

(2013) 12 P&H CK 0152
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14469 of 1992 (O and M)

Lachhmi Chand and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0152

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.—By this writ petition the petitioners have challenged the orders whereby their land was declared surplus and the application for exemption was turned down. Mam Raj, father of the petitioners suffered a decree in the year 1958 as per which he agreed that portions of land belonged to the three petitioners. On 23.5.1959 the mutation was sanctioned by Annexure P-1. In the year 1961 Mam Raj submitted his declaration as a consequence of which some of the land owned by him and the three petitioners was declared surplus and allotment was made to the private respondents. It is not disputed that on that date petitioners were minors and no notice was issued to them. With the passage of time the Haryana Ceiling on Land Holdings Act, 1972 was promulgated and by then the petitioners had either attained majority or were on the verge thereof. They moved an application u/s 8 of the Haryana Ceiling on Land Holdings Act, 1972 on 19.08.1983 bringing to the notice of the Prescribed Authority the fact that land belonging to them had wrongly been declared surplus by considering it to be in the ownership of their father Mam Raj and without issuing any notice to them. The Prescribed Authority exempted 172 Kanals 13 Marlas of land. The private respondents filed an appeal which was allowed. The petitioners challenged that order before the Commissioner and the Financial Commissioner and, being unsuccessful filed the present writ petition. In reply the State-respondents No. 1 to 5 have accepted the factual averments made above. The

private respondents No. 6 to 17 did not file any written statement for almost 21 years and thereafter moved an application for permission to place on record written statement on 02.10.2013.

2. At the very outset learned senior counsel appearing for the petitioners states that this written statement cannot be taken on record since the respondents had sought to file it with inordinate delay. In my considered opinion it may not be necessary for me to decide this issue because the essential factual matrix has been admitted in this written statement also. Consequently I overrule the objection made by learned senior counsel for the petitioners and permit the written statement to be taken on record.

3. Learned senior counsel for the petitioners has argued that once the name of the petitioners existed on the revenue record then no portion of their land could have been declared surplus without issuing notice to them. In this connection he has relied upon Section 5A, 5B and 5C of The Punjab Security of Land Tenures Act, 1953. The same are reproduced as follows:-

5-A. Declarations supported by affidavits to be furnished by certain land-owners and tenants--Every landowner or tenant, who owns or holds land in excess of the permissible area and where land is situated in more than one Patwar Circle, shall furnish, within a period of six months from the commencement of the Punjab Security of Land Tenures (Amendment) Act, 1957, & declaration supported by an affidavit, in respect of the lands owned or held by him in such form and manner and to such authority as may be prescribed.

5-B. Selection of permissible area and consequence of failure to select--(1) A land owner who has not exercised his right of reservation to the prescribed authority within the period specified in section 5A and in such form and manner as may be prescribed.

Provided that a landowner who is required to furnish a declaration u/s 5A shall intimate his selection along with that declaration.

(2) If a landowner fails to select his permissible area in accordance with the provisions of Sub-section (1) the prescribed authority may subject to the provisions of section 5C select the parcel or the parcels of land which such person is entitled to retain under the provisions of this Act;

Provided that the prescribed authority shall not make the selection without giving the land owner concerned an opportunity of being heard.

5-C Penalty for failure to furnish declaration--(1) If a land owner or tenant fails to furnish the declaration supported by an affidavit as required by section 5A, the prescribed authority not below the rank of Collector may, by order, direct that the whole or part of the land of such landowner or tenant in excess of ten standard acres to be specified by such authority shall be deemed to be the surplus area of such land owner or tenant and shall be utilised by the State Government for the purpose mentioned in section 10A:

Provided that no such order shall be made without giving the land-owner or tenant concerned an opportunity of being heard.

(2) Where a land owner or tenant who is required to furnish a declaration u/s 5A fails so to do the prescribed authority may in respect of him obtain the information required to be shown in the declaration through such agency as it may deem fit.

