
(2001) 09 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5308 of 1981

Raghubir Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Punjab Land Reforms Act, 1972 — Section 5

Citation : (2002) 1 RCR(Civil) 523

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : Ram Lal Aneja, for the Appellant; B.S. Sewak, AAG, for the Respondent

Final Decision : Allowed

Judgement

J.S. Narang, J.—The petitioners purchased land from respondent No. 5 Shri Mohan Ram and in respect thereof. The sale deed dated 27.1.1976 was executed defining the area of the land as 44K-10 Marias comprised in Rectangle No. 104 Killa Nos. 4(6-14), 5(7-2), 6(8-0), 7(7-12), Rectangle No. 105 Killa Nos. 1(7-2), 10(8-0), Khewat No. 116 as per Jamabandi 1970-71 in favour of the petitioners in equal shares for a consideration of Rs. 22000/- (Twenty two thousand rupees). The sale deed was registered specially/stating that the land sold was free from all kind of encumbrances and that if any misstatement on the part, of the vendors would cause any loss or suffering to the vendees, the vendors himself personally and his property of all kinds would be liable. The mutation bearing No. 1031 was duly sanctioned by the competent authorities in favour on the petitioners. It was further assured that the land sold in question was included in the permissible area of the vendor and his family and that no part thereof had fallen or would fall in surplus pool to be determined in accordance with provisions of law. The land in question was described as self cultivated land by respondent No. 5 which fact stood corroborated from Jamabandi for the year 1970-71. The mutation sanctioned was duly reflected in the Jamabandi for the year 1975-76.

2. Respondent No. 5 had furnished declaration by way of filling Form "A" as required u/s 5 of the Punjab Land Reforms Act, 1972 (hereinafter referred to as the Act) within the period prescribed by Rule 5(2) of the Punjab Land Reforms Rules, 1973 (hereinafter referred to as the rules). By way of filling the aforesaid form, the permissible area was duly, selected by respondent No. 5 and the necessary orders were required to be passed thereon by the Collector. A copy of the aforesaid declaration form has been annexed as Annexure P-1. As per the aforesaid form, 509 Kanals 18 Marias were shown as the ownership of respondent No. 5 and out of which land measuring 125 Kanals, as per the detail given in column No. 6 of the Form, was shown to be under tenancy of one Ram Partap son of Shera Ram. It has been disclosed that since Kharit 1964, the aforesaid land was under the tenancy of the aforesaid person. Another piece of land measuring 63 kanals 12 Marias was shown under the tenancy of Hanuman son of Kalu Ram since Kharif 1963. The remaining area was projected to be under self-cultivation of respondent No. 5 and was selected as permissible area for himself and his family members. The aforesaid declaration given in the requisite form has been duly supported by an affidavit.

3. The total land holding of respondent No. 5 after converting into first quality land was taken as 14.04 Hectares by respondent No. 4 i.e., the Collector. The respondent No. 4 passed an order dated 20.5.1976 (copy Annexure P-2) vide which an area measuring 2.84 Hectares has been declared surplus in the hands of respondent No. 5. The petitioners had not been given any notice or any opportunity of being heard despite the fact that they have been duly entered as owners of the land purchased by them from respondent No. 5, as the mutation in respect thereof has been duly sanctioned and the entry in this regard had been reflected in the revenue records. Admittedly, the sale deed was executed and registered prior to the passing of the order by the Collector. However, in pursuant to an order dated 20.5.1976 passed by the Collector, respondent No. 5 furnished details of the land to be placed in surplus pool and the same stood described vide Annexure "A" filed before the Collector. In pursuant thereto, respondent No. 5 was directed to deliver possession of such land to the Circle Revenue Officer within a specified period.

4. The petitioners having come to know of the orders dated 20.5.1976 and 25.5.1976 passed by the Collector vide which land measuring 2.84 Hectares of the first quality belonging to respondent No. 5 was declared surplus and the order vide which the land described by respondent No. 5 was directed to be delivered to the Circle Revenue Officer. The plea taken by the petitioners before the Appellate Authority is that no opportunity of hearing had been given to the petitioners being the vandeeds of the land which has been declared to be included in the surplus pool at the instance of respondent No. 5. It is further stated that the total land belonging to respondent No. 5 when, converted into first quality land came to be 14,04 Hectares. According to the evidence brought on record, the family of the land owner, i.e., respondent No. 5 consisted of eight members. As a consequence thereof, he was allowed to retain permissible area upto 11.20

Hectares of first quality. However, the fact of part of the land belonging to respondent No. 5 being cultivated by the tenants and being in their possession has not been noticed despite the fact that this information was duly disclosed while filing the requisite form "A" u/s 5 of the Act.

