
(1991) 12 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : R.O.R. No. 26 of 1979-80

Mahant Garib Dass

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-12-1991

Acts Referred:

Citation : (1993) PLJ 253 : (1992) 2 RRR 16

Hon'ble Judges : C.D.Cheema, FC.

Advocate : O.K. Puri, Sr. State Counsel., P.N. Aggarwal, Advocate., Advocates for appearing Parties

Judgement

C.D. Cheema, F.C.

1. This is a revision petition by Mahant Garib Dass Chela Mahant Harnam Dass, r/o village Phambian, tehsil and district Hoshiarpur under Section 84 of the Punjab Tenancy Act, 1887 read with Section 24 of the Punjab Security of Land Tenures Act, 1953 against the order dated 10.7.1979 of the Additional Commissioner, Jalandhar Division in a case of surplus area.

2. Brief facts of the case are that surplus area of Harnam Dass, predecessor in interest of Mahant Garib Dass, was determined on 18.4.1960 under the Punjab Security of Land Tenures Act, 1953 and land measuring 30 St. Acres 1/2 Units was declared surplus with him. Subsequently, the surplus area was reduced to 24 S.As 13.3/4 Units vide Collector's order dated 14.10.1960. Out of this surplus area, land measuring 18 S.As 15.114 Units was utilised by allotment of eligible tenants. However, before the possession of the allotted area could be delivered to the allottees, the Collector passed further order withdrawing the area from utilization in pursuance of some instructions received from the Government. In the meantime Mahant Harnam Dass died on 19.3.1970 and was succeeded by his Chela Garib Dass. The Collector Agrarian obtained permission from the Collector to review the surplus area case of Mahant Garib Dass as the surplus area was required to be redetermined on account of opening of succession. Consequently, the case came up again before the Collector,

Hoshiarpur. The Collector found that on 15.4.1953 the land situated in village Phambian worked out to 35 S.A.s 11 Units while the land held in Muafi worked out to 18 S.A.s 14 Units: The land situated in the village of Sahri and Gangoli was entirely under the tenants and was, therefore, declared as tenants permissible area. The muafi land measuring 18 S.As 14.3/4 Units was also excluded from the holding of Mahant Garib Dass as it stood in the name of the institution and constituted a separate entity. The assessable holding of Mahant Garib Dass was taken as 35 S.A.s 11 Units, as it stood before consolidation and consequently area measuring 5 S.As 11 Units was found surplus with Mahant Garib Dass. This area included Banjar land and Bagicha measuring 6.1/4 Units and 5.3/4 Units respectively, the benefit of which was also allowed to the petitioner. The balance of 4 S.A.s 15 Units was declared surplus with him vide order of Collector, Agrarian, Hoshiarpur dated 30.6.1976. Aggrieved by this order petitioner filed an appeal before the Addl. Commissioner, Jalandhar Division, who after hearing the parties, rejected the appeal vide his order dated 10.7.1979. Mahant Garib Dass has now come up in the revision before this court.

3. This case was taken up for arguments on 9.12.1991. The learned counsel for the petitioner submitted on that date that the Collector vide his endorsement No. 688/NTA dated 7.7.1973, applied to the Commissioner, Jalandhar for sanction to review the order dated 20.8.1962 passed by the Collector (Agr.) Hoshiarpur regarding the surplus area of Mahant Harnam Dass. On remand the Collector declared 4 SAs as surplus and the Additional Commissioner dismissed the, appeal. According to learned counsel Addl. Commissioner had no power as per judgment of the Punjab & Haryana High Court. The order of Commissioner is dated 10.7.1979. On this the learned Senior State Counsel submitted that this plea has not been taken in the ground of revision petition. Without this now he cannot take this plea at this stage. The learned counsel further submitted that this plea was also not taken at the time of admission of the case. On that date the case was adjourned for today and the learned Senior State Counsel was asked to produce order/notification vide which powers were delegated to the Addl. Commissioner.

