
(2014) 12 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 18673 and 18674 of 1995

Kanshi Ram

APPELLANT

Vs

Financial Commissioner (Appeals II) and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Land Reforms Act, 1972 — Section 11, 11(2), 11(5), 18, 28
Punjab Tenancy Act, 1887 — Section 65, 77, 80, 80, 81, 81

Citation : (2015) 1 RCR(Civil) 513

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Rajesh Narang, Advocates for the Appellant; B.S. Cheema, DAG, Advocates for the Respondent

Judgement

Paramjeet Singh, J.—This order shall dispose of CWP-18673-1995 and CWP-18674-1995 as common questions of fact and law are involved in both these petitions. Civil Writ Petition No. 18673-1995 has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 17.06.1993 (Annexure P-3) passed by respondent No. 3-Collector Agrarian, Fazilka, dated 23.05.1995 (Annexure P-4) passed by respondent No. 2-Commissioner, Ferozepur Division, Ferozepur and dated 23.08.1995 (Annexure P-5) passed by respondent No. 1-Financial Commissioner (Appeals II), Punjab.

2. Civil Writ Petition No. 18674-1995 has been filed under Articles 226/227 of the Constitution of India for quashing the orders dated 16.04.1984 (Annexure P-2) passed by respondent No. 3-Special Collector, Agrarian Ferozepur, dated 23.05.1995 (Annexure P-3) passed by respondent No. 2-Commissioner, Ferozepur Division, Ferozepur and dated 23.08.1995 (Annexure P-4) passed by respondent No. 1-Financial Commissioner (Appeals II), Punjab.

3. In both the petitions, the petitioner has also sought a direction to respondent No. 3 to re-assess his land for determining the surplus area, if any, while giving

him the benefit of adult son.

4. For convenience sake, a brief reference to the facts is necessary which are being extracted from CWP-18673-1995.

5. The petitioner was a big land owner. Surplus area proceedings were initiated against the petitioner under the Punjab Security of Land Tenures Act, 1953 (in short, "the 1953 Act"). Vide order dated 28.06.1965, 21 kanals of land of the petitioner situated in village Bandiwala, Tehsil Fazilka was declared surplus. The said land remained unutilized. In the meantime, the Punjab Land Reforms Act, 1972 (in short, "the 1972 Act") came into being w.e.f. 02.04.1973. As per the provisions of the 1972 Act, permissible limits of area are separately defined and an adult son is also entitled to separate unit. The petitioner moved application for determination of permissible area under Section 5(1) of the 1972 Act on the ground that the land had remained un-utilized till the commencement of the 1972 Act. Consequently, vide order dated 14.01.1977 (Annexure P-1), respondent No. 3-Collector Agrarian reconsidered the matter and recorded a finding that the land of the petitioner is within permissible limits and there is no surplus area in his hands, however, if the land mortgaged by him is redeemed beyond the permissible limit, the same shall go to surplus pool. It has also been recorded that holding of the land owner declared surplus under the 1953 Act or any part thereof is the surplus area under the 1953 Act, of any other landowner, the entire holding of the landowner or part thereof as the case may be, shall remain surplus and shall not be affected by the order of the Collector. The order was passed in 1977 but no action was taken. However, proceedings were again started in the year 1984 and it was declared that 21 kanals land stood declared surplus under the 1953 Act. Vide impugned orders (Annexures P-3 to P-5), it has been held that the petitioner is not entitled to any protection, consequently the proceedings for taking over possession were initiated under Section 9(2) of the 1972 Act. Hence, writ petition was filed.

6. In pursuance of notice, the respondents No. 1 to 3 put in appearance and filed written statement. In written statement, it is pleaded that the order dated 14.01.1977 vide which surplus area of the landowner was declared surplus, has never been challenged by the petitioner and it has become final, therefore, the surplus area declared as such under the 1953 Act would remain surplus. The notice under Section 9(1) of the 1972 Act for taking possession of surplus land was issued to the landowner. The area was declared surplus in the year 1960, therefore, the landowner cannot take the benefit of his son who became adult later. The surplus land has vested in the State.

7. I have heard learned counsel for the parties and perused the record.

8. Learned counsel for the petitioner has firstly raised the argument that the order dated 14.01.1977 (Annexure P-1) has never been challenged by anyone including the petitioner. The possession of land in question was never taken by the State Government after the declaration of land as surplus under the 1953

Act. It remained unutilized. In the meantime, the 1972 Act came into being w.e.f. 02.04.1973. Thereafter, the matter was re-considered vide order dated 14.01.1977 (Annexure P-1) and it was held that no land is surplus with the petitioner except the mortgaged land. Admittedly, by that time, respondent No. 4-son of the petitioner had become adult and he is entitled to separate unit as per the 1972 Act. Learned counsel further contended that after a delay of nine years, the matter cannot be re-agitated. Learned counsel further raised the second argument that on coming into operation of the 1972 Act, the big landlord is required to be given choice afresh to select permissible area as per the provisions of law as he has never been divested of the land in question.

9. Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the petitioner and contended that although the land was never taken into possession, but it stood vested in the State Government with the coming of the 1972 Act. The petitioner cannot derive any benefit from it.

10. I have considered the rival contentions of learned counsel for the parties.

11. Admittedly, earlier proceedings were initiated against the petitioner under the 1953 Act and 21 kanals of land were declared surplus, but possession of the same was never taken. No document has been placed on record to show that possession of the land was ever taken by the State Government. The land in question stands utilized.

After how much period government can re-open the case:

12. Both the issues raised by learned counsel for the petitioner are no more res integra.

13. It would be appropriate to reproduce Section 18 of the 1972 Act, which reads as under:

"18. Appeal, review and revision.--The provision in regard to appeal, review and revision under this Act shall, so far as may be, the same as provided in sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887 (Act SVI of 1887).

Sections 80 to 84 of the Punjab Tenancy Act, 1887 (in short, "the Tenancy Act") read as under:

"80. Appeals - Subject to the provisions of this Act and the rules thereunder an appeal shall lie from an original or appellate order or decree made under this Act by a Revenue-officer or Revenue Courts; as follows, namely:--

(a) to the Collector when the order or decree is made by an Assistant Collector of either grade;

(b) to the Commissioner when the order or decree is made by a Collector;

(c) to the Financial Commissioner when the order or decree is made by a Commissioner;

Provided that -

(i) an appeal from an order or decree made by an Assistant Collector of the first grade specially empowered by name in that behalf by the State Government in a suit mentioned in the group of sub-section (3) of section 77 shall lie to the Commissioner and not to the Collector;

(ii) when an original, order or decree is confirmed on first appeal, a further appeal shall not lie;

(iii) when any such order or decree is modified or reversed on appeal by the Collector the order or decree made by the Commissioner on further appeal, if any, to him shall be final.

81. Limitation for appeals - the period of limitation for an appeal under the last foregoing section shall run from the date of the order or decree appealed against and shall be as follows that is to say:--

(a) when the appeal lies to the Collector - thirty days;

(b) when the appeal lies to the Commissioner -sixty days;

(c) when the appeal lies to the Financial Commissioner-ninety days;

82. Review by Revenue-officers - (1) A Revenue-officer as such may either of his own motion or on the application of any party interested review and on so reviewing modify reverse or confirm any order passed by himself or by any of his predecessors in office.

Provided as follows:--

(a) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed and when a Revenue-officer of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessors in office he shall first obtain the sanction of the Revenue-officer to whose control he is immediately subject;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue officer of a lower class who has left the district or has ceased to exercise powers as a Revenue-officer and to whom there is no

successor in office.

(3) An appeal shall not lie from the order refusing to review, or confirming on review, a previous order.

83. Computation of periods limited for appeals and applications for review - In the computation of the period for an appeal from or an application for the review of an order under this Act, the limitation therefor shall be governed by the Indian Limitation Act, 1877.

84. Power to call for examine and revise proceedings of Revenue-officers or Revenue Courts - (1) The Financial Commissioner may at any time call for the record of any case pending before or disposed of by any Revenue officer or Revenue Courts subordinate to him.

(2) A Commissioner or Collector may call for the record of any case pending before or disposed of by any Revenue-officer or Revenue Court under his control.

(3) If in any case in which a Commissioner or Collector has called for a record he is of opinion that the proceedings taken or the order or decree made should be modified or reversed he shall submit the record with his opinion on the case for the orders of the Financial Commissioner.

(4) If after examining a record called for by himself under sub-section (1) or submitted to him under sub-section (3) the Financial Commissioner is of opinion that it is inexpedient to interfere with the proceedings or the order or decree he shall pass an order accordingly.

(5) If after examining the record the Financial Commissioner is of opinion that it is expedient to interfere with the proceedings or the order or decree on any ground on which the High Court in the exercise of its revisional jurisdiction may under the law fir the time being in force interfere with the proceedings or an order or decree of a Civil Court he shall fix a day for hearing the case and may on that or any subsequent day to which he may adjourn the hearing on which he may appoint in this behalf pass such order as he thinks fit in the case.

