
(1992) 08 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1287 of 1980

Pohla Singh alias Pohla Ram (died)

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 13-08-1992

Acts Referred:

Citation : (1992) 2 LJR 568 : (1992) PLJ 414 : (1993) 1 RRR 29

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

Advocate : Pawan Bansal, Advocate, J.R. Mittal, Senior Advocate, I.S. Vimal, Advocate, Advocates for appearing Parties

Judgement

V.K. Bali, J.—Pohla Singh and others pray for issuance of a writ in the nature of mandamus directing the respondents not to dispossess them from the land measuring 291 Kanals 10 Marlas situate in village Budhlada. The facts of the case need to be noticed first.

2. One Dhanna Singh was a big landowner of village Budhlada. Collector Bhatinda vide orders dated 9.6.1961 declared an area of 28.68 standard acres in his hands as surplus under the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter to be referred as "the Act"). Dissatisfied, Dhanna Singh preferred appeal/revision which were dismissed by the Commissioner and the Financial Commissioner respectively. The last order was passed on 2.3.1967. However, during the pendency of aforesaid proceedings compensation with regard to surplus area so declared which was determined at rs. 13,882.53 was accepted by Dharam Singh. Under the Utilization of Surplus Area Scheme, the land so declared surplus was allotted to the petitioners in the year 1962. The claim of the petitioners is that they were landless cultivators of the village and each of them as also husband of petitioner No. 6 were allotted an area of 5 standard acres each. It is, this manner, that all of them were given 28.68 standard acres. The Sanads in Form V were issued to the petitioners on 5.3.1962 and the petitioners were put into possession of the land in question. So much so, even after consolidation pass books were issued to the petitioners. The petitioners claim to

be in continuous possession of the land till date. On account of allotment of land to the petitioners in the way and manner aforesaid, entries in the revenue records were incorporated and even mutations were duly sanctioned. It is stated that the entire land was barren land and had Tibbas and deep ditches. The petitioners are said to have toiled hard on the land, sunk tubewells and made the land cultivable. They also planted fruit bearing and other trees and converted the barren land into rich fields. It is stated that at present there are more than 200 trees. There are five tubewells which have been installed by the petitioners after obtaining loans and mustering every penny of their life's earning. When all this was going on and the petitioners had bona fide believed themselves to be the owners for all intents and purposes, they came to know some time before filing the present writ petition that Dhanna Singh had not given up his endeavour to get the land released from the surplus pool and had in fact filed a writ petition challenging the orders of the Collector, Commissioner and Financial Commissioner, in the High Court. The aforesaid writ petition was obviously filed after the decision rendered by the Financial Commissioner bearing Civil Writ Petition No. 3213 of 1968. The writ petition remained pending till it came for final adjudication on 9.1.1980. The undisputed case of the petitioners is that although the land had not only been allotted to them but they came to occupy the same yet they were not impleaded as respondents at any stage and without hearing them, the writ petition was allowed on 9.1.1980. It is submitted that Dhanna Singh while filing the aforesaid writ petition concealed material facts which were very much in his notice that the surplus area had been utilised and allotted to the petitioners that Dhanna Singh had duly accepted the amount of compensation determined by the authorities that after the death of Dhanna Singh, his legal representative Gurcharan Singh respondent No. 4 also became a big landowner for the reason that besides the land be inherited from Dhanna Singh, he had some other land as well. His holding without considering the land in dispute was so much that it exceeded the permissible limits under the Punjab Security of Land Tenures Act as also Punjab Land Reforms act, 1972, that the land in dispute allotted to Dhanna Singh as a military grant as claimed by him could not be held military grant as claimed by him in the hands of his son Gurcharan Singh. On the aforesaid facts, it is maintained by the petitioners that they cannot be held to be bound by the decision rendered in the civil writ petition filed by Dharam Singh.

3. This petition has been contested only by respondent No. 4. By way of preliminary objection, it is pleaded that the Pepsu Tenancy and Agricultural Lands (Amendment) Act, 1968 came into force on 16.4.1968. The Act was given retrospective effect and, inter alia, provided that the land which was granted to a person for gallantry was immune from the provisions of the Pepsu Tenancy and Agricultural Lands Act. It is pleaded that by virtue of the amendment aforesaid, all the orders declaring surplus land by any authority under the Act would be void and ineffectual. The father of the respondent No. 4 is stated to have been granted of the land as gallantry award. The land was wrongly declared as surplus

and the orders passed on that behalf were not legal and, therefore, the son of Dhanna Singh (respondent No. 4) could take possession from the petitioners particularly after the writ petition of Dhanna Singh was allowed. In so far as the main case of the petitioners with regard to nonimpleading them as parties at any stage is concerned, it is pleaded by the respondent No. 4 that the appeal as also the revision were only for setting aside the orders with regard to surplus area as also that the petitioners knew that a writ petition is pending in this Court. In so far as the material facts of the case are concerned, the same have not been denied.

