
(2008) 05 P&H CK 0103
In the Punjab And Haryana At Chandigarh

Kartar Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 32MM(2)

Citation : (2008) 152 PLR 35 : (2008) 3 RCR(Civil) 551

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—This is a petition for quashing of order dated June 22, 1983 (Annexure P-3) passed by Collector, order dated August 27, 1984 (Annexure P-4) passed by Commissioner and order January 23, 1986 (Annexure P-6) passed by Financial Commissioner, being illegal, ultra vires, void and without jurisdiction.

2. Briefly the facts of the case as mentioned in the writ petition are that Kehar Singh was the landowner who was the father of petitioners No. 1 to 3 and grandfather of petitioners Nos. 4 and 5. Land of Kehar Singh was assessed at 46.72 standard acres by Collector (Agrarian), Nabha, vide order dated 21.12.1959 and an area of 16.72 standard acres was declared surplus under the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as "the Act"). An appeal filed against the order of Collector was dismissed in March 1960 by the Commissioner. The surplus area was allotted to certain tenants on March 9, 1964 and possession was delivered to them on April 8, 1964. Meanwhile consolidation proceedings took place in July 1960. Civil Writ Petition No. 1014 of 1964 was filed by the landowner, and the High Court vide judgment dated September 1, 1966 directed that the competent authority to separate the surplus area under the provisions of Sub-section (2) of Section 32-MM of the Act and the case was remanded. It was also directed that the tenants, who had been settled on the land which was declared surplus, would not be disturbed till the final orders were to be passed by the competent authority. On remand by the High

Court, the Collector on September 14, 1970 declared surplus area to the extent of 2.37 standard acres. On October 20, 1970 the Collector ordered that the possession of land 14.35 standard acres be restored to the landowners. On November 1, 1970 certain steps were taken for restoration of the land, including the land in dispute to the landowners. In respect of area allotted to and cultivated by the respondents Sondhi and Sauni, it was found that crops were sown and Malkana possession was given to the landowners vide report of the Kanungo dated November 1, 1970 and allottees were directed to hand over physical possession after harvesting the crop. One of the re-settled tenants filed an appeal before the Commissioner against the order of Collector dated September 14, 1970, who remanded the case to the Collector on January 18, 1971 with a direction to decide afresh after hearing the re-settled tenants. A revision petition filed by the landowner was dismissed by the Financial Commissioner on February 11, 1971 and thereafter the Collector passed a fresh order on May 28, 1974 assessing the total holding at 37.44 standard acres and declared 7.44 standard acres as surplus. Landowners' appeal, revision and the writ petition were dismissed right up to the level of the Supreme Court.

3. On March 19, 1979, sons of landowner Kehar Singh made application claiming separate units of permissible area for themselves, being the adult sons of Kehar Singh. On November 10, 1981 a similar application was filed by Kehar Singh, landowner himself. On November 24, 1982 landowner Kehar Singh died leaving behind three adult sons. The applications were submitted by the sons for claiming benefit of inheritance under the Punjab Land Reforms Act, on August 26, 1983. When no decision was taken on these applications, a notice was issued u/s 9(1) of the Punjab Land Reforms Act on August 26, 1983 for taking possession of the surplus area declared under the Pepsu Law. The petitioners filed objections to the effect that the land which was in their possession had not been utilized and, therefore, on opening of inheritance, no surplus land was there in their hands. Sons of landowners Kehar Singh claimed that they being adults on the appointed date, were entitled to separate units. The Collector passed an order on June 22, 1983, vide which the claim was dismissed and an appeal filed against the order of Collector was also dismissed by the Commissioner on August 27, 1984 observing that the area must be considered to have been utilized long before the death of Kehar Singh landowner and the claim of the petitioners was not tenable. The petitioners then filed revision before the Financial Commissioner which was also dismissed vide order dated January 23, 1986, which is under challenge in the present writ petition.

