
(2005) 05 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7744 of 1987

Smt. Ranjeet Kaur

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Security of Land Tenures Act, 1953 — Section 32D(2), 32FF
Punjab Security of Land Tenures Rules, 1956 — Rule 6(3), 6(7)
Punjab Tenancy Act, 1887 — Section 90, 90(1), 90(2)

Citation : (2005) 141 PLR 116 : (2005) 3 RCR(Civil) 390

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : Ashok Verma, for the Appellant; S.S. Duhan and B.S. Chahar, for the Respondent

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—Prayer in this writ petition filed under Articles 226/227 of the Constitution of India by the petitioner is for quashing orders dated 6.7.1984 (Annexure P-1), 22.8.1986 (Annexure P-3) and 23.6.1987 (Annexure P-4) passed by the Collector Surplus Area, Sirsa, Commissioner, Hisar Division, Hisar Camp at Hisar and the Financial Commissioner, Haryana respectively.

2. The petitioner claims to have purchased land bearing Rect. No. 96, Killa No. 10/2(2-16), 11/1(4-16), Rect No. 112, Killa No. 25/1(4-9), Rect. No. 113, Killa No. 21(7-12) 22(4-0) measuring 23 Kanals 13 Marias situated in Village Nanuana, Tehsil and District Sirsa belonged to respondent No. 5 a big land owner vide registered sale deed dated 29.7.1968.

3. Pursuant to proceedings, initiated under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "the 1953 Act"), the Collector vide order dated 22.1.1962 determined the permissible/surplus area belonging to respondent No. 5 and declared, land allegedly purchased by the petitioner, as the

surplus area of Respondent No. 5.

4. An appeal filed against this order, before the Commissioner, Hisar Division, Hisar was successful and the case was remanded to the Collector, Surplus Area vide order dated 29.8.1963. The Collector determined surplus area afresh vide order dated 30.6.1980. This order was again impugned before the Commissioner, Hisar Division, Hisar, who, vide order dated 9.5.1983 once again remanded the matter to the Collector, Surplus Area, with a specific direction to decide the case afresh, after granting full opportunity of hearing to the landowner, as also to all tenants and vendees.

5. After remand, the surplus area case of respondent no. 5 was decided vide order dated 6.7.1984 (Annexure P-1). The land, comprising the alleged tenancy of the petitioner was declared surplus.

6. Aggrieved by the order Annexure P-1, vide which land purchased by the petitioner was declared surplus, she preferred an appeal, before the Commissioner, Hisar Division, Hisar, claiming therein that the order Annexure P-1 was void, qua her rights as a vendee, as no notice had been issued or served upon her during the course of the proceedings, which culminated in the order Annexure P-1.

7. The appeal was dismissed vide order dated 22.8.1986 (Annexure P-3). The revision filed by the petitioner before the Financial Commissioner, Haryana, was also dismissed. The Commissioner as also the Financial Commissioner declined the petitioner's plea that she was mandatorily required to be served with a notice, on the ground that as she had purchased the land being conscious of the fact that the land could have been declared surplus and, therefore, she had no plausible defence and thus no right to be heard. It was also held that as the Collector had thoroughly and extensively issued a general proclamation to all interested persons, the failure of the petitioner to put in appearance would not entitle her to get the order of surplus area set aside.

8. Counsel for the petitioner vehemently contends that the order Annexure P-1 vide which land purchased by the petitioner has been declared surplus is liable to be set aside as no notice of the proceedings to declare the land surplus was ever issued/served upon her. The petitioner, being a transferee from the big land owner before the passing of Annexure P-1, was a person concerned/person interested and, therefore, the Collector was obliged to serve a notice upon her and provide her with an adequate opportunity to defend her rights. The petitioner's rights could not have been brushed aside by holding that she did not possess any plausible defence. This Court has held in *Hardev Singh and Ors. v. State of Punjab* and Ors. 1971 P.L.J. 283 that the requirement to serve a notice, upon a transferee is not dependent upon the nature of defence and cannot be used as an excuse to deny an opportunity of hearing.