(6) Except when the Financial Commissioner fixes under sub-section (5) a day for hearing the case no party has any right to be heard before the Financial Commissioner when exercising his powers under this section.

Position of law: "At any time" means:

14. No doubt, Section 84(1) of the Tenancy Act uses the expression "at any time" but it cannot be indefinite time. The power has to be exercised within reasonable time. The Hon"ble Supreme Court in The State of Gujarat Vs. Patil Raghav Natha and Others, has extensively considered the expression "at any time" and after construing expression "at any time" has stated the law thus:--

"11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation

prescribed under Section 211, but it seems to us plain that this power must be exercised within reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

15. Further perusal of 81 of the Tenancy Act clearly shows that it prescribes the period of thirty days before the Collector, sixty days before the Commissioner and ninety days before the Financial Commissioner for filing appeal. The aforesaid section prescribes a very short period of thirty days, sixty days and ninety days, respectively. It would be unreasonable to hold that the revenue authorities have unlimited power to entertain appeal/revision after lapse of several years.

16. In *Ibrahimpattam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others*, , the Hon"ble Supreme Court has considered the identical provision and held as under:--

"Even before the Division Bench of the High Court in the writ appeals, the appellants did not contend that the suo-motu power could be exercised even after long delay of 13-15 years because of the fraudulent acts of the non-official respondents. The focus of attention before the Division Bench was only on the language of Sub-section (4) of Section 50-B of the Act as to whether the suo-motu power could be exercised at any time strictly sticking to the language of that sub-Section or it could be exercised within reasonable time. In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when contention that the suo-motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the nonofficial respondents. Use of the words "at any time" in Sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and within what period the suo-motu powers is to be exercised, in Sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo-motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of parties. Use of the words "at any time" in sub-section (4) of Section 50-B of

the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of dictionary meaning of words "at any time", the suo-motu power under Sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo-motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

17. A Division Bench of this Court in Sudarshan Kumar and Others Vs. State of Punjab and Others, has held as under:--

"During the course of arguments, it remained undisputed that if the land, declared surplus, till the year 1973 when the Act of 1972 came into being, may not have been utilized either before the provisions of Act came into being or till such time Devki died, the authorities constituted under the Act had no option but for to reassess the surplus area in the hands of legal heirs of Devki. Reference in this connection be made to Full Bench judgment of this Court in Ranjit Ram v. Financial Commissioner, Punjab, 1981 P.L.J. 259, which has since been confirmed by the Hon"ble Supreme Court in Ujjagar Singh (Dead) by Lrs. Vs. Collector, Bhatinda and Another, . Thus, the judgments of the Full Bench and Hon"ble Supreme Court cover the situation when the Act of 1972 came into force and the land was not utilized. The order proposition as settled, as mentioned above, is that when death of a land owner occurs and the land has not been utilized, it has to be reassessed in the hands of legal heirs. It has been so held by the Full Bench of this Court in Ajit Kumar v. State of Punjab and others, 1980 PLJ 354."

Position of law with respect to area declared surplus under the 1953 A ct and the Pepsu Act and effect of the 1972 Act.

18. In Ranjit Ram Vs. The Financial Commissioner, Revenue Punjab, Chandigarh and Others, , the Full Bench of this Court framed three questions of law, however, question No. 1 is relevant for disposal of this writ petition which reads as under:

"(1) Whether a landowner, whose land has been declared surplus under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Punjab Law) or under the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Pepsu Law) and who has not yet been divested of the ownership of the surplus area before the enforcement of the Punjab Land Reforms Act, 1972 (hereinafter referred to as the Reforms Act) is entitled to

select the permissible area for his family and for each of his adult sons in view of the provisions of section 4 read with section 5(1) of the Reforms Act?"

19. A relevant extract of the answer to aforesaid question No. 1 given by the Full Bench of this Court in Ranjit Ram's (supra) reads as under:

