(2013) 07 P&H CK 0847

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 16037 of 1989

Dalip Singh and Others		APPELLANT
	Vs	
The Financial Commissioner and Others		RESPONDENT

Date of Decision: July 30, 2013

Acts Referred:

- Punjab Land Reforms Act, 1972 - Section 11, 11(5), 11(7), 4, 5

Citation: (2014) 173 PLR 790

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Gaurav Chopra, for the Appellant; Ranbir Singh Pathania, DAG, Punjab for Respondent Nos. 1 and 2, Mr. H.S. Bhullar, Advocate for Respondent Nos. 3 to 6, Mr. J.S. Verka and Mr. L.S. Mann, Advocates, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The writ petition challenges the order passed by the authorities constituted under the Punjab Land Reforms Act, 1972. All the proceedings were in relation to the share of the family of Sucha Singh whose holding had been attracted to the provisions of Punjab Security of Land Tenures Act and by a notification issued on 16.06.1967, an extent of 25 standard acre 2 1/2 unit was declared as surplus. On death of Sucha Singh, the heirs applied for fresh determination of surplus under the utilization of surplus area u/s 11(5) of the 1972 Act. This was rejected by the Collector and there have been several proceedings at various higher forums in three distinct rounds of litigation that ultimately culminated in the order of the Financial Commissioner holding that the petitioners were not entitled to any consideration for redetermination of the surplus area. It is this order which is in challenge before this Court.

The principal challenge to the orders come on a plea that on the appointed day mentioned under the Act of 1972 namely on 24.01.1971, there had been no utilization of the property of surplus declared. The law u/s 6 mandates eliciting an information regarding holding in terms of Section 5 that allows for selection of the permissible area and furnishing declaration of certain persons setting out a selection that the owner could make for the adult sons. Section 4 which details the manner of reckoning permissible area, including a computation of holding for adult sons. The argument was that even if the declaration had not been given by the land owner himself, a determination was required to be made of the permissible and the surplus area u/s 7 and the same having not been done, the land owners were entitled to require the State to make a redetermination of the surplus area u/s 11(5). The counsel would rely on a judgment of Full Bench of this Court in Ranjit Ram Vs. The Financial Commissioner, Revenue Punjab, Chandigarh and Others, that dealt with the duties which were cast and the effect of the order passed by authorities without reference to Section 7 of the Act. The counsel would make a pointed reference to the observations of the Full Bench that reads as under:-

...As already observed, the permissible area of a landowner as defined in sub-section (2) of the Section 4 of the Reforms Act, is subject to the provisions of Section 5 Section 5 entitled the landowner to select permissible area for his adult son in addition to the permissible area of his family. The right of the landowner to get permissible area for his adult son in addition to the permissible area of the family, cannot held to be taken away merely by his not filing a declaration u/s 5 of the Reforms Act. If such landowner fails to make a declaration u/s 5 of the Reforms Act, the Collector has been enjoined upon to obtain requisite information in the prescribed manner in accordance with the provisions of section 6 of the Reforms Act. Section 7 of the Reforms Act enjoins duty on the Collector to pass an order determining the permissible area and the surplus area of a landowner or a tenant, as the case may be. It cannot be successfully contended that in case a landowner fails to make declaration u/s 5 of the Reforms Act, his adult son will not be given permissible area by the Collector when an order is passed u/s 7 of the Reforms Act. The failure of a landowner to furnish the declaration u/s 5 of the Reforms Act has been made an offence under the provisions of sub-section (2) of the Section 7 of the Reforms Act and a landowner is liable to be imprisoned for a term which may extend to two years or with fine, which may extend to two thousand rupees, or with both. If the Legislature intended that in a case where the landowner fails to make declaration, he will not be entitled to get permissible area for his adult son when so determined u/s 7 of the Reforms Act, it would have clearly made provision to this effect in sub-section (2) of Section 7. Since landowner has been given right to get permissible area for his adult son as well, omission of the landowner to file the declaration would not take away the right of his entitlement to get permissible area for his adult son in addition to the permissible area of the family. Collector is duty bound while passing an order u/s 7 of the Reforms Act to allow permissible area for

the adult son as well. It is clear that the entitlement of the land owner to get permissible area for his adult son is out of the land of the landowner held or possessed by him whether already declared surplus or not....

