
(1968) 02 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 273 of 1967

Karam Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 28-02-1968

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 10A

Citation : (1968) 02 P&H CK 0004

Hon'ble Judges : R.S. Narula, J; Mehar Singh, J

Bench : Division Bench

Advocate : H.S. Gujral and Labh Singh, for the Appellant; G.C. Mittal and Y.P. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narnla, J.—Mega Raj Malhotra a displaced person from West Pakistan, was allotted 63 standard acres and 5 units of land in village Bhalar, Tehsil Thanesar, district Karnal. On December 20, 1956, he sold one-third of his said holding in favour of his son Baldev Raj Malhotra (respondent No. 2 in this appeal) and another one-third of the said holding in favour of his other son Janak Raj Malhotra respondent No. 3 in this appeal). On June 4, 1957, he sold away the remaining one-third of the said holding to the 13 writ petitioners, i.e. Karam Singh and others. On the same day Baldev Raj Malhotra and Janak Raj Malhotra respondents transferred their respective holdings which they had acquired from their father by separate sale deeds in favour of the writ petitioners. Thus no land was left with Megh Raj Malhotra after June 4, 1957. Thereafter Megh Raj Malhotra died on March 1, 1960. By order, dated June 16, 1960 (Annexure "A" to the writ petition) the Collector, Karnal, after recording the statements of Karam Singh and Tara Singh writ petitioners declared 13 standard acres and 5 units of the land in dispute as surplus by ignoring the transfers effected by Megh Raj Malhotra during 1956-57. It has been sated on behalf of the writ petitioner-appellants that the factum of the death of Megh Raj Malhotra was not known to

the parties present before the Collector and that the order was passed in ignorance of that fact. Though an appeal against the order of the Collector was dismissed by the order of the Commissioner, Ambala Division, dated December 13, 1961 (Annexure "B" to the writ petition), a petition for revision of that order filed by Karara Singh and others was accepted by the order of Shri Saroop Krishan, Financial Commissioner, Punjab, dated April 11, 1962 (Annexure "C") on the ground that the rights of the present petitioners, the vendees from the sons of the original owner, would not be affected, as they were without doubt bona fide purchasers for value. On an application for review of Mr. Saroop Krishan's order filed by the State, Shri A. L. Fletcher, Financial Commissioner, Development Punjab, by his order, dated March 7, 1963 (Annexure "D") set aside the order of Mr. Saroop Krishan and restored that of the Collector as it was conceded before him that as a result of subsequent statutory amendments, the sales in favour of Karam Singh etc. had to be ignored.

2. Proceedings for resettlement of tenants on the surplus land in question having in the meantime been initiated, the Collector Agrarian, Thanesar, made a reference, dated March 22, 1965 (Annexure "G") to the Commissioner, Ambala Division, for forwarding the case to the Financial Commissioner with the recommendation that the order of the Collector, dated June 16, 1960, may be set aside and in the alternative for permitting the collector to review the said order if the Commissioner found that the earlier order of the Collector was subject to review. The Commissioner Ambala Division in his order, dated July 5, 1965 (Annexure "H") forwarded the case to the Financial Commissioner with the recommendation to the effect that the earlier order may be set aside and the case be remanded to the Collector (Agrarian) Thanesar, for de novo enquiry and a fresh decision according to law. This recommendation was considered necessary because of the surplus area having been declared on June 16, 1960, in the hands of Megh Raj Malhotra, who was found to have died on March 1, 1960, i.e. before the impugned declaration. When the case reached the Financial Commissioner, Shri Saroop Krishan, Financial Commissioner (Planning), Punjab, by his order, dated August 20, 1965 (Annexure "I") declined to revise the order of the Collector in view of the provisions of section 10-A of the Punjab Security of Land Tenures Act (10 of 1953) (herein after called the Act). The learned Financial Commissioner held that Megh Raj Malhotra and his heirs acting together having transferred the entire land to outsiders i.e. Karam Singh etc., there was no land which was or could be acquired by the sons or heirs of Megh Raj Malhotra by inheritance after the death of Megh Raj Malhotra on March 1, 1960, and that, therefore, the exception engrafted on section 10-A of the Act could have no application to this case, and Karam Singh etc. could derive no advantage from it. The order of the Financial Commissioner, dated August 20, 1965, was impugned in this Court by Karam Singh and others in Civil Writ 2529 of 1965. The writ petition was resisted on behalf of the respondents. In the written statement filed on behalf of the State, it was stated that the writ petitioners having purchased the land after April 15, 1953, could not claim the protection of section 19-B of

the Act, which was subject to the provisions of section 10-A. It was further added that section 10-A would not apply to this case as no property at all stood in the name of Megh Raj Malhotra at the time of his death, and nothing was inherited by his heirs.

3. Mahajan, J. who heard the case dismissed the writ petition by his order under appeal, dated May 10, 1967. The learned Judge held that the exception in section 10-A (b) operates only in the case of "land acquired by an heir by inheritance." and that in the present case the entire land 1 having been sold by Megh Raj Malhotra and his sons prior to the death of Megh Raj Malhotra nothing remained to be inherited by the sons of Megh Raj Malhotra and nothing was in fact inherited by them. On that basis the impugned order of the Financial Commissioner was upheld on the ground that the transfers in question of the entire holding had to be ignored as it could not be held even fictionally that the sons had acquired any part of the holding of the deceased by inheritance. It is this judgment of the learned Single Judge against which the writ petitioners have come up in appeal under clause 10 of the Letters Patent.

