

(1978) 12 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3558 of 1974

Harchand Singh

APPELLANT

Vs

The Collector, Agrarian, Bhotinda and Another

RESPONDENT

Date of Decision : 13-12-1978

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 32
Punjab Security of Land Tenures Act, 1953 — Section 24

Citation : AIR 1979 P&H 129 : (1979) 1 ILR (P&H) 332

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.C. Mital, J.; P.C. Jain, J

Bench : Full Bench

Judgement

S.S. Sandhawalia, C.J.—Doubts about the correctness of a long line of precedent consistently followed in this Court for nearly two decades have necessitated this reference to a Full Bench.

2. The facts are neither in dispute nor in a wide compass. An area of 1.78 S. A was declared surplus in the hands of Harchand Singh petitioner by the authorities under the Pepsu Tenancy and Agricultural Lands Act, 1955. However, it is the common case that this area was never utilised as such and continued to be in the possession of the petitioner till September 14, 1973, when consolidation proceedings commenced in his village with regard to his holding. The scheme of the consolidation was duly prepared and the repartition announced wherein no separate tak for him had been carved out, at the stage of preferring the writ petition. It is the common case that under the scheme of consolidation the total holding of the petitioner was reduced by more than 5 per cent due to the general cut made for the reservation of the land for various common purpose such as the extension of the abadi, Panchayat Farm, School playground etc. it is averred that the holding of the petitioner came to be reduced by more than 3 S.As. with the result that no land of the petitioner would be rendered surplus in his hands under the Pepsu Tenancy and Agricultural Lands Act.

3. On the enforcement of the Punjab Land Reforms Act, 1972, the petitioner duly

filed his forms u/s 5 thereof and according to the provisions of the said statute also, it is his case that no land would be surplus in his hands. However, vide Annexure P-1 dated the 22nd of June, 1974, the Collector Agrarian, Bhatinda, issued a notice to the petitioner directing him to deliver possession of an area of 1.78 S. A. which had been earlier declared surplus in his hands way back in 1961. The petitioner then preferred the present writ petition challenging the notice on the primary ground that because of the statutory consolidation proceedings and the consequent reduction in the acreage of his holding, the area in his possession was clearly within the permissible limit.

4. The case first came up before M. R. Sharma, J., and therein it seems to be more or less assumed that the benefit of the decrease of the acreage due to consolidation would inevitably have to go to the petitioner. However, the learned Judge took the view that after the coming into force of the Punjab Land Reforms Act, 1972, it would be a moot point whether the surplus area in his hands should be determined afresh under the Punjab Land Reforms Act, 1972, or he should be allowed to retain the 30 S. As. of land under the Pepsu Tenancy and Agricultural Lands Act. Taking the view that this issue raised important questions of law which would govern a number of similar cases, the learned Judge referred the matter to a larger Bench for determining the aforesaid specific question. When the matter came before the Division Bench, this issue, however, seems to have taken an entirely secondary status. This was so because the Bench chose to express a vacillating doubt about the correctness of a number of Single Bench and Division Bench judgments of this Court holding that the landlord is entitled to have the diminution of his land in consolidation proceedings taken into consideration for the purposes of the declaration of his surplus area before the proceedings thereof are completed. It was briefly observed by the Division Bench that there appeared to be no good reason for the earlier determination of the surplus area to become questionable just because consolidation proceedings have taken place later on. Consequently, the case was referred to a Full Bench to test the correctness of the settled view of the Court.

5. Now it deserves highlighting that within this Court there is a long line of unbroken precedent that in case of the diminution of an area of a landowner due to consolidation before the surplus area proceedings are completed and finalized, he would be entitled to claim that his new area be taken into consideration for determining his permissible area and not that held by him prior to the consolidation. This was apparently so held by Harbans Singh, J. (as he then was) in Civil Writ Petn. No. 1366 of 1962 (*Bachan Singh v. Financial Commr., Punjab*) decided on the 4th of February, 1963 (Punj). This view found favour with H. R. Khanna, J. (as his Lordship then was) in *Maghar Singh v. State of Punjab* 1964 PLJ 155 and it was observed as follows:--

"Perusal of the different provisions of the Act goes to show that the occasion for the declaration of the surplus area would arise only if a landowner holds land in excess of the permissible limit. Further, it is plain that it is only the area which is

in excess of the permissible limit that can be declared to be surplus. In case the proceedings under the Act are still pending and in the meanwhile as a result of consolidation proceedings the total area, to which a landowner becomes entitled, is less than the area previously held by him, it is, in my opinion, that new area which should be taken into consideration and not the area which was held by him before the consolidation. There is nothing in the Act. which prohibits the Collector from taking into account the reduction brought about in the area held by a landowner by consolidation. The Act in question is a piece of legislation which results in expropriation and as such its provision should be construed strictly, and unless a case falls within the express provisions of the Act the benefit must go in favour of the landowner."

