

(2008) 07 P&H CK 0063

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Smt. Pamela Devi Opal and
Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: July 9, 2008

Acts Referred:

- Punjab Land Reforms Act, 1972 - Section 3(4)

Citation: (2008) 152 PLR 345 : (2008) 3 RCR(Civil) 949

Hon'ble Judges: Daya Chaudhary, J

Bench: Single Bench

Judgement

Daya Chaudhary, J.

The present writ petition has been filed for quashing of the order dated 20.10.1977 (Annexure P-1) passed by the Collector, order dated 30.6.1978 (Annexure P-2) passed by the Additional Commissioner and orders dated 4.12.1981 and 12.5.1983 (Annexures P-3 and P-4) passed by the Financial Commissioner.

2. In concise, the facts of the case as mentioned in the writ petition are that Brij Kumar, the land owner died in the year 1960 leaving behind him his widow Pamela Devi (petitioner No. 1), daughter Preeti (petitioner No. 2) and son Ajay Kumar (petitioner No. 3). Petitioner No. 2-Preeti was born on 29.3.1953 and petitioner No. 3-Ajay Kumar was born on 6.8.1958. The returns of the land were filed by Pamela Devi-widow and daughter Preeti and the total holding of the family was converted into land of first quality which came to 16.77 hectares. Out of both, none of the children was major on the "appointed day" and the widow Pamela Devi was entitled to keep one unit of land as her permissible area. After leaving seven hectares of land as permissible area of the land owner, remaining 9.77 hectares of first quality of land was declared surplus by the Collector Agrarian, Gurdaspur vide order dated 20.10.1977. The land owner went in appeal before the Additional Commissioner, Jallandhar Division, Jallandhar, who vide his order dated 30.6.1978 dismissed the

same against which the Revision Petition was filed before Financial Commissioner and the same was also dismissed vide order dated 4.12.1981. The review petition filed by the petitioners against the order of the Financial Commissioner was also dismissed vide order dated 12.5.1983.

3. The present writ petition has been filed by the legal heirs of Brij Kumar (land owner) and challenged the orders passed by the authorities below.

4. Mr. M.L. Sarin, learned senior counsel for the petitioners has argued that the impugned orders are unjust, void and without jurisdiction as Preeti-petitioner No. 2 was major on the date when the Act came into force i.e. 2.4.1973 and she was not a member of the family as defined in Section 3(4) of the Punjab Land Reforms Act No. 10 of 1973 (hereinafter referred to as "the Act") that neither a major son nor a major daughter of a person is a member of the family. Section 3(4) of the Act is reproduced as under:

3(4) "Family" in relation to a person means, the person, the wife or husband, as the case may be, of such person and his or her minor children other than a married minor daughter.

5. Mr. Sarin has further argued that the authorities below have declined the claim of the petitioners by taking wrong view of the law as the issue whether petitioners No. 2 and 3 were minor or major was to be seen on the appointed day i.e. 24.1.1971 and not on 2.4.1973, when the Act came into force.

Mr. Sarin has further argued that the authorities below have committed a grave mistake by holding that under Rule 5 read with Form A, the relevant date for determining whether a person was major or minor was the appointed day i.e. 24.1.1971 and not the date when the Act came into force, whereas, there is no such provision made either under Rule 5 or in Form A and even otherwise it is a settled principle of law that no rule can go against the provisions of the principal Act otherwise the rule itself would ultra vires the Act and void. The provision of clubbing the holdings of the members of the family was made u/s 4(4) of the Act. To support his contentions, learned Counsel has relied upon Jaswant Singh and Ors. v. Punjab Government and Anr. 1993 P.L.J. 684, Kidar Singh @ Kidara Singh and Anr. v. Karam Singh 1989 P.L.J. 156, Sh. Jagjit Singh and Ors. v. State of Punjab and Anr. 1983 P.L.J. 319, Mangat Ram v. The Financial Commissioner, Revenue, Haryana and Ors. 1994 P.L.J. 324, [Ujjagar Singh \(Dead\) by Lrs. Vs. Collector, Bhatinda and Another](#), and Ranjit Ram v. The Financial Commissioner, Revenue Punjab and Ors. 1981 P.L.J. 259. \\

