

Balwinder Kaur Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 8, 2013

Acts Referred: Punjab Land Reforms Act, 1972 &" Section 5(1)

Citation: (2013) 2 PLR 651

Hon'ble Judges: Rekha Mittal, J

Bench: Single Bench

Advocate: P.N. Aggarwal, for the Appellant; Ashwani Talwar, Additional A.G. Punjab for the Respondent Nos. 1 to 5 and Sandeep Jasuja, Advocate for the Respondent No. 6, for the Respondent

Final Decision: Dismissed

Judgement

Rekha Mittal, J.

The petitioner prays for issuance of a writ of certiorari quashing orders dated 21.12.1976 (Annexure P2) and

24.02.1983 (Annexure P3), passed by the Collector, Agrarian, Fazilka and orders dated 25.11.1991 (Annexure P5), 06.04.1993 (Annexure

P10) and 27.11.1998 (Annexure P13), passed by the Special Collector, Agrarian, Ferozepur, Commissioner, Ferozepur Division, Ferozepur and

the Financial Commissioner Appeals (I), Punjab, respectively. The present dispute pertains to land measuring 35 kanals 4 marlas of village

karianwali, Tehsil Fazilka, District Ferozepur. On 19.08.1955, a registered deed of transfer was executed in favour of the petitioner and her sons,

namely, Harpartap Singh and Harminder Singh by Shri Ajaib Singh, husband of the petitioner. Later on, Ajaib Singh suffered a decree dated

17.06.1958 in favour of the petitioner in respect of land measuring 269 kanals 17 marlas, including the land, in dispute and mutation No. 291 was

sanctioned in favour of Smt. Balwinder Kaur on 18.08.1958. The Collector, Fazilka, vide order dated 23.01.1961, declared surplus area in the

hands of Ajaib Singh under the Punjab Security of Land Tenures Act, 1953 (in short, "the 1953 Act"). The order dated 23.01.1961 was set aside

by the Commissioner, Jalandhar Division, Jalandhar, vide order dated 22.05.1961 and the matter was remanded for decision afresh. The

Collector, Fazilka passed fresh order declaring surplus area of Ajaib Singh on 30.10.1961. The appeal filed against the order of the Collector was

dismissed by the Commissioner, Jalandhar Division, Jalandhar on 24.07.1962. The orders declaring surplus area were set aside by this Court on

05.09.1969 in Civil Writ Petition No. 1847 of 1961 and the matter was remanded for decision afresh. The Collector, Agrarian, Fazilka, vide

order dated 10.12.1970 (Annexure P1) declared 21 standard acres 13 units as surplus area in the hands of Ajaib Singh which also included land

measuring 35 kanals 4 marlas, in dispute.

2. After commencement of the Punjab Land Reforms Act, 1972 (in short "the 1972 Act"), the Collector Agrarian, Fazilka, dealt with the surplus

area case of Ajaib Singh and passed order dated 21.12.1976 (Annexure P2). The Collector, Fazilka, passed order dated 24.02.1983 (Annexure

P3) to take over possession of the land, in dispute, thereafter, the Special Collector, Fazilka passed order dated 22.10.1990 (Annexure P4) for

issuance of warrants of possession to take over the possession of the land in question. Subsequent thereto, the Special Collector, Agrarian,

Ferozepur, passed order dated 25.11.1991 (Annexure P5), whereby the land, in dispute, was allotted in favour of Lekh Ram son of Rugha Ram

(respondent No. 6 herein). The petitioner challenged the orders dated 24.02.1983 (Annexure P3) and 25.11.1991 (Annexure P5) in appeal,

which was dismissed by the Commissioner, Ferozepur Division, Ferozepur, vide order dated 06.04.1993 (Annexure P10). The revision petition

preferred by the petitioner also met the same fate, vide order dated 27.11.1998 (Annexure P13), passed by the Financial Commissioner Appeals

(I), Punjab.

3. Counsel for the petitioner has assailed order qua surplus area of Ajaib Singh, passed by the Collector, Agrarian, Fazilka on 21.12.1976 on the

premise that area of Ajaib Singh which was declared surplus, vide order dated 10.12.1970, prior to the enforcement of the 1972 Act, was not

taken into consideration. It is argued that as the possession of the area declared surplus under the 1953 Act was not taken over by the State prior

to commencement of the 1972 Act, the same was required to be taken into account for deciding surplus area of Ajaib Singh under the 1972 Act.