4. A perusal thereof reveals that the Legislature in Section 5B has permitted the prescribed authority to declare the land of such a land owner to be surplus who fails to furnish his declaration. Section 5C even prescribes a penalty for such a land owner but both the Sections impose a condition that no order (either making a selection or imposing penalty) can be passed without giving to the affected persons a notice. As per learned senior counsel such notice having not been given the entire exercise was void. In this connection he has relied upon *Anoop Singh and Others Vs. The State of Haryana and Others*, wherein a Division Bench of this Court held as follows:

20. Since the names of the appellants are recorded in the revenue record i.e. jamabandi (Annexure P-10) for the year 1959-60 prior to the order of declaration of surplus area on 15.5.1961, therefore, notice on Form F" was sine qua non to the appellants, who were transferees/donees.

21. We are in agreement with the submissions made by the counsel for the appellants that in the absence of notice on Form F" to the appellants, the surplus proceedings have vitiated because in view of *Indraj's case* (supra), provision of notice is imperative and even the presence of the father and grand father of appellants is not sufficient compliance with the requirement of law:

5. Learned senior counsel has further contended that these petitioners would be entitled to the protection of Section 8 of the Haryana Ceiling on Land Holdings Act, 1972 since the land came into their ownership prior to 30.07.1958. For this proposition he has relied upon Full Bench decisions of this Court in *Smt. Jaswant Kaur and Another Vs. The State of Haryana and Another*, and *State of Haryana and Others Vs. Chandgi*, . In the case of *Smt. Jaswant Kaur* (supra) their Lordships held as follows:--

8. The provisions of Sections 4 and 8, particularly section 8, appear on first impression to be inconsistent with the provisions of section 12(3) but, as we said earlier, it is our first duty to seek to avoid conflict by endeavouring to harmonise and reconcile every part so that each shall be effective. A closer and critical examination of the provisions shows that they are not irreconcilable and all of them fit well into the general scheme of the Act. Section 8 has not been repealed expressly, by section 12(3) of the Act, nor can it be said, in the view that we are taking, that it was repealed by necessary implication. Section 12(3) was introduced by way of amendment by Act XVII of 1976. By Section 1(2) of the Amending Act, it is deemed to have come into force on 23.12.1972. A harmonious way of construing sections 8 and 12(3) would be to give full effect to

section 8(1) upto 23.12.1972, that is to say, to exclude-from the operation of section 12(3), the transfers made upto 23.12.1972 which are protected by section 8(1) of the Act, namely, (1) acquisition of land by the State or Central Government, (2) acquisition by a tenant under the Pepsu Law or the Punjab law. or (3) acquisition by an heir by inheritance. Other transfers of land in excess of permissible area under the Punjab law or the Pepsu law would be protected if the transfers were made prior to 30.7.1958. We see no reason why sections 8 and 12(3) should not be construed in this harmonious manner so as to give effect to both the provisions. We find from the instructions issued from time to time that the Government has also construed the provisions in a similar manner. In Memo No. 5726-AR (IA-76/28819, dated 15.9.76, addressed by the Financial Commissioner and the Secretary to Government, Haryana, Revenue Department, to the Commissioners of the Ambala and Hissar Divisions etc., it is said:--

The surplus area already purchased by the eligible tenants/persons u/s 18 of the Punjab law and section 22 of the Pepsu law should be considered to have been lawfully utilized and should not, therefore, be vested in the State Government u/s 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. Only such unutilized surplus area which was not purchased by the eligible tenants/persons under the Punjab law or Pepsu law should be deemed to have been vested in the State Government from the appointed day u/s 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, and may be mutated in favour of the State Government immediately and necessary action to allot such area to the eligible persons may be taken in accordance with the provisions of the Utilization of Surplus and Other Areas Scheme, 1976.

