that "a landowner shall be entitled to intimate a reservation within six months from the date of commencement of this Act, and no reservation so intimated shall be varied subsequently whether by act of parties or by operation of law, save with the consent in writing of the tenant affected by such variation or until such time as the right to eject such tenant otherwise accrues under the provisions of this Act".

24. Section 5-A [inserted by Punjab Act No. 46 of 1957] mandates that "every landowner or tenant, who owns or holds land in excess of the permissible area....., shall furnish within a period of six months from the commencement of the Punjab Security of Land Tenures [Amendment] Act, 1957, a declaration supported by an affidavit in respect of lands owned or held by him.....". Section 5-B deals with consequences of failure to select the permissible area and it empowers the Prescribed Authority to select the parcel or parcels of land for a landowner who fails to select such area on his own. Section 5-C provides penalty

for failure to furnish declaration under Section 5-A.

25. Section 9-A [added vide Punjab Act No. 11 of 1955] says that a tenant who is liable to be ejected, being a tenant "on the area reserved under this Act or is a tenant of the small landowner" shall not be dispossessed unless he is accommodated on a surplus area in accordance with the provisions of Section 10-A or otherwise on some other land by the State Government.

26. Thereafter comes Section 18 which confers the right on certain tenants to purchase the land and which has over-riding effect on the other provisions of the Act. Section 18[1] and [2], being relevant provisions, are reproduced below:-

"18. Rights of certain tenants to purchase land.- [1] Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a landowner other than a small landowner -

[i] who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years; or

[ii] who has been restored to his tenancy under the provisions of this Act and whose period of continuous occupation of the land comprised in his tenancy immediately before ejection and immediately after restoration of his tenancy together amounts to six years or more, or

[iii].....

shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause [i] or clause [ii] at any time, and in the case of a tenant falling within clause [iii] within a period of one year from the date of commencement of this Act.

Provided that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect of the land or any portion thereof, if he had sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation, unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried.

Provided further that if the land intended to be purchased is held by another tenant who is entitled to pre-empt the sale under the next preceding section, and who is not accepted by the purchasing tenant, the tenant in actual occupation shall have the right to pre-empt the sale.

[2] A tenant desirous of purchasing land under sub- Section [1] shall make an application in writing to an Assistant Collector of the First Grade having jurisdiction over the land concerned, and the Assistant Collector, after giving notice to the land-owner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall determine the value of the land which shall be the average of the prices obtaining for similar land in the locality during

10 years immediately preceding the date on which the application is made."

27. Similarly, Section 19-C [added by Punjab Act No. 14 of 1962 retrospectively w.e.f. 30.07.1958] is also relevant and it reads as follows:-

"19-C Power to cause delivery of possession of surplus area:- [1] The Collector may from time to time by order in writing direct the landowner or the tenant to deliver possession of the land in his surplus area to the person resettled on such land by the State Government or any officer empowered by it within ten days of the service of the order on him.

[2] If the landowner or the tenant refuses or fails without reasonable cause to comply with an order made under sub-Section [1], the Collector may cause the possession of the land in the surplus area to be delivered to the person resettled on it and may for that purpose use such force as may be necessary".

28. From the above stated Scheme of the Act, it emerges out that a "landowner" as well as a "tenant" are entitled to retain the land to the extent of "permissible area", namely, 30 Standard Acres and any land owned or possessed by them beyond such permissible area is liable to be declared "surplus area". A landowner who owns land in excess of the permissible area is obligated to reserve any parcel or parcels of land to the extent of permissible area "in the prescribed form and manner" and intimate it to the Patwari or any other prescribed authority. Such information was required to be furnished by the landowner within six months from the date of commencement of the 1953 Act, i.e., 15.04.1953. Further, once the landowner intimated the reservation of his permissible area, it could not be varied subsequently either by act of the parties or by operation of law. Every such declaration was required to be supported by affidavit and in the event of failure to declare the permissible area, the Prescribed Authority could undertake such exercise on behalf of the landowner.

29. It becomes relevant here to notice that the "surplus area" of big landowners- Rao Pirthi Singh and his minor son was decided by the Collector Agrarian on 25.02.1965 and 134 Standard Acres and 3 Units were declared surplus under the 1953 Act.

30. It can, thus, be safely inferred that the big landowner - Rao Pirthi Singh exercised his option qua the "permissible area" within the stipulated period under the 1953 Act, way back in the year 1953-54 or thereafter but certainly well before the determination of his surplus area case.

31. As a necessary corollary and by operation of law, he lost his title, interest or right and was no longer the "landowner" in respect of the "surplus area" measuring 134 Standard Acres and 3 Units after such declaration on 25.02.1965. It is pertinent to mention here that the Collector, Agrarian's order dated 25.02.1965 was not challenged by the landowner or any tenant and it attained finality.

32. We now advert to the rights claimed to have been acquired by the

predecessor of appellants under Section 18 of the Act. Truly, Section 18 opens-up with a non-obstante clause and has over-riding effect on other provisions of the Act. It entitles a tenant - [i] who is in continuous occupation of the land for a minimum period of six years etc. "to purchase from the landowner the land so held by him" if the said land has not been included in the "reserved area" of the landowner. Sub-Section [2] provides that as soon as a tenant applies in writing to the Assistant Collector of the First Grade for the purchase of land, the Authority shall issue notice "to the landowner and to all other persons interested in the land", and after making such inquiry as he thinks fit, the value of the land shall be determined.

