(2002) 11 P&H CK 0041

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 2293 of 1981

Smt. Paramjit Kaur		APPELLANT
	Vs	
The State of Haryana and Another		RESPONDENT

Date of Decision: Nov. 13, 2002

Acts Referred:

- Haryana Ceiling on Land Holdings Act, 1972 - Section 9(1)

Citation: (2003) 134 PLR 43 : (2003) 1 RCR(Civil) 796

Hon'ble Judges: N.K. Sodhi, J

Bench: Single Bench

Advocate: P.S. Dhaliwal, for the Appellant; Charu Tuli, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Sodhi, J.

Whether the wife is entitled to be heard during the course of proceedings for determination of the surplus area when her husband as a member of the family had furnished the declaration u/s 9(1) of the Hary-an a Ceiling on Land Holdings Act, 1972 (for short the Act) including therein the land held by other members of the family, is the short question which arises for determination in this bunch of four Civil Writ Petitions Nos.2293, 3972 of 1981, 820 of 19S2 and 15716 of 1991. Two of these writ petitions pertain to the State of Punjab where surplus area was declared under the provisions of the Punjab Land Reforms Act, 1972. Counsel for the parties are agreed that the provisions of the two Acts are analogous and that the answer to the aforesaid question will equally apply to the cases arising under the Punjab Act. For the sake of convenience the facts are being taken from Civil Writ Petition No.2293 of 1981 in which the main arguments were addressed.

2. Rulia Singh was a big landowner of village Tatiana, Tehsil" Guhla, Distt, Kuruk-shetra. He furnished a declaration to the prescribed Authority u/s 9(1) of the Act giving the

particulars of all his land and that of his adult son. He included in the declaration the land owned by his two wives as well including the petitioner herein. The Sub Divisional Officer-cum-Collector (Agrarian) by his order dated 29.9.1980 allowed to the landowner one primary unit and one separate unit and after excluding 861 kanals 18 marlas of land which was permissible by law, declared 311 kanals 12 marlas of land as surplus in his hands. It may be mentioned that the landowner claimed only two units of land, one for the family on whose behalf he had filed the return and the other for his adult son. Feeling aggrieved by this order, Rulia Singh, landowner, filed an appeal before the Collector who by his order dated 29.12.1980 dismissed the same. It was argued before the Appellate Authority that the landowner had sold 56 kanals of land on 4.8.1978 to one Harnek Singh son of Sampuran Singh on account of his personal necessity and, therefore, this sale being bona fide should have been accepted as valid and the land sold should have been taken out from his land while determining the surplus area. This contention was negatived by the Collector. It was thereafter that the petitioner who is the wife of Rulia Singh filed the present petition under Article 226 of the Constitution challenging the order of the Prescribed Authority and that of the Collector whereby surplus area had been declared in the hands of her husband on the ground that she was not afforded an opportunity of hearing during the course of the surplus area proceedings. It is alleged that Rulia Singh had erroneously shown the land of the petitioner as owned by him and included the same in the declaration furnished u/s 9(1) of the Act and that she was entitled to be heard by the Prescribed Authority before the surplus area was declared in the hands of Rulia Singh. Reliance in this regard has been placed on a Division Bench judgment of this Court in Angrez Kaur v. State of Punjab 1983 P.L.J. 361.

3. In response to the notice issued to the respondents, they have filed their reply pleading that the petitioners being the wife of Rulia Singh was a member of his family and, therefore, she was not entitled to any hearing. It is further pleaded that Rulia Singh was duly heard in the proceedings for declaration of surplus area and that the orders declaring surplus area in his hands having become final could not be challenged by his wife in the present proceedings. 4. Before I deal with the rival contentions of the parties, it is necessary to refer to some of the provisions of the Act which are relevant for our purpose. The Act was enacted with a view to consolidate and amend the law relating to ceiling on land holdings in the State of Haryana and to give effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution. The term "family" has been defined in clause (f) of section 3 of the Act to mean, husband, wife and their minor children or any two or more of them. Clause (m) of section 3 defines a "person" to include a company, family, association or other body of individuals whether incorporated or not and any institution capable of holding property. "Separate unit" has been defined in clause (q) of Section 3 of the Act and means, an adult son living with his parents or either of them and in case of his death, his widow and children, if any. Section 4 of the Act defines what "permissible area" is of a person or family consisting of husband, wife and up to three minor children. Section 7 of the Act mandates that no person shall be entitled to hold whether as landowner or tenant or as a mortgagee with

possession or partly in one capacity or partly in another, land within the State of Haryana exceeding the permissible area on or after the appointed day which is the 24th day of January, 1971. The Explanation to this Section is relevant and the same reads as under:-

Explanation - Where the person is a family including the separate unit, if any, the land owned or held by such person together with the land owned or held by the members of the family and the separate unit shall be taken into account for the purposes of calculating the permissible area."