While paraphrasing the findings of the majority view, it was observed as follows:-

(1) That a landowner whose land has been declared surplus under the Punjab Security of Land Tenures Act 1953, or under the Pepsu Tenancy and Agricultural Land Act, 1955, who has not been divested of the ownership of the surplus area before the (enforcement of the) Punjab Land Reforms Act, 1972, is entitled to select the permissible area for his family and for each of his adult sons in view of the provisions of Section 4 read with Section 5(1) of the Punjab Land Reforms Act.

2. The counsel would also take me to yet another judgment of the Full Bench in Ajit Kaur and Others Vs. The Punjab State and Others, that considered the effect of the provisions u/s 11(5) and 11(7) of the Act and the requirement of a formal redeclaration or de-declaration of the surplus area in the hands of the heirs after the death of the land owner. The view as expressed by the Full Bench is again paraphrased in para 34 which is reproduced as under:-

(1) Sub-section (7) of Section 11 of the Reform law would be attracted to all cases of surplus area declared under the Punjab law, the Pepsu law or the Reform law, but it envisages that stage of determining by snapping or delinking the ties of the landowner by divesting him to the possession and title under the orders of the Collector, of the surplus area so declared.

(2) The protection available, to heirs under sub-section (5) of Section 11, under either of the aforesaid three laws, would be available till the time the State Government divests the landowner of his land u/s 8 of the Reform law or causes its utilisation u/s 11, prior to the death of the landowner.

(3) The formal re-declaration or de-declaration of the surplus area in the hands of the heirs after the death of the landowner, whether at a time when the Punjab law of the Pepsu law was applicable or thereafter when Reform law was applicable, would not be necessary and the protective legislation of sub-section (5) of Section 11 would give a protective umbrella against the vesting of such area in the State Government or the utilisation thereof....

3. The argument of the learned counsel for the petitioners, therefore, was that even when the land owner did not make a declaration u/s 6, there was a duty cast on the Collector to determine the permissible area u/s 7 and if it was not done, it should only be taken that the property had remained unutilized and the surplus area would, therefore, be required to be redetermined in terms of Section 11(5) of the Act.

4. Learned counsel appearing for respondent Nos. 3 to 6-tenants would contend that the property cannot be stated to be unutilized, for after the coming to the force

of the Act of 1972, the property had been granted by the State to tenants on 06.03.1975 and since the property had actually vested on coming to the force of the Act by virtue of Section 8, there had been utilization of the property and the fact that there had been death of the land owner subsequently on 04.05.1976 would be of no consequence. The counsel would make a reference that deals Section 8 and according to him on the appointed day notified under the Act, the property became vested with the State and since the land owner had already made his own reservation under the Punjab Security of Land Tenures Act and the specific items of property had been declared as surplus, there was no requirement of having to collect any information either u/s 6 or 7 and the land owners have no right to seek for a redetermination. According to him, the reference to Section 7 in the Full Bench must be understood as a reference which would be relevant in a case where there had been no reservation made already by the land owners under the Punjab or Pepsu laws and the Ranjit Ram''s case will not answer the situation of land owner making the reservation already under the Punjab Security of Land Tenures Act. Learned counsel would also argue that the land owner himself had not applied u/s 6 to seek for determination of the surplus area by disclosing the names of his adult sons on the date of the coming to force of the Act and their respective entitlement to holding. The contention was taken for the first time before this Court in the writ petition and that had never been adverted to before the authorities under the Act. Learned counsel appearing on behalf of respondent No. 7 who yet another tenant adds an additional plea that a Full Bench of this Court in Sardara Singh and others Vs. The Financial Commissioner and others in C.W.P. No. 4930 of 1982 decided on 26.03.2008 had again made a consideration of the issues and according to him, position in Sardara Singh''s case makes it clear that the land owner cannot reopen the issue for redetermination.