In support of his contention, he has placed reliance upon Full Bench judgment of this Court in Ranjit Ram Vs. The Financial Commissioner,

Revenue Punjab, Chandigarh and Others, and Ujjagar Singh (Dead) by Lrs. Vs. Collector, Bhatinda and Another, It is further submitted that two

sons of Ajaib Singh were adult on 24.01.1971, "the appointed day" under the 1972 Act and have not been given permissible area to the extent of

7 hectares of first quality each and they have been given lesser permissible area, vide order dated 21.12.1976. According to counsel, Hardavinder

Singh, third son of Ajaib Singh, born on 09.10.1963, attained majority on 09.10.1981 before commencement of the proceedings to take over

possession in respect of surplus area of Ajaib Singh and, therefore, Hardavinder Singh also become entitled to his separate permissible area of 7

hectares, who does not own or hold any land.

4. Indisputably, Ajaib Singh, a big land owner, transferred the land, in dispute, in favour of the petitioner after 15.04.1953, the date relevant for

determination of surplus area under the 1953 Act. Counsel for the petitioner has fairly conceded that the land transferred by Ajaib Singh after

15.04.1953 is to be ignored for determination of his permissible and surplus area under the 1953 Act. The Collector, Agrarian, Fazilka, finalized

the proceedings qua determination of surplus area of Ajaib Singh, vide order dated 10.12.1970 under the 1953 Act and area measuring 21

standard acres 13 unit, including the land, in dispute, was declared surplus in the hands of Ajaib Singh. After coming into force the 1972 Act, the

surplus area case of Ajaib Singh was processed in the light of declaration furnished by him in Form "A" u/s 5(1) of the 1972 Act and vide order

dated 21.12.1976, his surplus area was determined. An extract from order of the Collector, Agrarian, Fazilka, reads as follows:-

As per evidence on the record, the land owner is only assessable unit in this case. As the adult sons of the landowner have furnished a separate

declaration in form "A". The holding of the adult sons was 2.6288 hectares less than their permissible limit to which they are now entitled to retain

from the area of their father u/s 5(1).

I have gone through the record of the case carefully and heard the learned counsel for the land owner and N.T. Agr. for the State. According to

the statement part "B" prepared by Halqa Patwari land measuring 48 kanals 14 marlas equivalent to 1.0284 hectares was sold to Baljit Singh son

of Dalbir Singh against Rs. 19,000/- on 12.05.1975. The statement of the landowner and vendee have been recorded whereby they have deposed

that they are not related to each other. The copies of the khasra girdawari produced by the vendees shows that the vendee is in actual cultivating

possession of the land, since the date of transfer. Copy of registered sale deed also shows that land has been transferred for a valid consideration.

This sale took place after the commencement of the Act, therefore, the same cannot be taken into account in this assessment.

According to the office report land measuring 199 kanals equivalent to 3.4225 hectares was declared surplus under the old Act. Under the

provisions of this Act the land declared surplus shall remain surplus and shall not be affected by this order. Also this land is to be excluded from the

holding of the land owner.

After excluding the land which is declared surplus under the old Act the remaining holding of the landowner comes to 9.4005 hectares.

As provided u/s 4(1) of the Act, the landowner is entitled to retain a permissible area of 7 hectares and 2.6288 hectares for his two adult sons u/s

5(1). Thus, the permissible area of the landowner is 9.6288 hectares. But the holding of the landowner is 9.4005 hectares which is less than the

permissible limit. Obviously, no land is surplus with the landowner. Hence, the declaration furnished by the land owner is filed. The file may be

consigned to the record room after due completion.

The land if any already declared surplus under the Punjab Security of Land Tenures Act, 1953 shall remain surplus and shall not be affected by this

order.

If the aforesaid holding of the landowner or any part thereof is the surplus area under the Punjab Security of Land Tenures Act, 1953 of any other

landowner, the entire holding of the landowner or part thereof as the case may be shall remain surplus and shall not be affected by this order.

5. The petitioner has challenged order dated 21.12.1976 by raising certain pleas which were available to Ajaib Singh and his two adult sons, who

were allotted permissible area. The petitioner filed the present petition after a gap of 23 years of the impugned order. No meaningful arguments

have advanced by counsel for the petitioner to explain an inordinate delay to challenge order dated 21.12.1976. The petition to assail order dated

21.12.1976 is barred by delay and laches.

