

(1979) 08 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 2308 and 2309 of 1969 and Civil Miscellaneous No's. 868 and 1027 of 1979

Rajinder Singh and Others

APPELLANT

Vs

The Financial Commissioner (Revenue) Punjab, Chandigarh
and Others

RESPONDENT

Date of Decision : 02-08-1979

Acts Referred:

Citation : AIR 1979 P&H 252

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Judgement

1. This judgment will dispose of Civil Writ Petitions Nos. 2308 and 2309 of 1969. First I shall deal with Civil Writ Petition No. 2308 of 1969. The facts as given in the petition briefly are as follows:--

Kheta Singh, respondent No. 4, was a big landowner. He sold land measuring 35 bighas and 18 biswas in favour of Jaimal Singh and Nachhtar Singh for a sum of Rs. 10,000 vide sale-deed dated June 14, 1958. The petitioners filed a suit for possession by way of pre-emption on the ground that they were sons of respondent No. 4 and, therefore, had a superior right of pre-emption. The suit was decreed on August 17, 1959 and the petitioners obtained possession of the land in pursuance of the said decree.

2. The Collector, Ferozepur, commenced proceedings for declaration of surplus area against respondent No. 4 and declared the land measuring 19-12 standard acres as surplus vide order dated August 31, 1962. The area which had been sold by respondent No. 4 was declared surplus. It is alleged that before declaring surplus area, the petitioners were not served with any notice regarding the declaration of surplus area proceedings. It is further said that the appeal and revision of respondent No. 4 were dismissed by the Commissioner and the Financial Commissioner vide their orders dated March 8, 1965 and May 14, 1965, respectively. The consolidation proceedings were taken in village Khaneki Dhab,

District Ferozepur, where the petitioners had become owners of the land by pre-emption. It is alleged, the Collector (Agrarian) Ferozepur, respondent No. 3, again started proceedings for determination of the surplus area. He, however, did not give any notice of the proceedings to the petitioners. He declared an area to the extent of 18-11/4 standard acres as surplus with respondent No. 4 because in consolidation proceedings, his total holding had been reduced from 49-12 standard acres to 48-11/4 standard acres.

3. The petitioners, It is stated, came to know about the aforesaid order and they filed an appeal against it before the Commissioner, Jullundur Division, respondent No. 2 wherein they contended that they being transferees of the land of respondent No. 4 were entitled to be heard before declaration of surplus area with him, which had not been done. The plea was rejected by the Commissioner as per order dated March 3, 1969. They went up in revision before the Financial Commissioner, respondent No. 1, which was dismissed by him on August 28, 1969. They have come up in writ petition against the aforesaid orders to this Court.

4. It is contended by Mr. Sahni, learned counsel for the petitioners, that the property in dispute was transferred by respondent No. 4 in favour of Jaimal Singh and Nachhttar Singh before July 30, 1958. The petitioners filed a suit for possession by pre-emption which was decreed. The right of pre-emption is a right of substitution and, therefore, the petitioners will be deemed to be transferees of the property with effect from June 14, 1958, the date when the sale-deed was executed by respondent No. 4 in favour of original vendees. He further submits that the sales before July 30, 1958, are protected. He also contends that that being the case, the petitioners were entitled to notice before declaration of the surplus area in the hands of respondent No. 4 but it was not done by the Collector and as soon as they came to know that the land in dispute had been declared as surplus area in their hands, they filed an appeal against the order of the Collector to the Commissioner. In the aforesaid circumstances, the counsel submits, the Commissioner as well as the Financial Commissioner have taken erroneous view of the matter and decided it against them.

5. Mr. Sachdeva, learned counsel for respondents Nos. 5 to 7, allottees of the surplus area, has vehemently contended that the petitioners did not file any appeal against the order of declaration of surplus area dated August 31, 1962. He argues that they filed an appeal against the order dated September 13, 1967, which was made by the Collector after consolidation proceedings and that order cannot be said to be an order for declaration of surplus area. It is further argued that as the order dated August 31, 1962 has not been challenged by them before the revenue authorities, therefore, they are not entitled to any relief in these proceedings. Similar contentions were raised by Mr. Jagat Singh.

6. I have given due consideration to the arguments of the learned counsel. It is well settled that a transferee from a big landowner is a person interested in participating in the proceedings for declaration of surplus area and he must be

given an opportunity of being heard before declaration of surplus area in the hands of transferor so that his interest may not prejudicially be affected. (See *Harnek Singh v. State of Punjab* (1972) 74 PLR 127 (FB)). It is also well settled that it is not intended by the Act that in case the Collector or the authorities under the Act formed the view that the person interested was all along aware of the proceedings and was guilty of laches in coming forward to contest the proceedings, he would be entitled to a hearing on merits. (See *Ashok Kumar v. State of Haryana* (1975) 77 PLR 140 (FB)). It is now to be seen how far the aforesaid principles are applicable to the present case.

