

PETITIONER:
SUDARSHAN NATH & ORS.

Vs.

RESPONDENT:
THE STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 04/04/2000

BENCH:
S.S.Ahamad, Doraiswamy

JUDGMENT:

Raju, J.

The appellants, who are the legal representatives of the original landholder Raghubinder Nath and were unsuccessful before the High Court, have come up before this Court against the order dated 20.8.91 of the Division Bench of the Punjab and Haryana High Court in Civil Writ Petition No.3062 of 1991, declining to interfere with the order dated 1.8.90 passed by the Financial Commissioner (Appeals). Late Raghubinder Nath, who was said to be a big landowner, was governed by the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the Land Tenures Act'). By a proceeding dated 30.6.60 in exercise of the powers of the Collector under Sections 3 and 4 of the Land Tenures Act, the ceiling area of the said landowner came to be determined and an extent of 3 Standard Acres and 9 $\frac{1}{4}$ Units were declared as surplus. On 31.3.76, the Collector Agrarian, Gurdaspur, after completion of the consolidation proceedings in the area, passed an order declaring that there is no area left surplus and ordered the case to be filed. While matter stood thus, the predecessor-in-interest of respondents 2 and 3, Late Jagat Ram, to whom 20 kanal and 13 marlas were said to have been given on lease even prior to 1953, filed a suit for declaration that he, being a tenant, is eligible for the allotment of the surplus area measuring about 56 kanal and 4 marlas with a consequential direction to the Collector, Gurdaspur, to allot the surplus land to him. No doubt, to these proceedings the landowner was not impleaded as a party but only the State, represented by the Collector, was made a party. The said suit came to be decreed on 7.11.79, ex-parte. When the said plaintiff filed the Execution Petition No.5 of 1980, the learned Subordinate Judge adverted to the fact that the legal heirs of Raghubinder Nath have filed an appeal against the order of the Collector and inasmuch as the matter has been stayed, the vesting cannot take effect and the allotment order could not be issued at that stage. On that view, the execution proceedings were held to be premature and consequently dismissed on 1.11.81. In the meanwhile, on 29.9.80 the Collector Agrarian, Gurdaspur, passed an order declaring 3 Standard Acres and 9 $\frac{1}{4}$ Units to be the surplus area. This order was challenged by the original landholder on an appeal before the Commissioner, Jalandhar Division, but the same came to be dismissed on 10.2.82. The challenge was further pursued before the Financial Commissioner by means of a

Revision Petition. When the above proceedings were pending, the Collector, Gurdaspur, appears to have allotted the surplus land, as declared, to Late Jagat Ram on 24.3.82. Pursuant to the allotment so made, on 30.3.82 Jagat Ram was said to have deposited Rs.5,900/-.

The revision filed by Raghubinder Nath before the Financial Commissioner against the order passed by the Commissioner came to be disposed of on 10.3.83 with a direction that the landowner should be given an opportunity of selecting permissible area and the allottee accommodated elsewhere on an equivalent land. In doing so, the revisional authority was of the view that the Revenue Officers are bound to give an opportunity to a landowner of being heard and selecting his permissible area under Section 24-A(2) of the Land Tenures Act, after consolidation proceedings, if the land declared surplus had not been utilised by them. It is interesting to notice that even the revisional authority did not approve of the bona fide nature of the transfers said to have been effected in 1954 and adversely commented upon the omission to produce copies of the Khasra girdawaris for the period subsequent to the execution Sale Deed dated 2.5.54. On 2.2.84, the original landowner Raghubinder Nath died and the mutation was said to have been sanctioned on 16.1.86 in favour of the appellants.

