
(2008) 08 P&H CK 0062
In the Punjab And Haryana At Chandigarh

Mahesh Kumar and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Citation : (2009) 154 PLR 101 : (2009) 1 RCR(Civil) 254

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—The petitioners, who are legal representatives/heirs of the big land owner Sh. Brij Bhushan Sharan, pray for the issuance of a writ in the nature of Certiorari for quashing of the orders dated 15.11.1983 and 28.2.1985 (Annexures P-4 and P-5) passed by the Commission, Ambala Division, Ambala and the Financial Commissioner, Haryana respectively.

2. Brij Bhushan Sharan was the owner of 112 Std. Acres and 7 Units of agricultural land situated in different villages of Tehsil Jagadhri. As he was a big land owner, within the meaning of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "the Punjab Act") the Collector, Agrarian, Jagadhri vide order dated 12.12.1960 determined his surplus/permissible area and held that as 97 Std. Acres 1/4 units of land were under old tenants and was therefore tenants permissible area, the big landowner would only be entitled to a permissible area of 15 std. Acres 6.3/4 units despite his statutory entitlement as a big landowners to a permissible area of 30 std. Acres..

3. On 17.9.1970, the Collector, Agrarian, Jagadhri sought permission to review the above order, on the ground that the big land owner had not disclosed his land in village Bhud Majra. The Commissioner, Ambala Division, Ambala vide order dated 6.7.1971 granted permission to the Collector, to review the order dated 12.12.1960 on two counts, namely; to initiate proceedings u/s 5-C of the Punjab Act and thereafter to separate the landlords and the tenants permissible areas.

The Collector issued a notice to Brij Bhushan Sharan and initiated proceedings against him. Pursuant to an order dated 28.2.1973, the Collector dropped proceedings u/s 5-C of the Punjab Act but proceedings for separation of the big landowner's permissible area from the tenants permissible area i.e. for issuance of Form "F" reflecting the permissible area of the big land owner in accordance with his entitlement under the provisions of the Punjab Act remained pending even after the enforcement of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as "the Haryana Act").

4. During the pendency of these proceedings, the big land owner passed away on 11.4.1977 and bequeathed his entire property, by way of a Will dated 26.1.1970, to the petitioners. The petitioners asserting that as the big landowner had passed away and the surplus area proceedings were still pending under the Punjab Act, they were entitled to a redetermination of the surplus area in their hands as heirs of Brij Bhushan Sharan, filed an application before the Collector. The Collector, Agrarian allowed this application vide order dated 16.9.1982 and redetermined the surplus area in the hands of the petitioners.

5. The Commissioner, Ambala Division, Ambala, took suo moto cognizance of this order and forwarded a reference to the Financial Commissioner, recommending that the order dated 16.9.1982 be set aside, as with the enforcement of the Haryana Act surplus area declared under the Punjab Act, automatically vests in the State of Haryana u/s 12(3) of the Haryana Act and, therefore, the Collector could not redetermine the surplus area in the hands of the petitioners.

6. The learned Financial Commissioner, after considering arguments for and against the acceptance of reference held, that as the big land owner had not been granted his statutory entitlement of 30 std. Acres of land, the Collector would be required to redetermine the surplus area. As a consequence, the order dated 12.12.1960 declaring surplus area was set aside and the matter was remitted to the Collector. In so far as the above finding, both the petitioners and the respondents accept its correctness. The point of divergence between the petitioners and the respondents is whether while directing the Collector to redetermine the surplus area, the Financial Commissioner could have ordered the Collector to restrict the permissible area to 30 std. Acres in all, thus, rejecting the petitioner's prayers that the surplus area be redetermined in their hands.

7. Counsel for the petitioners submits that the learned Financial Commissioner, rightly held that the big land owner had not been allowed his statutory permitted permissible area of 30 std. acres of land and directed reopening of the surplus area proceedings, under the "Punjab Act". As surplus area proceedings were reopened for adjudication afresh under the "Punjab Act", the demise of the big land owner, required the learned Financial Commissioner to direct redetermination of the surplus area in the hands of the petitioners, the legal heirs of the big landowner. Reliance is placed upon a Division Bench Judgment of this Court reported as *Antu v. Naresh Saran* 2001(2) R.C.R. (Civil) 790 (P&H).

