
(2010) 02 P&H CK 0160
In the Punjab And Haryana At Chandigarh

Jatinder Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 2(8), 24

Citation : (2010) 02 P&H CK 0160

Hon'ble Judges : Gurdev Singh, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These appeals have been preferred against the judgment dated 28.3.2003, vide which writ petition Nos. 3044 and 3251 of 1982 filed by the petitioners/appellants were dismissed, in respect of the determination of surplus area under the provisions of the Punjab Security of Land Tenures Act 1953 (hereinafter referred to as the Act).

2. One Bhagwant Kaur owned land in villages Sunet, Jawaddi, Umedpur, Partap Singhwala, Baranbarda and Umed Pur, Tehsil and District Ludhiana, which was being managed by the Court of Wards. That land was given by the Court of Wards to one Dina Nath son of Karam Chand, vide registered lease deed dated 21.4.1947 for a period of seven years. The whole of the land situated in villages Partap Singh Wala was under the tenancy of said Dina Nath as on 15.4.1953. After that land was released from the Court of Wards, the same was given by the landowner on lease to Shashi Inder Singh and Jatinder Singh, vide registered lease deed dated 27.6.1956. Bhagwant Kaur was a big landowner and as such proceedings regarding surplus area were initiated against her by the Collector (Agrarian). That Collector, vide his order dated 22.7.1960, held that the landowner was entitled to retain 30 standard acres as permissible area and as such declared 154 standard acres 1/2 unit of her land in villages Sunet, Jawaddi, Partap Singh and Umed Pur, as surplus. She, through her attorney and Devinder Kaur filed a revision application before the Collector, which was rejected on

20.11.1964. Major Shashi Inder Singh filed an appeal against order dated 22.7.1960 before the Commissioner, Jalandhar Division, Jalandhar, who set aside that order, vide order dated 12.7.1965 and remanded back the case to the Collector with the direction to determine the case afresh regarding the claims of Shashi Inder Singh and Jatinder Singh, who were the tenants of Bhagwant Kaur. During the pendency of the case, Karnail Singh and Jarnail Singh sons of Waryam Singh, presented an application before the Collector to implead them as parties on the ground that the land which was declared surplus was allotted to them and they were in actual cultivating possession. Thereafter, Jatinder Singh also moved a similar application. Both those applications were dismissed.

3. Karnail Singh and Jarnail Singh aggrieved by the order dated 3.3.1966 filed an appeal before the Commissioner, Jalandhar Division, Jalandhar, which was accepted and they were ordered to be impleaded as parties. The Collector referred the case to SDO (C), Ludhiana, for inquiry and for making his report about the factual position. That SDO, vide his report dated 29.7.1976, reported that no tenant permissible area can be allotted to Shashi Inder Singh and Jatinder Singh and that the total holding of Bhagwant Kaur was 193 standard acres $1/4$ units out of which 25 standards acres 14 units were banjar land, which were to be excluded from assessment, leaving balance of 158 standard acres $2-1/2$ units. Thus, after reserving 30 standard acres, the remaining 128 standard acres $2-1/4$ units had been declared surplus. The Collector came to the conclusion that the remand order was on specific point and did not leave any scope for further inquiry so far as the determination of the surplus area of Bhagwant Kaur was concerned. In respect of the claim of Shashi Inder Singh and Jatinder Singh, he held that there was no mention of the lease deed at the time the proceedings were initiated in the year 1960 and those tenants were held having more land than the permissible limit and that there was no entry in the khasra girdawari that they were in cultivating possession of the land regarding which lease deed was executed in their favour by Bhagwant Kaur. They were not held to be her tenants and as such were not entitled to any such permissible area.

4. Aggrieved parties i.e. landowner Bhagwant Kaur and the tenants Devinder Kaur and Shashi Inder Singh and others preferred two appeals against that order of the Collector, which were decided by a common judgment dated 8.1.1979 by the Commissioner, Patiala Division, Patiala. Both the appeals were dismissed vide order dated 8.1.1979. In respect of the landowner, it was held that the case was remanded to the Collector only regarding the determination of the permissible area, if any, of the tenants and the landowner had no right to make a fresh selection of the surplus area. In respect of the tenants, it was held that Jatinder Singh and Shashi Inder Singh, on whose appeal the case was remanded, were not the tenants over the land in dispute and that the other tenant Jatinder Singh never preferred any appeal against the order dated 22.7.1960.