6. The judgment aforesaid was subjected to appeal and the Letters Patent Bench in *State of Punjab v. Maghar Singh* 1969 PLJ 323, reaffirmed the ratio thereof with even greater vigour.

Equally it deserves notice that an identical view has been taken by A.N. Grover, J., in *Amar Singh v. State of Punjab* 1966 PLJ 81 and Narula, J. (as he then was) in *Bhag Singh v. State of Punjab* 1966 PLJ 238. In *Jang Singh v. State of Punjab*, 1970 PLJ 93, to which I was a party, the writ petition was directly admitted to a hearing by the Division Bench which categorically expressed its agreement with the enunciation of the law by the Court earlier and allowed the petition in accordance therewith.

I must confess that we have not had the benefit of any serious debate on the point. Leaned counsel for the petitioner inevitably relied on the catena of judgments noticed above and canvassed for their affirmance. What deserves notice, however, is that Mr. Syal appearing for the respondent-State frankly conceded his inability to challenge the correctness of the view enunciated therein and fairly stated that there was not a single judgment to the contrary. Indeed he ultimately himself took the stand that no flaw in the impeccable reasoning of the Single Bench and Division Bench judgments was discernible which could possibly merit any reconsideration. Nor can one recall that the land reforms agrarian legislation after Independence was initiated by the Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955 in the two States of Punjab and Haryana. The settled view of this Court with regard to surplus area under both these provisions in the context of consolidation proceeding has held the field without a discordant note. In the aforesaid context, we are unable to discern any reason whatsoever to deviate from the string of authorities on the point. Apart from a passing observation, the learned Judges of the Division Bench making the reference have not adequately indicated their reasons for the vacillating doubt raised therein. It appears that the matter was not adequately canvassed before their Lordships nor have they adverted in detail to the authorities noticed by them or sought to repel the reasoning thereof. With respect we are unable to hold that the settled view of this Court on the point calls for any reconsideration or deviation therefrom. We would, therefore,

reaffirm the reasoning and the ratio of the judgments noticed above.

Coming to the second aspect of the case, it again appears that both the sides took the stand that the present case is not a matter of redetermination of the surplus area afresh either under the Pepsu Tenancy and Agricultural Lands Act, 1955 or the Punjab Land Reforms Act 1972. The common stand taken was that in essence the matter now is the separation of the surplus area from the permissible area after the process of consolidation has taken place. In this context what calls for pointed notice are the provisions of Sub-section (2) of Section 32-MM of the Pepsu Tenancy and Agricultural Lands Act, 1955, which are as under:--

"(1)* * * * *

(2) Where, after the declaration of the surplus area of any person and before the utilisation thereof, his. land has been subjected to the process of consolidation, the officers referred to in sub-section (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation."

7. It is not in dispute that analogous, If not identical, provisions thereto exist in Section 24-A (2) of the Punjab Security of Land Tenures Act, 1953 and Section 13(2) of the Punjab Land Reforms Act, 1972. A bare reference to these provisions would show that the authorities thereunder are entitled to separate the surplus area out of the area of land allotted to the landowner after the process of consolidation. This, indeed, is what is required to be done in the present case as well and not a re-determination of the surplus area as such. Consequently, in our view, the question whether the provisions of the Pepsu Tenancy and Agricultural Land Act, 1955, or the Punjab Land Reforms Act, 1972, would govern the re-determination of the surplus area does not fall for determination here and, the more so, because of the common stand taken by the parties on this issue.

Adverting now to the merits of the case, from the pleading it is not crystal clear as to the quantum of reduction in acreage of the petitioner which may have ensued consequent on the process of consolidation. Whilst the petitioner had claimed in para 7(b) of the writ petition that his holding has been reduced by about three standard acres with the result that no surplus area is left in hands, the respondent-State whilst admitting that consolidation proceedings are going on in the village has taken the stand that it was not possible to ascertain the precise quantum of the reduction in the area to be allotted to the petitioner thereafter. It is, thus, plain that the exact reduction in the petitioner's holding is a matter which as yet remains to be finally determined.

In the light of the aforesaid legal and factual position this writ petition is hereby allowed and Annexure P-1 thereto is quashed. This would, however, not preclude the respondent-State from resorting to sub-section (2) of Section 32-MM of the Pepsu Tenancy and Agricultural Lands Act, 1955, for separating the surplus area

provided there is now any such area left in the hands of the petitioner after the reduction in its acreage. The parties wilt bear their own costs of this petition.

Prem Chand Jain, J.

8. I agree.

S.C. Mital, J.

I agree.

Petition allowed.