(2010) 04 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Kamla Devi and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:
Haryana Ceiling on Land Holdings Act, 1972 — Section 8(3)

Citation : (2010) 5 RCR(Civil) 3902 : (2010) 5 RCR(Civil) 3901

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—The appellants are assailing order dated 18.11.2009 passed by learned Single Judge of this Court whereby allowing CWP No. 2979 of 1989, in part remanding the matter to the competent authority for the limited purpose to consider the case of the petitioners for the grant of benefit provided u/s 8(3) of the Haryana Ceiling of Lands Holding Act, 1972 (hereinafter referred to as the 1972 Act).

2. Brief facts of the present case are that Jai Pal Singh was a big landholder; some area in the hands of Jai Pal Singh was declared surplus under the provisions of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the 1953 Act) vide order dated 28.7.1960. Jai Pal Singh filed an appeal before the Commissioner, which was dismissed vide order dated 14.11.1960; revision was also dismissed by the Financial Commissioner vide order dated 1.5.1961; this Court vide order dated 12.3.1962 passed in CWP No. 369 of 1961 remanded the matter to the competent authority for fresh decision on the question of surplus area in the hands of Jai Pal Singh; this Court in the order dated 12.3.1962 directed to exclude entire land sold by Jai Pal Singh prior to 30.7.1958 from the total land held surplus; a chance/option was also given to the landholder to make his selection of permissible area, in accordance with law. After remand, the writ petitioners/their predecessors purchased land measuring 61 kanals 14 marlas from Jai Pal Singh vide sale deed dated 18.6.1974; the

Collector vide order dated 12.5.1978 declared some land of Jai Pal Singh as surplus after giving benefit of the land sold by Jai Pal Singh prior to 30.7.1958 as directed by this Court vide order dated 12.3.1962; the land owner did not furnish list of choice. Accordingly, the Collector described Khasra numbers to be included in the surplus area vide order dated 20.5.1978. Jai Pal Singh challenged the order of the Collector dated 20.5.1978 in appeal, which was allowed by the Commissioner vide order dated 14.11.1979 remanding the matter to the Collector with a direction that Jai Pal Singh would be allowed to give list of Khasra Nos. to the Collector; Jai Pal Singh, predecessor-in-interest of the present appellants submitted list on 20.11.1979 mentioning Khasra Nos. therein to be taken in surplus pool; the Collector vide order dated 20.10.1981 accepted the list submitted by Jai Pal Singh; Mohan Singh predecessor-in-interest of the writ petitioners filed an application before the prescribed authority saying land purchased by him was wrongly included in the surplus pool and no notice was given to him before accepting Khasra Nos. purchased by him in surplus pool; application moved by Mohan Singh was dismissed by the prescribed authority vide order dated 11.10.1983; appeal filed by Mohan Singh was accepted by the Collector vide order dated 6.2.1984 with the direction that surplus area first of all is to be taken from the land of the owner and only if, surplus land would not be completed from the holding of Jai Pal Singh then the area purchased by Mohan Singh be included in the surplus pool; order of the Collector was challenged before the Commissioner; the Commissioner accepted the appeal filed by the predecessor-in-interest of the big land holder vide order dated 17.4.1985. The petitioners preferred revision before the Financial Commissioner, which was also dismissed vide order dated 18.2.1987. Order of the Financial Commissioner was challenged by filing writ petition, which was allowed by learned Single Judge vide impugned Judgment dated 18.11.2009.

3. Learned Single Judge in the impugned Judgment has observed that the writ petitioners being interested persons are entitled to be considered for the grant of benefit u/s 8(3) of the 1972 Act. Learned Single Judge further observed that land purchased by the petitioners would be included in the surplus pool only if, surplus area cannot be calculated-completed from the land of the big landholder excluding the land sold by the big landholder in favour of the petitioners.