5. That order was further challenged by way of revision before the Financial

Commissioner u/s 24 of the Act. That revision was dismissed, vide order dated 16.6.1982. It was held that Shashi Inder Singh and Jatinder Singh were themselves possessing certain lands and claim of surplus area of Bhagwant Kaur as tenant permissible area was surplus. The Financial Commissioner, while agreeing with the finding of the Commissioner, observed that the Collector, after remand, had excluded the banjar area being not land within the meaning of Section 2(8) of the Act and also the land which was acquired by the State Government of Punjab and the Improvement Trust. While determining the surplus area of Bhagwant Kaur, he also agreed with the finding of the Commissioner that the tenants have failed to prove their status as tenants.

6. Aggrieved by the orders of those revenue authorities, Jatinder Singh filed CWP No. 3251 of 1982, whereas Bhagwant Kaur and others filed CWP No. 3044 of 1982 for quashing those orders.

7. They challenged those orders on the premises that revenue officers misunderstood the remand order as it was only at the instance of Shashi Inder Singh. Once Bhagwant Kaur was transposed as appellant and the appeal was accepted the order passed in the year 1960 declaring the surplus area stood set aside and that surplus area was to be determined afresh. The landowner as well as the tenants were entitled to raise all the legal objections available to them for deducting banjar land and the land acquired by the State and the Improvement Trust. The balance land of the landowner was found to be 150 standard acres 2-1/2 units. The Collector had no jurisdiction to declare the area exceeding 128 standard acres 2-1/2 units as surplus. The banjar land could not have been included in the permissible area of the landowner. After the order regarding declaring of the surplus area was set aside, and the case was remanded, the land ceased to be surplus and allottees were not entitled to remain in possession of the land so declared as surplus. The landowner was entitled to the exclusion of the tenant permissible area from the total holdings. The Collector was bound to hold that the tenants, whose names figured in the revenue record, were the tenants in that land. It is very much apparent from the revenue record that previously Dina Nath was the lessee for nine years and thereafter registered lease deed was executed in favour of Shashi Inder Singh and Jatinder Singh. Therefore, revenue officers had no jurisdiction to hold that they were not tenants in the year 1958-1959.

8. The contentions raised by the appellants before the learned Single Judge did not find favour and resultantly, the writ petitions were dismissed, vide aforesaid common judgment.

9. Notices of the appeals were given to the respondents.

10. We have heard learned Counsel for both the sides.

11. It was submitted by learned Senior Counsel for the appellants that once the order declaring the land of the big landowner as surplus was set aside, and the case was remanded, the surplus area was to be determined afresh. It cannot be

held that the remand order was only for a limited purpose of determining permissible area of the tenants, as the big land owner was also transposed as appellant in that appeal in which that order was passed. The area declared as surplus had never been utilized and the same never vested in the State. Bhagwant Kaur continued to be owner of that land and he could have selected fresh permissible area. In that eventuality banjar land and the land so acquired by the State was to be excluded while determining the permissible area. When the proceedings were still pending before the revenue authorities, the Punjab Land Reforms Act, 1972 (hereinafter referred to as "the Act of 1972") had come into force repealing the Act and as such this surplus area was to be determined as per the provisions of the 1972 Act and option was to be given to landowner to select his/her permissible area. These counsels did not challenge the orders passed in the writ petitions so far as the tenants are concerned. In support of their contentions, the learned Senior Counsel relied upon Babu Ram and Ors. v. State of Punjab and Ors. 1965 P.L.J. 185; Bhupinder Singh v. The State of Punjab and Ors. 1980 P.L.J. 72; Gurnam Singh v. State of Punjab and Ors. CWP No. 2594 of 1982 decided on 29.4.1997 and Tilak Raj and Ors. v. Financial Commissioner (Revenue) Punjab and Ors. 1992 PLJ 142