5. If Section 8 were to be read in isolation in the manner that the learned counsel appearing on behalf of the respondents argue, it leaves little room for doubt that on the appointed day on the coming to the force of the 1972 Act, a property already declared as surplus under the Punjab Security of Land Tenures Act would stand vested with the State and that would available for distribution to tenants by the State and the landlord cannot seek for a redetermination. This view is not correct as what is seen from the judgment of this Court in Ranjit Ram''s case referred to above. In paragraph 9 of the judgment referred to above, the Court has examined the interplay of the provisions of Sections 4, 5, 7 and 8 and has held as follows:-

....It is no doubt true that under the provision of Section 8, the area which has been declared surplus under the Punjab Law or the Pepsu Law, can also vest in the State Government but this section cannot be interpreted to mean that the area of a landowner declared surplus, whose case falls within the purview of Sections 4 and 5 of the Reforms Act, can be taken possession of u/s 8 of the Reforms Act. There maybe cases where the surplus area has been declared under the Punjab Law or the Pepsu Law, but such cases do not fall within the purview of Section 4 and 5 of the

Reforms Act. In those cases the area as declared surplus becomes final and the State Government under the provision of Section 8 of the Reforms Act is entitled to take possession of the same so as to divest the owner of the ownership of the land so declared surplus. Thus the provisions of Section 8 of the Reforms Act would be fully complied with when possession in such cases is taken by the State. Section 8 of the Reforms Act cannot be interpreted in seclusion. The said provision is subject to the provision of Sections 4 and 5 read with Section 7 of the Reforms Act. The legislature clearly intended that land owners, who own land more than the permissible area as defined in the Reforms Act, their cases had to be processed again on the touchstone of the provisions of Section 4 and 5 of the Reforms Act....

6. Reading of this judgment would, therefore, show that Section 8 itself cannot be interpreted in isolation. It is to be read subject to Sections 4 and 5 read with Section 7 of the Land Reforms Act. The question of what should happen if the land owner himself does not make a declaration is also answered in Ranjit Ram''s case (supra) and we have already extracted the relevant portion. Ranjit Ram is an authority for the position that on the coming to the force of the Act of 1972 if there was already no utilization of surplus, there is an imperative for the authorities for a determination of the permissible area and surplus area, if again the land owner had not given such a declaration. If it has not been also done then it cannot be stated that the property could be utilized by the State for distribution. Death of a person, therefore, in such a situation constitutes a difference and it would require a redetermination u/s 11(5). I cannot again understand an argument that Sardara Singh''s case in C.W.P. No. 4930 of 1982 concludes the issue in favour of the respondents. It is exactly to the contrary. Referring to the majority view, it referred to the Ajit Kaur''s case. The judgment in Ajit Kaur''s case examines the duty of the authority under Sections 11(5) and 11(7). It is para 34 that sums up the findings which I have already referred to above. Sardara Singh''s case answers the situation reading Ajit Kaur and states that heirs of land owner, who inherit the land which had been declared surplus under any of the three laws causes affectation to the surplus area. This is actually an issue which is against the respondent but it is, however, understood by the respondents as though it is in their favour. By pure cementic and legal understanding, it does not conclude anything in favour of the respondents but it is to the contrary. I do not think that there is an issue for me to consider that there had been a utilization of the property on 06.03.1975. Learned counsel appearing for the petitioner would contend that there was only a symbolic delivery and the possession is still with them. The authorities have considered that even symbolic delivery must be taken as delivery in the eye of law which must be understood as utilization of the surplus area. If utilization has come subsequent to the Act without going through the procedure which is required under Sections 5, 6 and 7, it ought not to be construed as constituting a vesting u/s 8. We have already seen that Section 8 must be read subject to provisions of Sections 4, 5, 6 and 7. Without redetermination, such utilization was not even possible. The impugned proceedings

are erroneous and I set aside the same. The matter is remitted to the Collector for consideration in the light of the observations u/s 11(5) and decision taken on the basis of data submitted. The writ petition is allowed on the above terms.