8. Counsel for respondent No. 5 submits that the surplus area case of the big land owner attained finality on 12.12.1960. The proceedings pending thereafter were for inclusion of land that had escaped notice of the revenue authorities. The surplus area declared in the year 1960 vests in the State of Haryana u/s 12(3) of the Haryana Act and the petitioners prayer for redetermination of the surplus area in their hands upon the demise of the big land owner was rightly rejected by the learned Financial Commissioner. It is submitted that in case surplus area is to be determined afresh in the hands of the petitioners, the tenants permissible area would necessarily be effected.

9. I have heard learned Counsel for the parties and perused the impugned orders.

10. The learned Financial Commissioner, while considering the entire gamut of the dispute, recorded a clear and unequivocal finding that the order dated 12.12.1960, declaring surplus area was legally unsustainable, as the big land owner, who was statutorily entitled to a permissible area of 30 std. acres of land was only allotted 15 std. Acres and 6.1/4 units. A relevant extract from the order passed by the Financial Commissioner would place the aforementioned observations in their correct perspective.

I have considered the above arguments carefully and have also gone through the record. The surplus area case which was decided on 12.12.1960 was also not correctly decided since the landowner was not given his full permissible area of 30 S. As. As is clear from the orders of the then Collector (Agrarian) the landowner was left with only 15 S. As 6.1/4 units which was much less than the permissible area.

11. The Financial Commissioner thereafter proceeded to set aside the Collector's order dated 12.12.1960, but while dealing with the question, whether the petitioners, namely, the legal heirs of the big land owner were entitled to pray for a redetermination of the big landowner's land holding in their hands, rejected this prayer by holding that with the coming into force of the Haryana Act the surplus area declared under the Punjab Act, would vest automatically in the State of Haryana and the petitioners, would only be entitled to 30 standard acres of land. The latter conclusion, in my considered opinion is incorrect and contradicts the basic premise upon which the collector's order was held to be illegal.

12. After holding that the Collector's order dated 12.12.1960 was illegal and remitting the matter to the Collector, the order dated 12.12.1960 stood set aside and no surplus" area was available for vesting in the State but the Financial Commissioner proceeded to record a finding that the surplus area declared in 1960 had vested in the State of Haryana, by the enactment of Section 12(3) of the Haryana Act, oblivious of his own finding that order declaring surplus area was void. This inherent contradiction in the findings renders the impugned order illegal and void.

13. The automatic vesting of surplus area, declared under the Punjab Act,

necessarily presumes the existence of a legal and final order declaring surplus area of a big land owner. As noticed herein above, the Financial Commissioner set aside the order dated 12.12.1960 declaring surplus area and remitted the matter to the Collector. It would necessarily proceed from the above finding that there was no surplus area available for vesting in the State of Haryana, in terms of Section 12(3) of the Haryana Act. The finding that the surplus area declared on 12.12.1960 vested in the State of Haryana is, therefore, factually and, therefore, legally unsustainable. The only course open to the learned Financial Commissioner was to direct redetermination of the surplus area of the big land owner, if alive, as per his entitlement and if deceased in the hands of his legal representatives, as proceedings pending under the "Punjab Act" on the enforcement of the "Haryana Act" have to be decided under the provisions of the "Punjab Act", as postulated by Section 33 of the "Haryana Act".

14. The demise of the big land owner in 1977 and the setting aside of the surplus area order 12.12.1960 has added another dimension to this already complicated situation. In view of the setting aside of the order dated 12.12.1960 of the Collector declaring surplus area, the demise of big land owner and remand of the matter to the Collector to redetermine the entitlement of the big landowner, the Financial Commissioner committed an error in holding that the petitioners would be entitled to 30 standard acres of land only. The Financial Commissioner ordered reopening of the entire surplus area case of the big land owner, for redetermination under the provisions of the Punjab Act. Under the Punjab Act, if during pendency of proceedings and before utilization of the surplus area, the big landowner passes away, the surplus area would have to be redetermined in the hands of the big landowner's legal heirs. Consequently, the respondents, in my considered opinion, would be required to compute the surplus area afresh, in accordance with the entitlement of the petitioners and not in accordance with entitlement of the big land owner under the Punjab Act. The above conclusions are supported by a Division Bench judgment of this Court i.e. Antu 's case (supra) wherein, while considering a similar dispute, it was held as under:

In the present case, however, the Collector Agrarian, while initially deciding the case of big landowner, simply stated that out of 133 standard acres 2 units, 126 standard acres, 17 units were under the cultivation of old tenants and, therefore, there was no area with him that may be declared surplus. In the facts, as were available before the Collector, he ought to have permitted the landowner to select his permissible area out of 133 standard acres, a part of which would have obviously been in possession of tenants as well as it is only the remaining area which could be declared as tenants' permissible area. This initial mistake made by the Collector, in our considered view, has changed the whole complexion of the case in the event of demise of the original landowner and the situation is irretrievable. One could think of correcting or modifying the order of Collector Agrarian dated January 31, 1961 so as to read that out of holding of 133 standard acres 2 Units, Brij Sharan is entitled to keep 30 standard acres as his permissible area and the remaining of land would be tenants permissible area but that

course cannot now be adopted as to which 30 std. acres of land would have been the choice of landowner, cannot be guessed. It is, thus, a case where the landowner was deprived to make selection of his permissible area to the extent of ceiling of land as provided under the Act and meanwhile the original landowner has died. In considered view of this Court, it is straightforward case where this exercise has to be done de novo, but if the same is to be done, naturally, the land, in the hands of present landowners, shall be taken into consideration. Demise of Brij Sharan resulted into inheritance by his legal heirs, i.e. the present respondents and the Collector, in our view, was absolutely justified in considering the ceiling on each of surviving heirs of Brij Sharan as each one of them was entitled to the permissible area. This would naturally not leave any tenants' permissible area or surplus area and the heirs of Brij Sharan shall have to be held as small landowners. Even though as mentioned above, the matter came to be decided in favour of respondents on the dint of Sections 10-A and 10-B of the Act, but in our view, in the facts and circumstances of this case, the same are not applicable to the situation of land. The State Government is competent to utilize any surplus area for the settlement of tenants ejected or to be ejected, 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 standard acres, at the commencement of the Act, shall affect the utilization thereof, as would be clear from the provisions of Section 10-A of the Act. The surplus area has to be utilized for settlement of tenants but if it has not been utilized and the landowner dies, same cannot be so utilized or in other words, has to revert to the heirs of landowners. Section 10-A of the Act pre-supposes existence of surplus area and, in the present case, as would be clear from the narration of events given above, no area was ever declared as surplus in the hands of Brij Sharan. On the other hand, it was specifically held by the Collector Agrarian that there was no need to declare any surplus area in the hands of big landowner as most of the area, owned by him, was occupied by tenants.

15. It is, therefore, apparent that as the Financial Commissioner set aside the order dated 12.12.1960 and directed the Collector to redetermine the surplus area, no surplus area was available for vesting in the State u/s 12(3) of the Haryana Act. The Financial Commissioner, therefore, had no jurisdiction to hold that the petitioners would be entitled to 30 std. Acres of land in all. The redetermination of surplus area and as a consequence the permissible area cannot be confined to 30 std. acres of land in the hands of heirs of Brij Bhushan Sharan, the original landowner. The order passed by the Financial Commissioner is, therefore, inherently flawed and deserves to be set aside.

16. Consequently, the writ petition is allowed, the order dated 15.1.1983 passed by the Commissioner, Ambala Division, Ambala is set aside and the order dated 28.2.1985 passed by the Financial Commissioner, Haryana is modified to the extent that the Collector, Agrarian, Jagadhri shall redetermine the holdings/ permissible and surplus area, owned by the big landowner, in the hands of the

petitioners, and the tenants surplus area if any, in accordance with law.

Parties are directed to appear before the Collector, Agrarian, Jagadhri on 29.9.2008. No order as to costs.