"10. In my considered opinion, the language used by the Legislature in enacting the provisions of sections 5(2), 8, 9(1), 11(2) and 11(5) of the Reforms Act, is not of any help one way or the other to answer question No. 1. I have already come to the conclusion that the provisions of sub-section (2) of section 5 are only procedural and cannot be taken to have amended the definition of permissible area and surplus area as defined under section 4 read with section 5(1) of the Reforms Act. Section 8 of the Reforms Act deals with the vesting of unutilized surplus area in the State Government. As already observed, this section will have full play even if question No. 1 is answered in the affirmative. It cannot be successfully contended that section 8 will become redundant if question No. 1 is answered in affirmative. Section 9(1) deals with the power of the Collector to take possession of surplus area and does not give any guidance for interpreting the definition of permissible area and surplus area as contained in sections 4 and 5 of the Reforms Act. Under section 11(2) the State Government, by notification in the official Gazette, has been empowered to frame a scheme for utilizing the surplus area under the Punjab Law, the Pepsu Law or the Reforms Act. Sub-section (5) of section 11 provides that save in the case of land acquired by the State Government under any law for the time being in force or by an inheritance, no transfer or other disposition of land which is comprised in the surplus area under the Punjab Law, the Pepsu Law or Reforms Act, shall affect the vesting thereof in the State Government or its utilisation under the Reforms Act. Even if question No. 1 is answered in the affirmative, the provisions of Sub-section (2) or sub-section (5) of section 11 will have full play. As regards the provisions of section 28 of the Reforms Act, I have already observed in the earlier part of the judgment that the said provision does give an indication that where a person owns or holds land in excess of the permissible area, as defined in section 4 and section 5(1) of the Punjab Law, their cases have to be reprocessed in accordance with the provisions of the Reforms Act.

11. For the reasons recorded above, I answer question No. 1 in the affirmative and hold that a landowner, whose land has been declared surplus under the Punjab Law or under the Pepsu Law and who has not yet been divested of the ownership of the surplus area before the enforcement of the Reforms Act, is entitled to select the permissible area for his family and for each of his adult sons in view of the provisions of section 4 read with section 5(1) of the Reforms Act"

20. The Hon"ble Supreme Court in Ujjagar Singh (Dead) by Lrs. Vs. Collector, Bhatinda and Another, has considered the decision rendered by the Full Bench of this Court in Ranjit Ram's (supra) and held as under:

"7. The learned counsel, who appeared for the State, did not take a stand that

under the Punjab Act, the appellant is holding any surplus area. He, however, placed reliance on the judgment of this Court in the case of Amar Singh and Others Vs. Ajmer Singh and Others, : Amar Singh and Others Vs. Ajmer Singh and Others, , where it has been said that merely because the land had not been utilised and remained in possession of the heirs of the landowner was inconsequential. The aforesaid decision of this Court relates to the Haryana Ceiling on Land Holdings Act, 1972 which came into force w.e.f. 23.12.1972. From a bare reference to the aforesaid judgment, it shall appear that the vesting under that takes place on the appointed date. There is no provision under that Act like 32-E(a) of the Pepsu Act under which the surplus area had been declared so far the appellant is concerned. As such the aforesaid judgment in the case of Amar Singh v. Ajmer Singh (supra) is of no help to the respondent- State. In normal course, we would have directed the respondent-State to examine the question of surplus land held by the appellant along with his four adult sons in accordance with the provisions of the Punjab Act, but in view of an admitted position that if a fresh proceeding is to be initiated under the Punjab Act, there is no question of declaration of any land as surplus area, no useful purpose will be served by issuing any such direction. Accordingly, the appeal is allowed. The order of the dismissal passed by the High Court on the writ petition filed on behalf of the appellant is set aside. All proceedings initiated against the appellant either under the provisions of the Pepsu Act or the Punjab Act are quashed. In the facts and circumstances of the case there shall be no order as to costs."

21. Admittedly, date of birth of respondent No. 4-Pawan Kumar is 21.12.1952 and findings to that effect is recorded in order dated 14.01.1977 (Annexure P-1). Respondent No. 4 became adult on the appointed day i.e. 24.01.1971, prescribed under the 1972 Act. Since son of the petitioner became adult on the appointed day i.e. as on 24.01.1971, therefore, adult son is also entitled to separate permissible area.

22. In view of the settled position of law as discussed above, if possession of surplus area is not taken before the commencement of the 1972 Act, the authorities are bound to re-consider and redetermine the surplus area case under the provisions of the 1972 Act. In these circumstances, the area declared surplus does not vest in the Govt. Therefore, no question of utilization of the surplus area by the Govt. arises. In the present case, it is also clear that possession was never taken by the Government from the petitioner. Since the area has not vested in the Government under the 1953 Act, the same was required to be re-determined under the 1972 Act.

23. In view of above discussion and considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned and law laid down by this Court and Hon"ble Supreme Court, this Court is of the considered view that in the given fact situation of the present case, instant writ petition is liable to be accepted. Ordered accordingly. Consequently, the impugned orders are set aside.

No order as to costs.

However, authorities will be at liberty to initiate surplus proceedings, if the petitioner is still having more land than permissible limits.