5. Learned Appellate Authority, Ferozepur Division, Ferozepur did not accept any of the contentions of the petitioners and held that the land with regard to which ownership is being claimed by the petitioners was sold on 27.1.1976, i.e., much after the enforcement of the Act. It is further held that there is no provision under the Act for taking notice of the sales affected after the date of enforcement of the Act. Thus, the question of serving any notice upon the petitioners did not arise and that any assurances given by the land owner, i.e., respondent No. 5 to the petitioners for including the land sold in the permissible area has no meaning sofar as the stake of the petitioners is concerned. The appeal was accordingly dismissed vide order dated 28.11.1978 (copy Annexure P-4).

6. Aggrieved of this order, the petitioners filed a reference and which ultimately stood defined as Revision Petition before the Financial Commissioner (Appeals), Punjab. The fact of total land held by respondent No. 5 (land owner) has been accepted. The reasoning given by the Forms below have been accepted by the learned Financial Commissioner and has additionally said that the vendees were expected to be aware of plus and minus while purchasing the land. Since such kind of sales are to be ignored in view of the provisions of the Act, as such, no right could be said to have been established, which can be said to have been protected under the provisions of law. Thus, petition was dismissed by the Financial Commissioner vide order dated 6.8.1981.

7. The petitioners felt aggrieved of the order and have filed the present petition. The state has filed written statement repelling the contentions submitted in the petition. The preliminary objection is that the alleged sale was effected on 27.1.1976 and that the mutation in respect thereof was sanctioned on 8.5.1977, the surplus area was declared by the Collector vide order dated 25.5.1976, i.e., much before the sanction of the mutation. Even otherwise, no right can be said to have accrued in favour of the petitioners under the provisions of the Act for claiming any notice of hearing as no right had devolved upon the petitioners before passing of the order by the Collector. It is also stated that while filing declarators form "A" respondent No. 5, i.e., the land owner showed his entire holding as self cultivated but at the same time has stated that an area measuring 188 Kanals 12 Maras has been shown under the tenants cultivation.

8. Learned counsel for the petitioner has contended that the revenue authorities have not at all taken into consideration the land which was under tenancy with the tenants prior to the coming into force of the Act and that on the appointed date, the permissible area equivalent to the permissible area of the land owner was required to be left out while determining the surplus area in the hands of the land owner. Admittedly, the total area of first quality land in the hands of the land owners came out to be 14.04 Hectares and it is also the admitted case that the

permissible area of the land owner, i.e., respondent No. 5 became decipherable as 11.20 Hectares by keeping into consideration that members of the family of the land owner were eight. It is further admitted case that the surplus area declared is 2.84 Hectares, however, if the area measuring 188 Kanals 12 Marias is accepted to be under the tenancy, which has not been denied by the revenue authorities and while filing written statement the state has admitted that the aforesaid area is under the tenancy of the tenants which has been shown in the declaration form submitted before the revenue authorities. Thus, by taking this fact into consideration, no area would be determinable as surplus area in the hands of the land owner.

9. It is further argued that the land measuring 44 Kanals 10 Marias which was sold by the land owner, i.e., respondent No. 5 to the petitioners could not be declared as surplus area as the same was included in the permissible area of the land owners. The revenue authorities have exceeded their jurisdiction while permitting the land owner to bring such change. However, de hors of this change, if the first argument is accepted that an area measuring 188 Kanals 12 Marias was under the tenancy of the tenants, no surplus area would be determinable in the hands of the land owner. Thus, either way the land purchased by the petitioners would not be affected in any manner.

10. It is further the contention of the learned counsel for the petitioner that the petitioners having purchased the land in question, though admittedly after the enforcement of the Act, but before determination of surplus area in the hands of the land owner, they were entitled to be heard by way of serving notice on them. It is the settled law that in such a situation, the person who acquires ownership of the land which was to be defined and which infact stood defined as permissible area by the vendor, the right of hearing was required to be granted by the revenue authorities at the time of determining surplus area in the hands of the land owner.

11. Reliance has been placed in support of the aforesaid arguments upon the judgments rendered by this Court and by the apex Court which are : (i) Harbans Singh and Gurbaksh Singh v. Ajit Singh and Ors. (1975) 77 P.L.R. 69, wherein it was held as under :

"(c) Punjab Security of Land Tenures Rules, 1956 - Rule 6 - Surplus area proceedings - Notice not issued - Order of Collector declaring surplus area - Not a nullity - Voidable at the instance of aggrieved party.

