

(1995) 05 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W.P. No. 4030 of 1981

Ram Kishan

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: May 9, 1995**Acts Referred:**

- Punjab Land Reforms Act, 1972 - Section 4(5)

Citation: (1995) 111 PLR 731**Hon'ble Judges:** T.H.B. Chalapathi, J**Bench:** Single Bench**Advocate:** Balraj Behl, for the Appellant; Manjit Singh, AAG, for the Respondent**Final Decision:** Dismissed

Judgement

T.H.B. Chalapathi, J.

This writ petition has been filed challenging the orders of the authorities below determining the surplus area of the petitioner under the provisions of the Punjab Land Reforms Act, 1972. Admittedly, the petitioner owned land measuring 527 kanals, 7 marlas in village Arniwala, Tehsil Fazilka, District Ferozepur. The petitioner has no issues. The petitioner and his wife desired to adopt the son of 5th respondent. Respondent No. 5 is the brother's son of petitioner's wife. The 5th respondent along with his son Sanjeev Kumar came to the house of the petitioner and started living with the petitioner. The petitioner executed a registered gift deed dated 11.5.1972 transferring the land measuring 138 kanals 10 marlas situated in village Arniqala in favour of 5th respondent. This land was taken into account while determining the surplus area of the petitioner under the provisions of the Punjab Land Reforms Act, 1972 by the authorities. According to the petitioner, the gift is a bona fide one and, therefore, the land covered by the gift has to be excluded while determining surplus land. As the authorities did not accept the request and included the said land while determining the permissible area, the petitioner filed this writ petition.

2. Learned counsel for the petitioner contended that under Sub-section (5) of Section 4 of the Punjab Land Reforms Act, 1972 the land which was transferred by sale, gift or otherwise, other than a bona fide sale or transfer, after the appointed day but before the commencement of this Act, shall be taken into account as if such land had not been transferred and the onus of proving the transfer as bona fide shall be on the transferor. While relying upon this provision learned counsel contended that the gift is for consideration of love and affection and, therefore, it is bona fide and therefore, land covered by the gift deed has to be excluded. The Legislature while enacting Sub-section (5) of Section 4 of the Punjab Land Reforms Act directed that all the land which has been transferred by sale, gift or otherwise to be taken into account while determining the permissible area as if such land has not been transferred. Only bona fide sale or transfer has been exempted from taking into account while determining the permissible area. In the case of sale, transfer is said to be bona fide if it is supported by valuable consideration. Admittedly, the transfer in this case is by way of gift by the petitioner in favour of his wife's brother's son. Gift is defined in Section 122 of the Transfer of Property Act, 1882. Gift is the transfer of certain existing moveable or immovable property made voluntarily and without consideration. Consideration as envisaged in Section 122 of the Transfer of Property Act means valuable consideration and not consideration in the shape conferring spiritual benefit to the donor. If valuable consideration be not the consideration referred to in Section 122, there cannot be any gift without consideration at all. There will always be some sort of consideration in giving gift, for instance a consideration of spiritual or moral benefit or consideration for love and affection. Such considerations are not considerations contemplated in Section 122. The consideration contemplated therein must be valuable consideration, that is consideration either for money or money's worth. Therefore, it cannot be said that gift in favour of the brother's son of the wife of the petitioner is for consideration as there cannot be any gift with consideration. Therefore, the land covered by gift cannot be excluded. Sub-section (5) of Section 4 of the Punjab Land Reforms Act also says only such bona fide sale or transfer has to be excluded from determining the permissible area. It did not say that the property covered by gift also has to be taken into account. No doubt gift is also transfer of immovable property, but the transfer must be bona fide one. To make the transfer bona fide the transferee must be a bona fide transferee for valuable consideration. In other words, if the transferee takes the property for valuable consideration then only it can be said that the transfer is bona fide one. In the case of gift, there is no question of it being supported by valuable consideration. Therefore, it cannot be said that the gift is bona fide and it cannot be excluded from consideration while determining the permissible area of the petitioner.

3. On consideration of the facts and circumstances of the case, I do not find any illegality in the orders of the Collector dated 4.11.1977. Commissioner dated 27.11.1978 and the order of the Financial Commissioner dated 28.4.1981.

4. The writ petition, therefore, fails and is accordingly dismissed. There will be no costs.