Pursuant to the order dated 10.3.83 passed by the Financial Commissioner, the Collector Agrarian pursued the matter further and by his proceedings dated 10.6.86 came to the conclusion that the heirs of Late Raghubinder Nath were entitled to reserve the area for themselves in accordance with the provisions of the Punjab Land Reforms Act, 1972 (hereinafter referred to as 'the Land Reforms Act') and that the total land holding of Raghubinder Nath worked out to 43 Std. Acres 2 Units (33 Std. Acres 9 $\frac{1}{4}$ Units plus 9 Std. Acres 8 $\frac{1}{4}$ Units sold already). Since Raghubinder Nath died leaving seven legal heirs, there is no surplus land with them and consequently the allotment made in favour of Jagat Ram was not only held bad but stood cancelled and he has to be accommodated elsewhere in terms of the directions of the Financial Commissioner dated 10.3.83. The Naib Tehsildar (Agrarian) was directed to put up a proposal for allotment of alternative land equivalent to the area to be given to Jagat Ram. As against the said proceedings, Jagat Ram filed an appeal before the Commissioner. During pendency of the same, Jagat Ram died on 2.10.86 and the legal representatives were brought on record on 13.1.87. This appeal came to be dismissed on 16.5.88 on the ground that the area declared surplus did not vest in the State under Section 8 of the Act for want of notice as required under Section 9(1) of the Act. The allottee Jagat Ram was also held to have not proved his possession of the lands. Thereupon, the legal heirs of Jagat Ram pursued the matter before the Financial Commissioner by filing a revision and his legal heirs continued the same on account of his death. By the proceedings dated 1.8.90, the revision petition was allowed and the orders of the Commissioner dated 16.5.88 came to be set aside holding that the declaration of the surplus area in the year 1960/1980 held the field and was never set aside and that Jagat Ram, the allottee, having deposited the purchase amount on 30.3.82 in the Treasury, became the owner of the land on such deposit. It was also held that in view of the death of the original landowner in the year 1984 and the utilisation of the land even during the life-time of the landowner, who did not challenge the

same successfully, the orders of the Commissioner cannot be sustained. Aggrieved against the said proceedings, the heirs of the Raghubinder Nath approached the High Court unsuccessfully. Hence, this appeal.

The learned counsel for the appellants placed strong reliance upon the orders dated 31.3.76 under which the Collector held that there is no area left as surplus, the further orders dated 10.3.83 passed by the Financial Commissioner holding that the landholder should be given an opportunity to select the permissible area and the tenant Jagat Ram should be accommodated elsewhere on an equivalent land, and the orders passed on 10.6.86 by the Collector as well as that of the Commissioner made on 16.5.88 to contend that the appellants had acquired rights to retain the entirety of the lands, in view of the fact that the lands declared surplus were not also utilised by taking over possession of the same. It was also strenuously contended that there was no vesting of the lands declared surplus in accordance with law and, therefore, the Financial Commissioner committed an error in interfering with the orders of the Commissioner and the Collector. Argued the learned counsel further that the High Court, in dismissing the Writ Petition without assigning any reason whatsoever, committed a serious mistake and, therefore, the appeal before this court merits acceptance.

Per Contra, the learned counsel for the respondents, who are the legal heirs of Jagat Ram, contended that the orders of the Financial Commissioner dated 1.8.90 has considered the issues arising in their proper perspective on the indisputable position arising out of the fixing of ceiling and declaration of surplus lands of the landholder as early as on 30.6.60, the subsequent allotment in favour of Jagat Ram on 24.3.82 and the deposit of a sum of Rs.5900/- on 30.3.82 which proved utilisation of the surplus land even during the life time of the landholder who died only on 2.2.84. It was further contended for those respondents that the possession of the lands declared surplus and allotted to Jagat Ram were always in his possession and this position being an indisputable fact on record the Commissioner and the Collector in passing orders on 10.6.86 and 16.5.88 merely proceeded on surmises to sustain the claim of the appellants and therefore the Financial Commissioner was right in granting relief to the respondents, on a proper appreciation of all the facts and by applying the correct principles of law. The appeal, according to them, had no merits.

The first respondent-State also affirmed the factual position that the area in question was declared surplus and utilised during the life time of the big landholder Raghubinder Nath and, therefore, the appellants have no rights whatsoever to be vindicated and consequently the appeal only merited rejection.

We have been taken through the various orders passed at different times by the concerned authorities and we are only surprised to notice that such orders were being made from time to time taking into account one or the other of the facts without a comprehensive consideration of the totality of facts and the law governing the case on hand. The impugned orders of the Financial Commissioner dated 1.8.90 only analysed all those relevant aspects in their proper perspective and no exception could be taken to the

action of the High Court in declining to interfere, though it would have been proper and desirable for the High Court to have given some reasons to disclose its mind, instead of rejecting the Writ Petition by a cryptic order.