6. The petitioner, wife of Ajaib Singh (a big landowner) and mother of Harpartap Singh and Harminder Singh (small landowners and adult sons of

Ajaib Singh and the petitioner) has initiated proxy litigation on their behalf knowing fully well that they had failed to avail an alternative remedy of

appeal and revision as well as did not challenge order dated 21.12.1976. The petitioner is neither a big land owner nor a small land owner.

Counsel for the petitioner has failed to substantiate his plea of competency and locus standi of the petitioner, by reference to any statutory

provision or judgment, to invoke the writ jurisdiction to challenge an order in regard to the determination of surplus area in the hands of Ajaib

Singh.

7. Counsel for the petitioner submits that the mere fact that the petitioner had other adequate legal remedy to challenge order dated 21.12.1976 is

not enough to reject her claim. For this purpose, he has relied upon a judgment of the Hon"ble Supreme Court in The State of Uttar Pradesh Vs.

Mohammad Nooh, . In the referred authority, the relevant observations in para 11 are quoted herein under:-

On the authorities referred to above it appears to us that there may conceivably be cases-and the instant case is in point-where the error,

irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive

that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or

tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a

manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior courts sense of fair play

the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or

tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if course was had to

it, it confirmed what ex facie was a nullity for reasons aforementioned.

8. Counsel for the petitioner is unable to satisfy that the present case is covered even by fraction much less squarely by the cited judgment or the

circumstances of the present case, warrant issuance of a certiorari albeit the fact that the petitioner has failed to exhaust her statutory remedy of

appeal and revision. The petitioner, therefore, cannot draw any advantage to her contention from the decision in "State of U.P. v. Mohammad

Nooh" (supra). As the petitioner had earlier challenged the order in regard to determination of surplus area of Ajaib Singh in 1961, by resorting to

statutory remedy of appeal/revision etc., she possibly cannot raise a plea that she was not aware of her statutory remedy.

9. A plea has been raised that had the area declared surplus under the 1953 Act been taken into consideration while determining the surplus area

of Ajaib Singh under the 1972 Act, two adult sons of Ajaib Singh would have got complete allotment of their permissible area of 2.6288 hectares

as they have now been allotted only 2.405 hectares. This plea of the petitioner is misconceived and untenable. The impugned order finds reference

to sale of 48 kanals 14 marlas equivalent to 1.0284 hectares of land by Ajaib Singh to Baljit Singh son of Dalbir Singh on 12.05.1975. The

Collector, Agrarian, has failed to take into consideration this land in the hands of Ajaib Singh as any sale of land by a big land owner subsequent to

commencement of the 1972 Act which came into force on 02.04.1973 is to be ignored. A relevant extract of Section 4 of the 1972 Act, in this

regard, may usefully be reproduced at this stage:-

4. (1) Subject to the provisions of Section 5, no person shall own or hold land as land owner or mortgagee 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) xx xx xx xx xx xx

(b) xx xx xx xx xx xx

(c) xx xx xx xx xx xx

(d) xx xx xx xx xx xx

(3) xx xx xx xx xx xx

(4) XX XX XX XX XX XX

(5) In determining the permissible area, any land which was transferred by sale, gift or otherwise, other than a bona fide sale or transfer after the

appointed day but before the commencement of this Act, shall be taken into account as if such land had not been transferred and the onus of

proving the transfer as bona fide shall be on the transferor.

(6) xx xx xx xx xx xx

(7) xx xx xx xx xx xx

10. A perusal of Section 4(5) of the 1972 Act reveals that any land transferred by sale, gift or otherwise, other than a bona fide sale or transfer,

after 24.01.1971 but before the commencement of this Act i.e. 02.04.1973, shall be taken into consideration as if such land had not been

transferred. As Ajaib Singh sold 48 kanals 14 marlas equivalent to 1.0284 hectares of land on 12.05.1975, this land shall be taken into account

for determination of the permissible area of Ajaib Singh. The two adult sons of Ajaib Singh were allotted 0.2283 hectares less than their

permissible entitlement. Ajaib Singh sold more than 1 hectare land after 02.04.1973. As this sale is to be ignored, more than one hectare of land

was available in the hands of Ajaib Singh for allotment of complete permissible area to his two adult sons. Rather, if the concerned authority had

ignored this sale in the light of Section 4(5), the surplus area in the hands of Ajaib Singh would be more than the area declared as such vide order

dated 21.12.1976.

