
(2014) 05 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16330 of 1991

Mukhtiar Kaur

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Citation : (2015) 1 RCR(Civil) 661

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Adarsh Jain, Advocates for the Appellant; Ranbir Singh Pathania, D.A.G, Advocates for the Respondent

Judgement

K. Kannan, J.—The writ petition challenges the order passed by the Financial Commissioner (Development), Punjab in proceedings under Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act). The impugned order is a culmination of proceedings which were initiated under Section 24-A of the Act brought for separation of interest of the present petitioner claiming her own right in the property which was declared as surplus in the hands of her husband. It is an admitted case that the property held by the petitioner's husband Kheta Singh was declared to fall within the provisions of the Act for surplus to an extent of 10 acres or 7 1/2 units. The separation was sought by the wife claiming that her husband had actually sold an extent of 87 kanals 19 marlas to a person namely, Gurmail Singh on 1.10.1956 and this sale was interdicted by a claim to preemption through a suit. The suit had also been decreed on 25.2.1958 and mutation had been made in her name recognizing the right secured under the decree. The plea was, therefore, that the property which was sold before 1.2.1967 must be excluded and that in any event, the property purchased by the wife could not be taken to be the property in the hands of the husband to make a computation of his permissible holding. The reliance was on proceedings initiated by the agreement and communicated to all the authorities on 16.3.1967 that spelt out the manner of declaration of surplus and providing for existence of

three conditions detailed below:

- "a) That the vendee is not the relative of the prescribed degree of the vendor landowner;
- b) That the surplus area purchased, with the other area owned by the person, does not exceed 10 standard acres; and
- c) That the surplus area purchased has not been utilized by allotment to eligible tenant."

The plea was that the property which was sold before 1.2.1967 was therefore, required to be excluded.

It was also contended that Kheta Singh had a son who was a major and the holding would require to be redetermined under the Punjab Land Act since the property declared as surplus had not been utilized and continued to be in the hands of the petitioners.

2. Taking the latter point first, I must observe that there is no dispute on the fact that the property declared as surplus was not utilized and it was allowed to be continued in the hands of the owner. As regards the requirement for redetermination on the ground that the original land owner had a major son the attempt brought before the authorities was to produce a medical certificate to show that he was more than 30 years of age. The authorities did not accept this since birth certificate was not produced. There was also no reason given as to why the birth certificate is not produced. All that is stated was that the son did not go to school and therefore there was no school record relating to his date of birth. I may not be able to reopen an issue of fact of what the age of the son was and whether the holding would require redetermination only at that point. I do not propose to therefore, reopen the said issue, at this stage.

3. The case would still merit consideration on the other contention raised that a property which was sold to a stranger through a transaction on 1.10.1956 cannot be made the subject of holding of the land owner. If we must read the instructions issued on 6.3.1967 brought through Annexure P-1/A it leaves no doubt that if the vendee was not a relative and if the purchaser was himself not holding more than 10 standard acres and the surplus area purchased which had also not been utilized by the allotment to eligible tenants, then the property would require to be excluded. The fact that the wife was able to reclaim the property by exercise of right of preemption cannot obtain any different sense, according to the petitioner became the property in the hands of a stranger cannot in the first place be same as the property of the land owner for computation of total holdings. The counsel would refer me to a Division Bench ruling of this Court in Chhattar Singh and another v. The Financial Commissioner, Revenue, Haryana and others reported in 1970 PLJ 487 that dealt with a case of transaction of sale by the land owner to a stranger and which was reclaimed by the sons who were landless persons by preempting the sale. The Division Bench

held that once a property was sold to a stranger it ceased to be the land of the original land owner and it became the land of the stranger till the decree of preemption was passed. The character of acquisition by the sons was not to be treated as acquisition of the land of their father but it must be taken as acquisition of the land belonging to a stranger. The judgment, in my view, is directly applicable to the facts of the case, I have also examined situation where the right of purchase exercised by the wife in stead of the son would make any difference and I hold that there is no difference. Learned counsel appearing for the State would refer me to Section 10-A clause-C that sets out as under:

"For the purposes of determining the surplus area of any person under this section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored."

This Section applies to surplus area for resettlement of ejected tenants and in my view it shall not be applied in a situation that we are confronted now. Even otherwise, I have not been show through any particular provision which will make the holding of a wife to be treated as the holding of the land owner himself. The land owner is defined under the Punjab Land Revenue Act of 1887 under Section 2 (2) which also makes no indication of reference to holding of a wife as pertaining to the holding of a land owner himself. As it would turn out, separation sought by the wife under Section 24-A of the Act was perfectly tenable and it was bound to be treated as the property of the wife and excluded from the holding of the husband. It was immaterial that a declaration had already been made in the year 1961 and that it was not challenged. Section 24-A contemplates an application to be filed even after a declaration is made:

"Sec. 24-A Power to separate share of landowners in joint lands. - (I) Where a landowner owns land jointly with other landowners and his share of such land or part thereof, as ascertained from the record of rights, has been or is to be declared as surplus area, the officer competent to declare such area, or, where such area has been declared, the Officer competent to utilize it, may on his own motion, after summary enquiry and affording to the persons interested in such land an opportunity of being heard, separate his share of such land or part thereof in the land owned by him jointly with other landowners,

(emphasis supplied)

(II) Where after the declaration of the surplus area of any person and before the utilization thereof, his land has been subjected to the process of consolidation, the officers referred to in Sub-section (I) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation."

(emphasis supplied)

In sub clause I, there is specific reference to an application made by a person after an area has been declared surplus. Clause II deals with the situation of a separation sought after the declaration of surplus area and before utilisation thereof. In this case, I have already pointed out that there is no contest on the point that there has been no utilization of the property which has been declared as surplus. The application under Section 24-A was, therefore, bound to be made.

All these would leave us to a situation that determination of surplus already made under the Punjab Act, 1953 will not conclude the Proceedings. The State shall undertake a fresh exercise under the Land Reforms Act, 1972. The impugned order is quashed and the writ petition is allowed to the above extent.