PETITIONER:
SANTRAM

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT30/11/1994

BENCH:

ACT:

HEADNOTE:

JUDGMENT:
ORDER
1. Leave granted.
2. We find that in the present case, the High Court was not justified in interfering with the order of the learned Sessions Judge cancelling the bail of the respondent-accused. The learned Sessions Judge had given cogent reasons for passing the order in question by pointing out that the accused had threatened the material witnesses in question including the complainant, on two occasions.. On the first occasion, an application was filed for cancellation of their bail. It was, however, rejected. Within another few days a second attempt was made to threaten the witnesses. That was inquired into both by the Station House Officer as well as by the Deputy Superintendent of Police. They found substance in the complaints. Hence it was the State which moved the Court for cancellation of the bail relying upon the verified report of the police officers. The learned Sessions Judge took into consideration all the relevant facts and came to the
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conclusion that it was necessary to cancel the bail in order to maintain a terrorfree atmosphere during the proceedings. The High Court, while setting aside the order of the learned Sessions Judge stated that the learned Judge was arbitrary and had made the order of cancellation of bail without any material being "marshalled on the record" to support the conclusion. We are unable to appreciate this reason. A perusal of the order of the learned Sessions Judge shows that he has referred to all the material circumstances on record and has come to his conclusion in question. We, therefore, set aside the impugned order of the High Court and maintain the order of the Sessions Judge dated 26-11-1992 and direct that the accused, who have already been taken into custody, pursuant to the non-bailable warrants issued by this Court, will remain in custody till the trial is over.
3. The appeal is allowed accordingly.
SAMPURAN SINGH V. STATE OF HARAYANA
ORDER in C.A. No. 3397 of 1984
1.This appeal arises from the order of the Division Bench of the Punjab & Haryana High Court, dated November 23, 1981

made in C.W.P. No. 5298 of 1981. Admittedly by proceedings dated August 28, 1964 the appellant was declared to have surplus land of 117 bighas, 5 biswas of barani land as on April 15, 1964. Thereafter he remained in possession and enjoyment of the surplus land. In the W.P. the appellant claimed that in the interregnums his three sons had become majors and that therefore the surplus area should be recomputed under the Haryana Ceiling on Land Holdings Act, 1972. The High Court dismissed the writ petition. Thus, this appeal by special leave.

2.Shri Bansal, learned counsel for the appellant raised two-fold contentions. Firstly he contended that since the land, though declared surplus, having been allowed to be in possession and enjoyment of the appellant, that is, to remain otherwise unutilised, the appellant was entitled to seek the reopening of his declaration in which his sons had since become majors. Under Sections 7 and 9 of the Haryana Act, computation of surplus land had to be done among himself and his three sons. We find no force in this contention. The Punjab Act while fixes 31 standard acres as ceiling area, the Haryana Act fixes 17-1/2 standard acres as ceiling area and permits under Section 9, the determination of surplus land. If there was a major son living separately, his unit could be computed separately as his share. In that process, the surplus land is liable to adjustment under Section 9 of Haryana Act. That does not, however, permit the Surplus area declared Under the Punjab Act to be adjusted by reopening and recomputation. Neither the Haryana Act nor the Punjab Act contain any such provision. On the other hand the provision in Section 33(2)(ii) that pending proceedings under the Punjab Act should be completed under 1953 Act and the surplus land would vest in the State is a clear indication to the contrary. A Full Bench of the Punjab & Haryana High Court in Jaswant Kaur v. State of Harvana1 interpreting Section 12(3) of Haryana Act held that the surplus land on and from December 23, 1972 shall stand vested under Section 12(3) of the Haryana Act in the State. In other words, from that date the lands stand vested in the State of Haryana free from all encumbrances, becoming available under the Haryana Act for allotment of surplus land to the tenants and the landless laborers for cultivation. This Court also considered the effect of that judgment

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in Jodha Ram v. Financial Commissioner, Haryana, Chandigarh2 and held that by operation of Section 8 read with Section 12 and also of the Punjab Act, any alienation made prior to July 13, 1958 alone was saved and the lands remaining undisposed of, till the date of vesting would continue to vest in the State and the surplus landholder does not have any right, title or interest in the land and he cannot even seek eviction of any tenant inducted by the State into that land. In view of these decisions, we have no hesitation to conclude that though the surplus land was allowed to remain in possession of the previous landholder, the title stood vested in the State free from all encumbrances on and from December 23, 1972. Further the mere enjoyment of surplus land allowed by the State to the previous landholder does not create any right in him to claim any title in such land. Therefore, the question of fresh computation among the appellant and his three sons, who later became majors, does not arise.