6. Mr. Sarin has further argued that petitioner No. 2 inherited her share of land in her deceased father's estate, in her own right, under the Hindu Succession Act, was legally entitled to a separate unit of permissible area and because of that right only a separate declaration of her own area u/s 5 of the Act was filed. He further argued that petitioner No. 3 became major on 6.8.1976 i.e. long before the surplus area of

the family was determined, first on 22.11.1976 and then on 20.10.1977. The earlier determination dated 22.11.1976 having held null and void, the first actual determination was made by the Collector on 20.11.1977 and on both these dates, petitioner No. 2 was major. Petitioner No. 1 was also entitled to claim a separate unit for him.

7. Written statement on behalf of the respondents has been filed, which is on record. The stand taken in the written statement is that the age of petitioners No. 2 and 3 is to be considered on the appointed day i.e. 24.1.1971 and the petitioner No. 2 was minor and was not entitled to a separate unit. Vide order dated 22.11.1976, 9.77 hectares of land was declared as surplus with the petitioners although the Act came into force on 2.4.1973 but the area to be assessed with the owner was to be considered as on 24.1.1971 i.e. the appointed day. It has been argued by the counsel for the respondents that the authorities below have rightly passed the orders that the age of petitioners No. 2 and 3 was to be considered on the appointed day i.e. the date the Act came into force w.e.f. 2.4.1973 and the original land owner-Brij Kumar did not file any return in Forms A, C and E as required under the Act.

8. The question of law presented by the counsel for the petitioners is of far reaching importance in the context of the land ceiling Law. In order to appreciate the question raised in this case it is necessary to refer to the relevant provisions of the Act, which reads as under:

Section 3. Definitions.- In this Act, unless the context otherwise requires....

(4) "family" in relation to a person means the person, the wife or husband, as the case may be, of such person and his or her minor children, other than a married minor daughter;

(5) "Land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes-

(a) the sites of buildings and other structures on such land, and

(b) banjar land;....

(10) "person" includes a company, family, association or other body of individuals whether incorporated or not, and any institution, capable of holding property;

(15) "Surplus area" means the area in excess of the permissible area;

Section 4 Permissible area (1) Subject to the provisions of Section 5, no person shall own or hold land as landowner or mortgage with possession or tenant or partly in one capacity and partly in another in excess of the permissible area.

(2) Permissible area shall mean in respect of

- (a) land under assured irrigation and capable of yielding at least two crops in a year, 7 hectares; or
- (b) land under assured irrigation for only one crop in a year, 11 hectares; or Barani land, 20.5 hectares; or
- (d) land of other classes including banjar land an area to be determined according to the prescribed scale with reference to the intensity of irrigation productivity and soil classification of such classes, having regard to the respective valuation and the permissible area of the classes of land mentioned at (a), (b) and (c) above subject to the condition that the area so determined shall not exceed 21.8 hectares.

Provided that:

(i) Where land consists of two or more classes, the permissible area shall be determined on the basis of relative valuation of such classes of land subject to the condition that it does not exceed 21.8 hectares.

(ii) where the number of members of a family exceeds five, the permissible area shall be increased by one fifth of the permissible area for each member in excess of five, subject to the condition that additional land shall be allowed for not more than three such members.

(3) Notwithstanding anything contained in Sub-section (2), where any land is comprised in an orchard such land shall, for the purpose of determining the permissible area, be treated as barani land.

(4)(a) where a person, is a member of a registered cooperative farming society, his share in the land held by such society together with his other land, if any, or if such person is a member of a family together with the land held by every member of the family shall be taken into account for determining the permissible area.

(b) where a person is a member of a family, the land held by such person, together with the land held by every other member of the family, whether individually or jointly, shall be taken into account for determining the permissible area "Section 5 of the Act reads as under:

5. Selection of permissible area and furnishing of declaration by certain persons.- Every person who on the appointed day or at any time thereafter, owns or holds land as landowner or mortgage with possession or tenant or partly in one capacity and partly in another in excess of the permissible area, shall select his permissible area and intimate his selection to the Collector, and where land is situate in more than one district, to the Collectors concerned, through a declaration to be furnished in such form and manner and within such period as may be prescribed and if such person has as adult son he shall also be entitled to select separate permissible area in respect of each such son, out of the land owned or held by him subject to the condition that the land so selected together with the land already owned or held by

such son, shall not exceed the permissible area of each such son.