9. The failure of the Collector to serve such a notice upon the petitioner would render the proceedings illegal, null and void in so far as it concerns the

petitioner. For the proposition that a vendee is required to be served with a notice, counsel for the petitioner places reliance upon *Gurcharan Singh and Ors. v. Prithi Singh and Ors.* 1974 P.L.J. 166 (S.C.), *State of Haryana and Ors. v. Vinod Kumar and Ors.* (1986)89 P.L.R. 222 (F.B.), *Hardev Singh and Ors. v. The State of Punjab and Ors.* 1971 P.L.J. 283 (D.B.), *S. Pritam Singh Chahil v. State of Punjab and Ors.* 1967 P.L.J. 114 *Harnek Singh and Anr. v. The State of Punjab and Ors.* (1972)74 P.L.R. 127 (F.B.), *Birbal v. Bawa Basant Dass and Ors.* 1971 P.L.J. 65 *Lal Singh and Anr. v. State of Punjab and Ors.* 1972 P.L.J. 730 *Jodh Singh deceased represented by L.Rs v. Joginder Singh and Ors.* 1987 P.L.J. 6 and *Saber Khan and Ors. v. The Financial Commissioner (Appeals) Punjab and Ors.* 1993 P.L.J. 208.

10. It is further argued that the findings returned by the Commissioner, and the Financial Commissioner that the Collector made a general proclamation, pursuant whereunto all vendees and tenants appeared, is not borne out from the record. The interim orders passed by the Collector, which are reproduced in para 10(v) of the grounds of the present writ petition do not refer to the issuance of any notice to the petitioner, the mode and manner of their issuance or the report of service thereon. The findings returned by the Commissioner and the Financial Commissioner, are liable to be set aside, as they are contrary to the record.

11. Counsel for the official respondents on the other hand contends that the petitioner has not placed any material on record to substantiate her plea that she was not served personally or by proclamation. As recorded in the orders of the learned Commissioner/Collector, the petitioner was duly served. There is no reason to doubt the correctness of the findings recorded by the revenue officers.

12. Even otherwise, as the sale deed between respondent No. 5 and the petitioner does not bind the State and as the petitioner has no plausible defence, an opportunity of hearing, would be only wastage of time and an empty formality. No equities arise in favour of the petitioner/vendee to claim that land purchased be put in the permissible area of the landlord as held by the Supreme Court in *Lajpat Rai and Ors. v. State of Punjab and Ors.* 1981 P.L.J. 316 and, therefore, no notice is required to be served upon a transferee and no hearing afforded.

13. Before I proceed to adjudicate the respective contentions on merits, it would be appropriate to reiterate the legal position obtaining qua the rights of the State, the big land owner and a transferee from a big land owner.

14. As far back as in the year 1967, the Supreme Court, while examining the effect of a sale by a big land owner, though under the Pepsu Act, in *S. Pritam Singh Chahil v. The State of Punjab and Ors.* 1967 P.L.J. 114 held that a sale effected by a big land owner, after 21.8.1956, does not bind the State and would have to be ignored while adjudicating the permissible/surplus area of a big land owner. Such a sale would not effect the surplus area in any manner whatsoever. However, the Supreme Court clarified that such sales, though not binding on the

State would be legal, valid and binding between the big land owner and the transferee. Relevant extract of the above mentioned judgment is reproduced hereunder:-

"The proposal to introduce the said bill must have caused apprehension in the minds of the landowners that they would lose the lands above the permissible area and naturally they must have transferred their lands in favour of their relatives. Section 32-FF was added to frustrate such devices and to make the enforcement of the Act really effective. Under the said section such a transfer made after August 21, 1956, shall not affect the rights of the State Government under the Act to the surplus area to which it would be entitled but for such transfer. Between the transferor and the transferee the transfer would be good, but it would not be effective against the State Government. That is to say for ascertaining the surplus area the land transferred would be included in the transferor's land."

15. The above mentioned legal position has not undergone any change and is not dissimilar to the position under the Punjab Security of Land Tenures Act. It is, thus, apparent that a transferee from a big land owner would be a person concerned/a person interested in any misfortune that may befall the land purchased. In surplus area proceedings, there is a very real threat, of the transferees land being placed in the surplus area and such an act would prejudicial effect the rights of a transferee, if any. The principles of natural justice, are not excluded from their applicability to enactments for agrarian reforms and, therefore, there is no warrant for the proposition that a transferee from a big land owner is not entitled to an opportunity of hearing in proceedings to declare surplus land belonging to his vendor.

