
(1994) 04 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5125 of 1988

Surjit Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 29-04-1994

Acts Referred:

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

Citation : (1994) 108 PLR 513

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : S.C. Mohunta and P.N. Makani, for the Appellant; L.N. Verma, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Surjit Singh and nine Ors. through this petition filed by them under Articles 226/227 of the Constitution seek issuance of writ in the nature of certiorari so as to quash orders passed by respondent No. 2, Financial Commissioner, Annexure P-5, vide which revision preferred by respondent-tenants against the order of the Commissioner dated 30th August, 1985, was accepted.

2. The brief facts of the case reveal that by order dated 10th June, 1961, Collector Surplus Area declared 96.89 ordinary acres of land as permissible area in the hands of big landowner, namely, Balram. This order was passed under the provisions of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act of 1953). This order was reviewed on 21st May, 1962 and landowner was held entitled to 60 ordinary acres of land. The matter however, once again came to the Collector, Surplus Area on 21st March, 1964, when the original landowner was examined who gave the list of Khasra numbers sought to be reserved as surplus area as also list of Khasra numbers which had increased on account of consolidation operations. In view of fresh Goshwara prepared by KhanCkand, Kanungo and verified by Vishnu Datt, Naib Tehsildar, the position of

the land holding of the said landowner was depicted as follows:-

O.A. St.A. 1.(a) Area of 15.4.53 381.66 117.81 (b) Area received through inheritance 126.63 39.21 2. Area increased on account of consolidation operation (which is to be given to the landowner) 28.41 8.88 3. Area left with Muni Devi through the Order of the Court. 19.55 6.11 4. Area acquired by the State Govt. 2.28 0.56 5. Area under old tenants 183.34 56.36 6. Permissible area to remain with the landowner. 60.00 18.67 7. Area to be declared surplus after making necessary additions and deductions. 271.33 83.20

3. In view of the land position as reflected above the Collector, Surplus Area, vide order dated 20th June, 1964, held landowner entitled to the permissible area of 60 Ordinary Acres and declared 27133 Ordinary Acres as surplus. List of the khasra number that came to be surplus under the Act was separated and appended to the aforesaid order as Appendix "A". Some of the tenants who were occupying the land of Balram, the original landowner, which had come into surplus pool filed an appeal before the Commissioner in the year 1980. This appeal was against the order dated 21.5.1962 of the Collector Surplus Area and the main ground of the tenants therein was that they being old tenants occupying the land that was declared surplus in the hands of the big landowner were entitled to retain the said land which was to be tenants permissible area. The appeal of the respondent-tenants was accepted resulting into remand of the case which came to be ultimately decided by Collector vide order dated 31st December, 1982. The surplus land of the landowner was reduced from 271.33 acres to 126.78 acres after counting for the old tenants permissible area. This order was obviously not to the liking of the petitioner who carried an appeal before the Commissioner mainly pleading there that on account of the death of original landowner Balram in 1974, the land declared surplus in his hands had not been utilised, all the heirs of the original landowner would be entitled to separate permissible area under the provision of Haryana Ceiling on Land Holdings Act of 1972 which had obviously come into existence after the death of the landowner. The Commissioner accepted this contention of the petitioners and remanded the case to the Collector for redetermining the surplus area in the hands of the legal heirs of Balram, the original landowner. Being aggrieved, respondent-tenants herein filed revision before the Financial Commissioner, who vide orders dated 13.1988 not only set-aside the order of Commissioner dated 30.8.1985 but also set-aside the one passed in favour of the tenants by the Collector dated 31.12.1982. The land owners being aggrieved of the orders passed by the Financial Commissioner have preferred this writ.

