
(2013) 09 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5490 of 1990

Phula Singh and Others	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2014) 174 PLR 24

Hon'ble Judges : Laxmi Narain Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Laxmi Narain Mittal, J

1. Some land of respondent No. 4-Kaushalya Devi-big land owner was declared surplus by Collector (Agrarian)-respondent No. 3 vide order

dated 24.05.1984 (Annexure P-3). Petitioner No. 1-Phula Singh challenged the said order by filing appeal before the Commissioner-respondent

No. 2 alleging that Phuman Singh, father of all the six petitioners (appellant respondents No. 3 to 7 before the Commissioner), had purchased part

of the land declared surplus, before enforcement of the Punjab Land Reforms Act, 1972, (in short, the "Act") and, therefore, the said land could

not be included in surplus area of the big land owner. However, the Commissioner respondent No. 2 vide order dated 21.10.1985 (Annexure P-

4) dismissed the appeal preferred by petitioner No. 1. Revision petition preferred by all the petitioners has also been dismissed by Financial

Commissioner, (Appeals)- respondent No. 1 vide order dated 23.06.1989 (Annexure P-5). All the aforesaid orders (Annexures P-3 to P-5)

passed by respondents No. 1 to 3 are under challenge in this writ petition filed

under Articles 226 and 227 of the Constitution of India. I have heard learned counsel for the parties and perused the case file.

2. Perusal of mutation (Annexure P-10) reveals that Phuman Singh father of the petitioners had purchased 6 kanals 6 Marlas or 6 Bighas 6 Biswas

land from respondent No. 4-big land owner pursuant to order dated 28.09.1960 passed by Sub Divisional Officer, being tenant over the said land.

Since the said land was purchased by petitioners' father long before enforcement of the Act (appointed day being 24.01.1971), the said land

could not have been declared surplus in the hands of respondent No. 4-big land owner who was not owner thereof on the appointed day.

Respondents No. 1 and 2 committed grave error and illegality in rejecting the revision petition and appeal preferred by petitioners on the ground

that they had been duly served in the surplus proceedings. However, even if the petitioners did not appear before respondent No. 3-Collector

(Agrarian) in surplus proceedings, their appeal and revision could not have been dismissed merely on this ground. The same were required to be

decided on merits. However, respondents No. 1 and 2 refused to go into the merits of the case merely on the ground that petitioners had been

served with notice of surplus proceedings by Munadi and in spite thereof, they did not appear before the Collector (Agrarian). On the other hand,

even in the written statement, official respondents No. 1 to 3 have admitted that details of land of respondent No. 4-big land owner prepared by

Field Staff before passing of order (Annexure P-3) by respondent No. 3 were not correct, being not in accordance with jamabandi.

3. In view of admitted facts, there is no escape from the conclusion that the land mutated in favour of the petitioners' father vide mutation

(Annexure P-10) could not have been included in surplus area of respondent No.

4. As a necessary corollary, the instant writ petition is allowed.

Impugned orders (Annexures P-3 to P-5) passed by respondent No. 1 to 3 are set aside to the extent of including the land purchased by

petitioners' father-Phuman Singh as depicted in mutation (Annexure P-10) in surplus area of respondent No. 4-big land owner. Petitioners are

held to be owners thereof being legal heirs of Phuman Singh who had purchased it being tenant thereon.