16. The contention of the learned counsel for the respondent; that service of a notice upon a transferee would be an exercise in futility as the transfer does not bind the State and there is no right in a transferee to claim that land transferred to it be placed in the permissible area of the landlord, in my opinion places the cart before the horse.

17. The right to a hearing, in my opinion, does not emanate from the nature of defence but from the threatened invasion of a transferees rights, howsoever minimal. The obligation to serve a notice is not to be misunderstood as accepting, even prima facie, any claim or right of the vendee. The notice, would not in any manner whittle down the rights of the State, statutorily enacted. Holding otherwise would be conferring power upon the Collector to prejudge the nature of the defence and the right to pick and choose a transferee required to be served with a notice. The statute does not warrant such an interpretation and nor does it seek to confer such powers upon the Collector. The question, whether the defence is plausible, bonafide or not would obviously be considered and decided after the transferee puts up a defence in response to a notice served upon him. A Division Bench of this Court in Hardev Singh and Ors. v. The State of Punjab and Ors. 1971 P.L.J. 283 has succinctly held as follows:-

"Even otherwise, the requirement of service of notice on all persons interested under Sub-rule (3) of Rule 6 of the 1956 Rules appears to us to be based on principles of natural justice requiring an opportunity being afforded to any person who is likely to be prejudicially affected by an order which might be passed in the relevant proceedings. The want of such a notice cannot be dispensed with or ignored on the mere ground that particular transferees or tenants who may otherwise be deemed to be the persons interested in the proceedings have really no good defence to the proposed order. It is no doubt correct that neither the Act nor the 1956 Rules, require the Circle Revenue Officer or the Collector to hold an investigation into who could be the possible persons interested in the proceedings before them. It is, therefore, manifest that notice under Rule 6(3) has to be issued in the proceedings before the Circle Revenue Officer only to such persons whose names may be mentioned in form "D" prepared by the Patwari or whose names may be shown in the relevant revenue records available to the Circle Revenue Officer as either vendees or donees or other transferees or tenants of the land which is proposed to be included in the surplus area of the original landowner. In the present case it is admitted that the names of the petitioners had been entered in the revenue record as donees of the disputed land on account of the sanction of the mutation of the gift, and that relief on account of the said alienation had been claimed by the landowner before the Circle Revenue Officer. We, therefore, hold that the entire proceedings for determination of the surplus area of the original land owner its so far as it relates to the land forming the subject matter of the gift deed in favour of the petitioners is concerned, are vitiated by the above mentioned apparent error of law which has prejudicially affected the petitioners."

18. The aforementioned judgment, was referred to with approval by a Full Bench of this Court reported as *Harnek Singh and Anr. v. The State of Punjab and Ors.* (1972)74 P.L.R. 127 (F.B.) though while considering the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as "the Pepsu Act"). The Full Bench held that a transferee from a big land owner was entitled to an opportunity of being heard.

"Though Mr. Seth has tried to argue that a transferee is included in the expression "persons concerned" occurring in Section 32-D(2) of the Act, and is, therefore, entitled to be heard at all stages relating to the declaration of the surplus area of the transferor, we consider it unnecessary to enter into this controversy for the simple reason that even if the statute and the rules framed thereunder are silent on the point, it appears to us to be necessary for satisfying the principles of natural justice, without which it is impossible to maintain the rule of law, to give an adequate opportunity to a transferee to safeguard his interest in proceedings which can possibly culminate in a decision prejudicially affecting him and his property rights. I have already illustrated in an earlier part of this judgment that the interests of such a transferee are always in jeopardy in proceedings for determination of the surplus area of his transferor. The Full Bench in *Pritam Singh's case* (1966) C.L.J. 165 (F.B.):I.L.R. (1966) P&H 707