4. Section 10-A(b) of the Act reads :

Notwithstanding any thing contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).

Explanation.-Such utilization of any surplus area will not affect, the right of the land-owner to receive rent from the tenant so settled.

5. Mr. Harbans Singh Gujral, the Learned Counsel for the writ petitioner-appellants submitted that since the above-quoted provision requires transfers after April 15, 1953, being ignored for the purposes of the Act, all the three transfers in question should be deemed to have been nonexistent for all purposes, and that being so the sons who sold the land to the writ petitioners were deemed to have got it by inheritance. The very premises on which this submission of Mr. Gujral is based are nonexistent, Section 10-A (b) of the Act does not require transfers subsequent to the coming into force of the Act to be ignored for all purposes. In fact no provision of the Act declares the said transfers to be either inoperative, invalid or non-existent. All that the relevant provision says is that such transfers, with the exception of the two categories mentioned in the provision itself, shall not affect the utilization of the surplus area under clause (a) of section 10-A. The ownership would no doubt vest in the transferee, but the transferee would not be able to claim that the land in question should be taken out of the surplus area of the vendor and should be handed over to him and not be utilized for resettlement of ejected tenants u/s 10-A (a) read with clause (i) of sub-section (1) of Section 9. The explanation to clause (b) of section 10-A makes it further clear that the utilization of any

surplus area u/s 10-A (a) would not even affect the right of the landowner to receive rent from tenants settled under that clause. The only two classes of land that are exempted from the operation of the mischief of clause (b) of section 10-A; are (i) land acquired by the State Government under any law for the time being in force, and (ii) land acquired by an heir by inheritance, out of the land comprised in the surplus area at the commencement of the Act. The short question therefore the reply to which decides the fate of the transferees is whether the land which they want to exclude from the surplus area which was deemed to exist at the time of the commencement of the Act falls in any of the excepted categories or not. The relevant question in this case is whether the writ petitioners, or as a matter of fact, even two of their vendors i.e., the sons of Megh Raj Malhotra acquired the land sought to be excluded from the surplus area by inheritance or not. It appears to me that it cannot be said by any stretch of imagination that the sons of Megh Raj Malhotra acquired any land by inheritance from their father, as on the facts of this case, Megh Raj Malhotra did not possess any land whatsoever at the time of his death which could possibly have been inherited by any one of his heirs.

Mr. Gujral firstly relied upon the judgment of Mahajan J. himself in *Shiv Lal v. Financial Commissioner (Development)*. Punjab (1964) 66 P.L.R. 606, In that case the admitted fact was that at the time of his death Sadhu Ram, the big land-owner did own some land though he had sold a part of the land reserved by him for his personal cultivation. It was on those facts that the learned Judge held that the heirs of Sadhu Ram who were more than half a dozen having succeeded to his estate and the estate which they inherited not being more than the permissible area of the respective heirs of the deceased, the case fell within the exception contained in section 10-A (b) of the Act. Counsel for the respondents submitted that Shiv Lal's case (*supra*) has not been correctly decided. It is wholly unnecessary to go into that contention as the facts of Shiv Lal's case were clearly distinguishable and were indeed so held by the learned Single Judge himself in his judgment under appeal.

6. Reliance was then placed on my judgment given in Single Bench in *Rajinder Kumar alias Rajinder Nath and another v. State of Punjab* 1967 Cur. L.J. P&H 310), The ratio of that judgment is not at all relevant for deciding the instant case. The question which called for decision in the case of *Rajinder Kumar alias Rajinder Nath and another*2 (*supra*) was whether the claim of a tenant u/s 18 of the Act can be affected by death of the original land-owner after the filing of the petition u/s 18, and before the decision of the same by the Assistant Collector because of the consequent inheritance to the estate of the original owner by his heirs who were admittedly small land-owners, though land had been transferred by the original owner before his death to third persons which sale had been found by the authorities to be collusive. No such question arises in the case before us. The fiction of the deeming clause in section 16 of the Act on which the said judgment was based does not find place in section 10-A (b) of the Act. Though had referred to the judgment of Mahajan, J. in *Shiv Lal's case*1 in the

course of my judgment in the case of Rajinder Kumar alias Rajinder Nath another,² my judgment was not based solely on the pronouncement in Shiv Lai's case.¹ Moreover, Letters Patent Appeal No. 80 of 1967, against my judgment in the case of Rajinder Kumar alias Rejinder Nath another has already been admitted and is pending in this Court. It is, therefore, not only irrelevant but wholly inappropriate to refer to the Single Bench judgment in the case of Rajinder Kumar alias Rajinder Nath and another. It is significant that the relevant exception engrafted on section 10-A (b) of the Act is obviously intended for the benefit of the heirs who acquire land by inheritance from the original big land-owner. I do not find it possible to interpret the relevant exception in such a manner as to extend its benefit to persons who did not acquire the land in dispute by inheritance.

7. No other point was argued before us in this appeal. For the foregoing reasons Letters Patent Appeal No. 273 of 1967 fails and is dismissed though without any order as to costs.

Mehar Singh, C.J.

8. I agree.