Tilak Raj and Others Vs Financial Commissioner (Revenue) and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 5, 1991

Acts Referred: Punjab Security of Land Tenures Act, 1953 â€" Section 10A, 10B
Punjab Security of Land Tenures Rules, 1956 â€" Rule 6(5), 6(6)

Citation: (1994) 1 ILR (P&H) 310

Hon'ble Judges: V.K. Bali, J; A.L. Bahri, J

Bench: Division Bench

Advocate: R.L. Aneja, for the Appellant; M.C. Berry, DAG and Balraj Behal, for Respondents Nos. 3 to 9, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Bali, J.
The original big landlord Kashmiri Lal was admittedly owner of 92 Standard Acres 8Ã¯Â¿Â½ units of land located in village of

Salem shah. On the appointed date i.e. April 15, 1953 admittedly notice under the Punjab Security of Land Tenures Act 1953 was issued to

determine if he had any surplus land. The matter or the aforesaid purpose came before Collector Agrarian, Fazilka who,--vide his order dated

September 13, 1960 after leaving 50 Standard Acres of land as permissible area declared 42 Standard Acres 3/4 units as surplus. The landowner

challenged the aforesaid order by way of an appeal before the Commissioner and the same was accepted,--vide order dated February 1, 1962.

However, the case was remanded for fresh decision and a direction was given that the transfers made by the landowner in favour of Amar Nath,

Chuni Lal and Tilak Raj who were none other than the present Petitioners and are admittedly his successors by way off Civil Court decree

obtained by them in the year 1956 be taken into account. The Collector Fazilka,--vide his order dated August 28, 1962 after allowing 50

Standard Acres of land as permissible area declared 34 Standard Acres 14Ã¯Â¿Â½ units as surplus. It is significant to mention that the transfers made

by the big landowner in favour of his sons on the basis of Court decree were not held to be bona fide. The matter was further agitated by way of

an appeal before the Additional Commissioner. Jalandhar who,--vide his order dated April 18, 1963 accepted the appeal and reduced the surplus

area from 34 Standard Acres 14Ã¯Â¿Â½ units to 33 Standard Acres 4Ã¯Â¿Â½ units. The landowner thereafter did not agitate the matter but as some part

of the area declared surplus had since already been mortgaged by the landowner, the mortgagee sought review of the order dated April 18, 1963.

The plea of mortgagee succeeded and vide order dated October 28, 1965 the Additional Commissioner Jalandhar reviewed his earlier order

dated April 18, 1963. This older of Additional Commissioner, Jalandhar was challenged is appeal before the Financial Commissioner, Punjab,

Chandigarh which--vide his order dated December 31, 1965 dismissed the revision petition The landowner then filed Civil Writ Petition No. 432

of 1966 in this Court which too did not find any favour with his Court and it was dismissed,--vide order dated May 7, 1975. However, the

litigation was going on when the new Act i.e. Punjab Land Reforms Act, 1972 came into being. Original landowner Kashmiri Lal died on May 25,

1974 Collector,-vide his order dated November 17, 1976 on account of demise of the original landowner held that inasmuch as the successors of

the landowner would be small landowners and no lands in their hands could be declared surplus the death of original landowner would result in

non-operation of the earlier order declaring his land as surplus. Before, however, the aforesaid order was passed in the manner indicated above,

land measuring 11 Standard Acres 10Ã¯Â¿Â½ units had since been allotted in favour of Bishan Singh, Jugraj Singh, Jalla Singh, Mangal Singh and

others. Obviously, the allotment was out of the land declared surplus in the case of the big landlord and the same was made way back in the year

1964. When the successors of the original landowner i.e. the present Petitioners after obtaining a favourable order in their favour proceeded

against the allottees mentioned above and filed an application for their ejectment before the Collector Agrarian, Fazilka who actually ordered their

eviction,--vide order dated January 3, 1978. Respondents No. 3 to 9 went in separate appeals before the Additional Commissioner, Ferozepore

Division who after hearing the parties at length,--vide order dated November 30, 1981 accepted the appeal and set aside the orders dated

November 17, 1976 of the Collector. The aforesaid reversal of decision was obviously not to the liking of the Petitioners who agitated the matter

before the Additional Commissioner and being unsuccessful from that Court as well, they have approached this Court by way of present Writ

Petition with a prayer to quash, orders passed by Additional Commissioner, Ferozepore as also the Financial Commissioner.