4. We have heard learned Counsel for the parties and perused the record.

5. Learned Counsel for the appellant vehemently argued that since proceedings were initiated prior to the enactment of the 1972 Act, hence in view of Section 33(2)(ii)(iii) and (iv), everything was to be done as per the 1953 Act. He further stated that provisions of Section 8(3) of the 1972 Act cannot be pressed in service in view of Section 33(2)(iv) of the 1972 Act. Second argument of Mr. Aggarwal is that otherwise also, any transfer of land after the appointed day, is void. Transferee of the void transaction can not ask about the benefit of Section 8(3) of the 1972 Act. He further argued that the petitioners neither took the plea of fraud or misrepresentation being played by the big landholder with the

petitioners while executing the sale deed nor took the plea of bonafide purchaser, hence they cannot ask that the land sold by the big landholder cannot be included in the surplus pool. Mr. Aggarwal further argued that in view of Section 9 of the 1972 Act, it is for the landholder to furnish his choice/selection about the land forming part of the surplus pool. Neither the purchaser nor the authority under the 1972 Act can direct the landholder to exclude the land transferred by the landholder from the surplus pool. He further argued that the plea of Sections 8(3) or 9(3) of the 1972 Act can be taken only by the bonafide purchaser.

6. Ms. Ritu Bahri, Senior Deputy Advocate General, Haryana, submitted that the State is primarily concerned with the surplus area, no matter from where the land is coming. Land of the big landholder or land of the purchaser on the appointed day cannot form separate class since any transfer after the appointed day, qua the State, is void.

7. Mr. Anil Kshetarpal, learned Counsel appearing for the writ petitioners-respondents in appeal vehemently argued that the land purchased by the petitioners cannot be included in the surplus pool in view of Section 8(3) of the 1972 Act as it is to be included in the permissible area of the land holder at the first instance. Transferred land can only be included in surplus pool when the area of surplus pool is falling short after taking the remaining land from the landholder. He further submitted that the landholder cannot take benefit of his own wrong by transferring the land and thereafter, placing the transferred land in surplus pool.

8. All the learned Counsel stated at the bar that in the present case question of serving notice prior to declaring area as surplus area, to the transferee is not involved. In the present matter, following questions are involved, which are as under:

(i) As to whether, if proceedings for determination of surplus area commenced before the enforcement of 1972 Act and finalised after the enactment of the 1972 Act, option/selection of permissible land - surplus pool would be submitted as per the 1972 Act or as per the provisions of the 1953 Act? (ii) As to whether option given by the landholder can be changed on the say of the transferee or another authority under the 1953 Act to exclude the transferred land from the surplus pool?

9. Answer to Question No. 1:- Undisputedly, proceedings for the determination of surplus area against the land holders commenced as per the 1953 Act and for the first time, the prescribed authority passed order on 28.7.1960. Admittedly, on the date of commencement of the 1972 Act, proceedings were pending before the competent authority under the 1953 Act, after remand from this Court vide order dated 12.3.1962. Undisputedly, final order was passed in the matter by the Collector on 12.5.1978. Section 33 of the 1972 Act reads as under:

33. Repeal and Savings.-(1) The Provisions of the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955,

which are inconsistent with the provisions of this Act are hereby repealed. (2) The repeal of the provisions of the enactments mentioned in Sub-section (1), hereinafter to as the said enactments, shall no affect-

(i) purchase of land u/s 18 of the Punjab Law or Section 22 of the Pepsu Law, as the case may be pending immediately before the commencement of this Act, which shall be disposed of as if this Act had not been passed;

(ii) the proceeding for the determination of the surplus area pending immediately before the commencement of this Act, under the provisions of either of the said enactments, which shall be continued and disposed off as it this Act had not been passed, and the surplus area so determined shall vest in, and be utilized by the State Government in accordance with the provisions of this Act.

(iii) the revisional power of the Financial Commissioner u/s 24 of the Punjab law or under Sub-section 93) of Section 39 of the Pepsu Law, as the case may be, shall be exercised as if this Act had not been passed; and the area declared surplus in exercised of such power shall vest in, and be utilized by, the State Government in accordance with the provisions of this Act.

