
(1997) 04 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3851 of 1982

Gopal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-04-1997

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 12(3)

Citation : (1997) 117 PLR 627 : (1997) 3 RCR(Civil) 466

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Sanjiv Gupta, for the Appellant; Vimal Kumar, for Respondent Nos. 1 and 2 and P.C. Mehta and Ranjan Lohan, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—The petitioners are the legal heirs of one Rampat who was a big land owner. As he possessed land in excess of permissible limits under the provisions of the Punjab Security of Land Tenures Act, 1953, by an order dated 12.12.1980 the land of an extent of 40.42 ordinary acres was declared as surplus in his hands. The said order determining the surplus area under the provisions of Punjab Security of Land Tenures Act, 1953 became final. Thereafter, the Haryana Ceiling on Land Holdings Act, 1972 came into force. The big land owner Rampat died on 10th July, 1973 leaving the petitioners as his legal heirs. By an order dated 25th August, 1980 the Sub Divisional Officer (Civil), Dabwali who is also the prescribed authority under the Haryana Ceiling on Land Holdings Act, 1972 sought to allot the surplus land of Rampat of an extent 17.47 ordinary acres situated in village Gindran to the eligible allottees as per the provisions of Utilisation of Surplus and other Areas Scheme, 1976, Aggrieved by the order dated 25.8.1980 of the Sub Divisional Officer (Civil) Dabwali, the petitioners filed an appeal before the, Collector, Sirsa, who by an order dated 8th June, 1981 dismissed the appeal. A further revision to the Commissioner was also unsuccessful. Challenging the orders of the Sub Divisional Officer (Civil), Dabwali

(Annexure P-1) dated 25.8.1980, of the Collector in appeal (Annexure P-3) dated 8.6.1981 and the Commissioner on revision (Annexure P-5) dated 29.4.1982, the petitioners filed this writ petition for quashing the said orders by issuing a writ of certiorari.

2. According to the petitioners after coming into the force of Haryana Ceiling on Land Holdings Act, 1972 the surplus area has to be determined in the hands of Rampat and as Rampat died in the year 1973 the surplus area is to be re-determined in the hands of his legal heirs and without determining the surplus area under the provisions of Haryana Ceiling on Land Holdings Act, 1972 the surplus land which was determined in accordance with the provisions of Punjab Security of Land Tenures Act, 1953 cannot be utilised. It is their further case that the Sub Divisional Officer (Civil), Dabwali while passing the order dated 25.8.1980 was acting as prescribed authority under the provisions of Haryana Ceiling on Land Holdings Act, 1972. As there is no determination of surplus area in the hands of the petitioners the order of the prescribed authority is invalid and liable to be set aside. They further contended that the land has not been vested in the State Government simply because it was declared as surplus under the provisions of Punjab Security of Land Holdings Act, 1953 and, therefore, the same cannot be utilised. It is, therefore, contended that the orders of the authorities below are liable to be set aside. In the written statement the respondents inter-alia contended that the surplus area in the hands of the big land owner Rampat was determined on 12.12.1960 and the said order has become final and, therefore, the petitioners cannot challenge the said order after lapse of more than 20 years. The land which was determined as surplus under Punjab Security of Land Tenures Act, 1953 stood vested in the Government on the date when the Haryana Ceiling on Land Holdings Act, 1972 came into force and, therefore, that land has to be excluded from the holding of the big land owner as it became vested in the State Government. Since the said land was vested in the State Government the same can be utilised by the authorities under the provisions of Haryana Utilisation of Surplus and Other Area Scheme, 1976, therefore, there is no illegality or infirmity in the orders passed by the authorities and the writ petition is, therefore, liable to be dismissed.

3. There is no dispute that the land of an extent of 17.47 ordinary acres in the village Gidran was declared as surplus area in the hands of Rampat who was the predecessor in title of the petitioners by the competent authority by an order dated 12.12.1960 and the said order has become final. Rampat died on 10.7.1973 i.e. after the Haryana Ceiling on Land Holdings Act, 1972 came into force. It is to be seen whether the land declared as surplus under the provisions of Punjab Security of Land Tenures Act, 1953 became vested in the State Government on the date when the Act came into force. If it is so vested Rampat ceased to be the owner of the said land and the petitioners cannot claim any right in the said land as legal heirs of Rampat as Rampat died subsequent to the date when Haryana Ceiling on Land Holdings Act, 1972 came into force.