4. Today the learned counsel for the petitioner again submitted that addl. Commissioner, Jalandhar Division had no power and order dated 10.7.1979 is illegal in terms of judgment of the Hon'ble High Court. On this the learned Senior State Counsel presented a copy of notification issued by the Financial Commissioner, Revenue and Secretary to Govt., Punjab, Department of Revenue published vide No. S.O. 34/P.A. 16/87/S. 105/82 dated 16.9.1982 which is as under :

"In exercise of the powers conferred by clause(a) of subsection(1) of Section 105 of the Punjab Tenancy Act, 1887 (Act XVI of 1887) the Governor of Punjab is pleased to confer upon the Additional Commissioners, Ferozepur Division, Patiala Division and Jalandhar Division the powers of Commissioner exercisable under Sections 80 and 82 of the said Act read with (i) section 24 of the Punjab Security

of Land Tenures Act, 1953, and (ii) Section 18 of the Punjab Land Reforms Act, 1972, with respect to the areas falling within their respective jurisdiction with effect from 21 st April, 1977. "

The learned counsel for the petitioner submitted that this notification was published in the Gazette on 16.9.1982 after the order in this case had been passed. The learned counsel submitted that under the Punjab Tenancy Act powers have been given to the State Govt., to confer powers on revenue officers. But until Legislature gives power, delegation is not valid. The learned counsel further submitted that as per judgment of Supreme Court power can be delegated prospectively and not with retrospective effect. He cited AIR1970SC385, 1950, AIR1972SC2427 and AIR1987SC2239.

5. Regarding merit of the case of learned counsel for the petitioner submitted that order dated 20.8.1962 was reviewed vide order dated 28.7.1975. The Land Reforms Act, 1972 came into force on 2.4.1973. After passing of 14 years no review is permissible. The learned counsel further submitted that total holdings of the petitioner has been wrongly calculated. The total holding is 35 S.As 11 Units and after excluding the 15 S.As, which is a land of religious and charitable institution the petitioner is a small landowner. According to learned counsel he has challenged three orders i.e. order dated 28.7.1975 passed by the Commissioner, order dated 30.6.1976 passed by the Collector and order dated 10.7.1979 passed by the Additional Commissioner, Jalandhar Division. Concluding his arguments the learned counsel submitted that the revision petition be accepted.

6. The learned Senior State Counsel submitted that the judgment given in Civil Writ Petition No. 2130 of 1981 Barsala Singh v. Ruldu Singh, by the Hon"ble High Court dated 9.9.1981 produced by the learned counsel for the petitioner indicated that Shri S.K. Sial, the then Assistant Advocate General, Punjab conceded that in the absence of requisite notification the Addl. Commissioner did not have the jurisdiction to hear the appeal and due to that fact the case was remanded to the Commissioner for decision. This order was passed in the year 1981 and thereafter notification was issued by the Government on 16.9.1982, conferring powers on the Addl. Commissioner with effect from 21.4.1977. This notification is still valid and has not been quashed so far. Due weightage should be given to it. The learned counsel further submitted that this notification has the statutory powers under the General Clause Act section 34. Regarding the merit of the case of learned counsel submitted that after the case was remanded by the Commissioner, Jalandhar Division on 28.7.1975 it was decided by the Collector Agrarian, Hoshiarpur on 30.6.1970. No ground was taken before the Collector that a review was not competent and the case could not be reopened. The learned counsel further submitted that present petitioner himself indicated his choice of the land to be reserved for him and the area which was to be declared as surplus vide his application dated 30.6.1976. So this argument cannot be taken now. The learned counsel further submitted that at revisionary stage of the

Financial Commissioner, evidence cannot be discussed and referred to the D.B. Judgment of Hon"ble High Court reported 1968 PLJ 118.

7. I have heard the learned counsel for the parties and have also gone through the various orders including the record. So far as conferment of powers on Addl. Commissioner, Jalandhar Division is concerned, the learned counsel for the petitioner himself admitted that the notification dated 16.9.1982 has not been challenged or quashed by any court of competent jurisdiction. In the absence of this, this notification is quite valid and the order passed by the Addl. Commissioner is legal. But before a final conclusion is reached on this point it will be pertinent to see whether this ground has been taken by the counsel for the petitioner or not. Nowhere this ground has been taken by the counsel in his petition dated 16.10.1979 nor any application for its amendment or amended petition has been filed. In the absence of ground taken in the revision petition the objection now raised by the counsel for the petitioner cannot be allowed to be taken and is hereby rejected.