Merely because no notice was issued to the purchasers of land of the proceedings taken by the Collector for declaration of the permissible area of the land-owners and the surplus area, the order could not be said to be non-est or void. It was merely a voidable order and had to be voided by taking proceedings under the Act."

(ii) Bakhtawar Singh and Ors. v. State of Punjab and Ors. 1987 PLJ 7 and in the Head note it is held as under : "Punjab Land Reforms Act, Sections 4, 7 and 9 -

Declaration of surplus area of landowner - Notice and hearing to transferee - Necessary - Land transferred (in 1975) after coming into force of Act which fact stood recorded in revenue records before order passed (in 1977) by Collector Agrarian -Transferee interested party - Has a legal right to be heard by Collector - Transferee not issued notice nor any opportunity of hearing afforded before declaring surplus area in hands of big landowner (transferor) - Violative of Principles of natural justice - Order declaring surplus area quashed."

(iii) Sabar Khan and Ors. v. The Financial Commissioner (Appeals), Punjab and Ors. 1993 PLJ 208, the head note of which reads as under :

"Punjab Land Reforms Act, Sections 7 and 4(b) - Sale of land by registered sale deed after "appointed day" - Incumbent on Authorities to hear transferee before declaring surplus area of landowner - Opportunity of hearing not afforded of transferee - Violation of principles of Natural justice - Not correct that transferee not to be granted opportunity of hearing as sales taken place after appointed day."

12. On the other hand, learned Assistant Advocate General, Punjab has argued that the petitioners have no case as the land was admittedly purchased after the enforcement of the Act and that such sales were to be ignored by the revenue authorities at the time of determining the surplus area. It is also contended that the mutation in respect of the alleged sale was sanctioned on 8.5.1977 and that the order was passed by the Collector on 25.5.1976. Thus, claiming that the petitioners were entitled to be served notices, is not maintainable and thus, the argument is devoid of merits.

13. It has been further argued that the land owner did not disclose the factum of sale of the land and infact on his own violation carved out surplus area to be delivered to the State and in pursuant thereto, an area measuring 2.84 Hectares was declared surplus and by accepting the specified Khasra numbers etc. was directed to deliver possession thereof to the Circle Revenue Officer. It is too late in the day to take this plea that the area was under cultivation of the tenants and, therefore, this area should have been excluded by taking into consideration the permissible area which can be carved out by the tenant equivalent to the permissible area of the land owners.

14. I have considered rival contentions of counsel for the parties. I am of the opinion that the matter has not been dealt with by the revenue authorities in the correct perspective. Admittedly, the total area by taking it and converting into first quality land comes to 14.04 Hectares in the hands of the land owner, i.e., respondent No. 5 and it is further the admitted case of the revenue as well that the land owner was permitted to carve out permissible area equivalent to 11.20 hectares by keeping into consideration the total members of the family of the land owner which was taken as eight. It is also admitted case that while filling form "A" under the provisions of the Act and the rules, the land owner has categorically disclosed the land under cultivation of the tenants which measures

188 Kanals 12 Marias which is far less than the permissible area purchasable by the tenant of which can be held by the tenant as described and prescribed under the provisions of the Act. If this area is excluded, no surplus area would be found determinable in the hands of the land owners. It looks that the petitioners have been the bona fide purchasers of the land with regard to which the sale deed has been duly executed by respondent No. 5, i.e., the land owner has not acted fairly and honestly. The aforesaid facts should have been taken into consideration by the revenue authorities while determining the surplus area in the hands of respondent No. 5, this could have been pointed out if right of hearing had been granted to the petitioners. No doubt, I do not find such contentions having been noticed by the revenue authorities while passing the orders which have been impugned nor it can be ascertained whether any such ground has been raised or not. However, in any case, this plea has been raised now and which is not only factual but legal. The facts which have been disclosed would make one reach an irresistible conclusion that if area under tenancy had been taken into consideration, no surplus area could have been declared in the hands of the land owner, i.e., respondent No. 5.

15. In view of the above, this petition is accepted and the impugned Orders Annexures P-2, P-4 and P-5 passed by the revenue authorities are quashed.

16. It is directed that the revenue authorities, i.e., the Collector shall grant an appropriate opportunity of being heard to the petitioners and also the land owner, i.e., respondent No. 5 while determining the surplus area in the hands of land owner and also taking the area under the tenants cultivation as the Form "A" filled in by the land owner.

17. It is directed that such decision be taken by the Collector within a period of six months from the date of receipt of certified copy of this judgment.