(iv) the power exercisable u/s 5-C of the Punjab Law or u/s 32-BB of the Pepsu law, as the case may be, shall be exercised as if his Act had not been passed; and the area determined surplus in exercise of such power shall vest in, and be utilized by the Stat Government in accordance with the provisions of this Act;

Provided that the powers of Pepsu Land Commissioner under the Pepsu law shall vest in, and be exercised by the Collector of the district concerned.

(3) Save as provided in Sub-section (2), no authority shall pass an order if any proceedings whether instituted before or after the commencement of this Act which is inconsistent with the provisions of this Act.

10. From the perusal of Section 33(2)(ii) and (iv) of the 1972 Act, we have no doubt in our mind to hold that if proceedings for determination of the surplus land commenced prior to the enforcement of the 1972 Act, the entire proceedings shall be concluded as per the provisions of the 1953 Act, as if 1972 Act has not been passed. As per Sub-section (iv) of Section 33(2) of the 1972 Act, power exercisable u/s 5(C) of the 1953 Act shall be exercised by the land holder as if the 1972 Act is not passed. After exercise of the option pertaining to the permissible land - surplus land, surplus land shall be used by the State government as per the 1972 Act only. Meaning thereby, till option is given and accepted, provisions of the 1972 Act would not be applicable, if proceedings for determination of surplus area commenced prior to the enforcement of the 1972 Act.

11. Learned Counsel for the respondents could not point out any provision under the 1953 Act similar to the provisions of Section 8(3) of the 1972 Act. In the 1953 Act, landholder was not required to include land transferred in the permissible area at the first instance. In view of above, our answer to question

raised is, in the present matter provisions of Section 8(3) of the 1972 Act has no application. Option had to be given as per the old Act and in the old Act, there was no requirement to save the land transferred in the permissible land at the first instance and transferred land could be taken only when area of surplus pool is falling short.

12. Answer to Question No. 2:- A Division Bench of this Court in Harbans Singh and Ors. v. Ajit Singh and Ors. 1975 PLJ 85, in paragraph 5 of the Judgment has held as under:

There is no provision in the Act giving power to the Collector or any other officer under the Act to change the selection made by a landowner u/s 5-B(1) of the Act. In fact, the Collector has to ignore the alienations made after April 14, 1953, and has to determine the surplus area with the landowner as on that date.

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The alienation in favour of the vendees was perfectly valid and if they are deprived of their land because it has been declared surplus, they may seek such remedy as may be available to them against the landowners, but their selection of the permissible area cannot be changed by the Collector or the Commissioner or the Financial Commissioner.

13. Another Division Bench of this Court in Balbir Singh v. the Financial Commissioner (Appeals), Punjab 1996 (2) PLR 594 in paragraphs 10 and 11 has held as under:

...in the light of the fact that the landowner did not select this parcel of land as a part of the landowner''s permissible area by filing a declaration in Form A, it becomes clear that the landowner did not intend to retain this parcel of land. Therefore, Shri Chopra is not right in contending that the disputed land should have been treated as part of the landowner''s permissible area. To us, it appears that the landowner has made an attempt to find a convenient conducit to flout the provisions of law by not including the disputed land in her permissible area and then disposing of the same by way of sale. The petitioners may have suffered because of the mechanism applied by the landowner but they are to blame themselves for this situation. When the law has treated all the transfers of land effected after 2.4.1973 as void, the Court cannot infuse any life into such dead transactions and cannot interpret the law which would enable the landowner to bypass the salutary provisions of the 1972 Act. 11. In our considered opinion, the impugned orders do not suffer for any error of law and they do not call for interference by this Court. We are also of the opinion that unless the landowner had indicated the land in dispute to be as a part of her permissible area by making a declaration in Form A, prescribed in Rule 5 of the Punjab Land Reforms Rules, 1973, the same cannot be determined as landowner''s permissible area and the petitioners do not have any locus standi to pray that the disputed land should be treated as a landowner''s permissible area.