4. Mr. P.N. Aggarwal, learned Counsel for the petitioners has argued that the revenue authorities have wrongly held that the surplus area has been utilized, whereas the possession is still with the petitioners i.e. legal heirs of the petitioners. The allotment made in favour of the allottees and the possession given is not utilization in the eyes of law as no proceedings had taken place u/s 32-MM of the Act before proving the allotment and, therefore, no allotment could be made and, if any, allotment is made i.e. void and legal. He further argued that

the utilization comes to an end when the surplus area is set aside and in this case, the utilization must be considered to have come to an end on September 1, 1966 with the remand order of the High Court and, in any case, on September 14, 1970 when Collector declared only 2.37 standard acres as surplus. Mr. Aggarwal in support of his arguments has relied upon a judgment of the Supreme Court reported as Ujjagar Singh (Dead) by L.Rs. v. Collector, Bhatinda and Anr. 1996 P.L.J. 505 and Full Bench of this Court reported as Smt. Ajit Kaur and Ors. v. The Punjab State and Ors. 1980 P.L.J. 354 and Ranjit Ram v. Financial Commissioner, Revenue, Punjab and Anr. 1981 P.L.J. 259.

Written statement has been filed by respondent Nos. 5 and 6 which is on record.

5. Mr. K.G. Chaudhary counsel for the respondents No. 5 and 6 has argued that the allottees remained in possession from 1964 to 1970 and the order of surplus area was maintained right up to the level of Supreme Court. He argued that it is wrong to mention that the surplus area has not been utilized as the utilization was done within the life time of the landowner. The possession was not restored to the landowner by the Government but by the allonees, as is clear from the revenue record that the possession is with the Government.

6. Ms. Nidhi Garg, learned Assistant Advocate General appearing for the State of Punjab has stated at the Bar that the State is not a contesting party. When she was asked specifically as to whether the possession of the land in dispute was taken by the Government or not, she was unable to reply this question.

7. I have heard the arguments of the learned Counsel for the parties and perused the orders of the authorities below.

8. After the death of landowner Kehar Singh on November 24, 1982, the earlier orders declaring surplus area with him have become redundant and inoperative and the land held by the original allottee has devolved upon the petitioners, who are his sons and grand-sons, and benefit of death of the landowner should be given to his heirs. The entire case of the surplus area requires redetermination and should be decided fresh keeping in view the total holdings of the petitioners. Petitioner No. 1 to 3, who are sons of original landowner Kehar Singh, were adults on January 24, 1976 i.e. appointed date as defined under the Punjab Land Reforms Act, 1972, and, as such, they are entitled to separate units of permissible area under Sections 4 and 5 of the Act.

9. Kehar Singh, original landowner, remained in possession of his entire holdings from the very beginning, except when he was dispossessed from part of his holdings on April 8, 1964 but in the year 1970, the possession of the that land was even delivered back to him vide orders of the Collector (Agrarian) and thereafter original landowner remained in possession of the entire land till November 24, 1982, i.e. till his death. After that the petitioners came into possession of the land, that the land in dispute never vested in the State Government and that neither Kehar Singh, original landowner nor his heirs who are petitioners have been deprived of right of ownership regarding the land in

dispute. Even after the remand order by the High Court, the surplus area with Kehar Singh, landowner, was finally determined on May 28, 1974, but no proceedings for utilization of that area have taken place at all even after passing the aforesaid order and, as such, the respondents are not entitled to take possession of any area from the petitioners.

10. From the facts narrated above, it is clear that the authorities below have wrongly presumed that possession of the entire land which was declared surplus with Kehar Singh vide order dated May 28, 1974 of Collector was delivered to the allottees in the year 1964 whereas actual possession of only 60 Kanals was delivered to the alleged allottees in the year 1964 and possession of the land remained with Kehar Singh, the landowner.

Under these circumstances, this petition is allowed and impugned order dated 22.6.1983 (Annexure P-3) passed by Collector, order dated 27.8.1984 (Annexure P-4) passed by the Commissioner and order dated 23.1.1986 (Annexure P-6) passed by Financial Commissioner are set aside and the case is remitted back to the Collector for re-determination afresh keeping in view the total holdings of the petitioners.