(2013) 08 P&H CK 0166

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 14633 of 1990

Smt. Pyari and Others — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 12, 8, 9

Citation : (2013) 08 P&H CK 0166

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Arun Palli and Mr. Sunil Garg, for the Appellant; Deepak Girotra, AAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The order in challenge in the writ petition is one issued by the Financial Commissioner while disposing of the revision filed

under the Haryana Ceiling on Land Holdings Act, 1972. Imrati Devi, the original land owner had filed a declaration form u/s 9 of the Act on

12.08.1976. The prescribed authority had got the family particulars verified and it found that on the appointed day on 24.01.1971, she was the

owner of 1238 kanals 15 marlas of land but before her death, she had purported to have executed a Will on 04.02.1975 giving the land to three of

her nieces and one grand son. All the legal heirs claiming as beneficiaries under the Will, contended that each one of them be treated as entitled to

separate units and sought for a determination of their entitlement to the respective holdings. Their claims were considered by the first appellate

authority to hold that each one of the beneficiaries was to be treated as separate unit and there existed no surplus area. The State of Haryana had, therefore, come up before the Financial Commissioner to contend that vesting of the property in the State had taken place on the appointed day on

24.01.1971 and the Will executed by her subsequently distributing the property to several other persons ought not to be taken into reckoning. This

was accepted by the Financial Commissioner and held that the Will or even the natural succession to the heir was irrelevant. The Financial

Commissioner, therefore, interfered with the order passed by the prescribed authority and set aside the orders passed by the authority below and

directed a fresh consideration of the surplus. It is this order, which is brought in challenge before this Court.

2. Learned counsel appearing for the petitioner would refer the Haryana Amendment Act 40 of 1976 to the Haryana Ceiling on Land Holdings

Act, 1972 that modified the vesting provisions contained u/s 12. Section 12 of the Haryana Ceiling on Land Holdings Act, 1972 reads thus:-

12 VESTING OF SURPLUS AREA.--(1) The surplus area of a landowner shall be deemed to have been acquired by the State Government for

a public purpose and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being

in force) of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any

encumbrance:

Provided....

(2) The right and interest of the tenant....

(italics supplied)

3. I may immediately point out the proviso applies for permissible area of the mortgagor and since we are not considering the case, we are

discarding the proviso. We are not also considering the claims of any tenant of the surplus area and therefore, clause (2) is irrelevant. The vesting

which Section 12 contemplates, therefore, shall be with reference to the property which is ''declared as such surplus''. Admittedly, the land

owners'' holding did not come for any adjudication earlier either under the Punjab Security of Land Tenures Act or under the Pepsu law. After the

coming to the force of the Act, there had been no determination at all and the land owner himself had come by means of an application in the year

1976 for determination of her holdings. She had died before any declaration was made by the Collector or any utilization of the property that could

have been declared as surplus. It is in this context that Section 8 obtains relevance. Section 8 protects certain transfers and it has to be understood

in a technical sense, for it includes within the Section not merely transfers but also devolution of interest in succession. The Section reads thus:-

8. CERTAIN TRANSFERS OR DISPOSITIONS NOT TO AFFECT SURPLUS AREA.-(1) Save in the case of land acquired by the Union

Government or the State Government under any law for the time being in force or by a tenant under the pepsu law or the Punjab law or by an heir

by inheritance, no transfer or disposition of land in excess of-

(a) xxxx xxxx xxxx

(b) xxxx xxxx xxxx

(italics supplied)

4. Consequently, if ''the land acquired by the Government'' shall be deemed to be the property declared as surplus (in the manner contemplated u/s

8 extracted above) but if no such declaration had been made and the succession opened before such declaration or utilization by the State then the

effect of succession must be fully given vent to. The admitted position is that there had been no declaration made already. If there had been a

declaration under the Punjab or the Pepsu laws, it would have been irrelevant that there was no utilization. In an eventuality of declaration of

surplus having been made under the Punjab or Pepsu laws, the coming into the force of the Act on the appointed day itself would have operated to

vest the property in the State, no matter that the property was not utilized. In this case before a declaration was made by the State, succession had

opened and therefore, by conjoint reading of Section 8 and 12, the representatives of the deceased landowner were entitled to keep their own

holding as having taken place by way of succession and seek for a re-determination.

5. The impugned order is, therefore, set aside. The claim put forward by the representatives was under a Will. The language used u/s 8 is land

acquitted ""by an heir by inheritance"". I have not examined the situation of whether the expression could include a devolution through a Will. The

expression of devolution through a will in legal parlance could mean a bequest to a person who may or may not be an heir. I cannot assess whether the petitioners could be said to obtain interest in the property by devolution by inheritance if the Will were to be discarded. It shall be open to the

State to gather details of whether the petitioners could be stated to be heirs by inheritance and if any fresh assessment is sought to be done, the

State shall join the petitioners in the enquiry to consider their objections. As of now, the determination of the property held by the petitioners as

falling within the surplus area was erroneous. The writ petition is allowed to the above extent but reserving the right to the State for fresh

consideration in the light of observations made above.