Again in Memo No. 6632-AR(II)-76/33309, dated 29.10.76 it is said,

It has come to the notice of the Government that there is some lack of understanding in correctly interpreting the provisions of section 8 and section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. In this regard it is clarified that section 8 of the Haryana Ceiling on Land Holdings Act, 1972, inter-alia prohibits transfers and dispositions of land in excess of the permissible area under the old Acts made after the 30th July, 1958. Therefore, transfers or dispositions of surplus area under the Punjab Law or the Pepsu Law made before the 30th July, 1958 stands regularised by law or in other words they would affect the surplus pool. As a result of this, the surplus area which had been transferred or disposed of by the landowners before 30.7.1958, shall not vest in the State Government u/s 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, and therefore, such area cannot be utilized in accordance with the Utilization of Surplus and Other Areas Scheme, 1976.

6. In the case of State of Haryana and others v. Chandgi (supra) their Lordships held as follows:--

6. A bare perusal of the aforesaid observations of the Bench clearly go to show that besides the transfers which are protected by section 8(1) of the Act, other

transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law, would be protected if the transfers were made prior to 30th July, 1958. In view of the law laid down by the Bench in Smt. Jaswant Kaur's case (supra), it would be futile for the learned Additional Advocate General to argue that the sale made by Chandgi in favour of Teka on 10th December, 1958, has to be ignored. Mr. R.S. Mittal, learned counsel for the respondent, is right in contending that the Collector by his order dated 27th November, 1975, has done nothing else than giving effect to the provisions of section 8(1) of the Act. Thus, in view of the law laid down in Smt. Jaswant Kaur's case, I hold that the sale made in favour of Teka by Chandgi could not legally be ignored and that the surplus area of Chandgi had to be determined taking into consideration the said sale. In this view of the matter, the judgment of the learned Single Judge resulting in allowing the petition of Chandgi respondent and in setting aside the order of the Financial Commissioner, dated 16th August, 1977, is perfectly legal and no exception can be taken to the same.

7. Learned counsel for the private respondents has primarily/argued that this whole litigation is actually a fraudulent litigation because when the land was declared surplus it was on the declaration of Mam Raj who was none else but the father and guardian of the petitioners and consequently now the petitioners cannot turn around and challenge the declaration being made by Mam Raj. I am afraid I am not able to accept this argument. Had it been a case where the petitioners were merely share holders/coparceners there may be a case for arguing that the action of father/guardian/Karta may bind them (To my mind even that is not free from doubt) but in the present case the situation is not even that. Here the petitioners were independent owners of the land. Under the Punjab Security of Land Tenures Act, 1953, the term "land owner" is defined as follows:- Section 2(1) "Landowner" means a person defined as such in the Punjab Land Revenue Act, 1887(Act XVII of 1887), and shall include an "allottee" and "lessee" as defined in clauses (b) and (c), respectively, of Section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949), hereinafter referred to as the "Resettlement Act."

7A. In view of this open ended definition there can be no dispute that the petitioners were landowners on that date and consequently the provisions of Sections 5B and 5C would apply with full force.

The second argument raised by learned counsel for the private respondent is that the land was declared surplus in the year 1961 and the petitioners moved an application u/s 8 of the Haryana Ceiling on Land Holdings Act, 1972 after 22 years. In reply learned senior counsel has argued that the order declaring surplus was in the first place passed behind the back of the petitioners and secondly, no body tried to dispossess the petitioners and the moment they came to know of the order (when they were sought to be dispossessed by the allottees), they challenged the same. As per him, in these circumstances there is no question of delay at the hands of the petitioners. I find myself in agreement

with this argument also. Once these two seminal points are decided in favour of the petitioners, it has to be held that the order of the prescribed authority exempting 172 kanals 13 marlas of land and cancelling the allotment in favour of the private respondents has to be upheld while the orders passed by the Collector, Commissioner and the Financial Commissioner, Annexures P-4, P-5 and P-6 respectively, are set aside.

Petition is allowed in the above terms.