
(1992) 06 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 2030 of 1991

Jaswant Singh and others	Vs	APPELLANT
Punjab Government, Chandigarh and another		RESPONDENT

Date of Decision : 03-06-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 33
Constitution of India, 1950 — Article 14
Punjab Land Reforms Act, 1972 — Section 3, 3(1), 4, 4(2), 5
Punjab Land Revenue Act, 1887 — Section 44

Citation : AIR 1994 P&H 116

Hon'ble Judges : K.P. Bhandari, J

Bench : Single Bench

Advocate : Ajay Tewari, for the Appellant; Arihant Jain, Assistant Advocate General, Punjab, for the Respondent

Judgement

1. Vide my order dated 3-6-1992 I allowed the appeal by passing the following order:

"After hearing the learned counsel for the parties, I am of the opinion that the Courts below did not appreciate that the valuation of the land in this case has not been correctly worked out. The land of the plaintiff-appellant has been illegally declared surplus. This case is squarely covered by the Full Bench judgment of this Court in Ranjit Ram Vs. The Financial Commissioner, Revenue Punjab, Chandigarh and Others, .

According to the Full Bench judgment, each adult son is entitled to a separate unit of land on the date the land was declared surplus. If the land-owner has adult son when the land is declared surplus each son is entitled to a separate unit.

In this view of the matter, this appeal is accepted with no order as to costs and the judgment and decree passed by the Additional District Judge and the Subordinate Judge are set aside. It is held that there is no surplus land with the

plaintiff-appellant. The impugned orders declaring land surplus are declared illegal, ultra vires and null and void. The respondents are restrained from enforcing the same against the plaintiff-appellant. Detailed reasons to follow."

Now, I proceed to give reasons in support of my above order.

2. The brief facts of the case are as follows:

According to the plaintiff-appellants Jaswant Singh is the land-owner. He submitted the return under the provisions of the Punjab Land Reforms Act, 1972, Jaswant Singh, plaintiff, has two adult sons namely Bhupinder Singh and Bharpur Singh on the appointed date. Bhupinder Singh, plaintiff No. 2 had six family members and Bharpur Singh, plaintiff No. 3 had seven family members on the appointed date. It is averred that each of the adult son of the land owner was entitled to a separate permissible unit. Considering the strength of the members of the family of plaintiff No. 2 he was entitled to retain 8 1/4 hectares as permissible area and Bharpur Singh, plaintiff No. 3 was entitled to retain 9 1/2 hectares of land as permissible area. If proper calculations are made then the plaintiff-appellant had no surplus area. It is also averred that the land in dispute in the year 1970 was barani and had no source of irrigation. The Collector declared land measuring 2.13 hectares of land as surplus. The Collector did not make correct calculations. He allowed the land-owner seven hectares of land. He also allowed to each adult son seven hectares of land. The plaintiff-appellant filed an appeal against the order of the Collector before the Commissioner. The Commissioner vide his order dated 20-12-1978 accepted the appeal and set aside the order dated 14-4-1976 passed by the Collector and remanded the case to the Collector for a fresh decision. In terms of the orders of the Commissioner dated 20-12-1978 the Collector on 1-12-1980 passed the second order. The plaintiff-appellant preferred an appeal against the order dated 1-12-1980 to the Commissioner. The Commissioner again dismissed the appeal on 11-10-1982.

3. Aggrieved against the order dated 11-10-1982 the plaintiff-appellant filed a revision petition before the Financial Commissioner which was dismissed on 17-9-1984. It is averred that plaintiff No. 2 is aged 51 years and plaintiff No. 3 is aged 46 years and their families consists of six and seven members respectively. According to the law, they are all entitled to permissible area of 8 1/4 and 9 1/4 hectares of land. If proper calculations are made no area is surplus. It is contended that the learned Senior Sub-Judge, Sangrur did not consider and discuss the evidence on record regarding the permissible area of the members of the families of plaintiffs Nos. 2 and 3. He did not apply his mind that considering the strength of the members of the family they were entitled to more permissible area. Although the order of the Senior Sub-Judge shows that the point was raised but no finding was given by the Senior Subordinate Judge. It was contended that if the permissible area of the members of the families of plaintiffs Nos. 2 and 3 is correctly worked out then plaintiff-appellants have no surplus area. The order of the Collector is plainly illegal. Senior Subordinate Judge in this case in para 13 of the judgment had discussed the evidence on record regarding

the date of birth of family members of plaintiffs Nos. 2 and 3. There is no finding at all on the point raised by the plaintiff before the Senior Subordinate Judge. This shows that the Senior Subordinate Judge had not applied his mind on the vital question raised before him. So, the order of the Senior Subordinate Judge cannot stand the test of scrutiny and the said order is liable to be set aside.