2. Although in the petition, number of points have been raised but the learned Counsel appearing for the Petitioners has mainly contended that once

the orders of declaration of surplus area, were set aside,--vide order October 28, 1965, the allotments made on the basis of orders,--vide which

the land of big landowner, was declared surplus would ipso facto become void. The facts, however, as narrated above would go to show that

orders dated August 28, 1962 and April 18, 1963 in so far as landowner is concerned, had become final. He had not agitated the matter thereafter

and in fact an application for review was carried only by the mortgagee. As indicated above, the review application preferred by the mortagee was

accepted, it is that order which was later on challenged by the original landowner before the Financial Commissioner and the High Court and as

indicated above, he was unsuccessful at every stage. Order dated April 18, 1963 had, therefore, attained finality qua the landowner. As mentioned

above, he had only challenged this order dated April 18, 1963 and,--vide order dated October 28, 1965 the review of order April 18, 1963 was

permitted. The order parsed on the review application cannot possibly be interpreted so as to mean that part of the order which was not even

challenged by anyone was also set aside. The Financial Commissioner after thoroughly going through the facts of the case came to the correct

conclusion that while permitting the review, the Additional Commissioner ought to have limited the scope of the review to the extent of protecting

the interests of the mortgagee and if the order is read as a whole, it would be clear that review was to cover the interest of mortgagee only and in

all other respects, order dated April 18, 1963 had not to be touched.

3. The learned Counsel for the Petitioners also contends that the order by which on demise of original big landowner no effect was to be given to

the earlier orders passed under the Punjab Security of Land Tenures Act could not possibly be challenged by the tenants who had been settled on

the land declared surplus. In support of his aforesaid contention, the learned Counsel relies upon decision of Division Bench of this Court in

Bhupinder Singh v. The State of Punjab and Ors. 1980 PLJ 72. The facts of Bhupinder Singh''s case (Supra) would, however, show that while

interpreting Rules 6(5) and 6(6) of the Punjab Security of Land Tenures Rules, 1956, it was held that the ""reference to the tenants m this rule is

clearly to such tenants who were already on the land of the landlord in their capacity as such before the declaration of surplus area by the Special

Collector. Such tenants were considered to be necessary parties and it was imperative to hear them because the scheme of the Act is clear that the

land of a tenant who was cultivating the same as such at the time of the enforcement of the Act, could not be reserved by the big landlord at the

time of the declaration of surplus area by the Special Collector"". It was also held that ""insofar as the resettled tenant is concerned he is brought on

the surplus land of the landlord after it is declared surplus by the Special Collector. Thus his status as a tenant or a resettled tenant follows the

declaration of some area out of the land of the landlord as surplus. Such tenants or resettled tenants were not to be divested of their rights of any

specific order to that effect as a result of the setting aside of the order declaring some area to be surplus in the hands of a particular landlord."" We

are, however, not inclined to agree with the contention raised by the learned Counsel for the Petitioners. It shall be seen from the facts of the

present case that the tenants were settled on the land which was declared surplus in the hands of the original landowner way back in the year

1964. The Punjab Land Reforms Act 1972 came into force on 2nd of April 1973. Under the Act aforesaid, the manner in which the surplus land is

to be allotted, a scheme known as Punjab Utilization of Surplus Area Scheme 1973 was also framed. Paragraph 13 of the aforesaid Scheme runs

as follows:

A tenant resettled on the surplus area of a landowner in accordance with the provisions of the Punjab Law and the rules framed there under at any

time before the commencement of the Act shall be deemed to have been allotted land in accordance with the provisions of this scheme; Provided

that the provisions of this paragraph shall not be applicable where the tenant is deemed to have become the owner in accordance with Clause (b)

of Sub-section (4) of Section 18 of the Punjab Law before the commencement of the scheme.