12. On the other hand, it was contended by the counsel for the respondents that it was correctly held by the learned Single Judge that the remand order was for a specific purpose i.e. for determining permissible area of the tenants. The proceedings regarding declaring of the surplus area of the landowner were not to be re-opened, as the order in the appeal, in which the case was remanded, was never challenged by the landowner on any ground whatsoever. Therefore, there was to be no re-determination of the surplus area of the landowner. After the land was declared as surplus, the tenants were settled therein and the surplus land had been utilized. There was no question of re-determination of the surplus area after coming into force of the Act of 1972. There was no evidence before the revenue authorities nor anything was brought on record by the landowner for proving that the banjar land was included in her permissible area. No such land was found to be banjar and that fact cannot be re-agitated in these appeals. In support of his contentions, the learned Counsel relied upon Amar Surjit Singh v. The State of Punjab and Anr. 1968 P.L.J 297.

13. In view of the grounds of appeal and the arguments raised by both the sides, the following points arise for determination for the decision of these appeals.

(i) Whether after remand of the case to the Collector, permissible area of the landowner was required to be redetermined, as per the provisions of the Act of 1972?

(ii) Whether banjar land was included while determining the permissible/surplus area of the landowner and whether that point can be agitated before this Court in appeal?

14. Bhagwant Kaur was a owner of the land in excess of the permissible area

which was situated in different villages/Patwar circles. As per Section 5A of the Act, she was to furnish a declaration supported by an affidavit in respect of the land owned by her. As she held land in excess of permissible area, so she was to reserve parcel or parcels of land in excess of permissible area and she was to intimate her selection to the prescribed authority. In case of her failure to make that selection, that selection was to be made by the prescribed authority. It is not the subject matter of the present appeal whether Bhagwant Kaur herself selected the permissible area or that selection was made by the prescribed authority. The fact remains that proceedings were initiated for determining her surplus area under the Act and that after excluding the permissible area of 30 Standard Acres, 154 Standard Acres 1/2 units land was declared surplus, vide order dated 22.7.1960. In the appeal preferred by Shashi Inder Singh, that order was set aside and the case was remanded back only for considering the claim of Shashi Inder Singh and Jatinder Singh, who claimed themselves to be the tenants of Bhagwant Kaur. Though Bhagwant Kaur was transposed as the appellant, yet she never made any claim in the appeal nor she challenged the order declaring her land to be surplus.

15. The first judgment relied upon by the counsel for the petitioner is Babu Ram's case (*supra*). The facts of that case cannot be equated with the facts of the present case. In that case, the land was declared surplus with one Narinder Singh by the Collector. One Babu Ram made an application to the Collector that he had purchased 77 kanals and 10 marlas of land from Narinder Singh and the same being banjar should not have been declared surplus with Narinder Singh and that he had not been afforded an opportunity by the Collector who had declared the surplus area. That application was rejected by the Collector and Babu Ram filed an appeal before the Commissioner, who accepted the appeal and directed the Collector to re-hear Babu Ram as to why the area purchased by him should not be made a part of the area allowed to be retained by Narinder Singh as his permissible area. It was in those circumstances that it was held by the Division Bench of this Court that as a result of the acceptance of that appeal, the previous declaration of surplus area no more stands and the case was to be re-opened. In the present case, it was not the contention of the tenants that any such land had been included in the permissible area of the landowner to which they were entitled. Their only contention was that their permissible area as tenants be also determined. The case was remanded back for determining their permissible area as tenants and not for redetermining the surplus area of the landowner.

16. Similarly in Bhupinder Singh's case (*supra*), it was the order declaring some area to be surplus in the hands of a particular landlord which was set aside. It was in those circumstances that it was held that once the decision relating to the declaration of surplus area was set aside on account of any legal infirmity or for any other valid reason, the status of the resettled tenants as such comes to an end automatically and unless some area is declared surplus afresh, they have no right to be considered for allotment of the same after re-declaration of the

surplus area. In the present case no such infirmity was found regarding declaration of the area of landlord to be surplus. It was only regarding determination of the permissible area by the tenants.

17. In Gurnam Singh's case (supra) also, in the revision before the Commissioner, the order declaring the area surplus itself was set aside and the direction of the Commissioner was that the matter be re-decided on merits. The same is not the position in the present case.