4. The Additional District Judge also did not record any finding on the legal question that when members of the families of plaintiffs Nos. 2 and 3 were more than five they were entitled to retain more area as permissible area. This was an important question of law raised before the Additional District Judge but according to his judgment no such finding has been recorded by him.

5. It has been contended by the counsel for the appellant that plaintiffs Nos. 2 and 3 are the adult sons of plaintiff No. 1. It is further submitted that if the members of the family of each adult son exceeds five then in their case permissible area shall be increased by one fifth of the permissible area for each member in excess of five subject to the condition that additional land shall be allowed for not more than three such members. It is submitted that this argument finds full support from the language of Proviso (ii) of S. 4(2) of the Punjab Land Reforms Act, 1972 (for short the "Act"). It is further submitted that if the excess area for each adult son of the family exceeding five, is allowed then there is no surplus area- with the appellant at all. The holding of the landowner will be within the permissible area. Reliance has been placed by the counsel for the appellant on the judgment of the Additional District Judge in which it is specifically stated that family members of plaintiff No. 2 consists of 6 members and that of plaintiff No. 3 consists of 7 members.

6. Counsel for the State admitted that each of the adult son of the land owner is entitled to a separate permissible area according to S. 5 of the Act. He admitted that the Additional District Judge has rightly stated in the judgment that family members of plaintiff No. 2 consists of 6 members and that of plaintiff No. 3 consists of 7 members. He further submitted that permissible area is to be selected only for the adult son and not for the members of his family.

7. The question of law presented by the counsel for the appellant is of far-reaching importance in the context of the Land Ceiling Law. In order to appreciate the question raised in this case it is necessary to refer to the relevant provisions of the Act which reads as under:

"Section 3. Definitions :-- In this Act, unless the context otherwise requires:--

XXXXX

(4) "family" in relation to a person means the person the wife or husband, as the case may be, of such person and his or her minor children other than a married minor daughter;

(5) "land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for

purposes subservient to agriculture, or for pasture, and includes -

- (a) the sites of buildings and other structures on such land, and
- (b) banjar land;

xXXXX

(10) "person" includes a company, family, association or other body of individuals whether incorporated or not and any institution capable of holding property;

XXXXX

(15) "surplus area" means the area in excess of the permissible area."

"Section 4. Permissible area:-- (1) Subject to the provisions of S. 5, no person shall own or, hold land as land owner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area.

(2) Permissible area shall mean in respect of-

(a) land under assured irrigation and capable of yielding at least two crops in a year, seven hectares; or

(b) land under assured irrigation for only one crop in a year, eleven hectares; or

(c) barani land, 20.5 hectares; or

(d) land of other classes including banjar land, an area to be determined according to the prescribed scale with reference to the intensity of irrigation, productivity and soil classification of such classes, having regard to the respective valuation and the permissible area of the classes of land mentioned at (a), (b) and (c) above subject to the condition that the area so determined shall not exceed 21.8 hectares;

Provided that -

(i) where land consists of two or more classes, the permissible area shall be determined on the basis of relative valuation of such classes of land subject to the condition that it does not exceed 21.8 hectares;

(ii) where the number of members of a family exceeds five, the permissible area shall be increased by one fifth of the permissible area for each member in excess of five, subject to the condition that additional land shall be allowed for not more than three such members.

(iii) Notwithstanding anything contained in sub-section (2), where any land is comprised in an orchard such land shall, for the purpose of determining the permissible area, be treated as barani land.

(4)(a) Where a person is a member of a registered co-operative farming society, his share in the land held by such society together with his other land, if any, or if such person is a member of a family together with the land held by every

member of the family shall be taken into account for determining the permissible area;

(b) Where a person is a member of a family, the land held by such person, together with the land held by every other member of the family, whether individually or jointly, shall be taken into account for determining the permissible area.

XXXXX ."