Section 9 of the Act deals with selection of permissible area and requires persons to furnish declaration in the prescribed form and it reads as under:-

"9. SELECTION OF PERMISSIBLE AREA AND PERSONS REQUIRED TO FURNISH DECLARATION.- (1) Every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area, shall, within a period of three months from such date as the State Government may, by notification, specify in this behalf or subsequent acquisition of land, furnish to the Prescribed Authority a declaration supported by an affidavit giving the particulars of all his land and that of the separate unit in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible area which he desires to retain:

Provided that in case of a member of the Armed Forces of the Union, the last date for furnishing the declaration shall be the 31st October, 1976.

EXPLANATION I.- Where the person is a member of the family, he shall include in his declaration the particulars of the land held by him and also of land, if any, held by other members of the family, and the separate unit.

EXPLANATION II.- In calculating the extent of land owned or held by a person the share of such person in the land owned or held by an undivided family, firm or association of individuals, whether incorporated or not, and the land contributed as share capital or otherwise by him to a cooperative society or a company of which he may be a member or shareholder, shall be taken into account.

(2) Every person making a selection of the permissible area under sub-section (1), may also select land for the separate unit.

EXPLANATION. - An adult son, who owns or holds land and is living separately from his parents shall file the declaration under Sub-section (1) and make the selection of permissible area under Sub-section (2) separately.

(3) In making the selection such person shall include in the first place the land which had been transferred by him after the appointed day in contravention of the provisions of Section 8 and in the second place the land mortgaged by him without possession but

shall not include any land:-

(i) which is declared surplus;

(ii) which was under the permissible are of a tenant, under the Punjab Law or the Pepsu Law.

(4) The declaration under Sub-section (1) shall be furnished by,-

(a) in the case of an adult unmarried person, such person;

(b) in the case of minor, lunatic, idiot or a person subject to like disability, the guardian, manager or other person incharge of such person or of the property of such person;

(c) in the case of a family the husband or in his absence, the wife, or in absence of both, the guardian of the minor children;

(d) in the case of any other person, any person competent to act for such person on this behalf."

A reading of the aforesaid provisions makes it clear that every person who holds land in excess of the permissible area is required to file a declaration supported by an affidavit giving the particulars of all his land and that of the separate unit and he has to select land not exceeding the permissible area which he desires to retain. According to explanation 1 to Section 9(1) of the Act, where the person is a member of the family he has to include in his declaration the particulars of his land held by him and also of land, if any, held by other members of the family and the separate unit. Separate unit means an adult son living with his parents. It is also clear from the Explanation to Section 7 of the Act that where the person is a family including the separate unit, the land owned or held by such person together with the land owned or held by the members of the family and the separate unit shall be taken into account for the purpose of calculating the permissible area. Section 9(4)(c) of the Act requires that in the case of a family it is the husband who has to file the declaration under Sub-section (1). When Rulia Singh filed the declaration he had two wives and an adult son living with him. It is, thus, clear that he was required to include in the declaration not only the land owned by him but also the land owned or held by his wives and the adult son which he did. It cannot, therefore, be said that he erroneously included the land of the petitioners herein in the declaration. The land held by the wives and other members of the family had to be clubbed with that of Rulia Singh for the purpose of calculating the permissible area. Having filed the declaration on his own behalf and on behalf of the other members of the family, it was he alone who was required to be heard by the Prescribed Authority in the proceedings for declaration of surplus area. The wife or other members of the family including the separate unit on whose behalf he had filed the declaration, have not right to be heard because they were being represented by Rulia Singh who had filed the declaration on their behalf as well. The learned counsel for the petitioners could not point out any provision in the Act or in