18. In Tilak Raj's case (supra) Kashmiri Lal was the original big landlord. The Collector, vide his order dated 13.9.1960, declared his 42 Standard Acre $3/4$ Units as surplus. The landowner challenged that order by way of appeal before the Commissioner, which was accepted and the case was remanded for fresh decision and a direction was issued that transfer made by the landowner in favour of the petitioners, who were admittedly his successors by way of civil court decree obtained in the year 1956, be taken into account. Thereafter, the Collector left 50 Standard Acres as permissible area and declared 34 Standard Acres $14-1/2$ units as surplus and the decree of the court was not held to be bonafide. The matter was further agitated by way of appeal before the Additional Commissioner, which was accepted and the surplus area was reduced to 33 Standard Acres $14-1/4$ units as surplus. Thereafter the landlord never agitated the matter. Some part of the land which had been declared surplus had been mortgaged by the landowner. The mortgagee of that land sought review of the order passed by the Additional Commissioner and the same was reviewed. The order of review was challenged before the Financial Commissioner by way of a revision, which was dismissed. Thereafter, the mortgagee agitated the matter in the civil court. In the meanwhile, the original landowner died and his successors, being small landowners, the land in their hand was not declared surplus. The mortgagees, after obtaining decision from the civil court, filed an application for ejectment of the allottees, before the Collector, who ordered their eviction. Appeals were preferred against that order of the Collector and those orders of the Collector were set aside. The mortgagees approached the Financial Commissioner, but were unsuccessful and thereafter moved a writ petition before this Court. It was held that the order passed in favour of the landowner by the Additional Commissioner, review of which was sought by the mortgagees, was never agitated by the landowner and as such had attained finality qua him. It was also held that the order passed on the review application cannot possibly be interpreted so as to mean that part of the order, which was not even challenged by the landowner, was also set aside. The ratio of this ruling makes it very clear that where the landowner does not challenge the order declaring his land to be surplus and the same is set aside, by way of revision or review, at the instance of some other effected person, he cannot take advantage of the order passed in revision or review.

19. Therefore, in the present case, as Bhagwant Kaur, landowner never agitated the matter regarding declaring her land to be surplus before the Collector, so it

cannot be held that after remand of the case, the order declaring her particular land to be surplus, stood set aside. She is bound by the selection already made by herself or by the prescribed authority under the Act and she could not have selected her permissible area afresh after remand of the case to the Collector in the revision. Therefore, the question of determination of the permissible area or surplus area afresh in under the 1972 Act does not arise.

20. Therefore, point (i) is decided against the appellants and in favour of the respondents.

21. There is no dispute about the fact that banjar land is not included within the definition of land and is not to be taken into consideration, while determining permissible area of the landowner. Learned Single Judge called for the report of the Collector in order to elicit the correct status of the land. It is incorporated in the judgment, which has been challenged in these appeals, that the permissible area of landowner has been carved out from the land comprised in village Jawaddi and at that time the landowner had been found in possession of 41 Standard Acres 7-1/2 units area. Admittedly, no area has been defined as banjar jadid or banjar kadim in that village. That finding can not be challenged in these appeals. So it cannot be held that any such banjar land was included while assessing permissible area of the landowner. Moreover, the Hon''ble Supreme Court in Amar Surjit Singh's case (supra) held as under:

...The question whether the disputed land is banjar qadim land or not is a question of fact and that fact had to be decided by the Collector. There is dispute between the parties as to whether that land is banjar qadim or not. The appellant did not contend before the Collector before the impugned order was made that the land in question is a banjar qadim land and consequently the same had to be excluded from consideration in determining the surplus area. The proceedings before the Collector proceeded on the basis that the said land fell within the scope of Section 2(8) of the Act. It was for the appellant to plead before the Collector that the land in question was a banjar qadim land. Admittedly, he had included that land in the declaration filed by him u/s 5-A of the Act which means that on his own showing it is land as defined in the Act. We fail to see why the Collector could not have acted on the basis of that admission. At no time before the impugned order was made the appellant took up the plea that the admission made by him was an erroneous one.

22. The nature of land being a question of fact cannot be agitated before this Court. The same was required to be raised before the Collector and it was he who was to decide the same.

23. Accordingly, point (ii) is also decided against the appellants.

24. As a result of the findings on the above points, these appeals, which are without merit, are hereby dismissed. The order of the learned Single Judge is upheld. No order as to costs.