(2011) 11 P&H CK 0189

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 6806 of 1987 (O and M)

Ram Devi and Another		APPELLANT
	Vs	
The Financial Commissioner, Haryana, Chandigarh and Others		RESPONDENT

Date of Decision: Nov. 28, 2011

Acts Referred:

- Haryana Ceiling on Land Holdings Act, 1972 - Section 12(3), 18(4)
- Punjab Security of Land Tenures Act, 1953 - Section 12(3), 18, 2(3), 3, 4

Citation: (2012) 4 RCR(Civil) 129

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: M.L. Sarin, with Ms. Divya Sodhi and Ms. Alka Sarin, for the Appellant; S.S. Goripuria, Addl. A.G., Haryana for the Respondent No. 1 to 4, Mr. Arun Jain with Mr. Amit Jain, Advocate and Mr. R.S. Sharma, Advocate for the Respondent Nos. 5 to 7, Mr. Sudhir Mittal, Advocate for the Respondent Nos. 8 to 13 and Mr. S.C. Khunger, Advocate for the Applicant in C.M. No. 1678 of 2009, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan J.

C.M. No. 11449 of 2005

The application is at the instance of a third party seeking for impleadment on the ground that his father was a tenant against whom action is being taken by the land owner for eviction. He had not been heard at the time of determination of surplus and the property held by him as a tenant must have been excluded. There is nothing on record to show that any portion of property was held by a tenant at the time when the action was taken by the Collector. Further in the ultimate view, which I have taken that the landowner''s holding did not exceed the limit prescribed under the Act, there is no necessary for giving any right of hearing in this case.

The application for impleadment is dismissed.

C.W.P. No. 6806 of 1987

1. The issue involved in the writ petition is the consideration of whether an order declaring surplus under the Punjab Security of Land Tenures Act, 1953 (Act of 1953 for short), if it had become final, could be reopened at the stage of a claim by tenant for allotment to the property under the Haryana Utilization of Surplus and Other Areas Scheme, 1972. The core consideration under such an issue is on the contention whether the land owner is entitled to specify within his reserved area the property that is cultivated by a tenant, which is independently claimed by the tenant as falling within his permissible area. The petitioner claimed that she was a displaced person from the place in India, which is presently in Pakistan and as displaced person she had been allotted the properties in India to an extent of 85.96 standard acres. As displaced person, she was entitled to an extent of 100 ordinary acres or 50 standard acres under the Act of 1953. On 31.03.1961, one Moman had applied for purchase of the property held by him as a tenant in respect of 27 bighas comprised in Khasra No. 1482 in village Basti Bhiwan, Tehsil Fatehabad, District Hisar u/s 18 of the Act of 1953. The order had been passed allowing for a right of purchase to the tenant. Subsequently about the same time in the year 1961, it appears that the Collector Surplus Area, Hisar had taken up an enquiry regarding the property holding status of the petitioner and after the determination of surplus on 17.06.1961, it had gone in appeal and been remanded subsequently when a final order came to be passed on 14.06.1964. The relevant abstract of the order, which is necessary for our case, records of facts relating to the holding and it is reproduced hereunder:-
2. Finally the Court found that the petitioner had been left with an extent of less than 50 standard acres in her possession and therefore, there was no surplus land with the owner. It appears that Nand Lal, Ranjit Singh and Balbir, who are the respondent Nos. 5 to 7 herein had preferred an appeal against this order seeking a claim in relation to the property, which had been in their possession as tenants but which had been allowed to be retained by the petitioner within her reserved area. The appeal was dismissed as time barred. It had become final.

3. When the issue regarding the determination of surplus holding was, therefore, undertaken and concluded by the Collector, Surplus area as affirmed in appeal by the Commissioner, it came to be reopened differently on the objection filed before the prescribed Authority, Fatehabad at the instance of the respondents No. 5 to 7. Their grievance was that in relation to the property to an area measuring 71 bighas 3 biswas comprised in Khasra No. 1497, 1507, 1506 and 1510, the property had been left intact as the permissible area of Bunty, father of the 7th respondent. According to them, this property had become vested with the State by virtue of the provisions of Section 12(3) and the same was requested to be allotted to them. In view of the fact that there was already a decision taken by the Collector on 14.06.1974 holding

that the land owner did not own any lands in excess of the ceiling area especially after providing for sales of some of the properties in favour of tenants u/s 18 of the Act of 1953, the petitioner opposed any fresh determination on the fact whether the so-called lease in favour of Moman was fraudulent and collusive. The tenant however contended that being a lessee, the Collector was bound to determine at the surplus area proceeding also the permissible area of the tenant and as a person falling within category ''A'' under the Haryana Utilization of Surplus and Other Areas Scheme, 1972, the property was required to be allotted to the petitioner. The prescribed Authority accepted the contention and held, therefore, that the property had become vested with the State u/s 12(3) of the Haryana Ceiling on Land Holdings Act, 1972 and Haryana Utilization of Surplus and Other Areas Scheme, 1972 and the property was to be allotted to the petitioner.

4. The above order was challenged by the land owner Ram Devi before the Collector, who affirmed the decision. The Commissioner before whom a revision had been filed u/s 18(4) of the Haryana Ceiling on Land Holdings Act, 1972 reversed the decisions of the authorities below and held that Ram Devi had been held to be a small land owner and no area had been earmarked as the respondent-tenants'' permissible area anywhere. When the land was in dispute had not been excluded or reserved as the tenants'' permissible area, then the question of vesting with the Government u/s 12(3) did not arise. The Commissioner further held that the order passed on 14.06.1974 by the Collector could not be reopened at the instance of the appropriate authority under the Haryana Utilization of Surplus and Other Areas Scheme, 1972. This was again a subject of revision before the Financial Commissioner, who set aside the order and restored the order passed by the appropriate Authority and the Collector.

