Naresh Saran and others Vs Financial Commissioner Haryana and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 24, 1989

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 47 Rule 1
Haryana Ceiling on Land Holdings Act, 1972 â€" Section 12, 5, 8
Punjab Security of Land Tenures Act, 1953 â€" Section 10

Citation: AIR 1991 P&H 15 : (1990) 97 PLR 274

Hon'ble Judges: G.R. Majithia, J

Bench: Single Bench

Advocate: Mr. S.K. Goyal and Mr. Ram Rang, for the Appellant; Mr. I.K. Mehta and Mr. K.K. Mehta, for the Respondent

Judgement

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1. The petitioners have challenged the order of respondent No. 1 dated 20-6-1988 vide which he disposed of nine revision petitions filed by them.

2. Reference to a few relevant facts is necessary to appreciate the points arising for adjudication in the case. Shri Brij Raj Saran, predecessor-in-

interest of the petitioners was a big land owner. Proceedings for determination of his surplus area were initiated under the Punjab Security of Land

Tenures Act (for short the Act) and by an order dated January 30, 1961, it was held that there was no surplus area with him after leaving the

tenant"s and land onwer"s permissible area. The land of the land owner was subjected to the process of consolidation. During consolidation, the

Collector Agrarian vide his order dated January 29, 1968 separated the surplus area out of the area obtained by the land owner.

3. The tenants challenged the order before respondent No. 2, who accepted the appeal and remanded the case to the Collector vide order dated

February 10, 1970.

4. The Collector vide his order dated December 13, 1970 imposed a penalty of 10 standard acres u/s 5(c) of the Act on the land owner. The land

owner challenged the same in appeal which was accepted by the Commissioner vide order dated April 6, 1971 and the case was remanded to the

Collector, with the directions that a notice regarding imposition of penalty be served on the land owner and the tenants be also heard. The

Collector vide order dated September 14, 1971 imposed a penalty of 5 standard acres on the land owner since he failed to intimate that standard

acre 2 1/2 units area was mortgaged with him. The land owners and the tenants feeling aggrieved against the order of the Collector, went up in

appeal before respondent No. 2, who vide his order dated July 14, 1972 accepted both the appeals and the order of Collector Surplus Area

dated September 14, 1971 was set aside and the case was remanded to the Collector, Jagadhri with the following directions:--

a) The entire record be seen carefully and the landowner be given due allowance for any decrease in his holding due to consolidation.

b) The land situated in village Devdhar and village Tejh be taken into account.

c) Any land sold by Brij Saran land owner after 15-4-1953 be included in his permissible area.

d) The permissible area of the landowner be worked out in accordance with Section 5 of the Act.

e) The observations made by the Commissioner (in the impugned order) be kept in view imposing penalty u/s 5(c) of the Act.

5. The land owner unsuccessfully challenged the order of respondent No. 2 before respondent No. 1. The revision petition was dismissed vide

order dated May 5, 1980. The remand order of respondent No. 2 merged in the order of respondent No. 1 and the directions contained in the

order of respondent No. 2 were to be implemented.

6. The order of respondent No. 1 had not been implemented when the original land owner died on March 9, 1981 and his wife Smt. Ganga

Aggarwal died on March 10, 1981. Smt. Ganga Aggarwal died testate. She bequeathed her share in agricultural land in favour of her minor

grandson and granddaughter, namely, Paranav Saran and Shifali respectively.

7. The Collector Agrarian decided the case of the landowner afresh vide order dated December 8, 1983. The Collector did not afford an

opportunity to the heirs of the deceased to select the permissible area. The successors to the estate of Smt. Ganga Aggarwal were not given an

opportunity of hearing before declaration of surplus area. This led to the filing of two review petitions; one by the sons and the daughter of Brij Raj

Saran and the other by the heirs of Smt. Ganga Aggarwal for reviewing the order dated December 8, 1983. The review applications were allowed

by the Collector Agrarian vide order dated March 12, 1984; and thereafter, the surplus area case was decided afresh by him and it was found that

the heirs of the deceased were small land owners and the order was passed on February 7, 1985.

