

JODHA RAM (DEAD) BY LRS. ETC. ETC.

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v.

FINANCIAL COMMISSIONER, HARYANA AND ORS.

OCTOBER 11, 1993

[K. RAMASWAMY AND N.P. SINGH, JJ.]

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*Punjab Security of Land Tenures Act, 1953—Section 9(1)(i)—Lands declared as surplus area—Application u/s 9 (1)(i) to evict tenants—Whether maintainable—Held, No.*

The appellant filed a petition u/s 9(1)(i) of the Punjab Security of Land Tenures Act, 1953, for eviction of the tenants, on the ground that he himself was a small land holder and the tenants held large areas of land. The Assistant Collector held that as the appellant was a small land owner, he was entitled to recover the possession of the lands in dispute. The Collector, however, allowed the appeals of the tenants, on the ground that the lands which were the subject matter of controversy, had been declared as surplus area and the appellant was not entitled to evict the tenants and to take possession thereof. That finding was affirmed by the Commissioner as well as the Financial Commissioner. A writ petition filed before the High Court was dismissed. The High Court held that the lands having been declared as surplus area and the validity of the order having not been questioned at any stage earlier, it was not open to the writ petitioner to question the same in a proceeding initiated by him u/s 9(1)(i) of the Act, for eviction of the tenants. Hence this appeal.

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The appellants submitted that even if the land had been declared as surplus area, as there was no provision in the Land Tenures Act. In respect of vesting of such lands in the State, the title and ownership of the lands shall be deemed to have been conveyed to the appellant who continued to be the owner thereof, he was entitled to get the tenants evicted.

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It was also urged that after coming into force of the Haryana Ceiling on Land Holdings Act, 1972, section 8(1)(a) specifically exempted transfer of even surplus area made prior to 30-7-1958, the land in question shall not be vested in the State Government u/s 12 (3) of the Act.

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The question that arose for consideration was whether after decla-

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- A** ration of the lands as surplus area under the provisions of the Land Tenures Act, the appellants could have taken possession of the lands u/s 9(1)(i) by evicting the tenants.

Dismissing the appeal, this Court

- B** HELD 1.1 In view of clauses (a) and (b) of Section 10-A of the Punjab Security of Land Tenures Act, 1953, once any land is declared as surplus area, in accordance with the provisions of that Act, then the right of utilization of such land remains with the State Government and the landowner has only the right to receive rent from the tenants settled on such lands. His right to utilize the said land or to remain in possession was absolutely curtailed. If the landowners had no right to utilize the land, declared as surplus area or to remain in possession thereof, application on his behalf u/s 9(1)(i) to evict the tenants and to resume possession of the lands in question could not have been entertained by the authorities. Section 9(1)(i) conceives lands, over which the landowner after eviction of the tenant, can resume possession of such lands. [174-D-F]

- E** 1.2 Even if it was held that the transfer made in favour of the appellant in respect of the excess area being prior to 30-7-1958, will not be affected by Section 12(3) of Haryana Ceiling on Land Holdings Act, still the application for recovery of possession filed on behalf of the appellant u/s 9(1)(i) of the Land tenures Act had to be dismissed, because in view of Section 10-A of the Act, the appellant was not entitled to resume possession of the lands in question, after evicting the tenants. [177-C-D]

- F** CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3514-16 of 1982.

From the Judgment and Orders dated 8.1.1981 of the Punjab and Haryana High Court in Civil Writ Petition Nos. 2026, 2027 and 2028 of 1980.

- G** G.L. Sanghi, S.K. Mehta, and Dhruv Mehta for the Appellants.

M.R. Sharma, Jamshed Bey, H.K. Puri and Ms. Anjana Sharma for the Respondents.

- H** The Judgment of the Court was delivered by

N.P. SINGH, J. These appeals have been filed against the orders dated 18.1.1981, passed by the High Court, dismissing the writ petitions filed on behalf of Jodha Ram, Om Parkash, Lekh Ram and others, for quashing the order of the Collector and the Financial Commissioner, hold that the lands in question had been rightly declared Surplus Area under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the "Land Tenures Act").

It appears to be an admitted position that Om Parkash, appellant in one of the appeals, had entered into partnership agreement with Loti Ram and Rup Ram (predecessor in interest of Respondents Nos.5 to 10), to run an agricultural farm on the lands of aforesaid Om Parkash. In the year 1949, Om Parkash filed a case for dissolution of partnership and rendition of accounts. Loti Ram and Rup Ram took a plea that as per the terms of the partnership, on the dissolution of the partnership, they were entitled to get 150 bighas of land as tenants.

The Land Tenures Act came into force on 15.4.1953. The appellant Jodha Ram purchased the lands in dispute from Om Parkash through a sale deed dated 21.11.1953. The Collector in exercise of the powers conferred on him by the Land Tenures Act, declared the lands in dispute as surplus area, by an order dated 28.6.1960.