7. It may be highlighted that the land in the hands of respondent No. 4 was declared surplus on August 31, 1962. The appeal and revision against that order were dismissed by the Commissioner and the Financial Commissioner. Thereafter, consolidation proceedings took place in the village and respondent No. 3 after the consolidation proceedings, proceeded under sub-section (2) of Section 24A of the Act which provides that it after the declaration of surplus area of any person and before the utilization thereof his land has been subject to the process of consolidation, the officers concerned shall be competent to separate the surplus area of the person out of the land obtained by him after consolidation. The petitioners filed an appeal in 1968 against the order of the Collector dated September 13, 1967, wherein necessary changes in the reserved area of Kheta Singh were made u/s 24-A of the Act, in view of consolidation proceedings in the village. At that time, they must have come to know about the order of declaration of surplus area in the hands of Kheta Singh on August 31, 1962. It was incumbent upon the petitioners to have challenged that order. The order u/s 24-A of the Act was not an order declaring surplus area in the hands of Kheta Singh but an order to separate his surplus area out of the area obtained by him after consolidation. It is well settled that if there is decrease in the reserved area of a landowner on account of consolidation, he cannot suffer for that. He, even after consolidation, would be entitled to 30 standard acres. Consequently, in case of decrease in the reserved area, he is entitled to be compensated from the surplus area. In addition, he would be allowed a fresh selection. In the present case, the area of Kheta Singh was reduced from 49 standard acres 12 units to 48 standard acres 11/4 units. Therefore, instead of 19 standard acres 12 units his surplus area decreased to 18 standard acres 11/4 units.

8. The writ proceedings emanate from the order of the Collector dated September 13, 1967. Consequently, the petitioners can challenge therein the said order and not the order of declaration of surplus area dated August 31, 1962. Now they cannot say that they should have been associated with the proceedings for declaration of surplus area in 1962. However, they were entitled to be associated with the proceedings under S. 24-A of the Act which have been initiated after consolidation. The observations in *Harnek Singh's* case (*supra*) are not fully attracted to this case. After taking into consideration all the circumstances, I am of the view that the petitioners were entitled to be served with notices and heard by the Collector in the proceedings u/s 24-A of the Act

and the finding of the learned Commissioner and that of the Financial Commissioner to the contrary is not correct. The orders of the Collector, the Commissioner and the Financial Commissioner are, therefore, liable to be quashed. The Collector may, however, decide the matter u/s 24-A of the Act afresh after hearing the petitioners and other concerned parties.

9. The learned counsel for the petitioners has made a reference to Bibi Daljit Kaur v. Financial Commr., Punjab 1976 PLJ 585 and Chandgi v. State of Haryana 1979 PLJ 387. In Daljit Kaur's case (supra), observations were that the donee was entitled to a notice before declaration of surplus area and in Chandgi's case (supra) it was held that the land pre-empted by the sons of a pre-emptor cannot be declared surplus in the hands of their father. However, the circumstances in which the above observations were made were different. It may be relevant to state that in Daljit Kaur's case (supra) the observations of the Full Bench in Ashok Kumar's case (supra) were not brought to the notice of the learned Judges. In my view, the abovesaid cases are not of much assistance to the counsel for the petitioners.

10. Now I shall deal with Civil Writ Petition No. 2309 of 1969. The petitioners in this writ petition are the same as those in C. W. P. No. 2308 of 1969. Regarding the respondents, there is some difference. Out of the respondents in C. W. P. No. 2308 of 1969, all except Collector are parties to this writ petition. In addition Bir Singh and Naib Tehsildar have been added as respondents.

11. Briefly, the facts which gave rise to the present petition are as follows:--

The Naib Tehsildar Surplus Area, Muktsar after the order dated August 31, 1962, was passed by the Collector, allotted the surplus area to respondents Nos. 1 to 4 vide order dated February 19, 1968 (copy Annexure "C"). It is alleged that the appeal of the petitioners against the order of the Collector was pending at that time before the Commissioner. They went up in appeal against the order of the Naib Tehsildar Surplus Area to the Collector, who accepted the same on September 28, 1968 and remanded the case to him with the direction that the question of allotment of land be considered after giving notice to the petitioners. Respondents Nos. 1 to 4 filed appeal against the order of the Collector before the Commissioner. He accepted it vide order dated March 3, 1969 and restored the order of the Naib Tehsildar. The petitioners, being dissatisfied with the order of the Commissioner, filed a revision petition, which was dismissed by the Financial Commissioner vide order dated August 28, 1969. They have now challenged the order of the, Financial Commissioner through this writ petition.

12. I have already quashed the orders of the Collector dated September 13, 1967 passed u/s 24-A of the Act, the Commissioner in appeal and the Financial Commissioner in revision. I have also directed that in the proceedings u/s 24-A of the Act, the petitioners should be heard by the Collector. In view of the setting aside of the said orders, the impugned orders in this writ petition are also liable to be quashed. Surplus area authorities may, however, take proper proceedings

for allotment of surplus land after the matter has been decided by them u/s 24-A of the Act.

13. For the aforesaid reasons, I accept Civil Writ Petition No. 2308 of 1969 and quash the orders of respondents Nos. 1 to 3 dated August 28, 1969, March 3, 1969 and September 13, 1967. I also accept Civil Writ Petition No. 2309 of 1969 and quash the impugned orders.

14. The authorities concerned may, however, proceed afresh in accordance with law. The parties are directed to appear before the Collector (Agrarian) Ferozepur, on August 30, 1979. C. M. Applications have become infructuous. No costs.

15. Petitions allowed.