

(1995) 03 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12251 of 1992

Kehar Singh and another

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 28-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 42
Haryana Ceiling on Land Holdings Act, 1972 — Section 12, 18(1), 33(2), 84(5)
Punjab Security of Land Tenures Act, 1953 — Section 33

Citation : AIR 1996 P&H 21

Hon'ble Judges : Jawaharlal Gupta, J

Bench : Single Bench

Advocate : Anil Khetarpal, for the Appellant;

Judgement

1. The petitioners are aggrieved by the order of the Financial Commissioner, Haryana, by which it was held that the big landowner having died in 1982, the benefit of inheritance was not admissible to his heirs. As a result, the order passed by the Collector (Agrarian), Thanesar, was set aside. The petitioners pray that order of the Financial Commissioner may be quashed. A few fact may be noticed.

2. On May 27, 1960, land measuring 13 acres 4 1/2 units belonging to Soran was declared surplus. On February 15, 1967, Soran sold area of land to Om Prakash etc. The details like Khasra Nos. etc. regarding the land which had been sold by Soran are not on the record. On December 30, 1982, Soran passed away. On April 26, 1984, the Sub-Divisional Officer (Civil)-cum-Collector (Agrarian), Thanesar, while considering the matter and regarding the choice of area, held that "the land of big owner has not been declared surplus and during this period the big land owner has also died. After his death, the heirs of big land owner have become small land owners. Therefore, no land can be declared as surplus, and Om Parkash etc. Shall remain in possession of the land so purchased. Rule

be consigned to record room." It appears that the State of Haryana filed a revision petition invoking the suo motu jurisdiction of the Financial Commissioner u/s 18(6) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the Act). This revision petition having been accepted, the two sons of Soran have filed this petition under Article 226 of the Constitution. They challenge the order of the Commissioner on various grounds which shall be presently noticed.

3. The claim made on behalf of the petitioners has been controverted in the written statement filed on behalf of the respondents. However, no one has appeared on behalf of the respondents to contest the petition.

4. Mr. Anil Kheterpal, learned counsel for the petitioners has contended that the order passed by the Financial Commissioner cannot be sustained in view of the provisions of S.33(2), sub-clause (ii) of the Act. It has been further contended that the power under S. 18 could not have been invoked to correct an error of law and that in any case, the revision petition could not have been filed after the lapse of 3 years. Learned counsel maintains that since the land had not been utilised, it cannot be said to have vested in the State. Is the counsel right?

5. The Government of India had appointed a Central Committee on land reforms. After the receipt of the report, a national policy was envisaged. The purpose was to make additional land available for distribution to landless persons so as to secure equitable distribution of land and remove economic disparities. As a result, it was felt that the permissible area should be suitably-reduced and a family should be made "a unit for the purpose of permissible area". It was further felt that the surplus area should vest in the State Government for allotment to the landless persons and conferment of proprietary rights on them. With these objects, the legislature of Haryana had passed the "Haryana Ceiling on Land Holdings Act, 1972". It received the assent of the President of India on December 22, 1972 and was published in the Gazettee on December 23, 1972. By Section 33 of the Act, the provisions of the Punjab Security of Land Tenures Act, 1953, as well as the Pepsu Tenancy and Agricultural Lands Act, 1955, were repealed. In Cl. (2)(ii), it was inter alia provided that "the repeal of the provisions shall not affect the proceedings 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 of as if this Act had not been passed....."

6. A perusal of the provision shows that it is applicable only in cases where the proceedings for the determination of the surplus area were pending before December 23, 1972. It has, however, no relevance to the facts of the present case. Herein, the declaration regarding surplus area had already been issued as far back as May 27, 1960. In fact, by virtue of the provisions Section 12 of the Act, this area had come to vest in the State Government with effect from January 24, 1971. The Collector had erred in holding that "the land of the big owner had not been declared surplus.....". In this situation, the provisions of Section 33(2)

(ii) of the Act cannot be invoked.

7. Equally lacking in merit is the contention that the power of the Financial Commissioner u/s 18(6) cannot be invoked to correct errors of law. Section 18 of the Act provides for the remedy of appeal, review and revision. Cl. (6) reads as under :--

"Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit."

A perusal of the above provision shows that irrespective of the provisions contained in sub-sees. (1) to (5), the Financial Commissioner has been authorised to call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself not only with regard to the legality but even the propriety of such proceedings or order. He is further competent to pass such order as he may deem fit. A very wide power to determine the legality as well as the propriety of the order has been vested in the Financial Commissioner. It is not a limited jurisdiction. It is very wide in amplitude. It is not confined to determining errors of jurisdiction only. In view of this clear provision, the contention raised by the learned counsel for the petitioners that the power could not have been invoked for the purpose of correcting an error of law, has no merit and cannot be sustained.

8. Mr. Khetarpal has referred to a decision of the Full Bench in Dhaunkal v. Man Kauri 1970 PLR 402 to contend that the suo motu powers of the Financial Commissioner are only those as conferred by Section 115 of the Code of Civil Procedure. The contention is misconceived. In Dhaunkal's case (supra), their Lordships were considering the provisions of Section 84 of the Punjab Tenancy Act, 1987. Sub-Sec. (5) provide as under :--

"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 for 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 or which he may appoint in this behalf, pass such order as he thinks fit in the case."

The provision in Section 84(5) of the Act is totally different from the provision in Section 18(6). The decision in Dhaunkal's case (supra) has no relevance to the present case. Consequently even this contention cannot be sustained.

9. It was then contended that the power u/s 18(6) cannot be invoked regardless of time and delay. The contention has no merit. Admittedly, no period of limitation has been prescribed. In fact, the legislature has authorised the

Financial Commissioner to exercise the power at "any time". When the legislature, in its wisdom, has not placed any limitation on the power of the Financial Commissioner, the Court cannot add to the words of the statute and lay down a period of limitation. A similar contention had been raised in the context of Section 42 of the East Punjab Holdings (Consolidation) and Prevention of Fragmentation) Act, 1948. It was rejected by a Full Bench of this Court in *Nar Singh Mansoor Singh v. State* and by a Division Bench in *Haqiqat Singh Vs. The Additional Director, Consolidation of Holdings, Punjab, Chandigarh and Others*, . In view of these authoritative pronouncements, the contention has to be rejected.

10. Lastly, it was contended that the land having not been utilised, it did not vest in the State. The contention has to be only noted to be rejected. The provisions of Section 12 of the Haryana Ceiling on Land Holdings Act, 1972 are clear. The land which had remained Unutilised till the appointed day, came to be automatically vested in the State.

11. No other point was urged.

12. Accordingly, there is no merit in this petition. It is dismissed. However, since no one has appeared on behalf of the respondents to contest this petition. I make no order as to costs.

13. Petition dismissed.