

(1978) 08 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4074 of 1973

Inder Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 18-08-1978

Acts Referred:

Punjab Land Reforms Act, 1972 — Section 5(1)

Citation : AIR 1979 P&H 5

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Judgement

1. This is a writ filed by Inder Singh, his wife Shrimati Neeta Kaur, their two sons and their wives, relating to the agricultural land of Inder Singh petitioner in village Kurali, tehsil Rajpura, district Patiala, which had been declared surplus by the authorities under the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Pepsu Act).

2. Inder Singh petitioner was a big landowner and the Collector, Agrarian Reforms, Rajpura, vide his order dated January 20, 1961, declared 34.35 standard acres of land surplus with him under the Pepsu Act. Inder Singh filed objections and agitated against the order declaring his area surplus. He lost and the order of the Collector was maintained up to the Supreme Court in about 1969 or 1970. The surplus area with Inder Singh remained in his possession under the stay orders issued by the authorities under the Pepsu Act or the Courts. The Punjab Land Reforms Act, 1973 (hereinafter referred to as the Reforms Act), came into force in April, 1973, and apprehending dispossession from the land found surplus with Inder Singh under the Pepsu Act, he and his family members filed the present writ in November, 1973, wherein their substantial prayer is that the benefit of permissible area which is allowed in respect of a major son of a landowner under the Reforms Act should be given in their case as well. Karnail Singh and Nirmail Singh petitioners are major sons of Inder Singh petitioner.

3. The writ has been contested by the State as also by other respondents who

have since been allotted the area found surplus with Inder Singh under the Pepsu Act.

4. The contention of the learned counsel for the petitioners is that under the Pepsu Act no area could be retained by the landowner as permissible area in respect of his adult son whereas under the Reforms Act, a landowner can retain such area under S. 5(1) thereof. The surplus area found with Inder Singh under the Pepsu Act is still in his possession with the result that he has not been divested of its ownership either under the Pepsu Act or under the Reforms Act. It being the case, Inder Singh is as well entitled to the benefit of retention of the land to the extent of the permissible area in respect of his two adult sons under S. 5(1) of the Reforms Act. The order of the Collector, Agrarian Reforms, Rajpura, dated January 20, 1961, declaring 34.35 standard acres of land surplus with him cannot be executed as such. As the authorities are inclined to dispossess him from that area in execution of the order of the Collector dated January 20, 1961, an appropriate writ may be issued to them for giving him the relief prayed for.

5. The case of the State and of the remaining respondents, as argued by their learned counsel is that the order of the Collector, Agrarian Reforms, dated Jan. 20, 1961, under the Pepsu Act having been maintained up to the Supreme Court has attained finality and is not subject to the provisions contained in S. 5(1) of the Reforms Act and, therefore, the question of giving benefit to Inder Singh petitioner to the extent of permissible area in respect of his adult sons thereunder does not arise.

6. A similar situation arose in *Nachhattar Singh v. The Collector, Agrarian, Reforms, Bhatinda* 1975 PLJ 8. The landowner in that case was found having 9.43 standard acres of land as surplus by the Collector. Agrarian, vide order dated Dec. 30, 1960, under the Pepsu Act. The landowner did not challenge that order before the higher authorities. He continued to be in possession of the surplus area when the Reforms Act came into force. On June 25, 1974, the Collector, Agrarian, Reforms served a notice upon him to surrender the surplus area. He challenged that order calling upon him to surrender the surplus area in a writ petition on the ground that he and his sons had a right to have their surplus area determined in accordance with S. 4 of the Reforms Act, which allowed the head of the family to retain additional area. The Division Bench considered the points raised on behalf of the landowner and concluded that the Reforms Act did not entitle the landowner to have his surplus area finally determined under the old laws to be reopened and redetermined. The writ petition was consequently dismissed. This authority is fully applicable to the facts of the present petition. Feeling the difficulty on this score, the learned counsel for the petitioners has argued that the judgment of the Division Bench by which the writ petition was dismissed in limine should not be followed inasmuch as it has not laid down correct law and, in the alternative, there are a few vital aspects of the case which the Division Bench did not consider and for that purpose, this petition may be referred to a Division Bench for reconsideration of the issue

involved.

