
(1983) 03 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3241 of 1980

Ishwar Devi

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-03-1983

Acts Referred:

Citation : (1983) PLJ 363 : (1984) RRR 459

Hon'ble Judges : S.S.Kang, J

Advocate : Ram Rang, Advocate., Advocates for appearing Parties

Judgement

S.S. Kang, J.

1. This is writ petition under Articles 226 and 227 of the Constitution of India by Smt. Ishwar Devi for issuance of a writ of certiorari quashing the impugned orders Annexure P.2 passed by the Collector Karnal on 8th February, 1979 and Annexure P.4 passed by the Commissioner, Ambala Division, Ambala on July 29, 1980.

2. Briefly stated the facts of the case are that Smt. Kauri Bai, grandmother of the petitioner who was a displaced person and a big landowner transferred 240 bighas of land to the petitioner by a registered Tamlik Nama dated June 1, 1956. A mutation reflecting this transfer was sanctioned on December 10, 1956. The land initially was Banjar Qadim, Thur and Gair Mumkin and was reclaimed by the petitioner after spending huge money. It is the claim of the petitioner that she resides at Delhi and did not know as to whether her grandmother was a big or a small landowner or whether her surplus area case was ever decided or not. It was only in February, 1978, that she was called upon by the Naib Tehsildar, Karnal and told that the land transferred to her was surplus and the same was going to be utilised for settlement of tenants thereon. The petitioner, thereupon, made an application to the Collector Agrarian, Karnal, stating that she was a transferee from Smt. Kauri Bai and was entitled to a hearing before the latter's surplus area case was decided but she was never served with any notice nor was she heard. She prayed that the land in dispute be taken out of the surplus pool

or in the alternative this land should be exempted from utilisation in accordance with the provisions of law and instructions of the Haryana Government dated 29th October, 1976. The petitioner did not own any land apart from the land in question. The instructions provided that the transfers and dispositions of surplus area under the Punjab Law or Pepsu Law made before 30th July, 1958 stand regularised by law and as a result of this the surplus area which had been transferred or disposed of by a landowner before 30th July 1958 shall not vest in the State Government under section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter called the Act), and, therefore, such area cannot be utilised in accordance with Haryana Utilisation of Surplus and Other Area Scheme, 1976. The Collector, Agrarian, Karnal allowed the application of the petitioner and observed that the land owned by the petitioner was within the permissible limit and the same had been transferred to her prior to 30th July, 1958 therefore this land will not vest in the State and will not be available for utilisation.

3. Surja and Antu, respondent No. 3 and 4 were settled on a portion of the land in dispute in accordance with the Haryana Utilisation of Surplus Area Scheme (for short the 'Scheme'). The Collector also ordered that form US 3 which had been issued to the respondent be cancelled. This order was passed on June 26, 1978.

4. Surja and Antu, respondent Nos. 3 and 4 filed two separate appeals against this order before the Collector, Karnal. He allowed the appeals on February 8, 1979. He set aside the orders of the Collector, Agrarian. Dissatisfied with the same, the petitioner filed two revisions petitions before the Commissioner, Ambala Division, Ambala, under section 18(4) of the Act. He dismissed the same on July 29, 1980 and the copy of the orders is Annexure P.4. Aggrieved, the petitioner has filed the present writ petition.

5. Shri Ram Rang, learned counsel for the petitioner has argued that the surplus area declared under the Pepsu Law or Punjab Law before 30th July, 1958 were protected under Section 8(1) of the Act. They do not vest in the State Government under section 12(3) of the Act and cannot be utilised for the resettlement of the ejected or ejectable tenants or eligible persons.

6. The Collector, Surplus Area while deciding the case of Kauri Bai in 1962 never issued any notice to the petitioner, who being a transferee and her name being entered in the revenue record was entitled to a notice.

7. The land declared surplus was never utilised. The mere order of allotment to a tenant does not mean utilisation. Utilisation is complete only when the allottee obtains a certificate of allotment and takes possession of the land within the period specified and executes a kabuliatnama or Patta. This was never done. Even US 3 forms were issued during the pendency of the application submitted by the petitioner to the Collector Agrarian in March, 1978. Since the surplus area of Smt. Kauri Bai was not utilised and Smt. Kauri Bai died in the year 1971, the petitioner being her heir by inheritance, the land owned by the petitioner cannot

be declared surplus.

8. I will first take up the point regarding the declaration of surplus area. The Collector Agrarian, Karnal, decided the case on 21st December, 1962. Smt. Kauri Bai was heard. The surplus area was declared in accordance with the selection of Smt. Kauri Bai. This order had not been challenged by the petitioner till 1978. It is difficult to believe that the petitioner did not come to know about this position. During the course of the arguments I had an occasion to peruse the passbook of the land owned by the petitioner. Respondents Antu and Suraj were allotted land vide order dated 24th May, 1965 and the possession thereof had been delivered to them. This fact was sufficient to inform the petitioner that surplus area case of her grandmother had been decided and tenants thereon have been settled on the surplus area. She cannot be allowed to take up this old issue after the lapse of more than 21 years.

9. Section 8 of the Act recognises transfers of the surplus area declared under the Punjab Law or Pepsu Law up till 30th July, 1958. Therefore, the land transferred in favour of the petitioner on 1st June, 1956 is protected in view of the clear language of section 8 of the Act. It has been held by a Full Bench of five Judges of this Court in *Jaswant Kaur and another v. State of Haryana and another*, 1977 P.L.J. 230 as under :

"A harmonious way of construing sections 8 and 12(3) would be to give full effect to section 8(1) upto 23.12.1972, that is to say, to exclude from the operation of section 12(3) the transfers made upto 23.12.1972 which are protected by section 8(1) of the Act, namely, (1) acquisition of land by the State or Central Government (2) acquisition by a tenant under the Pepsu Law or the Punjab Law, or (3) acquisition by an heir by inheritance. Other transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law would be protected if the transfers were made prior to 30.7.1958. We see no reason why sections 8 and 12(3) should not be construed in this harmonious manner so as to give effect to both the provisions.

It is thus clear from the above that the lands transferred to the petitioner by her grandmother though declared surplus under the Punjab Law or Pepsu Law do not vest in the State and they are not available for resettlement of the ejected or ejectable tenants. However, there is one exception. The land on which Surja and Antu tenants had been settled in 1965 before the enforcement of the Act will not be protected.

10. Mr. Ram Rang elaborating this point stated that the utilisation of the land of Antu and Surja was not completed before the coming into force of the Act because No Kabuliatnama had been executed by these tenants. It has been categorically averred in the written statement filed on behalf of respondents Nos. 3 and 4 that they had taken possession of the land in dispute on 24th May, 1965 and a report to his effect had been recorded in the daily diary of the Patwari. So the land allotted to respondent Nos. 3 and 4 stood utilised before the

commencement of the Act. As is clear from the observations of the Full Bench quoted above, the land which had been utilised for the settlement of the tenants is not exempted under the provisions of section 8 of the Act.

11. It has been made clear in the written statement filed by the respondents that the land which had not been utilised for settling respondents Nos. 3 and 4 has been exempted from the surplus pool by the authorities. The orders passed by the Collector and the Commissioner to this effect are reasonable.

12. This writ petition is without any merit and dismissed with costs. Counsel fee Rs. 200/.