

(1974) 01 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 563, 564 and 565 of 1972

Mohinder Singh and Another

APPELLANT

Vs

The Financial Commissioner Punjab and Others

RESPONDENT

Date of Decision : 17-01-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Security of Land Tenures Act, 1953 — Section 5(3)

Citation : AIR 1974 P&H 258

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Judgement

1. This judgment will dispose of Civil Writs Nos. 563, 564 and 565 of 1972 which are against the same order of the Financial Commissioner, Punjab, Chandigarh dated November 19, 1971.

2. The facts as given in Civil Writ No. 563 of 1972 are the Pal Singh, father of the petitioners, was tenant of Raja Baldev Singh, who was a big landowner. He cultivated land comprising khatauni No. 24 Khewat No. 6, Rectangle No. 9, Killas Nos. 9, 22/2, Rectangle No. 22, Killas Nos. 2, 3/1, 3/2, 4/1, 4/2, 6/1, 7/1, 8/1, 9/1, measuring 35 Kanals 11 Marlas situated in village Mahiud-din Pur Gazzi, Tehsil Dasuya, District Hoshiarpur from Kharif, 1951 till Kharif, 1965. He died in February, 1965 and the petitioners continued cultivating the same till today. Raja Baldev Singh gifted 25 standard acres 8 units of land in favour of respondent 5 Sanjogta Devi, widow of his pre-deceased son Nardev Chand, and the remaining land in favour of his son Barjesh Chander vide Mutation Nos. 142 and 141 dated October 28, 1958. The petitioners made an application, against respondent 5, to respondent No. 4, the Assistant Collector, 1st Grade Dasuya on March 12, 1965 for the purchase of the land above-mentioned. The Assistant Collector decided the application in favour of the petitioners on July 30, 1966(Copy Annexure "B") and ordered that they could purchase the land in dispute on payment of Rs. 2282.31 Paise. Respondent No. 5 Shrimati Sanjogta Devi went up in appeal before the Collector, Hoshiarpur (respondent No. 3), who accepted the same on

April 17, 1967 and remanded the case to respondent No. 4 to give a clear finding whether the land in dispute had been given in lieu of the land in possession of the petitioners before consolidation proceedings. Respondent No. 4, vide his order dated May 30, 1968(copy Annexure "C"), dismissed the application on the ground that respondent No. 5 became the owner of the land in Kharif 1960, that the application had been filed on March 12, 1965 and the same was not maintainable as the petitioners had not completed six years on the date of filing the application. The petitioners went up in appeal before the Collector (respondent No. 3), who dismissed the same on December 27, 1968(copy Annexure "D"). The petitioners filed revision against the said order to the Commissioner, Jullundur Division, Jullundur (respondent No. 2) which was also dismissed on December 30, 1969(copy Annexure "E"). A revision was filed against the order of the Commissioner by the petitioners to the Financial Commissioner, Punjab, Chandigarh (respondent No. 1). He also dismissed the same on November 19, 1971(copy Annexure "F"). The petitioners have challenged the aforesaid orders on the ground that they are illegal, ultra vires and without jurisdiction.

3. The first contention of the learned counsel for the petitioners is that the land in dispute was reserved by Baldev Singh after making gift in favour of respondent No. 5. He therefore, urges that the reservation is not binding on him. The learned Collector while deciding this case observed that the land in dispute fell within the reserved area of Raja Baldev Singh. He gave the finding taking into consideration the statement of Shri Om Parkash, Naib Tehsildar, Agrarian, Dharamsla. Under sub-section (3) of S. 5 of the Punjab Security of Land Tenures Act 1953(hereinafter referred to as the Act), a landowner is entitled to intimate reservation within six months from the date of commencement of the Act. Thereafter Section 5-B was inserted by the Punjab Security of Land Tenures (Amendment) Act, 1957(hereinafter referred to as the Amendment Act) which came into force on December 20, 1957. By virtue of that section, a landowner who had not exercised his right of reservation under the Act could select his permissible area within a period of six months from the commencement of the Amendment Act and intimate the selection to the prescribed authority in such form and manner as prescribed. The form for selection was prescribed by the Punjab Government vide notification No. 3223-LR. II-57/1624 published in Gazette (Extraordinary) dated March 22, 1958. The limitation of six months therefore should be deemed to have started from that date. As no landowner could furnish a declaration before that form was prescribed and published, the limitation of six months for reservation therefore expired on September 22, 1958. The gift was made by Raja Baldev Singh, admittedly, on October 28, 1958. The learned counsel for the petitioners has not been able to show from record that in fact the reservation was made after October 28, 1958. He in support of his contention submitted that the surplus area of Raja Baldev Singh was declared on August 22, 1961 and it shall be assumed that he reserved the area on that date. I am unable to accept this contention of the learned counsel for the

