

Soni Bai, Bhiwani Vs The Collector Agrarian, Hissar (S.D.O. Bhiwani) and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 14, 1975

Acts Referred: Punjab Security of Land Tenures Act, 1953 " Section 19(B), 5(B)

Citation: AIR 1975 P&H 210

Hon'ble Judges: R.S. Narula, C.J; M.R. Sharma, J; Bhopinder Singh Dhillon, J

Bench: Full Bench

Advocate: R.N. Mittal, for the Appellant; Naubat Singh, District Attorney, H.L. Sarin and C.B. Kaushik, for the Respondent

Final Decision: Allowed

Judgement

Bhopinder Singh Dhillon, J.

Petitioner Soni Bai owned no land on the date of enforcement of the Punjab Security of Land Tenures Act.

1953 (Punjab Act X of 1953) Thereinafter referred to as the Act), Her mother Smt. Parmeshwari Bai died on December 8, 1955 and the

petitioner inherited 6 Standard Acres and 8 1/4 Units of land on her death. Smt. Jamni Bai aunt of the petitioner gifted 26 Standard Acres and 1

1/2 Units of land to the petitioner on September 7, 1957. The petitioner thus became owner of 32 Standard Acres and 9 3/4 Units of land. She

reserved the area for her self-cultivation and filed her choice in form "E" as required u/s 5(B) read with Section 19 (B) of the Act, read with the

provisions of Punjab Security of Land Tenures Rules (hereinafter referred to as the Rules) on August 28, 1958 within the prescribed period.

However, on September 12, 1960, the Kanungo concerned reported that the petitioner was the owner of 32 Standard Acres and 9 1/2 Units of

land whereas she was entitled to retain 50 Standard Acres as permissible area and thus she had no surplus area. Collector Bhiwani. vide his order

dated September 16, 1960, copy of which is attached as Annexure "B" with the writ petition, held that since the petitioner owned less than 50

Standard Acres of land and she was an allottee, therefore, she was a small landowner and no further proceedings are required to be taken for

declaring any of the portion of her land as surplus.

2. Surja respondent was a tenant of the land under the petitioner. He filed an application u/s 1"8 of the Act for the purchase of the land under his

tenancy- The petitioner also filed a petition for ejectment of Suria. The petition filed by the petitioner was dismissed whereas the application for

purchase filed by Suria respondent was allowed on June 19, 1967. Both these petitions were decided vide same order referred to above. The

petitioner filed two appeals. one challenging the grant of proprietary rights to Surja respondent and the other challenging the order of the Assistant

Collector rejecting the application for ejectment. The Collector, vide his order dated February 20, 1968. copy of which is Annexure "E" with the

writ petition, accepted both the appeals and remanded the case. He held that the landowner had made a request for selection in time but Special

Collector did not prepare statement in form "F" after complying with Rule 6 (6) of the Rules. He directed the Collector to Pass fresh orders about

the permissible area of the petitioner. Surja respondent feeling aggrieved against this order, filed an appeal before the Commissioner. Ambala

Division. Ambala. which was dismissed by the Additional Commissioner, Ambala. vide his order dated August 23, 1968. copy of which if

Annexure "F" with the writ petition.

3. Consequently, due to remand order. on March 12. 1969. the Collector Surplus Area. Bhiwani. passed an order, copy of which is Annexure

"G" with the writ petition, holding that the petitioner was a big landowner and declared 12.75 ordinary Acres as surplus area in her hands. He did

not allow the petitioner to select her permissible area afresh but held that since she had selected more than 60 ordinary Acres, therefore, her

selected area for self cultivation is being made good by excluding the area under the old tenants and the purchased area. He did not give the

landowner fresh opportunity to make selection/reservation. This order of the Collector was challenged in appeal by the Petitioner before the

Commissioner, Ambala Division. Ambala. who dismissed the appeal vide his order dated August 22, 1969 copy of which is Annex. "K" with the

writ petition. The revision petition filed by the petitioner before the learned Financial Commissioner was also dismissed by him vide his order dated

Oct. 21, 1969. copy of which is Annexure "M" with the writ petition. The present writ petition under Arts. 226 and 227 of the Constitution of

India was filed by the petitioner on Jan. 24, 1970 challenging the orders of the Collector, Commissioner and Financial Commissioner, An-nexures

"G", "K" and "M" with the writ petition, respectively.

4. This petition came up for hearing on January 25, 1972. before R. P. Narula, J. (as he then was) and in view of the importance of the question of

law arising for the decision of the case, this petition was referred to a larger Bench and this is how this petition is before us.