7. The Division Bench dismissed the writ petition in limine but recorded a detailed and speaking order. It would, therefore, be neither appropriate nor desirable to ignore the rule laid down therein. On the alternative position taken by the learned counsel for the petitioners, his contention is that the Division Bench did not examine the implications of sub-section (1) of S. 5 and S. 17 of the Reforms Act. The argument advanced is that the surplus area as defined in sub-section (15) of S. 3 of the Reforms Act means the area in excess of the permissible area whereas the latter term stands defined in S. 4 thereof. Sub-section (1) of S. 5 confers a right on the landowner to retain permissible area in respect of his adult son and after allowing him such benefit, the surplus area, if any, can be vested in the States Government under S. 8 thereof. Inder Singh petitioner, therefore, can assert his right under the Reforms Act in the matter of recalculation of his land account irrespective of his surplus case having attained finality under the Pepsu Act.

8. The crucial point involved is the interpretation of S. 5 of the Reforms Act, which reads as under:--

"5. Selection of permissible are and furnishing of declaration by certain persons:--

(1) Every person, who on the appointed day or at any time thereafter, owns or holds land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible are, shall select his permissible area and intimate his selection to the Collector, and where land is situate in more than one district, to the Collectors concerned, through a declaration to be furnished in such form and manner and within such period as may be prescribed and if such person has an adult son, he shall also be entitled to select separate permissible area in respect of such son, out of the land owned or held by him, subject to the condition that the land selected together with the land already owned or held by such son, shall not exceed the permissible area of each such son;

Provided that where land is situated in more than one patwar circle, the declaration shall be supported by an affidavit in the prescribed form. (2) In making the selection, such a person, shall include firstly, land mortgaged without possession and secondly land under self-cultivation on the date of commencement of the period prescribed for furnishing the declaration under sub-section (1) but shall not include area declared surplus under the Punjab law, the Pepsu law or this Act, other than the area which was exempt from utilization by the State Government immediately before such commencement.

(2A)-----".

It will be noticed that in sub-section (2) of S. 5, it is specifically provided that for the purposes of making selection in terms of sub-section (1), the area declared surplus under the Punjab law or Pepsu law shall be excluded. It is, therefore,

clear that the provisions contain in sub-section (1) of S. 5 cannot be made applicable to the surplus area that stands already determined under the Punjab law or the Pepsu law (the Pepsu Act). The argument of the learned counsel for the petitioners that sub-section (2) is only restricted to the matter of selection for retention purposes only by the landowner is fallacious on the fact of it. In sub-section (1) it is provided that in the event of a person owning land in excess of the permissible area, he shall select his permissible area and if such a person has an adult son, he shall also be entitled to select separate area in respect of such son, of course, out of the land owned or held by the former. In sub-section (2) it is provided that in making the selection in terms of sub-section (1), the landholder shall not include the area declared surplus under the Punjab law or the Pepsu law. A harmonious reading of sub-secs. (1) and (2) of S. 5, which are patently conjunctive and not disjunctive, leaves no doubt whatsoever that in the cases of landholders where the surplus area has been finally determined under the Punjab law or the Pepsu law, the right to retain land to the extent of the permissible area in respect of an adult son shall be restricted to or exercisable out of the permissible area already allowed to him under the Punjab law or the Pepsu law. In other words, the landholder shall not be entitled to retain land to the extent of the permissible area in respect of his adult son out of the surplus area already determined under the Punjab law or the Pepsu law.

9. Another argument of the learned counsel for the petitioners is that S. 17 of the Reforms Act abrogates the order of the Collector, Agrarian Reforms, dated Jan. 20, 1961, inasmuch as it is not consistent with the provisions of this Act. This contention again has no force, Section 17 of the Reforms Act deals with abrogation of pending decrees, orders and notices and it reads:--

"17. Abrogation of pending decrees, orders and notices.

No decree or order of any court or authority and no notice of ejectment shall be valid save to the extent to which it is consistent with the provision of this Act."

In the light of what has been discussed above with regard to the interpretation of S. 5 of the Reforms Act, it can hardly be said that the order passed by the Collector, Agrarian Reforms, dated Jan. 20, 1961, is inconsistent with the provisions of this Act. It being the case, the question of applicability of S. 17 to the present case does not arise.

10. The learned counsel for the petitioners has placed reliance on S. 28 of the Reforms Act to fortify his contention that the provisions contained in sub-section (1) of S. 5 thereof shall apply even qua the surplus area found with Inder Singh petitioner by the Collector, Agrarian Reforms, vide order dated Jan. 20, 1961, Sec. 28, which is a repealing and saving section, reads as under:--

"28. Repeal and saving.

(1) The Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, in so far as these are inconsistent with the

provisions of this Act are hereby repealed.