5. The core issue for consideration in this case is whether a property, which is concluded by the Authority under the Punjab Security of Land Tenures Act, 1953 could be reopened after the conclusion of the proceedings by the appropriate Authority under the Haryana Utilization of Surplus and Other Areas Scheme, 1972. The residuary question would be whether the land owner is entitled to keep within his reserved area the property in the hands of a tenant as well. Learned counsel appearing for the petitioner could contend that in the manner in which the surplus area proceedings concluded finding that the petitioner was not holding property in excess of the ceiling area, it specifically made reference to the property of cultivating tenants on old tenant to an extent of 18.92 acres equivalent to 8.95 standard aces. In the manner of reservation of the property for the land owner, the permissible areas are set out u/s 3 of the Act of 1953. The permissible area is defined u/s 2(3), which is reproduced as under:-

Section 2(3) Permissible area" in relation to a landowner or a tenant means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceeds sixty acres, such sixty acres.

Provided that-

(i) no area under an orchard at the commencement of this Act, shall be taken into account in computing the permissible area;

(ii) for a displaced person-

(a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case maybe,

(b) Who has been allotted land in excess of thirty standard acres, but less than fifty standard acres, the permissible area shall be equal to his allotted area;

(c) Who has been allotted land less than thirty standard acres the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition.

Explanation-For the purpose of determining the permissible are of a displaced person, the provisions of proviso (ii) shall not apply to the heirs and successors of the displaced persons to whom land is allotted.

6. From the above definition, it could be seen that if the land owner was a displaced person, the land owner would be entitled to 50 standard acre or 100 ordinary acres. The learned Senior Counsel appearing on behalf of the respondent contended for a position that the petitioner was entitled to 30 standard acres. This, in my view, is not correct, for it has been brought out in the very order of the Collector that the land owner was entitled to 50 standard acres within the permissible area. It makes also reference to a fact that as a displaced person, he was entitled to such an extent. If the land owner was entitled to 50 standard acres then the learned Senior Counsel appearing for the tenants, Sh. Jain would contend that even the order of the Collector had made reference to the property held by the tenant as 18.92 acres. This was permissible area of the tenant and at the time of surplus area proceedings, the Collector was bound to specify the permissible area of the tenant. According to him, this reference to 18.92 acres must be taken as a property reserved by the Authority as falling with the permissible area of the tenant. This would have been normally so, if the land owner''s holding was in excess of the permissible area and with reference to such excess, the tenant could have had his own permissible area. On the other hand, if the permissible area of the tenant was less than 50 standard acres, which fell within the permissible area of the landlord also, then the tenant could only treat himself to be a tenant, who was liable for ejectment u/s 9. In this case, it could be seen that the land owner made his reservation and he had made a particular reference to the property in Khasra No. 1497 (12-2) 1507(10-15) and 1510(15-15) as falling within his reserved area. Admittedly all these properties were the properties held by the tenants. I see no merit in the contentions of learned Senior Counsel, Sh. Jain that the landlord could not have made a reservation of the property, which is held by the tenant. The reservation provisions admit of no such restriction. Sections

3 to 5 of the Act of 1953 refer to the reservation of land. Section 3 allows for selection of the entire area held by him as land owner in the State of Punjab, which does not exceed in aggregate, the permissible area as the property which could be reserved. Section 4 deals with fresh reservation of land due to modification of allotment. Section 5, which deals with reservation made before the commencement of the Act, would cease to have effect and subject of provisions of Sections 3 and 4, the land owner, who owns land in excess of the permissible area could reserve out of the entire land held by him any part or parcel of land not exceeding the permissible area. The reservation that Section 5 contemplates includes the area under self-cultivation at the commencement of the Act, the reserved area including the area under jhundimar tenant or a tenant, who has been in a continuous possession for 20 years and any other area owned by him. All that is necessary u/s 5 is that property reserved by the land owner must be a property, which is owned by him. It does not cast any restriction that he cannot make a reservation in respect of the property held by a tenant. If it were to be a property in excess of the surplus area, such area which his not a property in respect of which a tenant could exercise the purchase rights u/s 18, he could still be yet another category of tenant, who would be entitled for an allotment under the surplus scheme. A property held by a tenant is within the permissible area of the land owner and if it is specifically retained as falling with the reserved area, there is no question of the tenant making an assertion of a right for allotment under the Haryana Utilization of Surplus and Other Areas Scheme, 1972. Learned Senior Counsel appearing for respondents No. 5 to 7, Sh. Jain referred to a Division Bench ruling of this Court in Amar Singh Vs. State of Punjab and Another, hat at the time of determination, it was incumbent on the authority to determine the permissible area of the land owner and the permissible area of the tenant as well. Any adjudication relating to surplus area without a determination of permissible area of the tenant itself would be erroneous. In this case, I would not find any reason for application of law laid down in this case since the issue of demarcating a specific extent of property as falling within the permissible area of the tenant could arise only in case where the holding of the land owner is attracted to the provisions of the Act and any portion of the property is declared as surplus. If the entire area of the land owner falls within the total extent, which is permissible by the land owner himself and there exists no surplus, the question of making a determination of permissible area of a tenant does not arise at all.

7. The orders passed by the appropriate Authority and the Commissioner and still later by the Financial Commissioner were clearly wrong. The Commissioner had, however, read the provisions correctly to hold that adjudication that had concluded by the Collector could not have been reopened in collateral proceedings subsequently under the surplus area scheme. The impugned order of Financial Commissioner is set aside and the petition is allowed. The respondents No. 5 to 7 shall have independent consideration for being considered for allotment of some

other property available with the State under the surplus pool in terms of the scheme and not out of the property that falls within the permissible area of the landlord.