
(1991) 01 P&H CK 0092
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 194 of 1980

Roop Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

Citation : (1991) PLJ 560 : (1991) 2 RRR 260

Hon'ble Judges : R.S.Mongia, J

Advocate : Shri G.S. Cheema, A.A.G., Punjab., Shri A.L. Bahl, Advocate.,
Advocates for appearing Parties

Judgement

R.S. Mongia, J. (Oral)

1. Mool Chand son of Shri Tulsi Ram was the owner of land measuring 73 kanals 11 marlas situate in village Rurwala, Tehsil and District Ferozepur. Collector Ferozepur vide his order dated December 27, 1967 declared 28 standard acres 81/2 units as surplus area in the hands of Mool Chand while allowing him 20 standard acres as permissible area and 7 standard acres and 41/2 units as tenant's permissible area. It may be noticed here that though the landowner was entitled to 30 standard acres as permissible area under the Punjab Security of Land Tenures Act, but a penalty of 10 standard acres was imposed on him allegedly on account of delayed filing of return in FormA.

2. Petitioners in this writ petition i.e. Roop Singh and Mohinder Singh sons of Karam Singh purchased 32 kanals from Mool Chand vide registered sale deed on June 5, 1968. According to the petitioners they were the sitting tenants on the land of Mool Chand. It may be noticed here that the declaration of the surplus area in the hands of Mool Chand by the Collector on December 27, 1967 was upheld by the Commissioner vide his order dated February 10, 1969 and by the Financial Commissioner vide his order dated September 2, 1969. The present petitioners were not party to those proceedings. Mool Chand, landowner, challenged the declaration of the surplus area by way of writ petition in this Court being civil writ petition No. 3211 of 1969. During the pendency of that writ

petition Mool Chand died on July 29, 1973. Ultimately that writ petition was allowed on March 5, 1980 and the orders of the Collector, Commissioner and that of the Financial Commissioner were set aside. It was also observed in the judgment that the penalty imposed on Mool Chand by which he was deprived of 10 standard acres of permissible area without jurisdiction as he had not incurred any liability for the imposition of penalty. The case was remanded to the Collector for fresh determination of the surplus area in the hands of the heirs of Mool Chand who had died in the meantime. The concluding para of the judgment in civil petition No. 3211 of 1969 reads as under :

"For the forgiving reasons, I partly accept this writ petition, set aside the orders dated 27th December, 1967 passed by the Collector, dated 10th February, 1969 passed by the Commissioner and dated 2nd September, 1969 passed by the Financial Commissioner and remand the case to the Collector to decide the matter afresh in accordance with law and the observations made in this judgment. However, it is made clear that penalty imposed was without any jurisdiction as Mool Chand had not incurred any liability for the imposition of penalty. It is also clarified that the rights of private respondents who have already purchased the land will not be affected by this judgment. There shall be no order as to costs."

3. As the petitioners had purchased 32 Kanals out of the entire holding of Mool Chand, they received a notice dated October 28, 1975 under Section 9(1) of the Punjab Land Reforms Act, 1962 for delivering the possession of the surplus area. The objections filed by them against the notice were rejected by the Collector vide order dated December 16, 1975 (Annexure P1 to this writ petition). Further appeal and revision to the Commissioner and the Financial Commissioner respectively were also dismissed on February 5, 1979 and October 19, 1979 (Annexure P2 and P4 respectively). It may be observed here that on October 29, 1974 the surplus area which had been declared surplus earlier was allotted to Jit Singh and Mohan Singh. The petitioner challenged the orders of the Collector, Commissioner and Financial Commissioner referred to above as well as allotment of the surplus land to Jit Singh and Mohan Singh by way of the present writ petition.

4. The primary submission of the learned counsel for the petitioner Mr. A.L. Bahl is that the judgment of this Court in Civil Writ Petition No. 3211 of 1969 has not been complied with till date. If the judgment is complied with then the surplus area has to be determined afresh in the hands of the heirs of Mool Chand and since till date the area which had been declared surplus has not been utilised and the succession having been opened on the death of Mool Chand on July 29, 1973, there would be no surplus area in the hands of the heirs of Mool Chand and question of petitioners delivering possession of any land to the State Government would not arise. He further submitted that in view of the judgment in Civil Writ Petition No. 3211 of 1969 it has already been held that no penalty could be imposed on Mool Chand regarding 10 standard acres of permissible area

which would result in Mool Chand getting 30 standard acres as permissible area in any case and the purchase by the petitioners of 32 kanals would in that case fall in the permissible area.

5. There is force in the contention of the learned counsel for the petitioners. Without determining the surplus area afresh in accordance with the judgment of this Court in Civil Writ Petition No. 3211 of 1969, the writ petitioners could not be asked to deliver possession. They could only be asked to deliver possession in case it is found that the area purchased by them was surplus in the hands of Mool Chand. But in the present case since Mool Chand has died, it would have to be seen whether there is any surplus area in the hand of the heirs of Mool Chand.

6. Consequently, I allow this writ petition, set aside the orders of the Collector, Commissioner and Financial Commissioner (Annexures P1, P2 and P4 respectively) and direct that the Collector Ferozepur would first redetermine the surplus area in accordance with observations made in Civil Writ Petition No. 3211 of 1969 decided on March 5, 1980 and if any surplus area is found only then the petitioner would be required to deliver possession of the same to the State Government. Before deciding the case of surplus area, the petitioners would be heard by the Collector. There will be no order as to costs.