In the civil dispute, which was pending between Om Parkash and Loti Ram, the District Judge by an order dated 18.6.1970, held that Loti Ram and Rup Ram were entitled to remain in possession of the lands in question, as tenants. Jodha Ram, the appellant, who had acquired the right, title and interest of Om Parkash by aforesaid sale deed dated 21.11.1953, did not care to get himself impleaded as a party to that proceeding.

The appellant, Jodha Ram, however, filed a petition under Section 9(1)(i) of the Land Tenures Act on 16.8.1973, for eviction of Loti Ram and Rup Ram, before the Assistant Collector, on the ground that he himself was a small land holder and the aforesaid tenants held large areas of land and as such he was entitled to the possession of the lands in question under Section 9(1)(i) of the Land Tenures Act. The Assistant Collector came to the conclusion that as Loti Ram and Rup Ram, the tenants, held 269 canals and 5 marlas of land in addition to the lands in dispute and Jodha Ram was a small land owner, he was entitled to recover possession of the lands in dispute. On that finding, he directed eviction of the tenants. The Col-

- A lector, however, allowed the appeals of the tenants, on the ground that the lands which were the subject matter of controversy, had been declared as surplus area of Om Parkash and Jodha Ram, the appellant, was not entitled to evict the tenants and to take possession thereof. That finding was affirmed by the Commissioner, Ambala Division, as well as the Financial Commissioner. Ultimately, a writ petition was filed on behalf of the appellant, Jodha Ram, which was dismissed by the High Court. The High Court was of the view that the land having been declared as surplus area under the Land Tenures Act, and the validity of the order, having not been questioned by Om Parkash or the writ petitioner at any stage earlier, it was not open to the writ petitioner to question the same in a proceeding initiated by him under Section 9(1)(i) of the Land Teures Act, for eviction of the tenants, Loti Ram and Rup Ram.

Section 2(5a) of the Land Tenures Act defines "Surplus Area":-

- D "Sec. 2(5a). — "Surplus Area" means the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C and includes the area in excess of the permissible area selected under section 19-B; but it will not include tenants' permissible area:

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F Provided that it will include the reserved area, or part thereof, where such area or part has not been brought under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant from it, whichever is later, or if the landowner admits a new tenant, within three years of the expiry of the said six months."

- G On a plain reading any area in excess of the permissible limit, declared in accordance with the provisions of the Land Tenures Act, shall be deemed to be surplus area. The relevant part of Section 9 is as follows :-

- H "Sec. 9. — Liability of tenant to be ejected. — (1) Notwithstanding anything contained in any other law for the time being in force no landowner shall be competent to eject a tenant except when such tenant—

(i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner;..." A

Section 10-A provides :-

"Sec. 10-A. (a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of section 9. B

(b) Notwithstanding anything contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance, no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a). C

Explanation – Such utilization of any surplus area will not affect the right of the land-owner to receive rent from the tenant so settled. D

(c) For the purposes of determining the surplus area of any person under this section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored." E

There is no dispute that in exercise of the powers conferred, by the provisions of the Land Tenures Act, the authority concerned, declared the lands in dispute as surplus area, of Om Parkash on 28.6.1960. According to the appellant, Jodha Ram, even if the land had been declared as surplus area, as there was no provision in the Land Tenures Act, in respect of vesting of such lands in the State, the title and ownership of the lands in question of Om Parkash, shall be deemed to have been conveyed to the appellant, in view of the sale deed dated 21.11.1953, executed by Om Parkash in favour of the appellant. As such even after the declaration of the lands as surplus area, the appellant continued to be the owner thereof and entitled to get Loti Ram and Rup Ram, the tenants, evicted in accordance with the procedure prescribed under Section 9 aforesaid. F G

Section 9(1)(i) confers the right on the landowner to get a tenant H

- A evicted of such land, if the landowner is a "small landowner". In the present case, the appellant, Jodha Ram, was a small landowner vis-a-vis the two tenants, as such his application was maintainable under Section 9(1)(i). But the question which has to be answered is as to whether after declaration of the lands as surplus area under the provision of the Land Tenures Act, the appellant could have taken possession of the lands under Section 9(1)(i) by evicting the tenants. Section 10-A(a) empowers the State Government or any officer authorised in that behalf to utilize any surplus area for the resettlement of tenants ejected, or to be ejected. Section 10-A(b) enjoins that no transfer or other disposition of land which is comprised in surplus area, at the commencement of this Act, shall affect the utilization thereof in clause (a). In view of the explanation, the utilization of the surplus area is to be made by the State Government, only the right to receive rent from the tenant, settled on such land, remains with the landowner. In view of clauses (a) and (b) of Section 10-A of the Land Tenures Act, once any land is declared as surplus area, in accordance with the provisions of that Act, then the right of utilization of such land remains with the State Government and the landowner has only the right to receive rent from the tenants settled on such lands. It is true that there was no provision in the Land Tenures Act, under which all the right, title and interest of the landowner used to vest, even after declaration of such land as surplus area. But his right to utilize the said land or to remain in possession thereof was absolutely curtailed. If the landowners, as in the present case, the appellant, had no right to utilize the land, declared as surplus area or to remain in possession thereof, we fail to understand, how any application on his behalf under Section 9(1)(i) to evict the tenants and to resume possession of the lands in question could have been entertained by the authorities. Section 9(1)(i) obviously conceives lands, over which the landowner after eviction of the tenant, on any of the conditions mentioned therein, can resume possession of such lands, But if in view of Section 10-A, the utilization of lands declared as surplus area, has to be with the State Government, then appellant could not have exercised his power of resumption of the possession, by evicting the tenants under Section 9 of the Land Tenures Act.