4. Paragraph 13 of the scheme is, thus, attracted to the facts of the present case. The landowner died on 25th May, 1974 i.e. after the

enforcement of scheme of 1973. The tenants who were settled on the surplus land on account of paragraph 13 of the scheme re-produced above

improved their status and became allottees. It was not disputed by the learned Counsel for the Petitioners that under the scheme of 1973, a tenant

settled on the surplus area had a right to get allotment as proprietor persons who were tenants under the Act of 1953 became allottees in view of

the provisions of Punjab Land Reforms Act and Punjab Utilization of Surplus Area Scheme, it cannot be urged on any meaningful ground that they

would not have a right to be heard or they would not have a right to challenge the order if their rights were going to be prejudiced on account of

any order that might either reduce the surplus area or totally obliterate the same. The judgment cited by the learned Counsel in support of his

contention that the tenants or resettled tenants have no right of hearing nor they have any right to challenge the order with regard to surplus area of

landowner has, thus no substance and thus deserves to be rejected.

5. The contention of learned Counsel for the Petitioners cannot prevail for yet another reason and that is that the facts of the present case reveal

that the tenants were settled oh the land way back in the year 1964 and the death of the landowner occurred in the year 1974. Once the land

stood utilized even the death of the landowner would not make any difference for reducing the surplus area, atleast to the extent that the same

stood Utilized as per provisions contained in Section 10-A(b) of the Punjab Security of Land Tenures Act 1953, it is only succession by

inheritance or acquisition by the State that might result into reducing the surplus area in case of death of landowner but in so far as the land which

has been utilized, that cannot possibly revert back to the landowner. The Apex Court in Sher Singh and Ors. v. Financial Commissioner of

Planning Punjab and Ors. AIR 1987 S.C. 1307, has held that ""along with the order declaring the land of an owner as surplus, a corresponding

right and duty accrue to the Government to utilise the surplus area for the re-settlement of tenants. In other words, the rights on the land declared

as surplus get vested in the Government to be distributed amongst the tenants for re-settlement. This is an indefeasible right that the Government

secures. The land owner could not get back the land, if the surplus had not been utilised. There is nothing in the Act which imposes any time limit

for the Government to utilise the land for the purpose mentioned in the Act. Nor is there any provision enabling the owner of the land to claim back

the land and to get it restored to him if utilisation is not made by the Government within a specified period. All that the Act contains by way of

exception is what is seen in Section 10A(b). If at the time of the commencement of the Act, the land is acquired by the Government under the

relevant acquisition laws or when it is a case of inheritance, the owner could claim exclusion of such land from his land for fixation of his ceiling

under the Act. The second exception itself is further fettered by the provision in Section 10-B that where succession had opened after the surplus

area or any part thereof had been utilised u/s 10A(a), the saving specified in favour of an heir by inheritance would not apply in respect of the area

so utilised. To put it short, the Government had under the Act an unfettered right without time limit to utilise the land for re-settlement of tenants

subject to the two exceptions mentioned above. It is, of course, desirable that re-settlement should be done as expeditiously as possible. Inaction

on the part of the Government to re-settle the tenants will not clothe the owner with a power for restoration of the land.

6. A resume of facts as have been re-produced above would, thus, show that the tenants had acquired a right for allotment of the land. Therefore,

it cannot be said by any stretch of imagination that they had no locus standi to challenge the orders,--vide which the earlier orders declaring surplus

land in the hands of the original land owner was sought to be reviewed on the demise of Tilak Raj the original land owner. In Bhikoba Shankar

Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others, , it has been held that any person who is entitled to grant of land

under the provisions of Act may question an order which would have the effect of reducing the extent of total surplus land in any village.

7. Finding no merit whatsoever in this petition, we dismiss the same with costs which are quantified at Rs. 1,000.