

CASE NO.:
Appeal (civil) 1094 of 2001

PETITIONER:
M/s. Rattna Oil Mills/Rice Mills

RESPONDENT:
Paramjit Singh & Ors

DATE OF JUDGMENT: 30/11/2007

BENCH:
TARUN CHATTERJEE & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T
TARUN CHATTERJEE, J.

1. This appeal by way of a special leave petition is directed against the final judgment and order dated 9th of February, 2000 in CWP No. 1719 of 2000 of the High Court of Punjab and Haryana at Chandigarh.

2. One Munshi Singh, son of Dalip Singh, resident of Village Rampura, Tehsil Fazilka, District Ferozepur along with his wife Smt. Satwant Kaur owned land measuring 15.9542 Hectares on 24th of January, 1971, which was the appointed date under the Punjab Land Reforms Act 1972. A decree dated 6th of July, 1972 was passed in favour of Karnail Singh and others against Smt. Satwant Kaur and in pursuance to the said decree, the land was transferred and mutated in favour of Karnail Singh and others. Thereafter, Karnail Singh and others exchanged the land with Manjit Singh whose name had entered in the revenue records. On or about 14th of June, 1974, Manjit Singh sold land measuring about 12 Kanals 8 Marlas to M/s. Ahuja Oil and Chemicals, Fazilka, which is presently Respondent No. 5 herein and they constructed a factory on it. The land was mutated in the name of Respondent No. 5.

3. The Collector, Fazilka by his order dated 11th of January, 1977 determined the ceiling of the original owner Munshi Singh and held 8.0804 Hectares of land as surplus in the hands of Munshi Singh. Feeling aggrieved, the original owner Munshi Singh filed an appeal before the Commissioner, Ferozepur and the Commissioner by an order dated 5th of May, 1980 modified the order of ceiling of the Collector to the extent that the lands mentioned in the said order equivalent to 4.8187 hectares were excluded from the surplus pool and the matter was remanded back to the Collector, Fazilka for fresh decision. By an order dated 19th of August, 1982, the Collector, Fazilka determined the ceiling limit and declared 1.7849 hectares of land as surplus. The land in dispute measuring 12 Kanals 8 Marlas, sold to M/s. Ahuja Oil and Chemicals was declared surplus though no notice was given to them. Feeling aggrieved, M/s. Ahuja Oil & Chemicals filed an appeal before the Commissioner, Ferozepur claiming that since the aforesaid surplus land was purchased by them from Manjit Singh, they ought to have been heard and notice ought to have been served upon them and accordingly, the order of the Collector must be set aside. During the pendency of this appeal, the respondent No. 5 sold the said land in which a factory is situated to the appellant herein by a registered sale deed dated 11th of June, 1985. The appellate authority viz. the Commissioner, Ferozepur dismissed the appeal of M/s. Ahuja Oil and Chemicals on 14th of October, 1985 on the ground that M/s. Ahuja Oil & Chemicals were not entitled to prosecute the appeal in view of the fact that the land in dispute was already sold by it to the appellant. The appellant herein, being

the purchaser from M/s. Ahuja Oil & Chemicals filed an application before the Commissioner, Ferozepur, which was also rejected by the order dated 6th of July, 1987. Thereafter, the order dated 6th of July, 1987 was also challenged by the appellant herein in revision before the Financial Commissioner but the revision petition was also dismissed on the ground of locus standi of the appellant herein to challenge the same. A writ petition filed before the Punjab & Haryana High Court by the appellant herein was also rejected on the ground that the appellant herein was not entitled to any hearing of the proceeding for determination of surplus land under Punjab Land Reforms Act, 1972. It is this order of the High Court, which is now under challenge before us.

4. Heard the learned counsel appearing for the parties and examined the materials on record including the impugned order as well as the orders of the Collector, Commissioner and the Financial Commissioner and the other materials on record.

5. The only question that was raised by the learned counsel for the appellant herein was that the appellant herein ought to have been served with the notice of the appeal filed by M/s. Ahuja Oil & Chemicals before the Commissioner before disposing of the said appeal. Reliance was placed in this connection on the case of Escorts Farms Ltd., V/s Commissioner, Kumaon Division, Nainital, U.P. and ors. [(2004) 4 SCC 281]. In this case, it has been held by this court that it is difficult to accept that the transferees could be said to be merely proper parties and were not entitled to be arrayed, noticed and heard in the proceedings under the ceiling act. It was observed that the transfer made after the appointed date could have been saved only on proof of good faith and payment of adequate consideration for the transfer and this burden of proof can be discharged jointly or singly either by the transferor or the transferee. This court in that decision further observed that the transferee was the party likely to be adversely affected by the order nullifying the transfer if found to be lacking in good faith. The learned counsel for the appellant herein, therefore, submitted that the appellant herein, being the purchaser from M/s. Ahuja Oil & Chemicals, who had filed the appeal before the appellate authority \026 the Commissioner, Ferozepur, was entitled to be heard after the said purchase from M/s. Ahuja Oil and Chemicals. This submission of the learned counsel for the appellant herein was contested by the learned counsel for the state who submitted that since the appellant herein was a post vesting purchaser of the land in question, he was not entitled to be noticed or given any opportunity of hearing.

6. After hearing the learned counsel for the parties and after noting the submissions made by them, we find that it is an admitted position that the appellant herein was a post vesting purchaser of the land in question. The appointed day for determination of the surplus land under the Punjab Land Reforms Act, 1972 is 24th of January, 1971. It is true that it is an admitted position that M/s. Ahuja Oil & Chemicals was a subsequent purchaser after the appointed date and so was the appellant herein. It appears from the record that the name of M/s. Ahuja Oil & Chemicals was admittedly mutated in respect of the land in question but M/s. Ahuja Oil & Chemicals sold the land in question to the appellant herein during the pendency of their appeal before the Commissioner, Ferozepur. The order itself would show that the appeal of M/s. Ahuja Oil & Chemicals was dismissed only the ground that since M/s. Ahuja Oil & Chemicals had lost its interest in respect of the land in question, the appeal was liable to be dismissed. It would thus be evident from the said order that the appeal of M/s. Ahuja Oil & Chemicals could not be decided on merits. In this court, an affidavit has been filed in which the record shows mutation of the land in question in the name of M/s. Ahuja Oil & Chemicals. The learned counsel for the state, however, could not deny the authenticity of the said record (mutation entry).

Therefore, this document may be kept in file. From a bare perusal of this mutation entry, we find that the names of M/s. Ahuja Oil & Chemicals and also of the appellant herein are entered in the same in respect of the land in question. This being the admitted position and in view of the fact that the names of M/s. Ahuja Oil & Chemicals and the appellant herein have been mutated in respect of the land in question, we are of the view that the appellant herein must be given an opportunity of hearing by the appellate authority on merits.

7. Such being the position, we set aside the order of the High Court rejecting the writ petition and also the order of the appellate authority \026 Commissioner, Ferozepur and restore the appeal for fresh disposal.

8. For the reasons aforesaid, the matter is remitted back to the appellate authority \026 Commissioner, Ferozepur for decision on merits and in accordance with law. The appellate authority \026 Commissioner, Ferozepur shall decide the appeal within 3 months from the date of supply of a copy of this order to it.

9. The appeal is thus disposed of to the extent indicated above. There will be no order as to costs.