Section 5 of the Act reads as under:--

"5. Selection of permissible area and furnishing of declaration by certain persons --Every person who on the appointed day or at any time thereafter, owns or holds land as landowner or mortgagees with possession or tenant or partly in one capacity and partly in another in excess of the permissible area, 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 persons has an adult son he shall also be entitled to select separate permissible area in respect of each such son, out of the land owned or held by him subject to the condition that the land so selected together with the land already owned or held by such son, shall not exceed the permissible area of each son.

Provided that where land is situate in more than one patwar circle, the declaration shall be supported by an affidavit in the prescribed form.

(2) xxxxx

XXXXX."

8. Provisions of S. 4(2) of the Act clearly show that the expression permissible area has been defined in this sub-seaion. Second proviso to Section 4(2) of the Act lays down that where the number of members of a family exceeds five, the permissible area shall be increased by one fifth of the permissible area for each member in excess of five, subject to the condition that additional iand shall be allowed for not more than three such members.

9. Section 5 of the Act provides that every person who owns or holds land as landowner or mortgages with possession or tenant Or partly in one capacity and partly in another in excess of the permissible area, shall select his permissible area. It further lays down that if such a person has an adult son, he shall be entitled to select permissible area in respect of each adult son.

10. Provisions of Section 4 of the Act shows that ceiling limit has been placed on every person whether he is holding land as a land-owner or mortgages with possession or tenant or partly in one capacity and partly in another in excess of the permissible area. So far as for the purposes of determining the permissible area, it would be necessary to refer to the definition of the word "person" as

given in Section 3(10) of the Act. Section 3(10) of the Act provides that a person includes a company, family, association or other body of individuals, whether incorporated or not and any institution capable of holding property. So, for the purpose of determining the permissible area one has to immediately fall back on the concept of family as given in Section 4(4) of the Act. Section 3(4) of the Act provides that family in relation to a person means the wife or husband, as the case may be, of such person and his or her minor children other than a married minor daughter.

11. It is quite evident from the scheme laid down in Ss. 4 and 5 of the Act that concept of family ceiling has been introduced by the Act. Permissible area is defined in Section 4(2) of the Act only with respect to the family of a person. For determining the permissible area under the Act, the Act takes note of only family of the land-owner as defined in Section 3(4) of the Act.

12. Second proviso to S.4 of the Act further lays down that where the number of members of the family exceeds five, the permissible area shall be increased by one fifth of the permissible area for each member in excess of five, subject to the condition that additional land shall be allowed for not more than three such members. Section 5 of the Act lays down that every land owner who owns or possesses land shall select his permissible area and intimate about his selection to the Collector and further if such person has an adult son he shall be entitled to select permissible area in respect of each son.

13. A plain reading of Ss. 4 and 5 of the Act in the light of the Scheme laid down in the Act clearly shows that for determining separate permissible area for each adult son of the land owner a reference to the definition of permissible area as given in S. 4 of the Act has to be made. Permissible area has been defined in S. 4(2) of the Act according to the quality of the land and keeping in view the number of the family members. Second proviso to S.4 clearly lays down that if the family members exceed five then permissible area shall be increased by one fifth of the permissible area for each member in excess of five. The expression permissible area given in S.5 of the Act is to be read with S. 4 of the Act. For determining the permissible area, it is necessary to take into consideration the number of family members of each adult son and allow additional area for each family member of the adult son as laid down in second proviso to S. 4(2) of the Act. The Supreme Court in *Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another*, has laid down that the provisions of Land Reforms Act has introduced a concept of permissible area for the family as a unit by clubbing the land held by each member of the family as defined in the Act. As the provisions of the Act has laid down the concept of permissible area of the family, therefore, for determining the permissible area for each adult son in terms of S. 5 of the Act one has to go by the definition of the permissible area as given in Ss. 4 and 5 of the Act. Second proviso to S.4(2) of the Act clearly directs that if the family members of the adult son exceeds five, the permissible area shall be increased by one-fifth of the permissible area for each member in excess of five.

As according to the Additional District Judge the family members of plaintiff No. 2 consist of six members and the family members of plaintiff No. 3 consist of seven members, there is no escape from the conclusion that each of the adult son will have to be allowed additional area for the members in excess of five as laid down in second proviso to S. 4(2) of the Act. The word "permissible! area" as defined in S. 5 of the Act will have to" be interpreted in the light of the definition as given in S. 4(2) of the Act keeping in view that the Act has introduced the concept of family ceiling, So, necessarily the permissible area of the adult son could be determined by taking" into consideration the family members of the adult son. It has been laid down by the Fulf Bench of this Court in Ranjit Ram Vs. The Financial Commissioner, Revenue Punjab, Chandigarh and Others, that in addition to the permissible area for the land-owner, the land-owner is entitled to a separate permissible area for each of his adult son.