8. Regarding merits of the case it is clear that originally the land belonged to Mahant Hira Dass who was succeeded by Mahant Harnam Dass. Harnam Dass died on 19.3.1970 and succession opened on that date. After his death the present petitioner Mahant Garib Dass succeeded. The surplus area case of Mahant Harnam Dass, predecessor in interest of Mahant Garib Dass, was determined on 18.4.1960 under the Punjab Security of Land Tenures Act, 1953 and 30 S.As 1/2 Unit of land was declared as surplus. This was later on revised to 24 S.As 13.3/4 Units vide Collector's order dated 14.10.1960. Out of the surplus area so determined, 18 S.As 15.3/4 Units were allotted for the resettlement of eligible tenants. Before the possession could be delivered the Collector passed an order dated 20.8.1962 withdrawing the utilisation of area, keeping in view the instructions issued by the Government. After the death of Mahant Harnam Dass the Collector, Hoshiarpur, vide his communication dated 7.7.1973, applied for sanction to review the order dated 20.8.1962 vide which surplus area was declared. The matter was examined by the Commissioner, Jalandhar Division before whom the present petitioner was represented by his counsel. After hearing the counsel the learned Commissioner observed that order passed by the Collector Agrarian, Hoshiarpur dated 20.8.1962 cannot be sustained as there is no evidence that the entire land in dispute belonged to the religious institution. So necessary sanction for review of the order dated 20.8.1962 was granted on 28.7.1975. It was made clear that Collector, Agrarian, Hoshiarpur should redetermine the surplus area of Mahant Garib Dass who had succeeded to the property of Mahant Harnam Dass in accordance with the provision of Punjab Security of Land Tenures Act, 1953. It was also made clear that after the declaration of surplus area action be taken for its possession under the Punjab Land Reforms Act and disposal under the Punjab Utilisation of Surplus Area Scheme. This order of Commissioner, Jalandhar Division dated 28.7.1975 was never Challenged by the petitioner before the court of competent jurisdiction. It was mentioned in the order of Commissioner, Jalandhar Division

that Mahant Harnam Dass was owning land measuring 293 Kanals 13 Marlas out of surplus land measuring 341 Kanals 2 Marlas. The land in the hands of Garib Dass was not saved by the executive instructions. On remand the case was examined by Collector, Hoshiarpur, who found that Mahant Garib Dass had acquired by inheritance an area measuring 35 SAs as 11 Units in village Phambian, and beside this, Muafi to the extent of 18 S.As 14.23/64 Units. The area in village Sahri and Gaganoli was under the tenants with the tenants permissible area. This area was excluded from the holding of Mahant Garib Dass. In the year 1957-58 consolidation of holdings operation took place as a result of which holdings in the bands of Garib Dass came to 38 S.As 2 Units and that of muafi 15 S.As 14.1/2 Units. The increase in consolidation was given to the petitioner. Therefore, the surplus area remained the same i.e. 5 Standard Acres 12 Units. After giving benefit of Banjar land and of Bagicha the total area measuring 4 Standard Acres 15 Units was declared as surplus by the Collector on 30.6.1976. The appeal was dismissed by the Addl. Commissioner on 10.7.1979 with the observation that the ground taken in appeal is patently misconceived and the surplus area case has been kept pending on one ground or the other for the last 20 years with the obvious object of retaining the surplus area, as long as possible.

9. From the above it is clear that the Commissioner Jalandhar Division rightly granted permission to review the order of the Collector dated 20.8.1962 and this was also not challenged by the petitioner before this court. On remand the Collector clearly found that the total holding of the petitioner was 35 S.As and 11 Units in village Phambian and besides this muafi to the extent of 18 S.As 14.23/64 Units. The contention of the counsel for the petitioner that the muafi land is included in 35 S. As 11 Units is basically wrong, incorrect and misconceived. This has been held by the Collector, as well as, by the Additional Commissioner. The surplus area of the petitioner has been rightly decided under the Punjab Security of Land Tenures Act " 1953 and I find no merit in the revision petition, which is, hereby, dismissed.