Provided that where the land is situate in more than one patwar circle, the declaration shall be supported by an affidavit in the prescribed form (2)....

10. Sub-section 2 of Section 4 of the Act shows that the expression permissible area has clearly been defined. Second proviso to Section 4(2) of the Act lays down that where the number of members of a family exceeds five, the permissible area shall be increased by one fifth of the permissible area for each member in excess of five, subject to the condition that additional land shall be allowed for not more than three such members.

11. Section 5 of the Act provides that every person who owns or holds land as landowner or mortgages with possession or tenant or partly in one capacity and partly in another in excess of the permissible area, shall select his permissible area. It further lays down that if such a person has an adult son, he shall be entitled to select permissible area in respect of each adult son.

12. Section 4 of the Act shows that ceiling limit has been placed on every person whether he is holding land as a landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area. So far as determining the permissible area is concerned, it would be necessary to refer the definition of the word "person" as given in Section 3(10) of the Act. It provides that a person includes a company, family association or other body of individuals whether incorporated or not and any institution capable of holding property. So, for the purpose of determining the permissible area one has to immediately fall back on the concept of family as given in Section 4(4) of the Act. Section 3(4) of the Act provides that family in relation to a person means the wife or husband, as the case may be, of such person and his or her minor children other than a married minor daughter.

13. A perusal of Sections 4 and 5 of the Act makes it clear that concept of family ceiling has been introduced in the Act. Section 4(2) of the Act defines permissible area only with respect to the family of a person Section 3(4) of the Act takes note of only family of the landowner for determination of permissible area.

14. Second proviso to Section 4 further lays down that where the number of members of the family exceeds five, the permissible area shall be increased by one fifth of the permissible area for each member in excess of five, subject to the condition that additional land shall be allowed for not more than three such members. Section 5 of the Act lays down that every landowner who owns or possesses land shall select his permissible area and intimate about his selection to the Collector and further if such person has an adult son he shall be entitled to select separate permissible area in respect of each son.

15. A plain reading of Sections 4 and 5 of the Act makes it clear that for determination of separate permissible area for each adult son of the landowner a reference to definition of permissible area as given in Section 4 of the Act has to be made. Section 4(2) of the Act defines permissible area according to the quality of the land and keeping in view the number of the family members. Second proviso to Section 4 clearly lays down that if the family members exceed five than permissible area shall be increased by one-fifth of the permissible area for each member in excess of five. The expression permissible area given in Section 5 of the Act is to be read with Section 4 of the Act. It is necessary to take into consideration the number of family members of each adult son for determination of permissible area and allow additional area for each family member of the adult son as laid down in second proviso to Section 4(2) of the Act. The Supreme Court in State of Punjab v. Sucha Singh 1977 P.L.J. 139 has laid down that the provisions of Land Reforms Act has introduced a concept of permissible area for the family as a unit by clubbing the land held by each member of the family as defined in the Act. As the provisions of the Act has laid down the concept of permissible area of the family, therefore, for determining the permissible area for each adult son in terms of Section 5 of the Act one has to go by the definition of the permissible area as given in Sections 4 and 5 of the Act. Second proviso to Section 4(2) of the Act clearly indicates that if the family members of the adult son exceeds five, the permissible area shall be increased by one-fifth of the permissible area for each member in excess of five. The word "permissible area" as defined in Section 5 of the Act will have to be interpreted in the light of the definition as given in Section 4(2) of the Act keeping in view that the Act has introduced the concept of family ceiling." So, necessarily the permissible area of the adult son could be determined by taking into consideration the family members of the adult son. It has been laid down by the Full Bench of this Court in Ranjit Ram v. Financial Commissioner, Punjab 1981 P.L.J. 259 that in addition to the permissible area for the landowner, the landowner is entitled to a separate permissible area for each of his adult son.

