

(1992) 03 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 843 of 1980

Shri Jagat Singh and Others

APPELLANT

Vs

Punjab State and Others

RESPONDENT

Date of Decision : 13-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Land Reforms Act, 1972 — Section 5

Citation : (1992) 101 PLR 677

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : G.L. Nagpal, for the Appellant; A.C. Jain, for the Respondent No. 7 and Charu Tuli, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

H.S. Bedi, J.—Vide gift deed dated 25th September, 1972, Smt. Inder Kaur, respondent No. 4, gifted some agricultural land to Smt. Sukhwinder Kaur, her adopted daughter. Smt. Sukhwinder Kaur aforesaid sold a part of the gifted property to the petitioners vide sale deed dated 19th July, 1974. On coming into force of the Punjab Land Reforms Act, the Collector, before whom the return had been filed by Smt. Inder Kaur, declared an area measuring 0.83 hectares of 1st quality land as surplus. One Kashmira Singh, who was said to be a tenant on the land declared surplus, filed an appeal before the Commissioner which was allowed vide order dated 16-1-1979 on the ground that the affected parties had not been heard by the Collector before passing the impugned order and a direction was issued that the surplus case be re-assessed after affording an opportunity of a hearing to all concerned. The Collector thereafter vide order dated 12th March, 1979. Annexure P-1 once again declared 0.83 hectares of land surplus. The petitioners thereafter filed an appeal before the Commissioner, who on 16th January, 1980, vide Annexure P-2 dismissed it on the solitary ground that the gift in favour of Smt. Sukhwinder Kaur dated i.e. 24th January, 1971 and, as such, was invalid and no benefit could accrue to the landowner on that

account.

2. It has been urged by the counsel for the petitioners that the Commissioner had not gone into the bona-fides or otherwise of the gift made in favour of Smt. Sukhwinder Kaur and has dismissed the appeal by merely stating that the gift having been made after the appointed day, was not valid. He has urged that this was contrary to the provisions of Section 5 of the Punjab Land Reforms Act, whereby a bona-fide transfer even if it be by way of a gift made after the appointed day was to be protected. I find force in the argument of the counsel for the petitioner. It is clear to me that the Commissioner has not given a finding in terms of Section 5 of the Act as it was incumbent on him to give a finding with regard to the bona fides or otherwise of the gift made in favour of Smt. Sukhwinder Kaur.

3. The other points which have been raised by the counsel for the petitioners need not be gone into at this stage.

4. Keeping, in view what has been held above, the writ petition is allowed; Annexure P-2 is quashed and the matter is remitted to the Commissioner for fresh decision in accordance with law. It shall be open to the parties to take all arguments on facts and law before the Commissioner who shall dispose of the matter within a period of two months from the date he takes it up. The parties are directed to appear before Commissioner on 2nd April, 1992. No costs.