4. The records of the case reveal that the respondent No. 4 had taken interest in this case only upto 1989 as in the said year various applications were filed inclusive of one for early hearing. In fact this case was ordered to be listed for final hearing on 21.2.1989 by orders dated 10.2.1989 passed by the then Chief Justice of this Court on his application. No one has, however, appeared on behalf of respondent No. 4. This matter has, thus, to be decided on the basis of pleadings of the parties and the points raised by the learned counsel for the petitioners.

5. After hearing the learned counsel for the petitioners and going through the records of the case, I am of the view that this petition deserves to succeed. It is true that the Act of 1955 was amended in the year 1968 by Act No. 11 of 1968 and Section 51A was inserted. It is also true that by Section 2 of the Amending Act (Act No. 11 of 1968), it was provided that Section 51A shall be deemed always to have been inserted in the Act. Section 51A reads as follows :

"51A. Notwithstanding anything contained in this Act, where any land is granted for gallantry at any time before the 26th day of January, 1950, to any member of the armed forces, whether maintained by the Central Government or by any Indian State, then, so long as such land or any portion thereof, as the case may be, has not passed from the original grantee into more than three successive hands by inheritance or bequest, and is held by the grantee or any of such hands, such land or portion, as the case may be, shall not be taken into account in computing the surplus area under this Act, nor shall any tenant of such land or portion have the right to purchase it under Section 22.

Provided that where such land or portion has passed into more than three such hands, and the persons holding such land or portion immediately before the 3rd August, 1967, is a person to whom it has passed by inheritance or bequest the exemption under this section shall apply to such land or portion thereof, as the case may be during the life time of such person."

Perusal of section 51A no doubt shows that the lands which were granted as gallantry to the members of armed forces were exempted and in view of Section 2 of the Amending Act such exemption was introduced retrospective i.e. from the date of enforcement of Act of 1955 itself. However, nothing in the Amending Act or Section 51A deals with such matter that might have been concluded by the

unamended provisions of the Act. In such circumstances what is the effect of concluded transactions or orders that have been passed during the Act was a significant question and decision of the same, in my view, could not be arrived at without hearing the persons who had been conferred rights under the provisions of the Act. Admittedly, the petitioners were not heard at any stage even though they had obtained proprietary rights much before even when the writ petition was filed in this Court and Dhanna Singh, the original writ petitioner had knowledge of the same. As mentioned above, the Amending Act is retrospective and it applies to the transactions or sales which had already been confirmed by the authorities was a significant question and before divesting persons of the rights that had accrued to them, the least was that they should have been heard. I would not like to decide in the present case as to whether the petitioners had, in the facts and circumstances of this case, achieved indefeasible rights when writ against the orders declaring the land of Dhanna Singh as surplus was filed and was ultimately allowed but surely this has to be held that the petitioners without being heard in the matter cannot be bound by the decision obtained by Dhanna Singh or his son at their back. The facts and circumstances of this case clearly reveal that Dhanna Singh and after him his son at their back. The facts and circumstances of this case clearly reveal that Dhanna Singh and after him his son were aware that the petitioners have occupied the land in consequence of allotment made to them under the provisions of Utilization of Surplus Area Scheme. Dhanna Singh had even accepted the compensation that was assessed and yet this fact was concealed from this Court while filing the writ petition, mention of which has been made above.

6. In view of what has been said above, this writ petition is allowed. It is held that the petitioners are not bound by the decision rendered in Civil Writ Petition No. 3213 of 1968 decided on 9.1.1980 and in compliance of the same, they cannot be dispossessed from the land in dispute. If permissible, the question as to whether the land could be declared surplus or not may be determined in any proceedings that may be competent under the law by respondent No. 4 and if such a course is open, the question as to whether on account of retrospective operation of Section 51A of the Act, respondent No. 4 is entitled to ask for setting aside of the orders declaring the land surplus or that the petitioners have acquired an indefeasible right which cannot be taken away even by retrospective amendment shall be gone into. There shall be no order as to costs.