14. From the dictum of the Division Bench of this Court in the cases referred to above and in view of the provisions of the 1953 Act, it can very well be said that ordinarily, neither transferee nor the authority under the 1953 Act has any right or jurisdiction to say that the landholder must change his option including the transferred area in the permissible area or in other words, not to make transferred area part of the surplus area. Question No. 2 is answered accordingly.

15. Mr. Anil Kshetarpal, learned Counsel for the respondents by placing reliance on the Judgment of the Full Bench of this Court in Harnek Singh v. State of Punjab 1971 PLJ 727, has argued that the principle of audi alteram partem requires that transferee must be heard to point out malafide being committed by the landholder by including the transferred area in the surplus area and the transferred area at first place should be included in the permissible area. The Full Bench in Harnek Singh?s case (supra) has held as under:

23. Following the principles laid down in the abovementioned judgements of the Supreme Court and the earlier judgements of that Court in which the earliest dicta on the subject in Board of Education v. Rice and Ors. (1911) AC 179 were approved, I would answer the question referred to us in the affirmative and hold that where a transfer is made by a landowner after August 21, 1956, the transferee is a person interest in participating in the proceedings for declaration of surplus area and he must be given an opportunity of being heard to avoid his interest being prejudicially affected before declaring the surplus are of his transferor under the Act.

16. We have carefully examined the Judgment of the Full Bench in Harnek Singh?s case (supra). In the aforesaid matter, the Full Bench was to consider the scope of Section 33 of the Pepsu Tenancy and Agricultural Lands Act. Full Bench was not dealing with the question as to whether either the Collector or any authority under the 1953 Act or the vendee can challenge - change the selection made by the land owner.

17. Mr. Kshetarpal has also placed reliance on the Judgment of learned Single Judge in Diwan Chand v. State of Haryana 1983 PLJ 395 and in the matter of Balwant Singh v. State of Haryana 1997(2) PLJ 193.

18. Learned Single Judge in Diwan Chand?s case (supra) in paragraph 6 has held as under:

6. Sub-section (3) of Section 8 envisaged that if any big landowner effected transfer of the land in excess of the permissible area after the appointed day, in contravention of the provisions of Sub-section (1) of Section 8 i.e., if the transfer was not bona fide, then the transferred land was to be considered to be the land of the big landowner and it was provided that the surplus area shall be taken in the first instance from the area left with the big landowner and the transferees were to be touched only if the surplus area could not be made good from the area left with the big landowner.

19. In Balwant Singh?s case (supra), learned Single Judge in paragraph 5 has held as under:

5. Under Sub-section 3 of Section 8 of the Act the surplus area shall be taken in the first instance from the area left with the landowner and the transferees were to be touched only if the surplus area could not be made good from the area left with the landowner.

20. With all respect to learned Single Judge deciding the aforesaid case, we are of the opinion that learned Single Judge in the case cited (supra) before us, has not cared to look into the provisions of the 1953 Act. Without looking into the relevant provisions of the 1953 Act, learned Single Judge has held that the transferred area irrespective of the question of bona fide shall at first instance be included in the permissible area and can be made part of the surplus area only when surplus area becomes short. In view of the Judgment of the Division Bench of this Court in the case of Balbir Singh (supra), view of learned Single Judge in Diwan Chand?s case (supra) and Balwant Singh?s case (supra) do not lay down correct law.

21. In view of our answer to questions raised hereinabove, in our considered opinion, learned Single Judge went wrong by holding that provisions of Section 8(3) of the 1972 Act are applicable in the present case and the competent authority has to see/ensure that transferred area at first instance has to be included in the permissible area.

22. In our view, learned Single Judge ought not to have remanded the matter to the prescribed authority directing him to include the area sold to the petitioners within the permissible area of the landholder as per Section 8(3) of the 1972 Act. As observed above, neither the vendee nor any authority under the 1953 Act can direct the landholder to change his option submitted by him. Provisions of 1972 Act are not applicable in the present case.

23. In view of the above, view taken by learned Single Judge cannot be sustained in law. Appeal is allowed. Order of the Financial Commissioner dated 18.2.1987 is confirmed.

