
(2014) 11 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3726 of 1995

Richhpal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227
Haryana Ceiling on Land Holdings Act, 1972 — Section 12

Citation : (2015) 3 RCR(Civil) 751

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Amit Jain, Advocate for the Appellant; Sandeep S. Mann, Sr. DAG, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Paramjeet Singh, J.

1. Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari/mandamus declaring the action of official respondents in proceeding to declare the area in question as surplus in the hands of Dhannu Ram, land owner and allot the same to respondents No. 5 to 8 to the exclusion of the petitioners or their predecessors-in-interest who are continuing in possession of the land in question as tenants much before 15.04.1953 as illegal, arbitrary and unsustainable and for quashing the orders (Annexures P-1 to P-3) as illegal. I have heard learned counsel for the parties and perused the record.

2. The petitioners claim themselves to be the tenants over land of Dhannu Ram, landowner even prior to the year 1953. It is an admitted case that surplus area of the big landowner has been determined under the Haryana Ceiling on Land Holdings Act, 1972. The Government framed Rules for disposal of the surplus land/area which has vested in the Government. It is an admitted fact that no notice was given to any of the petitioners who claim to be the tenants over the

land which has been declared surplus. It is settled law that under the Haryana Utilization of Surplus and other Areas Scheme, 1976 as amended in 1979, the old tenants should be given preference if they fulfill the conditions under the Scheme. Without issuance of notice, the land which has been under cultivation of the petitioners, has been allotted to the private respondents.

3. The matter in hand is squarely covered by the decision rendered in *Lehri v. State of Haryana and others* 1996 (3) R.C.R. (Civil) 204 : 1996 PLJ 337 wherein it has been held as under:

"2. The petitioners in these three writ petitions are claiming to be the tenants of the land of Milawa Ram, landowner, even prior to 1953. It is an admitted case that surplus area of the big landowner has been determined under the Haryana Ceiling on Land Holdings Act, 1972, (hereinafter referred to as the "Act"). In the year 1976, the Government framed rules for disposal of the surplus land/area which have become vested in the Government. Admittedly, no notice was given to any of the petitioners who claim to be the tenants of the land which has been declared surplus. Under the Haryana Utilisation of Surplus and Other Areas Scheme, 1976 (hereinafter referred to as "the Scheme") as amended in 1979 the old tenants should be given preference if they fulfill the conditions under the scheme. While utilising the surplus area, it does not appear that any notice was given to the petitioners. Without issuing any notice, the land which has been under cultivation of the petitioner, has been allotted to the private respondents. This is contrary to the policy of the Government as enunciated in the scheme, as amended in 1979. The claim of the petitioners has not been considered by the authorities taking into account the provisions of the scheme. I am, therefore, of the opinion that it will be appropriate to remand these matters to the appellate authority, Hissar for fresh disposal of the matters. This view of mine also gets support from the decision of this Court in *Angrej Singh and others v. The State of Haryana and others*, 1993 (1) RRR 238 (P & H) : 1992 PLJ 627 wherein it has been held as follows:-

"The petitioners with a view to prove their continuous cultivating possession since the year 1950-51 have placed on record the copies of the jamabandi Annexures P-1 to P-7 by filing an application seeking permission to place on record the documents and order of allotment authority dated 16.5.1980, Annexure P-8. These documents were allowed to be placed on record in the interest of justice. On perusal of the copies of jamabandi from the year 1950-51 onwards, it is clear that Inder Singh, father of petitioner No. 1 Gurbakash, Jot Ram (having died during the pendency of the writ petition whose legal representatives have already been brought on record) are recorded as tenants at will and this entry has been repeated in subsequent copies of the jamabandi as well. Thus, this prima facie proves the contention of the petitioners that they are tenants-at-will since the year 1950-51. This being the position, such tenants have prior claim vis-a-vis other category of tenants under the Haryana Utilisation of Surplus and Other Areas Scheme, 1976. According to the scheme of 1976, the

allotment authority is to prepare village-wise list indicating the surplus area and the tenants' permissible area deemed to have been vested in the State Government under sub-section (3) of Section 12 of the Haryana Ceiling on Land Holdings Act, 1972. After preparation of this list, the same is to be displayed along with list of eligible persons at the office of the allotment authority as required by paragraph 5(1) of the Scheme. Paragraph 4 gives inter se priority list of eligible persons i.e. persons entitled to allotment of surplus area under this scheme. The categories are A, B, BB, C, CC, D, E, F, G, H and I. The petitioners' case falls under category A, or category BB i.e. in case their holding has been declared as the tenants' permissible area under the Punjab Law or the Pepsu Law, they would come within the purview of category A, whereas, in case their holding has not been declared as tenants' permissible area, their case can be processed under category BB. In the present case, no notice has been issued to the petitioners before allotting the land which was in their cultivating possession even before the coming into force of the Punjab Security of Land, Tenures Act, 1953. There is no averment by the respondents to the effect that they have better claim than that of the petitioners. It appears that the allotment authority without applying its mind has proceeded in a most casual manner. Since the allotment authority has proceeded without complying with the provisions of the Haryana Ceiling on Land Holdings Act, 1972, as well as Haryana Utilisation of Surplus and other Areas Scheme, 1976, the steps initiated by the allotment authority by allotting the land to respondent Nos. 8 to 12 are per se illegal and consequently set aside. The allotment authority/Collector (Agrarian) will examine the matter in the light of the provisions of the Haryana Ceiling on Land Holdings Act, 1972, as well as Haryana Utilisation of Surplus and other Areas Scheme, 1976, after hearing the petitioners and pass appropriate order in this regard. The petitioners, however, will not be dispossessed till the passing of the order by the concerned authority."

In the case in hand also, it is the claim of the petitioners that they and their predecessors have been in possession of the property prior to 1950. Therefore, I am of the view that these writ petitions are to be allowed.

3. Accordingly all the three writ petitions are allowed and the orders of the authorities below are hereby quashed. The allotment authority, Hissar is hereby directed to adjudicate the matter in the light of the provisions of the Act read with the provisions of the scheme and pass appropriate orders in this regard. While admitting these three writ petitions, stay of dispossession had already been granted, it will continue till passing of the orders by the concerned authority. Parties are directed to appear before the allotment authority on May 30, 1996."

The case in hand is fully covered by the law laid down in *Lehri* (supra). Accordingly, instant petition is allowed and impugned orders passed by the authorities below are quashed. The Prescribed/Allotment Authority is directed to adjudicate the matter in the light of the provisions of the Haryana Ceiling on

Land Holdings Act, 1972 read with the provisions of Haryana Utilization of surplus and Other Areas Scheme, 1976 and pass appropriate orders in this regard. Parties through their counsel are directed to appear before the Prescribed/Allotment Authority on 08.12.2014.