

Case NO.:
Appeal (civil) 7156 of 2000

PETITIONER:
HARNEK SINGH

RESPONDENT:
FINANCIAL COMMISSIONER, APPEALS, PUNJAB AND ORS,

DATE OF JUDGMENT: 06/12/2000

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2000 Supp(5) SCR 429

The following Order of the Court was delivered : Leave is granted.

The appellant who claims to be the legatee of the owner of the land, late Daljit Singh, assails the order of the High Court of Punjab & Haryana passed in CWP No. 11100 of 1998 dated July 30, 1998. By the impugned order the High Court confirmed the order of the Financial Commissioner Appeals-II dated June 26, 1998 in Case No. R.O.R. No. 115 of 1997-98.

This appeal arises out of the proceeding initiated before the Collector Agrarian, Dhuri by respondents 5 to 10 for delivery of possession of the land in question on the ground that it was allotted to them on September 22, 1980. The Collector dismissed their application on April 17, 1997. They carried the matter in appeal before the Commissioner, Patiala Division, who by order dated September 22, 1997 allowed the appeal and remanded the case to the Collector for passing a speaking order. Daljit Singh filed revision against that order before the Financial Commissioner (Appeals-II) (East Punjab), which was dismissed on June 26, 1998. The appellant claiming to be the legatee of Daljit Singh filed the aforementioned writ petition assailing the validity of the said order of the Financial Commissioner passed on June 26, 1998. The writ petition was dismissed by the High Court on July 30, 1998. It is against that order that the appellant is in appeal before us.

Mr. P.C. Jain, the learned senior counsel appearing for the appellant, contends that after determination of surplus land under the Pepsu Tenancy Agricultural Lands Act, 1955 [for short, 'the Pepsu Act'] there has to be re-determination under the provisions of the Punjab Land Reforms Act, 1972 [for short 'the Land Reforms Act'], Without such re-determination and without taking possession of the surplus land, there is no vesting of the land in the State Government as such the alleged allotment of the land in question in favour of respondents 5 to 10, is without authority of law: the order passed by the Commissioner and the impugned order passed by the High Court, are liable to be set aside.

Mr, D.S. Bali, the learned senior counsel appearing for respondents 5 to 10, on the other hand, contended that the land in question had vested in the State Government; on June 29, 1976 when the Collector passed order declaring an extent of 16.98 standard acre as surplus land under the Pepsu Act. Learned counsel further submitted that there was no necessity for any re-determination under the provisions of Land Reforms Act and that Section 8 was not attracted to the facts of the case. According to him by virtue of the first proviso to sub-section (2)(i) of Section 28, the land stood vested on being declared as surplus land by the Collector.

To appreciate the contentions raised by the learned counsel, it will be necessary to refer to the facts leading to passing of the said order of the

Collector dated June 29, 1976 under the Pepsu Act and the developments

thereafter. On the proceedings for determination of surplus land under the Pepsu Act being initiated the Special Collector declared that Daljit Singh held 22.15 standard acres as surplus land on January 23, 1963, That order was carried in appeal by him but it was dismissed on May, 27, 1963. In the revision filed against that order, the said Daljit Singh raised a plea that there was orchard on the land and, therefore, the land comprising thereof could not be computed in determining surplus land; but that plea was rejected and on January 27, 1965, the case was remanded back to the Collector for fresh consideration by the Commissioner. That order was unsuccessfully challenged in Writ Petition No. 1219 of 1965 which was dismissed on February 21, 1974.

In the meanwhile, the Land Reforms Act came into force on April 2, 1973. It appears under the Land Reforms Act, Daljit Singh filed a declaration on October 3, 1973 on which the Collector, Agrarian, Malerkotla, passed order on June 27, 1976 (hereinafter referred to as 'P1') holding that according to Section 5(1) of the said Act, the land owner was entitled to reserve two units of land as permissible area i.e. one unit for himself and one unit for his major son. Therefore, it was clear that there was no surplus area with the land owner and as such no action was required to be taken in that case.

While so, the Collector, Malerkotla, after remand of the case pending under the Pepsu Act, by order dated September 26, 1974 declared that the land owner was having surplus land of 20.75 standard acres. On appeal of Daljit Singh against that order, the Commissioner, Patiala, on May 30, 1975, remanded the case to the Collector to consider the effect of the decree of the Civil Court. On fresh consideration the Collector, Malerkotla, by his order dated June 29, 1976 (hereinafter referred to as 'P2') declared the owner was in possession of 16.98 standard acres as surplus land. We are told that an appeal from the said order was dismissed by the Commissioner on November 15, 1979.

It may be noticed here that at that stage allotment of the surplus land in favour of respondents 5 to 10, was made without notice to Daljit Singh. Yet another development that took place is that on July 30, 1982, Gurbirender Singh son of Daljit Singh (respondent No, 11) filed application before the Collector to stop all further proceedings under the Pepsu Act. It seems that in view of the order passed by the Supreme Court in the appeal filed by the State against the order of the High Court of Punjab & Haryana in Writ Petition No. 3746 of 1970 (Ranjeet Ram v. The State) all further proceedings were stayed by the Collector on July 30, 1982 (hereinafter referred to as 'P3').