- H Faced with this situation, it was urged that after coming into force of the Haryana Ceiling on Land Holdings Act, 1972, the situation has changed inasmuch as all transfers made by the land holders prior to 30.7.1958 even in respect of excess areas have been exempted from the scope and opera-

tion of the Ceiling Reference in this connection was made to Section 8 of the Act, the relevant part whereof is as follows :-

"Sec. 8. *Certain transfers or dispositions not to affect surplus area* :-

(1) Save in the case of land acquired by the Union Government or the State under any law for the time being in force or by a tenant under the Pepsu law or the Punjab law or by an heir by inheritance, no transfer or disposition of land in excess of -

(a) the permissible area under the Pepsu law or the Punjab law after the 30th day of July, 1958; and

(b) the permissible area under this Act, except a bona fide transfer, or disposition after the appointed day, shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer or disposition:

Provided that any person who has received an advantage under such transfer or disposition of land shall be bound to restore it, or to pay compensation for it, to the person from whom he received it."

It was urged that Section 8(1)(a) specifically exempts transfer of even surplus area made prior to 30.7.1958, as is the case in the present appeals. Section 12 contains the provision in respect of vesting of the surplus area.

"Sec. 12. *Vesting of surplus area*:- (1) The surplus area of a land-owner shall, from the date on which, it is declared as such, be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest including the contingent interest, if any, recognised by any law, custom or usage for the time being in force of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance:

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.

A (2) The right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished.

B (3) The area declared surplus or tenant's permissible area under the Punjab law and the area declared surplus under the Pepsu law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab law or the Pepsu law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration.

C (4) For the purposes of determination the surplus area under this Act, any judgment, decree or order of a court or other authority, obtained after the appointed day and having the effect of diminishing the surplus shall be ignored."

D It is true that Section 8(1)(a) says that no transfer or disposition of land in excess of the permissible area under the Punjab Law after the 30th day of July, 1958, shall affect the right of the State Government under the aforesaid Act, to which surplus area the State Government would be entitled but for the transfer or disposition. The 30th day of July, 1958 has been fixed as the cut off date. Transfer or disposition land in excess of the permissible area, under the Punjab Law made after the 30th day of July, 1958, will only be covered under the Haryana Ceiling on Land Holdings Act. Any transfer made prior to 30th July, 1958 in respect of an excess area under the Land Tenures Act, is not covered and has been exempted. It was pointed out that as such lands transferred prior to the 30th day of July, 1958, shall not vest in the State Government under Section 12(3) of the Act. Reference in this connection was made to a Full Bench judgment of the Punjab and Haryana High Court in the case of *Smt. Jaswant Kaur v. The State of Haryana*, AIR 1977 Punjab & Haryana 221. Mr. Justice O. Chinappa Reddy (as he then was), speaking for the Full Bench said :-

G "Shri Naubat Singh, the learned Assistant Advocate General, also agreed that we should harmonise S. 8 and S. 12(3) in the manner that we have done but he suggested that the date upto which transfers of the three categories specified by us earlier as (1), (2) and (3) should be recognised, should be the appointed day

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(24.1.1971) and not the date on which Section 12(3) came into force. We do not agree, Section 1(2) of Act XVII of 1976 expressly provides that the Act shall come into force on 23.12.1972. We must give some meaning and effect to it. In our view, the effect of S. 12(3) coming into force from 23.12.1972 on S.8 is that transfers of the three categories specified by us made up to 23.12.1972 would be excluded from the operation of S. 12(3), that transfers of land in excess of the permissible area under the Punjab or Pepsu Law would be protected if made before 30.7.1958 and that all other land not excepted by S. 8 would vest in the State Government with effect from the appointed day."

Even if it is held that the transfer made in favour of the appellant in respect of the excess area on 21.11.1953 being prior to 30.7.1958, will not be affected by Section 12(3) of Haryana Ceiling on Land Holdings Act, still the application for recovery of possession filed on behalf of the appellant under Section 9(1)(i) of the Land Tenures Act has to be dismissed, because in view of Section 10-A of that Act, the appellant is not entitled to resume possession of the lands in question, after evicting the tenants. These appeals are accordingly dismissed. But, in the facts and circumstances of the cases, there shall be no orders as to costs.

A.G.

Appeal dismissed.