

(1993) 12 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1821 of 1983

Mangat Ram

APPELLANT

Vs

The Financial Commissioner, Revenue and Others

RESPONDENT

Date of Decision : 15-12-1993

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 3, 4(2)

Citation : (1994) 108 PLR 521

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : H.S. Gill and G.S. Gill, for the Appellant; Suresh Monga, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—This order will dispose of Civil Writ Petition Nos. 473, 551, 1821 and 4758 of 1983 as one of the law points involved in all the petitions is common. The facts have, however, been extracted from C.W.P. No. 1821 of 1983 (Mangat Ram v. The Financial Commissioner and Ors.).

2. Petitioner is land-owner of village Pabnawa, Tehsil and District Kaithal He filed declaration dated August 16, 1976 under the Haryana Ceiling on Land Holdings Act, 1972 concerning the land owned by him. The matter came up before the Prescribed Authority, who vide order dated December 8, 1978 held that land measuring 132 kanals 11 marlas owned by him was surplus i.e. beyond the ceiling limit prescribed under the Act aforesaid. This order was challenged by him in Civil Writ Petition No. 2655 of 1980 and vide order dated September 1, 1980 he was permitted to file an appeal before the Collector. The Collector, however, remanded the case to the Prescribed Authority with a direction that the case be decided afresh after giving opportunity to him to produce proof with regard to his two daughters, Roshni and Krishna. It is pleaded that the Prescribed Authority without taking into consideration the primary unit and the additional units permissible under the law, wrongly held that he was entitled to retain 1-1/5 units

of "C Category. It is also pleaded that the Prescribed Authority did not take into consideration the fact, that Jai Parkash son. of petitioner was born on July 8, 1972 and that being so he was entitled to 1/5th additional unit as his permissible area. The matter was taken before the Collector in appeal which was dismissed on May 21, 1981. Still aggrieved, petitioner filed revisions before the Commissioner and Financial Commissioner but no relief was granted to him. In these circumstances, present writ has been filed asking for setting aside the orders passed by the Prescribed Authority, Collector, Commissioner and Financial Commissioner.

3. Mr. Mehtani, learned counsel for the petitioner has raised number of points but I do not wish to go into all, as the petition deserves to succeed on the point that while considering the ceiling Emit as per the provisions of the Act, unit permissible to a son who was born in between January 24, 1971 and March 24, 1973 had to be taken into consideration. This Court in *Jaswant Singh and Ors. v. Punjab Government and Anr.* 1993 P.L.J. 684, while dealing with the precise question, as mentioned above, held as follows:- ..

"The provisions of the Punjab Land Reforms Act received the assent of the President of India on 24th March, 1973. The Act was published in the Punjab Government Gazette dated 2nd April, 1973. Section 3 of the Act provides that this Act shall come into force at once. So, in terms of the Act, the Act came into force on receiving the assent of the President on 24th March, 1973. There is no provision in the Act giving this Act retrospective effect. There is a limited provision in Section 4(7) that the land is to be evaluated as on the appointed day, i.e. 24th January, 1971. The expression "appointed day" is defined in Section 3(1) as 24th January, 1971. The Section 4(5) of the Act also provides that any sale or gift otherwise than a bona fide sale or transfer, after the appointed day but before the commencement of the Act, shall be taken into account as if such land has not been transferred. In other words, sales which are not bona fide are ignored. Second proviso to Section 4(2) of the Act provides that where the number of members of the family exceeds five, the permissible area shall be increased by 1-1/5 of the permissible area of each member in excess of five. The provision of the Act has come into force on 24th March, 1973. There is no provision in the Act which provides that if the member of a family is born after 24th January, 1971, he shall not be entitled to the additional area as provided by second proviso to Section 4. On a plain reading of the Act, we have to see the number of the members of the family for the purpose of determining the permissible area on the commencement of the Act i.e. 24th March, 1973. The provisions of the Act are confiscatory in character. They have to be strictly interpreted so that the landowner is not deprived of his legitimate rights under the Act. A family ceiling has been fixed under the Act. The number of family members have to be seen according to scheme of the Act on the date of commencement of the Act. There is nothing in the Act which directs that the number of the members should be seen as on the appointed day i.e. 24th January, 1971. Such an interpretation would defeat , the purpose and

intendment of proviso to Section 4(2) of the Act. It is well settled principle of law that no provision of the Act should be given retrospective effect unless the language of the Act expressly or by necessary implication provides. If the Legislature wants to give retrospective effect, it must declare its intention clearly. The Act cannot be given retrospective effect merely by implication. Normally, our statutes are prospective and are supposed to respect vested rights."

Inasmuch as while computing the area of petitioner for the purposes of declaration of surplus area no additional unit was given on account of the son born to him on July 8, 1972, the orders impugned have to be set aside and are accordingly set aside. The matter is remitted to the Prescribed Authority for ascertaining the area by giving additional unit i.e. 1/5th to the extent the same may be permissible under the provisions of the Act to petitioner on account of son who was born to him in between January 24, 1971 and 24th March, 1973. It is made clear that it shall be open for the petitioner to press into service other points that have been raised in the present petition before the Prescribed Authority, who shall decide the same in accordance with law.

4. For the reasons recorded above these petitions are allowed and as observed above, the matter is remitted to the Prescribed Authority, concerned. Parties through their counsel shall appear before the concerned Prescribed Authority on 17.5.1994 if they have not appeared in consequence of the orders, referred to above. There shall, however, be no order as to costs.