4. Mr. S.C. Mohunta, learned Senior Counsel vehemently contends that inasmuch as the land that was declared surplus on June 10, 1961 and which was reduced by order dated 21.5.1962 had not been utilised and in the meantime original landowner Balram died in the year 1974, the order of surplus had outlived its efficacy and there had to be a fresh computation and assessment of the land that had now come in the hands of legal heirs of Balram and that too in view of the

provisions contained in Haryana Act of 1972. He further contends that if the total land now available with the petitioners, was determined in view of the provisions contained under the said Act, each individual male being entitled to separate unit, there will be no land surplus in the hands of the petitioners. For his aforesaid contention, the learned counsel places reliance on the single Bench judgment of this Court in Naresh Saran v. F.C. Haryana 1990 P.L.J. 512. Learned counsel appearing for the respondents-tenants, however, with equal vehemence contends that the petitioners had no locus standi to challenge the order passed by the Collector, Surplus Area, way back in 1962, which was once again reviewed after landowner had submitted a list of khasra number in the year 1974, after a lapse of nearly 20 years and that too in a matter which was opened on the plea of tenants asking for tenants permissible area. He further contends that the area declared surplus under the provisions of Haryana Ceiling Act of 1972 automatically vests in the State on commencement of the Act as per provisions contained in Section 12 of the said Act.

5. After hearing the learned counsel for the parties and going through the records, this Court is of the considered view that there is no merit in any of the points canvassed by the learned counsel for the petitioners and therefore, this petition must fail.

6. The facts as given in detail above would reveal that it is the tenants who in the year 1980 filed an appeal before the Commissioner praying determination of tenants permissible area. It is their plea which was accepted by remanding the case of the Collector before whom for the first time the petitioners clamoured for setting aside the order passed in 1961, 1962 and 1964, reference of which has been given above. The Collector was bound by the remand order passed by the Commissioner and the same was only with regard to considering the case of respondent-tenants for determining as to whether they were entitled to have a declaration that land in their possession was tenants permissible area. In the aforesaid proceedings it was not disputed that the tenants were holding on to the land which was declared surplus in the hands of original landowner Balram. The landowners in consequence of the notice issued by the Collector were only to answer or defend the cause of the petitioners claiming tenants permissible area. They had no right whatsoever to ask for determination of surplus area and setting aside the order passed way back in 1961 to 1964. The Collector on account of reasons aforesaid was justified in not entertaining the plea of the landowners. The learned Commissioner in an appeal, however, upset the order of the Collector on wholly untenable grounds. The petitioners, if they were entitled to any relief on account of non-utilization of land which was declared surplus in the year 1960 to 1964, has necessarily to move independently on that behalf and it is in consequence of the notice in the said matter, if at all issued that the tenants were to defend the orders passed in years 1960 and 1964 respectively. Numerous questions could be raised by the tenants in opposing the claim of the landowners. They could plead finality of the orders which were now sought to be reopened even immediately after the death of Balram, the original landowner.

They could also press into service provisions of Section 12 of the Haryana Ceiling Act of 1972, but in no circumstances they could be called upon to defend the aforesaid orders in an appeal filed by them which of course, was remanded to the Collector for determining tenants permissible area. That apart, a Division Bench of this Court in *Bharat Bhushan v. State of Haryana* (1990) 97 P.L.R.274 has held as follows:-

" The Haryana Ceiling on Land Holdings Act, 1972, came into force on December 23, 1972. Since the provisions under the Haryana Act were different from the Punjab Act, the view taken by the learned Single Judge in *Daibara Singh's* case (supra) was obviously wrong in view of the Full Bench judgment in *Smt. Jaswant Kaur's* case (supra). The matter is squarely covered by the judgment in *Thath Singh's* case (supra) wherein it has been observed in para 4 thereof that "a bare reading of the aforesaid provisions . makes it clear that under the Punjab Land Reforms Act, 1972, the surplus area declared under the Punjab Law, which has not been utilised till the commencement of the Punjab Land Reforms Act, and the surplus area declared as such under the Punjab Land Reforms Act shall on the date on which possession thereof is taken by or on behalf of the State Government vest in the State Government. As against this, under the Haryana Act, the area declared surplus under the Punjab Law, which had not vested in the State Government shall be deemed to have vested in the State Government with effect from the appointed day i.e. 24.1.1971 ; in other words before 23.12.1972, when the Haryana Act was brought into force."