Now, advertent to narration of case of Daljit Singh, it may be noted that aggrieved by the order of the Additional Commissioner dated 15.11.1979, he filed a revision before the Financial Commissioner (Appeals) who by his order passed on 1.9.1983 referred the case to the Commissioner Patiala Division. Inasmuch as copies of those two orders are not filed for our perusal, we do not propose to deal with the same. What is placed before us is the order of the Commissioner dated 4.9.84 who set aside two orders i.e. P1 & P3 and upheld the order P2, referred to above. On further revision, on March 5, 1997, the Financial Commissioner (Appeals), set aside the order of the Commissioner dated 4.9.84, insofar as it related to P1 and P3, and confirmed the order in regard to P-2. Thereafter there was a lull till respondent Nos. 5 to 10 filed application seeking delivery of possession of the land in question on December 16, 1996 which gave rise to the present appeal.

Here the germane question is : When did the surplus land, if any, of Daljit Singh, the land owner, vest in the State Government to deal with and allot the same to respondents 5 to 10? As the proceedings for determination of surplus land were completed under the PEPSU Act, even assuming that it

applies, for vesting of the land in the State Government; it may be necessary to refer to Section 32-J(1) of the Act which reads as under :

"32-J. Disposal of Surplus Area.-(1) the surplus Area acquired under section 32E shall be at the disposal of the State Government."

Sub-section (I) of Section 32-J states that the surplus area acquired under Section 32E shall be at the disposal of the State Government, It is thus evident that only on acquisition under Section 32E, the surplus land will be at the disposal of the State Government. Section 32E of the Pepsu Act deals with vesting of surplus area in the State Government. A perusal of the said provision shows, inter alia, that after the date of publication of the final statement in respect of a land owner or tenant in the Official Gazette and on the date on which possession of surplus land is taken by or on behalf of the State Government, such surplus area of the land owner shall be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest of all persons in such land be extinguished and such rights, title and interest shall vest in the State Government free from encumbrances created by any persons.

It may be pointed out here that long before the order of the Collector, Malerkotla, P2 was passed on 29th June, 1976, the Land Reforms Act came into force on April 2, 1973. Section 28 of the Land Reforms Act, which is relevant for our purpose, reads as under :

"Section 28 : Repeal and Saving-(1) The Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Land Act, 1955, in so far as these are inconsistent with the provisions of the Act, are hereby repealed,

(2) The repeal of the enactment mentioned in sub-section (1), hereinafter referred to as the said enactments, shall not affect-

(i) The proceedings for the determination of the surplus area pending immediately before the commencement of this Act under either of the said enactment, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by, the State Government in accordance with the provisions of this Act : Provided that such proceedings shall, as far as may be, be continued and disposed of from the stage these were immediately before and commencement of this Act, in accordance with the procedure specified by or under this Act (and the cases pending before the commencement of this act shall stand transferred to the collector of the district concerned for disposal).

(ii) the previous operation of the said enactments or anything duly done or suffered thereunder;

(iii) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments, in so far as such right, privilege, obligation or liability is not inconsistent with the provisions of this Act and any proceeding or remedy in respect of such right, privilege, obligation or liability may be instituted, continued or enforced as if this Act had not been passed. Section 28 of the Act does not confer any right or new rights on the landlords. This section merely clothes determination of surplus area under the Punjab and Pepsu Laws with continued legality as a measure of abundant caution."

A plain reading of sub-section (1) shows that the provisions of the Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955 in so far as they were inconsistent with the provisions of the Land Reforms Act, were repealed. Sub-section (2) which is a saving provision enacts that the proceedings for determination of the surplus area pending immediately before the commencement of the Land Reforms Act, - under either of the said enactment referred to above, shall

be continued and disposed of as if the Land Reforms Act had not been passed and the surplus area so determined shall vest in and be utilised by the State Government in accordance with the provisions of the Land Reforms Act. The language of this clause is unambiguous and plain. It enjoins continuation and disposal of proceedings for the determination of the surplus area under various Acts mentioned in sub-section (1), including the Pepsu Act, which were pending before the commencement of the Act in accordance with the provisions of those Acts, as if the Land Reforms Act had not been passed. It further directs that vesting in and utilisation of the land determined as surplus, by the State Government, in the aforementioned proceedings, shall be in accordance with the provisions of the Land Reforms Act. To this clause are appended two provisos. The first proviso says that as far as may be such proceedings shall be continued and disposed of from the stage they were pending immediately before the commencement of the Land Reforms Act and in accordance with the procedure specified thereunder (i.e. under the Land Reforms Act) and that the cases pending before Pepsu Land Commission immediately before that date shall stand transferred to the Collector of the District concerned for disposal. The second proviso, which is not really in dispute, provides that nothing in that section shall affect the determination and the utilisation of the surplus area other than the surplus area referred to above in accordance with the provisions of the Land Reforms Act.