5. The question of law, in view of the importance of which this case was referred to a larger Bench, as stated in the reference order is whether the

discretion of the landowner in the matter of reservation has been enlarged u/s 5-B of the Act as compared to the discretion vested in the

landowner u/s 5 (1) of the Act, and the landowner is, therefore, not bound to conform to the provisions of Section 5 (1) while making selection u/s

5-B so as not to be bound by the priorities enumerated in Section 5 (1) for purposes of reservation or selection. After hearing the learned counsel

for the parties, we are of the considered opinion that this question of law need not be gone into in this case as this petition can be disposed of on

another point and the question of law may be examined in some other proper case.

6. After hearing the learned counsel for the parties we are of the opinion that the order of the Collector. Annexure "G" and the subsequent orders

passed by the Commissioner in appeal and the Financial Commissioner, Haryana, in revision. Annexures "K" and "M". respectively, are liable to

be quashed. After the petitioner landowner had exercised her right of selection under the Act, she was declared a small landowner by the

Collector on September 16, 1960. It was subsequently that the Collector vide his order dated March 12, 1969, declared the petitioner as a big

landowner and declared 22.75 ordinary Acres of land as surplus area in her hands. Till then the petitioner was declared to be a small landowner

and she bona fide believed to be so. Any reservation or selection made by her before that was in fact null and void and of no consequence. It is

thus to be presumed that she in fact did not exercise her right of reservation or selection and when she was declared big landowner on March 12,

1969 she in fact had a right of reservation or selection of her permissible area which right was not allowed to be exercised by her.

A Division Bench of this Court in Chetan Dass v. Maru 1971 PLJ 111, has taken a similar view. It was held that where a landowner had bona fide

litigated on the basis that he was in fact a small landowner, in the purchase Proceedings u/s 18 of the Act, no question of making reservation or

selection could arise. It was held that where there was divergence of judicial opinion, whether the landowner would be a small or a big landowner

till authoritative pronouncement by the High Court, in such a situation the landowner was entitled to make a reservation of his permissible area from

the time when he was declared a big landowner. It was held that the landowner, who has been held to be a big landowner, is entitled to make the

reservation in accordance with the provisions of the Act. It is, therefore, apparent that when the petitioner was held to be a big landowner, she had

a right to make a reservation or selection in accordance with the provisions of the Act which right was not allowed to be exercised by her and to

which she is entitled. In this view of the matter, the order of the Collector dated March 12, 1969, copy of which is Annexure "G" with the writ

petition, and those of the Commissioner and Financial Commissioner dated August 22, 1969 and October 21, 1969, (Annexures "K" and "M"

with the writ petition) respectively, are hereby quashed. The Collector is directed to give an opportunity to the petitioner to make her selection or

reservation in accordance with the provisions of law.

7. It is however, made clear that this order of ours should not be taken to mean that we have allowed or disallowed the petitioner the right to

reserve the area under the tenancy of Suria respondent. We are not deciding the question of law as to whether the discretion of the landowner in

the matter of reservation has been enlarged u/s 5 (B) of the Act as compared to the discretion vested in the landowner u/s 5 (1) of the Act and that

the landowner is, therefore, not bound to conform to the provisions of Section 5 (1) while making selection u/s 5-B so as not to be bound by the

priorities enumerated in Section 5(1) of the Act for purposes of reservation or selection. We are purposely not doing so because it cannot be

anticipated that the petitioner will reserve or select the area under the possession of the old tenants. However, it is contended by Shri H. L. Sarin.

the learned counsel for Suria respondent, that the order on the previous application passed in favour of Suria respondent allowing him the

purchase, has become final as the petitioner has not appealed against that order. There is nothing before us to hold that the said order has become

final. However, it will be open to Suria respondent to prove before the Collector that the order allowing purchase application of Suria respondent

has become final and that the land transferred to Suria respondent under the said order finally, cannot now be available to the landowner for being

reserved or selected. It will be open to the petitioner to show otherwise. It may be made clear that the Collector will decide the case in accordance

with the provisions of the Act and the Rules made thereunder.

8. For the reasons recorded above, this writ petition is allowed. The order of the Collector dated March 12, 1969, copy of which is Annexure

"G", the order of Commissioner, Ambala Division, Ambala, dated August 22, 1969, copy of which is Annexure "K" and the order of the

Financial Commissioner, Haryana, dated October 21, 1969, copy of which is Annexure "M" with the writ petition, are hereby quashed. Collector

Surplus Area, Bhiwani, is directed to give the petitioner an opportunity to reserve or select her permissible area in accordance with law There will

be no order as to casts.

R.S. Narula, C.J.

9. I agree.

M.R. Sharma, J.

10. I also agree.