11. Another argument that the third son of Ajaib Singh who attained the age of majority on 09.10.1981 is also entitled to allotment of his

permissible area, is devoid of merit. As the matter in respect of determination of surplus area of Ajaib Singh attained finality in the year 1976 and

the petitioner has no locus standi to challenge that order and, that too, after expiry of 23 years, no proceedings in respect of surplus area of Ajaib

Singh were pending when the third son of Ajaib Singh attained the age of majority. It appears that the present petition has been filed by Balwinder

Kaur to nullify the determination of surplus area of Ajaib Singh as well as to claim allotment of more land to her sons. The petitioner has initiated

proxy litigation for the benefit of her family which is not permissible. In this view of the matter, the petitioner cannot gain any advantage to her

contention from the decisions rendered in the cases of Ranjit Ram and Ujjagar Singh (supra).

12. Another challenge laid by the petitioner is to the order passed by authorities for taking over the possession of the land, in dispute. There is no

denial that the land, in dispute, measuring 35 kanals 4 marlas is part of the land which was declared surplus, vide order dated 10.12.1970 as well

as order dated 21.12.1976. Counsel for the petitioner submits that as the petitioner was not provided an opportunity of being heard while passing

order dated 24.02.1983 (Annexure P3), the order is illegal being violative of the principle of natural justice. In support thereof, he relies upon a

judgment of this Court in "Prem Singh and others v. The State of Punjab and another" 1981 P.L.J. 159.

13. The contention of the petitioner, in my considered opinion, is misconceived. Admittedly, Ajaib Singh, husband of the petitioner was present

and was heard before order dated 24.02.1983, was passed. The petitioner has not denied that notice issued in her name was served upon her

husband. There is no denial that the husband of the petitioner has no adverse interest against her, who appears to have been the attorney of the

petitioner. As the notice was sent to the petitioner which was served on one of the adult members of the family and Ajaib Singh contested the

proceedings for delivery of possession of the land, in dispute, there is no merit in the contention of the petitioner that order dated 24.02.1983 was

passed without providing her an opportunity of being heard.

14. In the cited authority, the petition was filed by the tenants for possession who were not afforded an opportunity to show cause against taking

possession of the land despite their having a statutory right to seek conferment of rights of ownership or in the alternative for allotment of tenancy

land under clauses (a) and (b) of sub-section (2) of Section 11 read with provisions of Punjab Utilization of Surplus Area Scheme 1973. It is held

that if they had been given an opportunity before issuing order (Annexure P2), they could have got a chance to convince the Collector that there

was no need to dispossess them as they were entitled to conferment of rights of ownership or allotment of the land, in dispute. The referred

authority, deals with completely distinct and distinguishable facts, therefore, the petitioner cannot seek any aid to her plea from the observations

made therein.

15. Much stress has been laid by counsel that as the land in question did not vest in the Government u/s 8 of the 1972 Act, as the petitioner

remained in its possession throughout, an allotment made in favour of respondent No. 6 (Lekh Ram) is illegal and without jurisdiction. The

petitioner challenged the allotment in favour of respondent No. 6 (Lekh Ram) in the revision petition, but counsel for the petitioner did not seriously

question the said allotment as has been held by the Financial Commissioner Appeals (1), Punjab in order dated 27.11.1998 (Annexure P13). A

perusal of order dated 25.11.1991 (P5) makes it apparent that though draw of lots without reference to any particular land was conducted in

December, 1982 in favour of respondent No. 6, the land in dispute was allotted to Lekh Ram in November, 1991, after the possession was

recovered by the State. The petitioner has placed reliance upon jamabandi for the year 1986-87 (P7) and 1991-92 (P8). In these jamabandies,

the land has been described as "banjar jadid" that is land remained fallow for four or more harvests. The entries in these jamabandies in respect of

nature of the land negates the plea of the petitioner that the land was being cultivated by the petitioner. The State Government has relied upon rapt

roznamcha No. 145 in respect of taking over possession and entering of mutation No. 1191 on 14.11.1990. This entry in rapt roznamcha

necessarily raises a presumption in favour of the respondents that the possession of the land was taken over by the State in November, 1990. As

soon as the possession of this surplus area was taken over by the State, the land is deemed to be vested in the Government u/s 8 of the 1972 Act.

As the land stood vested in the State Government, the petitioner lost her competency to challenge any allotment in favour of an allottee because it

would be a matter between the State and the allottee.

16. This apart, the question in respect of delivery of possession of the land in question is a pure question of fact decided by the authorities, which

cannot be interfered in exercise of writ jurisdiction. That being so, the impugned orders do not suffer from any error of law or of jurisdiction as

would call for interference. In view of what has been stated here-in-above, the petition is dismissed. No order as to costs.