8. The respondent / tenants challenged the order dated February 7, 1985 in appeal before respondent No. 2. The appeal was allowed by order

dated February 25, 1986 and the order of Collector dated February 7, 1985 was set aside and that of the Collector dated Dec. 8, 1983 was

restored. The petitioner unsuccessfully challenged the order dated February 25, 1986 before respondent No. 1. The revision petition was

disposed of vide order dated June 20, 1988. The petitioner has assailed the order of respondent No. 1 principally on the following grounds:--

i) After the death of Brij Raj Saran on March 9, 1981, the surplus area case ought to have been decided afresh in the light of.....

The surplus area was not utilized in the life of the land owner. The heirs of the deceased land owner were in possession of the total holding and the

land had not vested in the State.

ii) The heirs of the deceased land owner were entitled to select permissible area for themselves.

iii) Review was made by the Collector within the statutory period and no permission was required from the higher authorities.

9. Respondents Nos. 9 to 13 in their reply did not controvert the factual averments made in the writ petition. Admittedly, the surplus area was not

utilized in the lifetime of the land owner. He died on March 9, 1981. Under Sections 10-A and 10-B of the Act the said holding would cease to

be-the holding of the said land owner and would stand devolved and distributed between his heirs by operation of law as a result of succession and

authorities were required to redetermine the surplus area in the hand of each of the heirs. The order regarding surplus area in the hands of the

original land owner was rendered nonexistent. In case of death of the original land owner unless surplus area is redetermined, there can be no area

as such to vest in the Government u/s 12 of the Haryana Ceiling of Land Holdings Act, 1972 (for short the "Haryana Act"). Sections 8 and 12 of

the Haryana Act have to be harmoniously construed. Section 8 saves lands devolved on heirs by inheritance. u/s 12 of the Haryana Act, surplus

land will vest in the State and this will be possible only if redetermination of surplus area is made and in so doing permissible area for each heir has

to be allowed and the balance will vest in State. Respondent No. 2 was swayed away by wholly irrelevant consideration when it set aside the

order of the Collector dated Feb. 7, 1985. The order was passed by the Collector Agrarian after allowing the review petition filed by the heirs of

the deceased and owner, but in fact, it will be deemed to be an order determining the permissible area of the heirs of the deceased. The Collector

after examining the entire record found that the heirs of the deceased land owner were small land owners and no fault can be found with it. If

respondents 1 and 2 had taken note of the fact that the land owner had died and the surplus area case had to be decided afresh in the light of the

provisions of Sections 10-A and 10-B of the Act and Sections 8 and 12 of the Haryana Act no fault would have been found with order of the

Collector dated February 7, 1985. As also Collector Agrarian was performing his statutory duty, it was incumbent upon him to decide the surplus

area case of the heirs of the land owners afresh. The order was passed in conformity with law although a different nomenclature has been given to

it.

10. The learned counsel for the respondents raised the following submissions :-

a) Agrarian reforms does not permit that the tenants interest should be ignored;

b) area sold ought to be included in the permissible area of the land owner;

c) review was permissible on the same ground as envisaged under Order 47 Rule 1 C.P.C.

11. I am not impressed with the submissions made by the learned counsel for the contesting respondents. The Act was enacted to provide security

of tenure to tenants by reducing their liability to ejectment and combat the evil of mass evictions to ascertain surplus areas and resettle lawfully

ejected tenants; to fix maximum rent payable by tenants and to confer right on tenants to preempt and purchase their tenancies in certain cases,

thus to make the tiller the owner. The Act itself postulates that if the original land owner dies after the declaration of the surplus area, but before

utilization, the land will devolve upon the heirs of the deceased land owner and in that eventuality, it should be determined afresh whether the heirs

of the deceased land owners have any surplus area. The purpose appears to be to safeguard the interest of the heirs of the deceased and when the

land is inherited by them, the total holdings in possession of each of the heir has to be seen whether these are within the permissible limits.

12. For the reasons stated above, the writ petition is allowed. The roder of respondent No. 1 dated June 20, 1988 and of respondent No. 2 dated

Feb. 25, 1986 are quashed and that of the Collector dated February 7, 1985 is restored. The parties are left to bear their own costs.

13. Petition allowed.