33. The recourse adopted by the predecessor of the appellants in this case, was incurably defective for the reason that only Rao Pirthi Singh - the big landowner [or his minor son], who were no longer the absolute owners or the persons "interested" in the land declared surplus on 25.02.1965 were impleaded and heard. The State of Haryana [through Collector Agrarian] was the only interested entity who ought to have been heard, especially when the Collector Agrarian meanwhile had taken steps in exercise of powers under Section 19-C[2] for the delivery of surplus area land to the persons re-settled on it. In any case, it is the Collector Agrarian who alone would have pointed out as to whether the predecessor of appellants being the alleged tenants, had any preferential right, or the "surplus area" was needed for the unsettled tenants.

34. Contrary to the scheme or import of Section 18[1] of the 1953 Act, predecessor-in-interest of the appellants - Teja Singh etc. applied for the purchase of land without leading any evidence to prove their continuous possession as tenants at least for a period of six years immediate before such application. The revenue record did not support their claim. Even the land-owner[s] took a categorical stand that they were not his tenants and the subject land was under his own cultivating possession. Further, the land had been declared surplus and it went into the State's pool in view of Section 19-C. The State was an entity interested in the land and no claim could be entertained without impleading it as a party-respondent. Still further, sub-Section [2] mandates that the ACIG shall decide the application "after making such inquiry as he thinks fit" which necessarily pre-conditions the due application of mind to weigh the evidence on record and then determine the litmus test whether the applicants were tenants over the land for the requisite period and did they fulfill other statutory conditions also? Instead, the ACIG passed a collusive order on the basis of "compromise" struck between the predecessor of the appellants and the "landowner" who by that time was left with no interest in the land as it had been declared as his "surplus area".

35. The fact that no evidence was led by the appellants' predecessor to establish his tenancy for a period not less than six years is also clearly inferable from Para Nos. 2 and 3 of the order dated 6.9.1967 of the ACIG, Naraingarh [P-2] where the stand taken by the big landowner in his written statement denying cultivating

possession of the predecessors of the appellant and that the land was actually being cultivated by Amar Singh, son-of-Dalip; Charta, son of Kapuria; and Raja, son of Shiba; residents of village Tibbi Majra, have been duly noticed. Similarly, in Para 3 it is averred that Kesho Ram Patwari Halqa Raipur Raini appeared as a witness and the case was fixed on that day, i.e., the date of decision "for the remaining evidence of the applicants.". At that stage, the parties put in a written compromise which was relied upon for accepting the claim of alleged tenants.

36. The manner in which the application was moved or the compromise took place does suggest that the purchase application was the handiwork of the big landowner who wanted to retain the "surplus land" over and above his "permissible area" through benami transactions.

37. Once the purchase order dated 06.09.1967 is held to be ineffective and a nullity, the State of Haryana who was not a party to that order rightfully included the land in "surplus pool" and allotted the same to unsettled tenants.

38. The crucial finding of fact returned by the Allotment Authority-cum-SDO[Civil], Naraingarh in his order dated 24.07.1980 that as per the revenue record Mansa Ram etc. were not continuous tenants for a period of six years on the land in question, has gone un- rebutted. No evidence to the contrary was led. The reliance placed by appellants on Rule 4[bb] of the Haryana Utilisation of Surplus and Other Areas Scheme, 1976 is also wholly misdirected and misplaced. Firstly, the said Scheme was notified on 28.05.1976 and was not introduced retrospectively. Secondly, the Scheme applies to "allotment" of land in the surplus pool of the State and not to a case of "purchase" under Section 18[1] of the 1953 Act. Thirdly, the appellants have failed to establish their possession as tenants since 15.04.1953 or prior thereto. The only Authority who passed order in their favour, namely, Commissioner, Ambala Division, too has not returned such a finding in their favour.

39. The appellants' plea that the purchase order dated 06.09.1967 could not be invalidated after a lapse of 23 years appears attractive but has no substance. It is not a case where the land owner who was party-respondent challenged the order after a long span. Rather, the State of Haryana, being not a party to the order dated 06.09.1967, has simply ignored the same as the subject-land forms a part of the "surplus pool" since February, 1965.

40. The decisions of the learned Single Judges in Banwari and Barkat Singh's cases [supra] do not advance the appellants' case as there the legality of purchase of surplus area by the tenants was not in dispute and it was rightly held that if the entire surplus area had been purchased by the tenants under the 1953 Act, no surplus land would be available with the landowner on the appointed day, i.e., 24.01.1971 of the Haryana Act.

41. The appellants' contention that they are exempted from the rigors of Section 12[3] of 1972 Act in the light of the saving clause contained in Section 8 of that Act, is also misconceived. Section 12[3] says that the area declared surplus or

tenants" permissible area under the Punjab Law which has not so far vested in the State Government, "shall be deemed to have vested in the State Government w.e.f. the appointed day.....". Section 8[1] says that the right of the State Government of the surplus area to which it would be entitled under the PEPSU Law or the 1953 Act shall remain un- affected, except in a case of land acquired by Union Government or State Government "or by a tenant under the PEPSU or Punjab Law....". These provisions would be attracted only if there is a lawful purchase of land by a tenant out of the "permissible area" in accordance with Section 18 of the 1953 Act.

42. For the reasons afore-mentioned, we find no ground to interfere with the order dated 03.08.2011 passed by the learned Single Judge and consequently dismiss these appeals without any order as to costs.