appears to have thought (in the passage quoted above) that the net result of Section 32-FF was that "the transfers have to be ignored" and, therefore, "no question of any notice to the transferees arises." It has since been settled by the Supreme Court in *S. Pritam Singh Chahil's* case (supra) that the only effect of Section 32-FF is that such transfers do not bind the Government, but they are otherwise good transfers so far as the transferors and the transferees are concerned. The point in issue does not appear to have been argued before the Full Bench at any length and appears to have been raised there almost incidentally towards the end of the case. It appears to me that in view of the authoritative pronouncement of the Supreme Court in *Pritam Singh Chahil's* case relating to the scope and effect of Section 32-FF relating to transfers referred to therein and having regard to the other provisions of the Act and the Rules, the observations of the Full Bench in the case of *Pritam Singh and Ors. v. The State and Ors.* (supra) (about no notice of the surplus proceedings to the transferee being necessary), which have been quoted in an earlier part of this judgment, are no longer good law."

19. Other judgment on the controversy in hand is *Gurcharan Singh and Ors. v. Prithi Singh and Ors.*, 1974 P.L.J. 166 wherein the Hon"ble Supreme Court held that a transferee from the big land owner is entitled to be heard in proceedings of surplus area with respect to his vendor. A Full Bench of this Court in *State of Haryana and Ors. v. Vinod Kumar and Ors.* 1986 P.L.J. 161 examined the question whether an order passed without issuance of a notice to a transferee from the big land owner would be liable to challenge before a Civil Court for failure to serve a notice upon a transferee. The Full Bench held that as a notice was required to be served upon a transferee, the order could be challenged before a Civil Court. Other judgments of this Court, which also hold that a transferee from a big land owner is entitled to hearing are *Pritam Singh Chahil Vs. State of Punjab and Others*, , *Harnek Singh and Anr. v. The State of Punjab and Ors.* (1972)74 P.L.R. 127 (F.B.), *Hardev Singh and Ors. v. The State of Punjab and Ors.* 1971 P.L.J. 283 (D.B.), *Birbal v. Bawa Basant Dass and Ors.*, 1971 P.L.J. 65 *Lal Singh and Anr. v. State of Punjab and Ors.* 1972 P.L.J. 730 *Bhakhtawar Singh and Ors. v. The State of Punjab and Ors.* 1987 P.L.J. 7 *Sabar Khan and Ors. v. The Financial Commissioner (Appeals) Punjab and Ors.* 1993 P.L.J. 208 and *Raghubir Singh and Ors. v. State of Punjab and Ors.*, (2002)131 P.L.R. 747.

20. In so far as the judgment of the Hon"ble Supreme Court reported as *Lajpat Rai and Ors. v. State of Punjab and Ors.* 1981 P.L.J. 316 the controversy therein was whether a transferee could claim a right to include his land in the permissible area of the vendor/big land owner. The Hon"ble Supreme Court held that where the land owner had himself made a selection, the Collector had no right to alter the selection and, therefore, the vendees could not maintain an action requiring the Collector to include the land purchased by them in the permissible area of the land owner. In my opinion, the said judgment does not hold that a vendee is not entitled to a hearing during surplus area proceedings.

The principle set down in the afore mentioned judgment would be applicable during the course of hearing of surplus area proceedings, when the Collector would be called upon to consider the nature of the claim set out by a vendee. It is at that stage that the Collector, would consider all claims put forth by the vendee and decide them in accordance with law. To non suit a vendee on the basis of the afore mentioned judgment would in my opinion be pre judging the issue in hand and denying a right to a hearing on the basis of the proposed defence.

21. The legal position as stated above leaves no manner of doubt that a transferee from a big land owner before the surplus area case is concluded, is mandatorily required to be served with a notice, informing him of the pendency of surplus area proceedings against his/her vendor. Failure to do so would entail quashing of the order as being violative of principles of natural justice, in so far as it effects the transferees rights.

22. Even otherwise, a perusal of the order passed by the Commissioner, Hisar Division, Hisar dated 22.8.1986 reveals that the Commissioner had directed, that all the land-owners, tenants and vendees be afforded an opportunity of hearing. Thus, the petitioner, in the present case was required to be served with a notice and ordered an opportunity of hearing.