Shorn of all controversies, there are certain unalloyed facts which can neither be ignored nor can escape the attention of anyone expected to adjudicate the controversy in issue and which have, in our view, been rightly taken note of by the Financial Commissioner, in passing the impugned order dated 1.8.90. Even the Financial Commissioner who passed orders on 10.3.83 on a revision petition filed by the landholder Raghubinder Nath recognised certain facts which are indisputable on record and the appellants, who strongly rely upon it to derive benefits given thereunder cannot afford to ignore or go behind the same. The fact that Jagat Ram was a tenant on the appointed date, as a consequence of which only the lands were allotted to him has not also been disturbed or specifically set aside. Except for the fact that the Financial Commissioner, in passing those orders merely took into account Section 24-A(2) of the Land Tenures Act to grant a further opportunity to select the permissible area, by observing that another opportunity to separate the area after consolidation has to be given to the landowner, there is no interference even by this authority of the fact that the ceiling and surplus in respect of this landholder has been already fixed, since then only the question of selecting the permissible area arise, for the landholder. The Financial Commissioner specifically recorded a finding about the lack of bona fide in the sale claimed to have been made by the landholder in 1954 in the following terms: The petitioner has however, failed to prove his bona fides regarding the land transferred by him in 1954. The revenue record does not show that possession of the land alleged to have been sold in 1954 was actually transferred to the vendee in 1954. This transfer as claimed has not been accepted as bona fide by the learned Collector. If the land had been transferred, the landowner should have produced copies of the khasra girdawaris of the crop subsequent to the execution of the sale deed dated 2.5.54. Since this has not been done, the transfer of the land as claimed by the landowner has been rightly disallowed by the learned Collector and endorsed by the learned Commissioner.

The predecessor-in-interest of the appellants late Raghubinder Nath was considered to be a big landholder and by an order dated 30.6.60, the ceiling was fixed in respect of his holding and after ignoring the sales claimed to have been made after 15.4.53 (the appointed date for purposes of the 1953 Land Tenures Act) an extent of 3 Std. Acres 9 $\frac{1}{4}$ Units of land were declared surplus. After consolidation, the area in the hands of the landowner seem to have increased to 35 Std. Acres-10 $\frac{1}{2}$ Units and thereafter on 29.9.80 the extent of 3 Std. Acres 9 $\frac{1}{4}$ Units was once again declared surplus by specifying the items of lands also viz., 'Khasra Nos.86-R/13 (6K- 4M), 1461/2 (0-15M), 1461/3 (1K-17M) 1462 (20K-12M) total measuring 29 K - 9 Marlas - 3 Standard Acres 9 $\frac{1}{4}$ Units. The remaining area of the landowner was held to be his reserved area. Thereafter, on 24.3.82, the Collector allotted the surplus land to Jagat Ram and thereupon Jagat Ram deposited the sum of Rs.5900/-. This allotment in his favour was on the basis that he was the tenant of the lands which came to be declared surplus, also. It is only in view of all these, the learned counsel

on either side concentrated at the time of hearing before us on the basic question as to whether the lands declared surplus could be said to have been utilised even during the life time of the landholder viz. prior to 2.2.84 when Raghubinder Nath died.

The decision in Bhagat Gobind Singh vs. F.C., Punjab [1972 PLJ 319] on which strong reliance was placed for the appellants may not be of any assistance in this case. It could be seen from the said judgment that the remand and further opportunity given for the landholder was in the context of the orders/instructions of the State Government dated 22.7.61 to save, if at all, bona fide sales made between 15.4.53 and 30.7.58 and more so, due to the reason that there was no scope in that case when the ceiling was fixed and surplus declared to undertake such an exercise. So far as the facts of the present case are concerned, the sales were held to be not bona fide by all the authorities and this fact also has been approved by the very orders of the Financial Commissioner dated 10.3.83. So far as the decision of this court reported in Rameshwar & Ors. Vs. Jot Ram & Anr. [1976(1) SCC 194 = 1975 PLJ 454] is concerned, in construing Section 18(4) of the Land Tenures Act, this Court held that on the deposit of even the first instalment of the purchase price the tenant shall be deemed to have become the owner of the land. The dispute sought to be with reference to the vesting as well as taking possession also has no merit. Since the lands were already in the possession of the tenant Jagat Ram, who happened to be the allottee also, there is no substance in the challenge. The landholder or his heirs, having not challenged specifically the order dated 24.3.82, cannot be allowed to dispute this factual position at all. The Financial Commissioner chose to give relief to the heirs of Jagat Ram only on the ground that the lands declared surplus came to be also utilised effectively under the Punjab Utilisation of Surplus Area Scheme, 1973 before 2.2.84 when the landholder died and therefore, there was nothing for the appellants to re-agitate the matter once over again to revise the ceiling area taking advantage of the death of the erstwhile landholder. The reasons, which weighed with the Financial Commissioner for granting relief to the heirs of Jagat Ram by passing the order dated 1.8.90, cannot be said to be either illegal or suffer any serious infirmities whatsoever to call for any interference in this appeal.

The appeal consequently fails and shall stand dismissed. The parties shall bear their own costs.