16. The provisions of Act received the assent of the President of India on 24.3.1973 and the Act was published in the Punjab Government Gazette on 2.4.1973. Section 3 of the Act provides that this Act shall come into force at once. So, in terms of the Act, the Act came into force on receiving the assent of the President of India on 24.3.1973 and there, is no provision in the Act giving this Act retrospective effect. There is a limited provision in Section 4(7) that the land is to be evaluated as on the appointed day i.e. 24.1.1971. The expression "appointed day" is defined in Section 3(1) as 24.1.1971. There is no provision in the Act which provides that if the member of a family is born after 24.1.1971 he shall not be entitled to the additional area as provided by second proviso to Section 4. On a plain reading of the Act, we have to see the number of members of the family for the purpose of determining the permissible area on the commencement of the Act i.e. 24.3.1973. The provisions of the Act are confiscatory in character and they are to be strictly interpreted so that

the land owner is not deprived of his legitimate rights under the Act. A ceiling limit for a family has been fixed under the Act and the number of family members have to be seen according to the Scheme of the Act as on the date of commencement of the Act. There is nothing in the Act which directs that number of members should be seen as on the appointed day i.e. 24.1.1971. Moreover, the Act cannot be given retrospective effect merely by implication as normally all the statutes are prospective and are supposed to respect vested rights.

17. In this case, the Collector has held that the family of the landowner consists of three members and as such is entitled only for 7 hectares of land as its permissible area and remaining area measuring 9.77 hectares of first quality land has been declared as surplus.

18. Having heard the arguments advanced by learned Counsel for the parties and going through the orders passed by the authorities below, I am of the view that admittedly petitioner No. 3 became major on 22.11.1976 and the surplus area of the family was determined first on 22.11.1976 and then on 20.10.1977. In fact the earlier determination dated 22.11.1976 was held to be null and void and the Collector determined the area on 20.11.1977 and the age of petitioner No. 3 was to be seen on the date of determination i.e. on 20.11.1977. Since petitioner No. 3 was major on 20.10.1977 and he was not a member of the family of the land owned and held by him, he cannot be taken into consideration for determining the permissible area of his mother and, therefore, petitioner No. 3 should have been allowed his own permissible area separately.

19. It is also an admitted fact that surplus area of the petitioners was to be determined under the Act and no proceedings were initiated or no decision was taken under the Punjab Security of Land Tenures Act. The petitioners were entitled to the benefit of Sections 4 and 5 of the Act. The authorities below have wrongly rejected the claim of the petitioners as the age of the petitioners No. 2 and 3 was taken into consideration on the appointed day. The case of the petitioners is also covered by the decision of the Full Bench of this Court in Sardara Singh and Others Vs. The Financial Commissioner and Others, decided on 26.3.2008. It has been held that Section 7(1) and 11(7) would be attracted in those cases where the death of land owner occurred before the surplus area was determined and if the death occurred after the surplus area had been determined the succession in favour of the heirs of the deceased would not affect the surplus area already determined. In the present case, the land owner died in 1960 and the land was declared surplus in 1976. Admittedly, petitioners No. 2 and 3 were major when the land was declared surplus and they were entitled for their independent share and they could not be considered members of the family as both of them were major on the date of declaration of the surplus area. The case of the petitioners, was to be decided by the authorities in view of Section 11(5) of the Act, which is reproduced as under:

(5) 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 not transfer or other disposition of land which is comprised in the surplus area under the Punjab law, the Pepsu law or this Act, shall affect the vesting thereof in the State Government or its utilization under this Act.

20. Since, the surplus area of the petitioners had to be determined under the Act and no proceedings had ever taken place nor any decision was given under the Punjab Security of Land Tenures Act, therefore, each of the petitioners were entitled to the benefit of Sections 4 and 5 of the Act.

21. Inasmuch as while computing the area of petitioners for the purposes of son born on 6.8.1958 the orders impugned i.e. order dated 20.10.1977 (Annexure P-1) passed by the Collector, order dated 30.6.1978 (Annexure P-2) passed by the Additional Commissioner and orders dated 4.12.1981 and 12.5.1983 (Annexures P-3 and P-4) respectively passed by the Financial Commissioner have to be set aside and accordingly set aside. The matter is remitted to the prescribed authority for ascertaining the area by giving additional unit. It is made clear that it shall be open for the petitioners to press into service other points that have been raised in the present petition before the prescribed authority, who shall decide the same in accordance with law.