What Mr. Bali contends is that Clause (i) of sub-section (2) should be understood to direct vesting of the surplus area determined under the provisions of the Pepsu Act immediately on passing of the order declaring surplus. We are afraid, we cannot accede to the contention of the learned counsel. We have pointed out above that even under the provisions of the Pepsu Act the surplus land does not vest in the State Government immediately on passing of an order by the Collector declaring the surplus land and that it vests in the State Government only on taking possession of such land by or on behalf of the State Government. A literal interpretation of the said provisions of the Land Reforms Act, as indicated above, shows that the surplus area as determined, would vest in and can be utilised by the State Government in accordance with the provisions of that Act. The relevant provision of the Land Reforms Act dealing with vesting in and utilisation of surplus land by the State Government is Section 8 which reads as under ;

"Section 8 : Vesting of unutilised surplus area in the State Government- Notwithstanding anything contained in any law, custom or usage for the time being in force, but subject to the provisions of Section 15, the surplus area declared as such under the Punjab law or the Pepsu law, which has not been utilised till the commencement of this Act and the surplus area declared as such under this Act, shall, on the date on which possession thereof is taken by or on behalf of the State Government, vest in the State Government free from all encumbrances and in the case of surplus area of a tenant, which is included within the permissible area of the landowner, the right and interest of the tenant in such area shall stand terminated on the aforesaid date :

Provided that where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government." A careful reading of Section 8, in so far as it relates to land owner, discloses, inter alia, that the surplus area declared under the Pepsu Act which had not been utilised till the commencement of the Land Reforms Act and the surplus area declared as such under the 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 free from all encumbrances. Thus it is evident that vesting in of the surplus land takes

place on taking possession of the land by or on behalf of the State Government.

It will be useful to notice that Section 11 of the Land Reforms Act provides that the surplus area which has vested in the State Government under Section 8, shall be at the disposal of the State Government to frame the scheme for utilisation of the surplus area declared as such under the Punjab law, the Pepsu Law or the Land Reforms Act. It is, thus clear that under the Land Reforms Act, vesting of the surplus land in the State Government is pre-requisite of framing of the scheme in respect of such land. The allotment of the land under the scheme is a subsequent step. Without taking possession of any surplus land there can be no vesting of surplus land in the State Government and a fortiori no scheme can be framed in respect of such land much less can it be allotted to any person.

Here it would be apt to mention that the provisions of these two enactments came up for consideration of a full bench of the Punjab and Haryana High Court in *Ranjit Ram v. The Financial Commissioner, Revenue, Punjab & ors.*, (1981) 83 Punjab Law Reporter 492. in para 7, it was held.

"even if the land of a land owner has been declared surplus, either under the Punjab Law or under the Pepsu Law, and if the land of land-owner has not been Utilised and former has not been purchased by the tenants In case of Punjab Law, and if the land-owner has not been dispossessed by the Government under the provisions of the Pepsu Law, he continues to be a land-owner of the land and also holds the same even though his land has been declared surplus, till he is divested of its ownership by taking possession of the land under section 8 of the Reforms Act, where it has been provided that the surplus area declared as such under the Punjab Law or the Pepsu Law which has not been utilised till the commencement of the Reforms Act, shall on the date or the date on which the possession thereof is taken by or on behalf of the State Government, vests in the State Government free from all encumbrances. It would thus be seen that such land owners' surplus area shall vest in the State Government on the date of taking of possession by the State Government under section 8 of the Reforms Act and till then the land-owners are not divested of the ownership of the surplus land,"

A Constitution Bench of this Court in *Ujjagar Singh (dead) by LRs. v. The Collector, Bhatinda & Anr.*, JT (1996) 6 SC. 713 having quoted para 7 of the said judgment of the Full Bench approved the same and held that once the lands declared as surplus under the Pepsu Act did not vest in the State Government, as possession thereof had not been taken, there had to be a fresh determination in respect of the area which the appellant was entitled to hold in the light of the Punjab Act.

In the instant case the land in question did not vest in the State Government, as admittedly, the possession of the land was not taken by or on behalf of the State Government, This is also clear from the averment made in the reply filed by the State Government in the special leave petition. It is admitted the land had been declared surplus and that the allotment order was passed in the year 1980. It is also admitted that the possession of the land owner continued and still continues to be that of the land owners. In view of the averments it cannot be legitimately contended that the land had vested in the State Government and therefore the allottees acquired right to get possession of land which is said to have been allotted on 22nd September, 1980.

From the above discussion it follows that the rights, title and interest of the land owner of the land in question continued with him and in law the land did not vest in the State Government, therefore, the allotment of the land in question in favour of respondent Nos. 5 to 10 is illegal and void and is of no legal consequence. The order of the Financial Commissioner Appeals-II dated 26.6.98 and the impugned order of the High Court confirming the said order of the Financial Commissioner Appeals-II are,

therefore, unsustainable and are accordingly set aside. The appeal is allowed but in the circumstances of the case we make no order as to costs.

JUDIS