14. The provisions of Punjab Land Reforms Act received the assent of the President of India on 24th March, 1973. The Act was published in the Punjab Govt. Gazette dated 2nd April, 1973. Section 3. of the Act provides that this Act shall come into force at once. So, in terms of the Act, the Act came into force on receiving the assent of the President on 24th March, 1973. There is no provision in the Act giving this Act retrospective effect. There is a limited provision in S. 4(7) that the land is to be evaluated as on the appointed day, i.e., 24th January, 1971. The expression "appointed day" is defined in S. 3(1) as 24th January, 1971. Section 4(5) of the Act also provides that any sale or gift otherwise than a bona fide sale or transfer, after the appointed day but before the commencement of the Act, shall be taken into account as if such land has not been transferred. In other words, sales which are not bona fide are ignored. Second proviso to S.4(2) of the. Act provides that where the number of members of the family exceeds five, the permissible area shall be increased by 1/5th of the permissible area of each member in excess of five. This provision of the Act has come into force on 24th March, 1973. There is no provision in the Act which provides that if the member of a family is born after 24th January, 1971, he shall not be entitled to the additional area as provided by second proviso to S. 4. On a plain reading of the Act, we have to see the number of members of the family for the purpose of determining the permissible area on the commencement of the Act, i.e., 24th March, 1973. The provisions of the Act are confisca-tory in character. They have to be strictly interpreted so that the land-owner is not deprived of his legitimate rights under the Act. A family ceiling has been fixed under the Act. The number of family members have to be seen according to the scheme of the Act on the date of commencement of the Act. There is nothing in the Act which directs that the number of members should be seen as on the appointed day, i.e. 24th January, 1971. Such an interpretation would defeat the purpose and intendment of proviso to S.4(2) of the Act. It is well settled principle of law that no provision of the Act should be given retrospective effect unless the language of the Act expressly or by necessary implication provides. If the Legislature wants to give retrospective effect, it must declare its intention clearly. The Act cannot be given

retrospective effect merely by implication. Normally all statutes are prospective and are supposed to respect vested rights.

15. In the present case, although according to the judgment of the Additional District Judge the question was raised before him but he has not given any finding on the question so raised before him. After taking into consideration the number of family members of plaintiff Nos. 2 and 3, the land-owner does not have any surplus area. So, the order of the Collector declaring the land surplus is clearly contrary to the mandatory provisions of Ss. 4 and 5 of the Act and is, therefore, illegal, ultra vires and null and void. If the land-owner does not have any surplus area and the Collector declares his land to be surplus, the impugned order would be completely without jurisdiction. It is precisely the position here. For determining the permissible area, the land-owner is entitled to select separate permissible area for each of his adult son as laid down in S. 5 of the Act. After doing so, in the present case, the land-owner does not have any surplus area. The Additional District Judge was clearly in error in not appreciating the question of law raised before him. In this view of the matter, the judgment and decree passed by the Courts below are liable to be set aside and the suit of the plaintiff-appellant deserves to be decreed.

16. The judgment and decree passed by the Additional District Judge also suffers from other infirmities. In the present case, a large number of documents were placed before the Additional District Judge but he did not discuss the evidence in detail. He just summarily held that the order of the Collector is legal. It was incumbent upon the Additional District Judge to discuss the entire evidence on record in the light of the provisions of the Act and then record a finding. As there is hardly any discussion in the judgment regarding the documentary evidence on record and the question of law raised, the judgment and decree passed by the Additional District Judge cannot be sustained.

17. It has been contended by the counsel for the appellant that the evaluation of the land has been worked out by the Collector illegally and in contravention of the mandatory provisions of S. 4(2)(a) of the Act. He submitted that the land of the appellant in village Ramnagar Sibia was barani. There was no permanent source of irrigation in this land. So, it could not be counted as the land of first quality because there was no assured, source of irrigation for cultivation of two crops in a year.

