

(1982) 07 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 337 of 1979

Norati and others

APPELLANT

Vs

Financial Commissioner Haryana and others

RESPONDENT

Date of Decision : 21-07-1982

Acts Referred:

Citation : (1982) CurLJ 595 : (1982) PLJ 450 : (1984) RRR 593

Hon'ble Judges : S.S.Sandhawalia;CJ., J and J.V.Gupta, J

Advocate : Sarjit Singh, Advocate., Advocates for appearing Parties

Judgement

J.V.Gupta, J.—One Dalip was the original tenant under Jagan Nath. He applied for purchase of the land comprised in his tenancy, under him, under section 18 of the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Act). During those proceedings, the said Jagan Nath died and his legal representatives were brought on the record. It was contended by the applicant that Jagan Nath was a big land owner, he was an old tenant under him and that his tenancy was not included in the permissible area of Jagan Nath. His application under section 18 of the Act, was allowed on April 18, 1972, by the Assistant Collector, vide his order Annexure P.1. He was, thus, allowed to purchase 27 kanals 16 marlas of land. Dalip died after his application was allowed. The legal representatives of Jagan Nath landowner filed an appeal against the order of the Assistant Collector wherein the legal representatives of Dalip were impleaded as parties. The appeal was dismissed by the Collector . The revision petition filed by the legal representatives of Jagan Nath landowner was also dismissed by the Commissioner. However, a subsequent revision petition filed by them before the Financial Commissioner was allowed vide order dated September 11, 1975, Annexure P.2. Feeling aggrieved, against the said order of the Financial Commissioner, the legal heirs of Dalip filed Civil Writ Petition No. 7307 of 1975 in this Court which was dismissed by the learned Single Judge though the impugned order or the Financial Commissioner was partly held to be illegal and was set aside to that extent. Dissatisfied with the same, they have filed this letters patent appeal.

2. The only question involved in this appeal is whether the learned Financial Commissioner could set aside the order passed on the purchase application on the assumption that the permissible area of the landowner had not been selected by the prescribed authority ? It is the common case of the parties that no such objection was taken on behalf of the landowner either before the Assistant Collector or in appeal before the Collector or in revision before the Commissioner. It was for the first time that such an objection was taken in the subsequent revision petition filed before the Financial Commissioner on the basis of which, amongst others, the learned Financial Commissioner accepted the revision petition and remanded the case to the Assistant Collector for fresh decision keeping in view the observations made by him therein. As a matter of fact, what weighed with the Financial Commissioner was the ground that since the original landowner Jagan Nath had died during the pendency of the purchase application, the Assistant Collector could only proceed further if the heirs of the deceased landowner were big landowners and in that case also if their permissible area had been selected by the prescribed authority, this finding was negatived by the learned Single Judge in view of the authoritative pronouncement of the Supreme Court in *Rameshwar and others v. Jot Ram and another*, 1975 Punjab Law Journal 454. However, in the earlier part of the order of the Financial Commissioner, it was also observed that "Jagan Nath, the original landowner, had neither reserved nor selected his permissible area. Even the authorities did not select the permissible area for him. As such, the purchase application could not be allowed without first declaring the permissible area of the landowner."

Having found that the order of the learned Financial Commissioner was wrong and illegal to this extent, that the rights of the tenant under section 18 of the Act are to be determined on the date of the application, the whole order of the learned Financial Commissioner was liable to be set aside. Admittedly, Jagan Nath landowner was alive at the time of the making of the purchase application and was a big landowner. Surplus area proceedings taken against him were finalised by the Collector vide order dated December 28, 1960. A copy of the said order was produced in this Court as it was not produced earlier before the learned Single Judge. It has been observed therein that "Jagan Nath, landowner, had neither reserved any land nor had he submitted Form E. The entire area was with the old tenants which could not be included in the surplus pool. His surplus area comes to 5.31 standard acres as the entire area was under the tenants and could not be included in the surplus pool." Once it is held that the surplus area proceedings were finalised and the landowner was held to be a big landowner, then the purchase application under section 18 of the Act could not be ignored in view of the Full Bench decision of this Court in *Dhaunkal v. Man Kauri and another*, 1970 Revenue Law Reporter 376. It has also been held therein that the Assistant Collector while dealing with the purchase application under section 18 of the Act has no jurisdiction to sit in appeal or revision over the order of the Surplus Area Collector in surplus area proceedings.

3. From the judgment under appeal, it appears that the learned Single Judge

mainly relied upon two judgments of this Court viz., Jee Ram and others v. Gobind and others, 1971 Punjab Law Journal 766, and Madho Dass and another v. Midha Singh and another, 1971 Punjab Law Journal 782, wherein it was held that the purchase application could be kept in abeyance till the Collector had declared the surplus area under section 5B of the Act. However, the same are not applicable to the facts of the present case because in those cases proceedings against the landowners under sections 5A, 5B or 5C of the Act had not been finalised when the application under section 18 of the Act was filed by the tenants. In view of the order of the Collector dated December 28, 1960, produced in this appeal, it could not be disputed that in the present case the proceedings against Jagan Nath landowner stood finalised on December 28, 1960. We also derive support from a Single Bench Judgment of this Court in Dharamsala Bawa Saran Dass, Ferozepur City v. The Financial Commissioner, Punjab and others, 1981 Punjab Law Journal 413, wherein the decisions of this Court in Jee Ram's case (supra) and Madho Dass's case (supra), have been noticed and distinguished. In this view of the matter, the learned Financial Commissioner could not ignore the order of the Collector dated December 28, 1960, and remand the case to the Assistant Collector for fresh decision.

4. As a result of the above discussion, this appeal succeeds and is allowed with costs. The judgment of the learned Single Judge is set aside and the writ petition is accepted with the result that the order of the Financial Commissioner, Annexure P2, is quashed.

S.S. Sandhawalia, C.J. I agree.