petitioners. Merely from the fact that the Collector did not decide the surplus area case of Raja Baldev Singh till August 1961, it cannot be assumed that he made the reservation of permissible area on that date. In the circumstances aforesaid, I do not find any force in this contention of the learned counsel for the petitioners. The tribunals below have come to a finding that Raja Baldev Singh had reserved the land in dispute. The learned counsel for the petitioners has not been able to prove that the aforesaid finding is incorrect. I, therefore, reject this contention of the learned counsel for the petitioners.

4. The second contention of the learned counsel for the petitioners is that the gift made by Raja Baldev Singh in favour of his daughter-in-law and son will not affect the right of the petitioners to purchase the land. In case the property in dispute was a part of surplus area of Raja Baldev Singh, the gift in October, 1958 could not affect the rights of the petitioners thereon in view of Section 16 of the Act. However, in the present case, this proposition will not be applicable as the land in dispute was part of reserved area. u/s 18 of the Act, a tenant has a right to purchase the area of the landowner held by him if it is not included in the reserved area of the landowner. For the reasons given above, this contention of the learned counsel for the petitioners is also rejected.

5. The last contention of the learned counsel for the petitioners is that consolidation proceedings in the village will not deprive the petitioners to make an application for purchase of the land even though ownership of land has been changed. In the present case the land on which the petitioners were tenants was gifted to Barjesh Chander. After the consolidation proceedings, the land which was in possession of the petitioners before consolidation was allotted to Sanjogta Devi, respondent No. 5 in lieu of her land. The petitioners instead of requesting the consolidation authorities u/s 23 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948(hereinafter referred to as the Consolidation Act) to allot them land which had been allotted to Barjesh Chander in lieu of his holding in their possession, continued in possession of the old land which fell to the share of respondent No. 5 in lieu of her earlier holding. In case they had taken possession of the land which had been allotted to them under the Consolidation Act, they would have the same rights in that land u/s 25 of that Act which they had in preconsolidation land. In the present case, it has been held by the Revenue Authorities that there is no evidence on the record by which old Khasra numbers which were under the cultivation of the petitioners, can be connected with the new Khasra numbers which are now in their possession. It is admitted that the land which is now under the cultivation of the petitioners is owned by Sanjogta Devi, respondent No. 5. In the circumstances, they hold the land under respondent No. 5 on the date when the land in dispute was allotted to her. The land has been allotted to respondent No. 5 after consolidation in Kharif 1960 whereas the application for purchase was made on March 12, 1965. Thus, it cannot be held that the petitioners are in possession of the land under respondent No. 5 for a period of more than six years. The application for purchase of the land made by the petitioners was, therefore, rightly rejected by

the Revenue Authorities. The learned counsel for the petitioners has placed reliance on Dhaunkal v. Man Kauri 1965 LLT 147 wherein it was held by the learned Financial Commissioner that a tenant having fulfilled the conditions prescribed by Section 18 of the Act has the same right in the land allotted to the landlord in lieu of the land of his tenancy in pursuance of the scheme of consolidation. In the present case, as already stated above, the land in dispute has not been allotted to the petitioners in pursuance of scheme of consolidation. Therefore, the above observations are not applicable to the present case.

6. The counsel for the parties have conceded that the facts of the other two writ petitions are the same except that the tenants were different, and they stand disposed of by this order.

7. For the reasons recorded above, I dismiss all the writ petitions with costs. Counsel's fee in each case Rs. 50/- -.

8. Petitions dismissed.