3.It is next contended that the Act has been given retrospective effect and it affects the vested right of the

appellant and that therefore it is ultra vires. We find no force in the contention. It is now well settled that legislature is competent to enact law with retrospective effect even taking away vested rights in some cases by allowing retrospective operation of the law. In this case such question does not arise for the reason that by statutory vesting of the surplus land, the preexisting right, title and interest in the land of its holder stood vested in the State on and from December 23, 1972. When the constitutional validity of the provisions in the Act was challenged, this Court by a Bench of three Judges in W.P. Nos. 16018-21 of 1984 and other cases entitled Mukhtiar Singh v. State of Haryana3 by judgment dated November 21, 1984 upheld their validity. Under these circumstances, we do not find any ground warranting interference with the order under challenge. The appeal is accordingly dismissed but in the circumstances without costs.

ORDER in C.A. Nos. 2532-35 of 1985, 2667-69 of 1985, 2531 of 1985 and
3403 of 1984

4.These appeals are being disposed of by a common judgment since a common question of law arises, the parties are interrelated and the dispute relates to the same land. These appeals arise from the judgment of the Punjab and Haryana High Court in C.W.P. No. 1677 of 1985 and batch by which a Division Bench dismissed the writ petitions of the appellants in limine. Thus these appeals by special leave are filed.

5.The appellants' family had 828 standard acres of land. Under Section 2(5) [sic 2(5-a)] of the Punjab Security of Land Tenures Act, 1953, for short 'the Act' which came into force w.e.f. April 15, 1953, the Collector took proceedings dated June 27, 1960 and declared surplus lands concerned in the respective appeals. That declaration became final. Thereafter, applications were filed under Rule 8 of the rules made under the Act seeking permission to utilise the surplus lands by continuing in their possession on the ground that they were cultivating the lands as a modern farm. It is unnecessary to advert to pervious history of the surplus lands except to state that the Special Board by its order dated May 12, 1964 made under Rule 8 of the rules permitted the appellants to continue to use the surplus area after ejecting the tenants that were put in

2 (1994) 1 SCC 27

3 Writ Petition Nos. 16018-21 of 1984, decided on Nov. 21, 1984

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possession by the Collector under East Punjab Utilisation of Lands Act, 1949. While the appellants continued to enjoy the surplus lands, the Haryana Ceiling on Land Holdings Act, 1972 came into force w.e.f. January 24, 1971. By operation of sub-section (3) of Section 12 of the Haryana Act, the surplus lands stood vested in the State w.e.f. December 23, 1972. The appellants filed writ petitions claiming that the minors in the family had, after declaration of the lands as surplus under 1953 Act, having become majors, they cannot be regarded as surplus-holders and, therefore, they were entitled to continue to use the lands. Those writ petitions being dismissed, the present appeals are filed by special leave.

6.Shri S.M. Ashri, the learned counsel for the appellants strenuously contended that by operation of Section 9 of Haryana Act read with the provisions of 1953 Act, the appellants continue to remain as owners of the land though the lands were declared surplus. He maintained that the

lands since remained undistributed among tenants and continued in appellants' possession and enjoyment as owners, they were entitled to be considered under Haryana Act as non-surplus landholders. Whether they are having lands within the ceiling limit prescribed under Section 7 of the Act has, therefore, to be considered and redetermined. We find no force in the contention.

7.No doubt under 1953 Act, there is no specific provision which provided for vesting of the surplus lands, declared thereunder. The Collector had power to take possession of the surplus lands and utilise them under East Punjab Area Utilisation of Lands Act, 1949, by their allotment to the tenants for cultivation. But for the exemption granted under Rule 8 of the rules, the appellants had no right to remain in possession. Having got the benefit of Rule 8 and remained in possession of the surplus land and utilised the same for the purpose of cultivation in a modern farm, it is not open to appellants to contend that the land having remained unutilised and continued to be in their possession and enjoyment, Section 12(3) does not divest them of their title. The language of Section 12(3) is unequivocal and clear. According to it the surplus lands declared under the Act stand vested in the State. Even otherwise the non-utilisation of surplus land till date of vesting i.e. on December 23, 1972 is not material. The object of the Act and Section 12(3) of 1972 Act was redistribution of surplus land among the landless ryots and agricultural labour and to confer title on them. The Act enabled the owner of the surplus land to recover rent from the lessee and enjoy the income till date of vesting and no more. Section 32 of Haryana Act admittedly declared all exemptions under Rule 8 as of no avail, w.e.f. January 24, 1971 in that it expressly states thus:

> "As from the appointed day exemption granted in relation to the utilisation of surplus area under korchards, tea-estates or well-run farms by virtue of the provisions of the rules framed or purported to have been framed under the Punjab Law, shall stand withdrawn."