4. Under Sub-section 3 of Section 12 of the Haryana Ceiling on Land Holdings Act, 1972 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 in pending proceedings to be decided under the Punjab law or Pepsu law shall be deemed to have vested in the State Government with effect from the date of such declaration. Thus, it is clear when the surplus area was determined under Punjab Security of Land Holdings Act, 1953 there is automatic vesting the the surplus area on the appointed day if the surplus area was declared before the date and if the surplus area was determined subsequent to the appointed day the surplus land will vest in the State Government on the date of such determination under the Punjab Security of Land Tenures Act, 1953. There is no dispute in the case on hand that the surplus area in the hands of Rampat was determined on 12.12.1960 under the Punjab Security of Land Tenures Act. Therefore, by virtue of Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972 the said surplus area stood automatically vested in the State Government on the appointed day i.e. 24th January 1971. The original land owner Rampat was alive both on the date when the surplus area was determined and also on the appointed day. Therefore, Rampat ceased to be the owner of the surplus area with effect from 24th January, 1971. When Rampat ceased Jo be the owner of the land, his legal heirs cannot inherit the said land and they have no right to object for utilisation of the land which had been declared as surplus by allotting the same under Haryana Utilisation of Surplus and Other Areas Scheme, 1976.

5. The learned counsel for the petitioners contended that the order was passed by the Sub Divisional Officer (Civil), Dabwali in his capacity as prescribed authority. Therefore, the order should be taken as one passed under the Haryana Ceiling on Land Holdings Act, 1972 and as there is no determination of surplus area under the Haryana Ceiling on Land Holdings Act, 1972 the order utilising the land under the Scheme is illegal. But it is to be seen under the Haryana Utilisation of Surplus and Other Areas Scheme, 1976 the allotment authority is the Sub Divisional Officer (Civil) iii whose jurisdiction the surplus area is to be allotted is situated simply because the Sub Divisional Officer (Civil) described himself as Sub Divisional Officer-cum-Prescribed Authority it cannot be said he has been acting only under Haryana Ceiling on Land Holdings Act, 1972. One has to see the nature and extent of power ". exercised to find out in what capacity the authority exercised its power.

There is no dispute that the Sub-Divisional officer (Civil) was exercising his powers under the Haryana Utilisation of Surplus and Other Areas Scheme, 1976. Under the said Scheme the Officer can utilise the surplus land in the manner prescribed under the Scheme. In this view of the matter I do not find any merit in the contention of the learned counsel for the petitioners.

6. The learned counsel for the petitioners further contended that the surplus land

as determined under the Punjab Security of Land Tenures Act, 1953 was sought to be utilised after the death of Rampat which took place in the year 1973 and, therefore, it is necessary to give a notice to the legal heirs of the deceased and as no notice was given to the petitioners the order utilising the land is liable to be set aside. In support of this contention that notice and an opportunity of hearing should be given to the legal heirs, the learned counsel relied upon a decision of the Full Bench of this Court in Harnek Singh v. State of Punjab 1971 P.L.J. 727. In that case it has been held that where a transfer is made by the land owner the transferee is a person interested in participating in the proceedings for declaration of surplus area and must be given an opportunity of being heard to avoid his interest being prejudicially affected before declaring the surplus area of his transferor under the Pepsu Act.

This decision has no relevancy to the facts of the present case. As already noticed when the surplus area was determined and declared before the appointed day i.e. 24th January, 1971 the same stood vested automatically in the State Government under Sub-section 3 of Section 12 of Haryana Ceiling on Land Holdings Act, 1972 and, therefore, the land owner ceased to have any interest in the land declared surplus and, therefore, the legal heirs will not and cannot inherit the same on the death of Rampat in the year 1973. When the petitioners have no legal right to succeed the said land as the said land ceased to be the land of Rampat the petitioners cannot be described as persons interested and that their rights are in any way affected. Therefore, no notice to the petitioners is necessary to be given as they are not the persons interested. This contention of learned counsel, therefore, fails.

7. The learned counsel for the petitioners further contended that the Sub Divisional Officer (Civil) has not consulted at least two non-officials nominated by the State Government as provided under paragraph 8 of the Scheme. Para 8 of the Scheme reads as follows :-

"Before drawing up parawise list under paragraph 6 and before passing an order of allotment under paragraph 7 the allotment authority shall consult at least two of such non-officials as the State Government may nominate in this behalf for any area."

Thus, according to the learned counsel for the petitioners consultation with two non-officials is necessary before passing an allotment order and according to him No non-official was consulted by the Sub Divisional Officer (Civil), Dabwali any, therefore, the order of allotment is illegal. This contention was not raised before the authorities below. This is a purely question of fact. Further it is not shown that the State Government nominated any non-officials for the purpose of consultation in the area in which the land is situated. Further the petitioners are not aggrieved parties if no consultation was made. If there are rival contenders to the allotment of surplus land they can reasonably raise this ground. It is not open to the petitioners to raise objection that the consultation as required under paragraph 8 has not taken place. The petitioners Cannot claim the allotment of

land in their favour. It is not even their case that they are entitled to allotment of the land. Therefore, even if there is no consultation with non-officials the petitioners cannot make a grievance of it as they have no right or claim for allotment. As already observed there is nothing on record to show that the State Government has nominated any non-officials for the purpose of consultation in the area in which the land is situated. I do not, therefore, find any merit in this contention of the petitioners.

8. In view of the foregoing discussion, I am of the opinion that there are no merits in this writ petition and writ petition is, therefore, liable to be dismissed.

9. The result is that the writ petition fails and accordingly dismissed. There will be no order as to costs.