18. Section 4(7) provides that for the purposes of evaluating the land of a person under the Act owned by him immediately before the commencement of the Act as well as land acquired by him after such commencement by inheritance, bequest, gift from a person whom he is an heir shall be evaluated as if the valuation was being made on the, appointed day and the land acquired by him after such commencement in any other manner shall be evaluated as if the valuation was being made on the date of such acquisition. It is evident from the provisions of S. 4(7) of the Act that the land has to be evaluated as on the appointed day. The "appointed day" is defined in the Act as 24th January, 1971.

So, for the purposes of determining the permissible area, we have to see the source of irrigation of the land and whether it is capable of yielding two crops as provided under S.4(2)(a) on the appointed day.

19. The plaintiff examined P.W. I Sarup Chand, Patwari, Halqa Ram Nagar Sibia. He deposed that he has brought the Jamabandi for the year 1970-71 of the village Ramnagar Sibia. Jaswant Singh, land-owner, owned 1/6th share in the land measuring 86 Bighas 7 bighas 11 biswas (sic). In the Jamabandi, it is not recorded that any electric motor is installed in the land in dispute. He has also deposed that according to the entries in the Khasra Girdawaries and Jamabandi, no electric motor is installed in the land owned by Jaswant Singh. He has deposed that there is a tubewell bore in Khasra No. 68 and according to the Jamabandi this land is owned by Bhupinder Singh. The land of Jaswant Singh is at a distance from the land of Bhupinder Singh in which tubewell is installed. There is no water-course connecting the land of Bharpur Singh with that of Jaswant Singh. The land of other farmers also falls in between the land of Bhupinder Singh and Jaswant Singh. Except this bore, Bhupinder Singh and Bharpur Singh have no other bore in any other land. According to the statement of the Patwari Halqa, it is clear that there is no tubewell in the land belonging to Jaswant Singh, land-owner. There is no electric connection of any bore with respect to the land of Jaswant Singh for irrigation purposes. P.W. 3 Bhupinder Singh also appeared as a witness. He is the son of Jaswant Singh. He has deposed that he is 48 years of age. He has four sons and no daughter. He has deposed that there is no electric motor in his name. He used to irrigate his land from the tubewell of his brother. He has further deposed that there is no electric motor in the name of his father Jaswant Singh. Bharpur Singh P.W. 5 also appeared in the witness box. He is also the son of Jaswant Singh, land-owner. He has deposed that he has five children. He has deposed that on 24-1-1971 one electric motor of 5 HP was installed in his land. He has deposed that his father irrigates his land measuring about 4 Killas from the water from his (witness) tubewell. P.W. 7 Jaswant Singh is the plaintiff. He appeared as his own witness and deposed that in 1971 there was no electric connection in his name for installation of electric motor for the purpose of tubewell. He has further deposed that he used to irrigate some portion of his land from the motor of Bhupinder Singh.

20. The defendant examined Dharam Chand, Patwari, as D. W. I. He has produced certain record. From the statement of Sarup Chand P.W.I, Patwari Halqa, Ramnagar Sibia, it is clear that according to the Jamabandi and the Khasra Girdawaries no tubewell is installed in the land belonging to Jaswant Singh in village Ramnagar Sibia. So, the land belonging to Jaswant Singh in the village does not have any assured source of irrigation. This statement of Sarup Chand is corroborated by the statement of P.W. 3 Bhupinder Singh, P.W. 4 Bharpur Singh and P.W. 7 Jaswant Singh. In view of the documentary evidence on record discussed above, there is no manner of doubt that in Ramnagar Sibia there was no tubewell on the land belonging to Jaswant Singh.