8.Therefore, from the appointed day the possession held by appellants of surplus lands become unlawful and entitles the Collector or competent officer to resume possession of them from appellants. Neither Section 12(3) nor Sections 7 and 9 of the Haryana Act empower the ceiling authority to reopen the proceedings relating to surplus lands which had become final is also made clear by Section 33(2)(ii) thereof. Section 33(2)(ii) says that the surplus area determined in the pending proceedings under the Act shall be done under that

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Act and surplus land shall vest in and be utilised by the State Government in accordance with the provisions of the 1972 Act. Sub-section (2)(ii) of Section 33, no doubt, deals with determination of surplus area pending proceeding under the Punjab Law as on the notified date and vesting of the surplus area so determined in the State. The legislative in tenement, therefore, appears to be that the surplus area declared under the Punjab Law shall remain to be surplus. If any area that becomes surplus under the Haryana Act since the surplus area was reduced from 31 standard acres to 17 1/2 acres, that surplus area should be redetermined under Section 7 read with Section 9. Therein if a son becomes major and resides separately he is entitled to a separate unit etc. However, it does not appear that the surplus area declared under the Punjab Law should be

reopened and recomputed under the 1972 Haryana Act. No such express provision was engrafted in 1972 Act. Though the family of the appellants have swelled and some of the minors have become majors, the appellants are not entitled to have the surplus area which had become final reopened for recomputation under the 1972 Haryana Act. Thus considered, we find that the High Court was fully justified in dismissing the writ petitions. The appeals are, therefore, dismissed, but without costs.

In SLP No. 7622 of 1982

9. Leave granted.

10.The first petitioner Tara Singh died on July 5, 1987 and his legal representatives have not been brought on record. Therefore, the appeal stood abated, as against him. Since the cause of action was the dismissal of the appeal against Tara Singh that operates as against the other two persons Pritam Singh and Jeet Singh. Therefore, the appeal as against the other appellants also stood abated. No costs.

In CA. No. 1657 of 1982, CA. @ SLP (C) Nos. 7175 of 1986, 3185 of 1985, 7441 of 1986, 7384 of 1986, & in W. P. Nos. 16213-16 of 1984

11.C.M.P. No. 24822 of 1982 in C.A. No. 1657 of 1982 is allowed. Leave grantedin the S.L.Ps. The point raised in these matters is covered by the judgmentjust now dictated in C.A. Nos. 2532-35 of 1985, 2667-69 of 1985 and 2531 of1985. Therefore, these appeals are, as well, dismissed. No costs.

ORDER in C.A. No. 2133 of 1984

12.The appellant was declared to have 15 standard acres as surplus land by an order of the Collector dated December 12, 1960 made under the provisions of the East Punjab Security of Land Tenures Act, 1953, which had come into force on April 15, 1953. That order became final. Earlier, in the year 1956 under the East Punjab Area Utilisation of Lands Act, 1949, the possession of 41 kanals 19 marlas which is now declared as surplus, was taken by the Collector and leased out to a tenant. It appears that during consolidation proceedings, the appellant had manoeuvred to obtain a decision from the authorities that he had only 6 standard acres of surplus land. Subsequently, in the year 1979, the appellant sought for restoration of land leased as being surplus land. In pursuance thereof, the authorities appear to have issued directions to restore the leased land to the appellant. However, a simultaneous proceeding appears to have been taken to assign the earlier declared surplus land to landless poor. The appellant questioned the action of the respondent in assigning such surplus land to the landless poor on the ground that he was not given even show-cause

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notice, by filing a writ petition in the High Court which was dismissed by order dated January 3, 1994. The present appeal by special leave is directed against that order.

13.Shri K.K. Mohan, learned counsel for the appellant strenuously contended that the appellant while is declared as surplus-holder only of 5 standard acres of land, the respondents could not assign the lands in excess of 5 standard acres that too without issue of show-cause notice to the appellant. We find no force in the contention. Admittedly, the appellant was declared as holder of 15 standard acres of surplus land by the order passed by the Collector on December 12, 1960. Having allowed that order to become final, the only course open to him was to have carried it in appeal or to have it reopened under that Act

or under the Haryana Ceiling on Land Holdings Act, 1972, provided the law permitted reopening of the proceedings and recomputation of the surplus holdings. That was not done. By operation of Section 12(3) of the Haryana Act, the surplus land stood vested in the State free from all encumbrances on and with effect from December 23, 1972. Jaswant Kaur v. State of Haryana1 a Full Bench Judgment which was approved by this Court in Jodha Ram v. F.C. Haryana2 holds that the lands stood vested in the State absolutely effective from December 23, 1972. From that date then pre-existing right, title and interest in 15 standard acres including that in 5 standard acres of land stood vested in the State and the appellant stood divested of the title to the land. Therefore, the question of restoring 5 acres of land to the appellant or giving notice to the appellant, does not arise.

14.It may not be construed that the other excess land which stood vested in the Government by operation of Section 12(3) read with the order dated December 12, 1960 would impede any right, if the appellant had got by any subsequent orders modifying the determination of the surplus area in accordance with the provisions of 1953 Act. The appeal is, therefore, dismissed but without costs.

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