
(2011) 12 P&H CK 0124
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6938 of 1986

Mangat ram & Anr.

APPELLANT

Vs

State of Haryana & Ors.

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 9(1)

Citation : (2012) 1 Law Herald 118 : (2012) 2 RCR(Civil) 469

Hon'ble Judges : K.Kannan, J

Advocate : Mr.L.N.Verma, Advocate and Mr.D.N.Ganeriwala, Advocate and Mr.Ashok Verma, Advocate, For the Respondent Nos.1 & 2: Ms.Kirti Singh, DAG., Haryana., For the Respondent No.3: None., Advocates for appearing Parties

Judgement

Mr. K. Kannan, J. (Oral)

1. The writ petition challenges the order passed by the Financial Commissioner on 27.5.1986 accepting the revision filed by the big land owner Raghbir Singh who is arrayed as the third respondent herein. The challenge to this order is brought at the instance of the petitioner who was an allottee of a portion of the property under the Haryana Employees Utilization of Surplus Area Scheme of 1976. This allotment was made after the declaration was made holding that the third respondent held property in excess of the permissible area and that the property allotted had been earlier treated as surplus in the hands of the third respondent. Initially the third respondent owned 220 K and 11 M and obtained a further acquisition through a Civil Court decree on 4.4.1975 an extent of 145 K 6 M. The total extent became to 365 K 17 M. This was more than the extent permissible under the Act and an initial attempt of the mother of Raghbir Singh namely Sarswati seeking for allocation of unit in the manner of determination of the family was repulsed by the authority when it found that Sarswati was herself shown as a member of the family by her husband Mohan Lal who was like the third respondent already attracted to the provisions of the Haryana Ceiling on Land Holdings Act and his wife had also been shown as a member of the family. Although the Sub Divisional Officer, Collector and the Commissioner concurrently

held that the property acquired by the land owner through a decree as a subsequent acquisition after the Act would also be required to be reckoned for the purpose of determination of surplus, the Financial Commissioner through the impugned order observed that the property of 145 K 6 M had been actually shown to be property of the father in the proceedings against the father and therefore the said property could not have been again added to the holding of the third respondent. This observation for passing the order in my view is clearly wrong and runs counter to the scheme of the Act and in particular with reference to Section 9 (1) of the Act.

(1) Every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area, shall 2[within a period of three months from such date as the State Government may, by notification, specify in this behalf] or subsequent acquisition of land, furnish to the prescribed authority a declaration supported by an affidavit giving the particulars of all his land and that of the separate unit in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible area which he desires to retain:

Provided that in case of a member of the Armed Forces of the Union, 3[the last date for furnishing the declaration shall be the 31st October, 1976.

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2. Any subsequent acquisition coming to a land owner even from a person who had not been attracted to the provisions of the Act will still have to subject himself to the application of the provisions of Section 9(1). It is irrelevant that the subsequent acquisition came through a person who had already suffered an excess assessment of land holding in his hands by the application of the Act. Every acquisition that adds to his own holding will have to be reckoned before and after the Act. All that will be necessary is whether the land owner at the time of assessment was the owner of the property which was admittedly in his hands. The third respondent who had secured a decree in his favour on 4.4.1975 cannot disown his own holding and treat for exclusion of the said property by the only reason that the father had retained the property within the permissible area. So long as it is shown as an acquisition, the consequences of application of Section 9 (1) cannot be avoided. If 145 K 6 M of land has been shown as surplus even then an allottee cannot come to any harm for the State was entitled to make an allotment of the property declared as surplus if on the other hand 145 K 6M had been shown within the permissible area of the father, by the fact that the property was transferred by him to his son, the son would be attracted to the provisions by the virtue of Section 9(1). Section 7 of the Act also renders impermissible any holding in excess of the Ceiling Act, at any time after the commencement of the Act.

3. The impugned order of the Financial Commissioner is quashed and the writ petition is allowed.