the Rules framed thereunder which could even remotely suggest that the wife or any other member of the family or the separate unit on whose behalf the landowner had filed the declaration are entitled to be heard in the surplus area proceedings. Even if notice had been issued to any other member of the family for the separate unit, there was nothing that they could urge in addition to what the landowner had stated in the declaration. Rulia Singh filed the declaration on behalf of the family including the separate unit and he, therefore, represented every member of the family including the adult son living with him. Since the law required Rulia Singh to include the land of all the other members of the family in the declaration furnished by him, it was he alone who was to be heard in the surplus area proceedings and by necessary implication the other members of the family were excluded from being heard. I have, therefore, no hesitation in holding that the petitioner being a member of the family of Rulia Singh who filed the declaration u/s 9(1) of the Act including her land therein, was not entitled to be heard in the surplus area proceedings. I may now refer to the order passed by the Division Bench in Angrez Kaur''s case (supra). In that case the land of Angrez Kaur and that of her husband were clubbed and the Collector issued notice only to the husband while determining the surplus area in his hands. No notice was issued to Angrez Kaur and she then filed a petition in this court making a grievance that she was entitled to be heard. The Advocate appearing for the respondents in that case conceded that a notice would be issued to Angrez Kaur as well before a final decision was taken. On the basis of this concession the learned Judges disposed of the writ petition with a direction to the Collector to issue notice to Angrez Kaur as well. Since the writ petition was disposed of on a concession made by the counsel for the respondents therein, the order of the Division Bench is no authority for the proposition that a wife whose land has been clubbed with her husband is entitled to be heard as a matter of right in the surplus area proceedings. As a matter of fact, this issue was never debated or discussed on first principles. Angrez Kaur''s case (supra) is, therefore, of no help to the petitioners herein.

5. In Seth Nand Lal v. State of Haryana and others 1980 P.L.J. 470 the constitutional validity of different provisions of the Act including Section 9 thereof were challenged before the Supreme Court and it was urged that since the husband has been given the right to furnish the declaration as also to make the selection of land within the prescribed area, he can while making the selection give away his wife''s land as surplus and this, according to the petitioners therein, was discriminatory against the wife who might lose her land declared as surplus. The contention was rejected by their lordships holding that the selection of permissible area is ordinarily guided by the consideration of retaining the best quality land with the family and even otherwise u/s 11(2) it has been provided that the land so retained as permissible area of the family and the separate unit shall be owned or held by the members of the family and also the separate unit in the same proportion in which they owned or held land before the selection of the permissible area. The learned Judges of the Supreme Court observed that, "if out of sheer cussedness, the husband were to select his land which he desires to retain as the permissible area and gives away his wife''s land as surplus, he will do so at his peril, for in the land so retained

as permissible area he and his wife shall have a share in the same proportion in which they owned or held their lands before the selection of the permissible area." It is, thus, clear from the observations made by the Supreme Court that the land of the husband and the wife has to be clubbed for the purpose of the declaration of surplus area under the Act.

CWP 15716 of 1991

6. In this case, Karam Singh son of Jeewan Singh was the big landowner and an area measuring 5.3433 hectares of first quality land was declared surplus in his hands. The order declaring the land surplus was challenged by his widow Smt. Bhagwan Kaur after a lapse of 12 years by filing an appeal before the Commissioner alleging therein that her deceased husband had not been properly served in the surplus area proceedings. The plea was negatived and the appeal dismissed on 5.6.1991. Jaspal Kaur the present petitioner who is Bhagwan Kaur''s brother''s daughter challenged the orders of the prescribed Authority and the Commissioner before the Financial Commissioner on the ground that the land had been purchased by Bhagwan Kaur and that she was not heard by the Prescribed Authority in the surplus area proceedings. Jaspal Kaur petitioner based her claim on the basis of a Will. The revision petition was dismissed by the Financial Commissioner on 17.9.1991 and it is against these three orders that the writ petition was filed by Jaspal Kaur petitioner. She has also pleaded that since Bhagwan Kaur was not given an opportunity of hearing by the Prescribed Authority the order declaring the land as surplus in the hands of Karam Singh was illegal. For the reasons already stated above, the plea is without any merit and the same stands rejected.

In the result, there is no merit in the writ petitions and the same stand dismissed with no order as to costs.