

(2013) 09 P&H CK 0395

In the Punjab And Haryana At Chandigarh

Case No : C.M. Nos. 12996 and 11897-98 of 2013 in/and C.W.P. No. 1734 of 1993

Smt. Basant Kaur (deceased) through L.R.

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2013) 09 P&H CK 0395

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Ajay Tewari, J.

C.M. Nos. 12996 & 11897-98 of 2013

1. For the reasons recorded, the applications are allowed. Documents (Annexures P-4 to P-9) are taken on record. Person mentioned in para No. 2 of CM. No. 11898 of 2013 is impleaded as legal representative of the petitioner who is stated to have died on 25.06.2000 subject to all just exceptions

Registry is directed to make necessary corrections in the memo of parties.

C.W.P. No. 1734 of 1993

The challenge in the present petition is to the declaration of the surplus area of Assa Nand-respondent No. 2 vide impugned order Annexure P-3.

2. Brief facts of the case are that big land owner Assa Nand-respondent No. 2 had made various sale transactions of his lands, some before the appointed day and some after the appointed day. He filed a declaration on 06.11.1979 but did not appear before the prescribed authority or at any stage after that. This was because by that time he sold his entire land and went away. The prescribed authority declared 547 kanals of "C" category land as surplus. Since no notice

had been issued to the purchasers they filed appeals. The impugned order was set aside and the matter was remanded back to the prescribed authority for fresh decision after hearing the transferees. On remand the prescribed authority reduced the surplus area from 547 kanals to 437 kanals 12 marlas. Subsequent appeals and revisions having failed one of the said vendees is before this Court.

3. Learned senior counsel for the petitioner has raised three arguments. Firstly, he has stated that as per the record 4th child of Assa Nand was born on 15.04.1972 and he should have been granted the benefit of one additional unit for that. He has placed reliance on the judgment in the matter of Mangat Ram Vs. The Financial Commissioner, Revenue and Others, . In that case, this Court had by placing reliance on the judgment in the matter of Jaswant Singh and others Vs. Punjab Government, Chandigarh and another, , held that since the provisions of the Act are confiscatory in nature, any child born between the appointed day and the day on which the Act actually came into force would be entitled to be counted for the benefit of additional unit.

4. The second argument raised by the learned senior counsel for the petitioner is that once it was recorded in the order itself that Assa Nand-respondent No. 2 had sold his entire land his surplus area had to be worked out in terms of Section 8(3) of The Haryana Ceiling on Lands Holdings Act, 1972 (hereinafter referred to as "Act, 1972") and first his permissible area had to be considered as surplus and thereafter the land of buyers (who are otherwise small land owners) could be considered on pro-rata basis.

5. Section 8(3) of The Haryana Ceiling on Lands Holdings Act, 1972 (hereinafter referred to as "Act, 1972") is as under:--

8(3). If any person transfer or disposes of any land after the appointed day in contravention of the provisions of sub-section(1), the land so transferred or disposed of shall be deemed to owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer or disposition is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area. If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the proportion to the land transferred or disposed off to them.

6. This Court in the matter of Mohan Singh (Dead) through Kirpal Singh and Others Vs. State of Haryana and Others, , has explained the scope of Section 8(3) of the Act, 1972 wherein his Lordship has held as follows:-

26. However, the main celebrated argument of learned counsel for the respondents that as the land was declared surplus under the Punjab Act, therefore, the same cannot be reopened under the Haryana Act and the land subject matter of sale deed of petitioners cannot be exempted from surplus pool,

is not only devoid of merit but misplaced as well. No doubt, no such exemption can possibly be claimed or granted to the petitioners, in view of clear and implicit legislative mandate underlying section 8(1) of the Haryana Act, but as indicated above, the petitioners are neither claiming the exemption of their land from the surplus pool nor they have sought to challenge and reopen the declaration of such surplus area. However, they are only claiming the legal benefit as envisaged u/s 8(3) of the Haryana Act, which posits that "if any person transfers or disposes of any land after the appointed day in contravention of the provisions of sub-section (1), the land so transferred or disposed of shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer or disposition is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area. If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the proportion to the land transferred or disposed off to them.

7. Learned Assistant Advocate General has not cited any judgment contrary to Mangat Ram's case (supra) and Mohan Singh's case (supra) and is not in a position to deny the applicability of Section 8(3) of the Act, 1972 in the facts of the present case.

8. Thirdly, the learned senior counsel has argued that the entire purchase made by the petitioner is bona fide. As regards this contention, in my opinion the extent of the protection of the interest of vendees is limited to Section 8(3) of the Act, 1972. Beyond that there is no protection given to any vendee for any reason; that he was not aware that the land was surplus or that he purchased it for valuable consideration or that the transaction was made in a good faith. To seek any relief beyond that granted by Section 8(3) of the Act, 1972 the vendees will have to seek redressal against the vendor and not the State. In the circumstances, the petition stands disposed of in the above terms and the impugned order (Annexure P-3) is set aside. The respondent No. 1 is directed to consider the facts of the judgment in Mangat Ram's case (supra) and the effect of Section 8(3) of the Act, 1972 and re-determine the surplus area of Assa Nand-respondent No. 2 (now through his vendees) accordingly. The petitioner through counsel is directed to appear before the prescribed authority on 20.01.2014 who will then proceed in the matter after issuing notice to the other owners of the land which belonged to Assa Nand-respondent No. 2.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.