21. The Jamabandi is prepared according to the provisions of the Punjab Land Revenue Act. The Jamabandi entries contain a column regarding source of irrigation of the land. The presumption of correctness attaches to the entries in the Jamabandi according to S. 44 of the Punjab Land Revenue Act. In the Jamabandi on the relevant date, i.e., on 24-1-1971 it is not shown that the land belonging to Jaswant Singh, the land-owner, in village Ramnagar Sibian, had any tubewell with 5 HP connection. According to P.W. I Rup Chand Patwari, there is no tubewell on the land of Jaswant Singh. The electricity connection is in the name of Bharpur Singh, son of Jaswant Singh. The expression "land under assured irrigation" and capable of yielding at least two crops in a year (hereinafter referred to as the first quality land) is very significant. It emphasises that the land should be under assured irrigation. This indicates that the source of irrigation, such as tubewell, should be in the land under consideration. The word "assured" in S. 4(2) means that the land-owner should be entitled to assured irrigation as a matter of right. The irrigation facility to the land should be available either from the canal or Govt.-owned tubewell wherein proper turn of water is fixed for irrigation purposes or it should be owned by the land-owner. If the irrigation facility is dependent merely on a courtesy of a friend or a relation, such temporary use of irrigation facility cannot be described as assured irrigation. The matter is made further clear by the provisions of S.4(2)(b) which provides that if the land under assured irrigation is only for one crop in a year, the land-owner is entitled to retain 11 hectares. This shows that the legislative intentment is to evaluate land according to the irrigation facilities available for two or one crop. If the land has no assured irrigation at all then it is classified by S.4(2)(c) as barani. In that case, the land-owner is entitled to 20.5 hectares of land as permissible area. In the absence of any source of irrigation on the land in question, it is very difficult to describe that such land has assured irrigation for two crops. Classification of land under S. 4(2)(a) (b)(c) of the Act is dependent on the question as to how much land should be left with the land-owner as permissible area. In my opinion, in the present case, the Collector did not apply his mind that in the absence of any tubewell on the land in dispute owned by the plaintiff-appellant, it cannot be said that the land was under assured irrigation for two crops. In this view of the matter, the Collector acted illegally in classifying the land of the appellant under S.4(2)(a) and allowing him only seven hectares of land as permissible area. The Collector, in the present case, completely overlooked while determining the permissible area of the appellant in the manner laid down under S. 4(2) of the Act. There is no finding by the Collector that the land belonging to the appellant has got assured irrigation and the land is capable of yielding two crops. There should be a firm finding that the land of the land-owner has assured irrigation and is capable of yielding two crops on the appointed day, i.e., 24th January, 1971, with reference to which date the valuation has been determined as provided in S. 4(7) of the Act. If the land of a landowner is wrongly classified for the purposes of evaluation as laid down in S. 4 of the Act, it results in deprivation of the land on payment of nominal compensation. The burden of proof is on the State to establish that the land

belonging to land-owner bears the classification in which the Collector has categorised the land for purposes of evaluation at the time of determining the permissible area under the Act. There is no such finding by the Collector in his order. In this view of the matter, the Collector has determined the valuation in a manner contrary to the mandatory provisions of S. 4 of the Act. This Act is a confiscatory piece of legislation. It takes away the land in excess of the permissible area on payment of a small amount of compensation. Before the land is declared surplus, the Collector must determine the permissible area of the landowner in the manner laid down in S. 4. The Collector has failed to keep in view the mandatory provisions of S. 4 of the Act while determining the permissible area and, therefore, the order passed by him cannot be sustained. As according to the jamabandi entries on 24th January, 1974, there is no tubewell in existence on the land of the appellant, it cannot be said that he had assured source of irrigation. So, his land has to be treated barani according to S. 4(2)(c) of the Act and the appellant shall be entitled to hold 20.5 hectares of land. The Collector, on the other hand, wrongly and contrary to the mandatory provisions of the Act allowed seven hectares of land to the plaintiff-appellant treating this land to be under assured irrigation when according to the evidence on record, there is no permanent source of irrigation available on the land in question on the appointed day. On proper calculation of the land in the manner laid down in S. 4, the appellant is entitled to 20.5 hectares of land as his permissible area. In this view of the matter, there is no surplus land with the appellant and the order of the Collector is liable to be declared illegal, ultra vires and null and void.

22. The appellant filed an appeal against the order of the Collector to the Commissioner and thereafter he filed a revision to the Financial Commissioner but the mistake was not rectified. As the order of the Collector in the present case is illegal, ultra vires and null and void because it is a non-speaking order; therefore, the appellate order as well as the revisional order must fall with it. If the original order suffers from inherent illegality in the sense that it is a non-speaking order, such defect cannot be cured merely because the order has been upheld in appeal or revision.

23. In view of the above discussion, this appeal is accepted with no order as to costs and the judgment and decree passed by the Addl. District Judge and the Subordinate Judge are set aside. Suit of the plaintiff is decreed. It is held that there is no surplus land with the plaintiff-appellant. The impugned orders declaring land surplus are held to be illegal, ultra vires and null and void- The respondents are restrained from enforcing the same against the plaintiff-appellant.

24. Appeal allowed.