The facts of the reported case reveal that Prem Nath was a big landowner who died on 3.6.1976; During his life-time the Special Collector vide his order dated 24.6.1969 declared surplus area in his hands. Vide order dated 3.5.1978, permissible area of the landowner was reduced to 30 acres. After the death of the original landowner, his son Bharat Bhushan challenged the said order primarily on the ground that since the surplus area was not utilized till the death of his father, the matter was to be decided afresh under the provisions of the Haryana Ceiling on Land Holdings Act, 1972. This plea did not succeed and contentions raised on that behalf were repelled by a Division Bench in *Bharat Bhushan's* case (supra). Mr. Mohunta, however, placed reliance upon the single Bench decision of this Court in *Naresh Saran's* case (supra). It is true that the Single Bench has taken a view contrary to the one that was taken in *Bharat Bhushan's* case (supra). However, it is an admitted position that L.P.A. against the aforesaid decision is pending in this Court Sitting singly, I have no choice but for to follow the view of the Division Bench particularly which the view of Single Bench holding contrary to the law laid down by the Division Bench is a subject of appeal.

7. The contention of Mr. Mohunta that till such time the Letters Patent Appeal that has been preferred against the judgment of the Single Bench is disposed of, the matter be kept pending, does not impress me as the same will not serve any useful purpose in view of recent pronouncement of the Supreme Court in *Mala*

Singh Vs. Financial Commissioner and others, . While reversing the decision of this Court it has been held that "the tenants" permissible area even though not utilized, the death of the landowner would make no difference in the matter as expression "Utilized" has not been defined under the Act It has been, however, used in Sections 10-A and 10-B of the Act to indicate that the surplus area of a landowner gets utilized on the resettlement of tenants on the said land." It has further been held that "under the scheme of the Act, the surplus area of a landowner gets utilized on the resettlement of tenants. on the said land.". It has further been held that "under the scheme of the Act, the surplus area of a big landowner could be used for the resettlement of landless tenants and Sections 10-A and 10-B of the Act provided that as and when it was done, the said surplus area was taken to be utilized If the surplus land allotted to the landless tenants under the Act stood utilised, there is no reason why the surplus land which was declared as tenant's permissible area under the Act be not considered to be utilised"

8. In view of the observations of the Supreme Court, as noticed above, the occupation of the tenants on their permissible area results into utilization, It is true that the Financial Commissioner has even set aside the order of Collector declaring that respondent-tenants are holding on to the land which is tenants' permissible area, yet it is proved that they are old tenants. It is so reflected in order dated June 20, 1964 wherein it is clearly mentioned that the area under the old tenants is 183.54 acres. The Financial Commissioner has also not completely closed the chapter as he has left the matter open watch is to be determined in consequence of his order. In the operative part of the judgment, it has been held by the Financial Commissioner that the tenants, who claim that they were entitled to tenants' permissible area which has actually been declared surplus, can apply to the Prescribed Authority, Sirsa, giving full details and the necessary evidence in support of their claim. He has further held that if the Prescribed Authority is satisfied with their claim, he may forward the case to the Financial Commissioner for passing appropriate orders u/s 33 of the Haryana Ceiling on Land Holdings Act, 1972, It is only the technicality which came into the way of tenants when the Financial Commissioner set aside the order of Collector holding that the tenants were occupying their permissible area. If, perhaps, this writ had not been filed, in consequence of the" orders passed by the Financial Commissioner, the Collector might have sent the matter to the Financial Commissioner by now and the matter, in all probability, would have been finalised.

9. Finding on merit, I dismissed this writ petition. Parties are, however, left to bear their own costs.