(2) The repeal of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactment shall not affect:--

(i) The proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under either of the said enactments, which shall be continued and disposed of as if this Act had not been passed and the surplus area so determined shall vest in, and be utilised by the State Government in accordance with the provisions of this Act:

Provided that such proceedings shall, as far as may be, be continued and disposed of, from the stage these were immediately before the commencement of this Act, in accordance with the procedure specified by or under this Act:

Provided further that nothing in this section shall affect the determination and utilisation of the surplus area, other than the surplus area referred to above, in accordance with the provisions of this Act and the cases pending before the Pepsu Land Commission immediately before the date of commencement of this Act shall stand transferred to the Collector of the district concerned for disposal;

(ii) the previous operation of the said enactments or anything duly done or suffered thereunder.

(iii) any right, privilege, obligation of liability acquired, accrued or incurred under the said enactments, in so far as such right, privilege, obligation or liability is not inconsistent with the provisions of this Act and any proceeding or remedy in respect of such right, privilege, obligation or liability may be instituted, continued or enforced as if this Act had not been passed:

Provided that such proceeding or remedy shall, as far as may be, be instituted, continued or enforced in accordance with the procedure specified by or under this Act."

Sub-clause (i) of sub-section (2) of S. 28 is clear that the proceedings for the determination of the surplus area pending under the old laws immediately before the commencement of the Reforms Act are to be disposed of under the old laws and for such cases the Reforms Act shall not be taken to have been passed. It means that if a case for the determination of surplus area under the Pepsu Act was pending immediately before the commencement of the Reforms Act, then for the purposes of that case, the Reforms Act shall not be taken to have been passed. The implication of not taking into consideration the provisions of the Reforms Act in such cases would be that the landowner will not be entitled to claim benefit of permissible area in respect of his adult son under sub-section (1) of S. 5 of the Reforms Act. This provision rather negatives the contention of the learned counsel for the petitioners that Inder Singh petitioner has a right to get his surplus area redetermined or recalculated in terms of sub-section (1) of S. 5 of the Reforms Act, in spite of the fact that the case of determination of his surplus area stands finalised under the Pepsu Act, Similarly, sub-clause (iii) of

sub-section (2) of S. 28 can bring no advantage to the petitioners because the surplus area already determined with Inder Singh petitioner under the Pepsu Act cannot be taken as inconsistent with the provisions of the Reforms Act inasmuch as sub-section (2) of S. 5 thereof provides specifically that such surplus area is to be excluded for the purposes of sub-section (1).

11. The learned counsel for the petitioners has placed reliance on a Division Bench authority reported as *Jagraj Singh v. The State of Punjab* 1978 PLJ 59, in support of his contentions. The argument raised is that the Reforms Act envisages a concept of tenant's permissible area and it has been so held in this authority. This Act further envisages a concept of allowing area to a landowner in aspect of his adult son and on the same analogy this concept should be made applicable to the present case. This contention is without merit. The ratio of *Jagraj Singh's* case (*supra*), that the Reforms Act does envisage a concept of tenant's permissible area has no relevancy to the facts of the present case. In that case, the State had issued executive instructions to the field authorities wherein it was conveyed that the Reforms Act does not admit of tenant's permissible area which position was not found tenable by this Court. The issue involved in the present case is absolutely different. It is about the applicability of the provisions of sub-section (1) of S. 5 of the Reforms Act to the area of a landowner which has already been declared surplus under the Pepsu Act and which order has further assumed finality. The finality aspect is, however, not material because even in the absence of such finality, the case being pending immediately before the commencement of the Reforms Act, it would have been disposed of under the Pepsu Act in terms of sub-clause (i) of sub-section (2) of S. 28 of the Reforms Act. It clearly provided under sub-section (2) of S. 5 of the Reforms Act that such surplus area declared under the Pepsu law is to be excluded for the purposes of selection in terms of sub-section (1). The ratio of *Jagraj Singh's* case, therefore, can hardly be pressed by the petitioners to their advantage.

12. The last contention of the learned counsel for the petitioners is that the authorities cannot dispossess Inder Singh petitioner from the surplus area without following the procedure prescribed under S. 9 of the Reforms Act. The learned counsel for the respondents rightly conceded that Inder Singh petitioner can be and will be dispossessed from the surplus area after following the procedure laid down in S. 9 (read with first proviso to sub-clause (1) of sub-section (2) of S. 28), of the Reforms Act which deals with the power to take possession of the surplus area.

13. In view of the discussion above, I have no hesitation in holding that the rule laid down in *Nachhattar Singh v. The Collector, Agrarian, Bhatinda*, 1975 PLJ 8 (*supra*), does not need reconsideration. The present writ, therefore, fails and is dismissed with no order as to costs.

14. Petition dismissed.