

PETITIONER:  
RAM SWARUP & ORS.

Vs.

RESPONDENT:  
S.N.MAIRA & ORS

DATE OF JUDGMENT: 17/12/1998

BENCH:  
S.Saghir Ahmad, G.B.Pattanaik

JUDGMENT:

PATHAK.J.

The appellants are landless persons and they had been allotted different parcels of surplus land of the surplus holder Late Prem Nath Maira after determination of the surplus in his hand by the Collector by Order dated 8th of June, 1960 under the Punjab Security of Land Tenures Act, 1953. The order of the Collector dated 21.4.61, declaring surplus in the hands of the land holder was assailed in appeal but the same was dismissed by the Commissioner, Ambala Division by his order dated 14.7.61. Against the appellate order a revision was carried to the Financial Commissioner in the year 1981 and it was contended before the Financial Commissioner that the original land holder having died on 5.1.76 before the vesting of the land in the State of Haryana under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, the heirs of the original surplus land holder inherited the same and consequently the question of surplus will have to be determined under the provisions of Haryana Act and there is no surplus. The Revisional Authority dismissed the said revision at the admission stage itself basically on the ground that the determination of surplus made by the Collector on 21.4.61 under the provisions of Punjab Security of Land Tenures Act, 1953 cannot be upset after 21 years and also on the ground that Section 12(3) of the Haryana Act having come into force retrospectively with effect from 21.3.72, the land must have to be vested in the State prior to the death of the surplus holder and therefore, no question of inheritance would arise and the lands have been utilised by way of settlement in favour of different landless persons. The matter was then carried to the High Court in a writ petition. The High Court by the impugned Judgment being of the opinion that notwithstanding the retrospective effect given to the provisions of Haryana Ceiling on Land Holdings Act, 1972, the said notification being made only in the year 1976 and the original holder having died prior to that date there was no vesting of the land in the State and therefore on death of the surplus land holder the legal heirs would be entitled to individual ceiling units under the Haryana Act and the earlier declaration of surplus under the Punjab Security of Land Tenures Act cannot take away that right. Accordingly, the High Court directed for re-determination of the surplus in accordance with the provisions of the Haryana Act. It may be stated at this stage that the present appellants who

had been allotted the lands and were given possession of the same since 1976, after declaration of surplus by the Collector were not parties to the Writ petition in the High Court and being aggrieved by the order of the High Court in the writ petition, they have approached this Court.

Mr. Mahabir Singh, the learned counsel appearing for the appellants contends that admittedly after declaration of the surplus in the hand of the surplus land holder under the provisions of Punjab Security of Land Tenures Act, 1953 and allotment of the surplus land in favour of the appellant and deliver of the possession to them confers an indefeasible right which could not have been taken away in their absence and the High Court committed gross error in interfering with the order of the Revisional authority. The learned counsel on merits also contends that Section 12(3) being retrospective in nature in the eye of law, the said provision must be held to be existing on the statute book with effect from 23.12.72. The original surplus holder having died in the year 1976, the legal heirs cannot claim independent ceiling units on the basis of inheritance under the provisions of Haryana Act and High Court, therefore, committed error in interpreting the provisions of Section 12(3) of the Act. The learned counsel appearing for the respondent on the other hand contended that death of the surplus holder having occurred earlier than the actual notification bringing Section 12(3) on the statute book, the legal heirs of the surplus holder are entitled to claim their right and the retrospectively of Section 12(3) will not take away that right. The learned counsel further contended that the lands not having been vested in the state under the provisions of Punjab Security of Land Tenures Act notwithstanding the declaration of surplus by the Collector and Haryana Act having come into force, the rights and liabilities will have to be determined under the provisions of Haryana Act and the High Court was, therefore, justified in interfering with the Revisional Order.

Having considered the rival submissions it appears to us that the High Court was not justified in interfering with the revisional order both on the ground that the persons affected were not parties as well as on the ground that the provision of Section 12(3) of the Haryana Act has not been correctly interpreted. From the available records and the orders passed by the authorities it is crystal clear that the Collector declared surplus land in the hands of the original surplus land holder by his order dated 8.6.60. Thereafter such surplus lands were allotted to different landless persons and possession thereof was given to them who have been continuously in possession of the same since 1976. By such allotment and delivery of possession in their favour, rights have been conferred on such allottees and therefore, any order without impleading them as parties could not have been passed which has the effect of taking away their rights. These appellants allottees were not parties to the writ petition and therefore, the High Court was in error in snatching away their rights without hearing them and without impleading them as parties in the writ petition. That apart, even on the question of interpretation of Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, we also find that the High Court has committed an error. The provisions no doubt was brought on to the statute book in the year 1976 by which time the original surplus holder had died but the legislature having

given the said provision the retrospective effect w.e.f. 23.12.72 and as such the rights of the parties will have to be governed, treating the provisions on the statute book on 23.12.72. The land holder having died much thereafter, in the eye of law the lands in question vested with the State on 23.12.72. Death having occurred much later in 1976, the legal heirs cannot claim any right on the basis that they are entitled to an individual ceiling unit as the land has not been utilised. The High Court obviously has not considered the effect of giving retrospectively to the provisions of Section 12(3). In this view of the matter, the conclusion of the High Court cannot be sustained and we quash the same. This appeal is allowed. The writ petition filed by the heirs of the original surplus land holder stands dismissed. There will however be no order as to costs.