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**(1995) 09 P&H CK 0099**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 4493 of 1981**

Telu Ram and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

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**Date of Decision :** 15-09-1995

**Acts Referred:**

Punjab Security of Land Tenures Act, 1953 — Section 2(8), 24

**Citation :** (1996) 112 PLR 152

**Hon'ble Judges :** T.H.B. Chalapathi, J

**Bench :** Single Bench

**Advocate :** S.C. Mohunta, C.B. Goel, Ashutosh Mohunta and Rajinder Goel, for the Appellant; Amol Rattan Singh, A.A.G., for the Respondent

**Final Decision :** Allowed

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## Judgement

T.H.B. Chalapathi, J.—This writ petition is filed to issue a writ of certiorari quashing the orders of the respondents Nos. 2 and 3 which are Annexures P-2 and P-3 to the writ petition.

2. The writ petitioners are the legal heirs of Moola Ram. The said Moola Ram was a big land owner owning lands in village Nohra. His surplus land was determined by the authorities under the provisions of the Punjab Security of land Tenures Act. 1953 by an order dated 7.1.1994. In the said order, the authorities included an extent of 13/1/4 unit Banjar Quadim lands as the land belonging to the big Land owner for the purpose of determination of surplus land. Thereafter Moola Ram filed an application before the Collector, Agrarian, Panipat to exclude the Banjar lands from the total land while computing his surplus land under the Punjab Security of Land Tenures Act 1953. The Collector, Agrarian, Panipat by his order dated 20.12.1978 (Ann. P-1) sought instructions from the Financial Commissioner cum Secretary, Haryana Government for allowing him to modify the order dated 7.1.1964, giving the benefit of Banjar Qadim land to the petitioner. The said memo dated 20.12.1978 shows that the matter was pending for one reason or the other from 1964 onwards. The Collector addressed a letter

to the Commissioner, Ambala Division, Ambala seeking permission to review the earlier order for giving benefit of Banjar Kadim lands to the land-owner. Then the Commissioner, Ambala Division, by his order dated 15.7.1980, rejecting the review petition on the ground that there is no provision for review. The said order was confirmed by the Financial Commissioner by his order dated 27.7.1981 on revision. Against the order of Commissioner dated 15.7.1980 and that of the Financial Commissioner dated 27.7.1981, the petitioners approached this Court.

2. The first question to be gone into in this writ petition is whether the authorities have got the power of review against the orders passed under the Punjab Security of Land Tenures Act, 1953. Section 24 of the Punjab Security of Land Tenures Act, 1953 says that the provision in regard to appeal, review and revision under this Act shall, so far as may be, be the same as provided in Sections 80,81,82,83 and 84 of the Punjab Tenancy Act, 1887. Section 82 of the Punjab Tenancy Act, 1887 provides for review of the orders passed by the revenue authorities. Section 82 reads as follows:-

"82. Review by Revenue-officers. - (1) A Revenue-officer, as such, may either of his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessor in office:

Provided as follows: -

(a) When a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue Officer of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessor in office, he shall first obtain the sanction of the Revenue-Officer to whose control he is immediately subject:

(b) no application for review of an order shall be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period;

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3. Thus a reading of Section 82 read with Section 24 of the Punjab Security of Land Tenures Act, 1953 clearly shows that the power of review can be exercised by the Officers acting under both the Acts. Therefore, the Commissioner is not correct in dismissing the application of the petitioner for review on the ground that there is no provision. No doubt true that the power of review cannot be exercised unless the statute provides for it. As already indicated, the statute provide the power of review and therefore the same can be exercised by the Revenue Officers.

4. According to the Collector Agrarian, Banjar Kadim land was also included in the holding of Moola Ram while computing his surplus area under the Punjab Secretary of Land Tenures Act, 1953. Therefore, the question is whether the

Banjar Kadim land will have to be excluded from consideration while determining the surplus area of the land owner. u/s 2(8) of the Punjab Security of Land Tenures Act, "Land" shall have the same meaning as are assigned to them in the Punjab Tenancy Act, 1987. u/s 4 of the Punjab Tenancy Act, 1887 "land" means land which is not occupied as the site of any building in a town or village and is occupied or has been left for agricultural purposes or for purposes subservient to agriculture, or for pasture and includes the sites of buildings, and other structures on such land and banjar land. While interpreting Section 2(8) of the Punjab Security of Land Tenures Act, 1953 read with Section 4(1) of the Punjab Tenancy Act, the Supreme Court in *Munshi Ram v. The Financial Commissioner, Haryana etc.* 1979 P.L.J. 182 held that Banjar Qadim and Banjar Jadid lands cannot be taken into account while computing surplus area under the Act because not being occupied or let for agricultural purposes or purposes subservient to agriculture, it does not fall within the purview of "land" under the Act. The Supreme Court referred to the decision of this Court in *Nemi Chand Jain v. Financial Commissioner, Punjab* (1964) 66 P.L.R. 278, *Sadhu Ram v. Punjab State* 1965 P.L.R. 84, *Amolk Raj v. Financial Commissioner, Planning Punjab* (1966) 45 L.L.T. 195 :1967 P.L.R. 319, *Jaggu v. Punjab State* (1967) XLVI L.L.J. 64 and *Jiwan Singh Vs. The State of Punjab and Others*, with approval and stated that the view taken by this Court in all these decisions proceeds on a correct interpretation of the statutory provisions as stood at the relevant time. It is not brought to my notice any other decision of the Supreme Court which has taken a contrary view. I am bound by the decision of the apex Court. Therefore, there cannot be any doubt that Banjar Qadim and Banjar Jadid lands have to be excluded from the holding of the land owner and only after such exclusion, the surplus area under the Punjab Security of Land Tenures Act, 1953 could be determined. Therefore, the Collector rightly sought to review the order passed earlier under the Act.

5. In view of my foregoing discussion, the orders of the Commissioner, Ambala Division dated 5.7.1980 (Ann.P.2) and that of the Financial Commissioner, Haryana dated 27.7.1981 (Ann.P.3) are liable to be set aside and I accordingly quash the said orders and remand the matter to the Collector Agrarian, Panipat, for re-determination of the Surplus area in the hands of Moola Ram under the provisions of the Punjab Security of Land Tenures Act 1953 after excluding Banjar Qadim land.

6. The Writ Petition is accordingly allowed. However, there will be no order as to Costs.