23. The question that now survives adjudication is whether the petitioner was actually served with a notice in the surplus area proceedings, which culminated in the order dated 6.7.1984 (Annexure P-1). As narrated in the earlier part of this judgment, the surplus area case was remanded to the Collector by the Commissioner vide order dated 9.5.1983, with a specific direction to grant full opportunity of hearing to the land owners, the tenants and the vendees. Upon remand, the Collector recorded orders dated 9.6.1983 and 16.1.1984 regarding service of notice upon persons interested. The orders read as follows:-

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"Today the case has come up before me on remand from the Deputy Commissioner. Now the case be put up after summoning the parties concerned for 27.6.1983.

Sd/-@TAB = Collector S.A. 9.6.1983

Present: Counsel for the parties as before. Chhant from the record has been produced. File be put up after summoning all the concerned persons on 14.2.1984.

Sd/- Collector S.A. 16.1.1984"

24. A perusal thereof reveals that the Collector vide order dated 9.6.1983 directed the concerned parties to be summoned for 27.6.1983. The said order does not specify the mode or manner, in which the parties concerned were to be summoned whether by personal notices or by proclamation. The orders that

follow, which are reproduced in the writ petition, make no reference to the fate of the service i.e. whether the summons were received, refused or served. There is no order directing service by proclamation or reference to any report evidencing service by proclamation upon any one, much less the petitioner.

25. The second order, which summons "all the concerned persons" also suffers from the same infirmity.

26. Rule 6(7) of the Punjab Security of Land Tenures Rules, 1956 (hereinafter referred to as "the 1956 Rules") prescribes the procedure for service of a notice in Form F. The said Rule further postulates that such notice shall be served as if it were a summon u/s 90 of the Punjab Tenancy Act, 1887. Section 90 Sub-section (1) requires that summons issued by a Revenue Officer shall, if practicable, be served (a) personally on the person to whom it is addressed on failing which; (b) his recognised agent, or (c) an adult male member of the family who is residing with him. Section 90(2) provides that if service cannot be made, or if acceptance of service so made is refused, the summons may be served by pasting a copy thereof at the usual or last known place of residence of the person to whom it is addressed. Sub-section (3) empowers a Revenue Officer to serve by proclamation in case the persons having same interest are so numerous that personal service on all of them is not reasonably practicable.

27. A perusal of the interim orders, the correctness whereof has not been denied by the respondents, leaves no manner of doubt that no summon/notice was ever issued or served upon the petitioner in accordance with the procedure detailed above.

28. The learned Commissioner and the Financial Commissioner have, however, held that the petitioner was served by proclamation. These findings have not been substantiated or supported by reference to any order directing service by proclamation or any report submitted by the process serving agency of the Collector, evidencing service by proclamation upon the petitioner. As noticed in the earlier part of the judgment, the respondents have failed to produce any record in support of these findings. Consequently, I have no option but to hold that service was never effected upon the petitioner whether personally or by proclamation and consequently, the Commissioner and the Financial Commissioner have incorrectly held that the petitioner was served by proclamation.

29. In view of what has been held above, it is apparent that the petitioner, a transferee from a big land owner was entitled to be served with a notice, intimating her about the pendency of the proceedings to declare land allegedly purchased by her as surplus. It is further held that as no notice was served upon the petitioner, the order of the Collector Annexure P-1 is illegal, being violative of principles of natural justice and is quashed, in so far as it effects the rights of the petitioner only. As a consequence, the orders of the Commissioner and the Financial Commissioner (Annexure P-3 and P-4) are also set aside.

30. It is, however, made clear that service of a notice, and/or grant of a hearing to the petitioner (transferee) shall not be construed to be an expression of opinion on the rights of the parties, which shall be determined by the Collector after affording an opportunity of hearing to the petitioner, the land owner and the State.

31. It is made clear that this order shall not be construed to reopen the entire case of the big land owner and the order of the Collector dated 6.7.1984 (Annexure P-1) is set aside only to the extent indicated above. Consequently, the present writ petition is allowed with no order as to costs.

32. The parties are directed to appear before the Collector on 11.7.2005, who shall adjudicate their claim afresh and in accordance with law, preferably within period of six months.