(2014) 07 P&H CK 0558

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 15786 of 1992 (O&M)

Sohan Singh	APPELLANT
Vs	
The State of Punjab	RESPONDENT

Date of Decision: July 23, 2014

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Prem Nath Aggarwal, Advocate for the Appellant; P.S. Bajwa, DAG and Som Nath Saini, Advocate for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.

The writ petition challenges the order passed by the authorities constituted under the Punjab Security of Land Tenures Act. The petition was at the instance of Sohan Singh whose holding was declared to be in excess of the ceiling area and declaration was made to that effect on 09.04.1962. Just prior to that order, there had been also an order passed confirming certain proprietary rights to some of the lands owned by Sohan Singh to one Meja Singh as a tenant. The order remained all the years till the petitioner filed revision petitions more than a decade later before the Financial Commissioner pointing out to two defects: one, the calculation of the property in excess had been made assuming his holding to be of 1/3rd share as inherited from father Tehal Singh. He had only a 1/4th share as brought out through a decree obtained by his brother''s widow Pritam Kaur and the calculation was therefore erroneous and the second objection was that there could not have been a conferment to proprietary rights before allowing for the landlord to make his own reservation and before the total holding is ascertained to fall in excess of his permissible area. On these contentions, the Financial Commissioner allowed for a review, on a concession made by the petitioner himself that the re-calculation will be made by taking his entitlement to 1/4th share and he would be given the benefit of selection of the area which he would retain within the ceiling area. At the time when

the representation was made before the Financial Commissioner, it was admitted by him that he held property in excess, which he represented to be 0.59 standard acres. The Financial Commissioner observed in his order that the extent of property in excess would require to be verified by the Collector, Tarn Taran. When the matter went before the Collector, it was found that he owned 1/8th share in 229 kanals 13 marlas and 12 kanals 15 marlas were in the hands of the tenant-Meja Singh. The remaining extent of property had been with him and the Collector passed an order on 26.08.1986 to declare the property which he wanted to surrender as surplus. When the petitioner was given the option pursuant to the Collector''s order on 26.08.1986, he purported to surrender 11 kanals of land which had been already sold by him. The Collector observed that it amounted to cheating by offering to surrender surplus area which had been disposed of and while declining the property surrendered, he declared specific extents of property measuring 16 kanals valued at 2 standard acres and 2 units as the property falling in surplus. It is this order which is in challenge before this court.

2. The learned counsel for the petitioner has three objections to take. The first objection was when the Financial Commissioner was reviewing the decision of declaration of surplus made on 09.04.1962, he had already noticed that he (the petitioner) was entitled only to 1/4th share and, therefore, the declaration made already became ineffective and a fresh reckoning could have been made only taking note of the subsequent changes that had taken place. The lack of consideration of the incident of death of the owner and the succession falling to two sons was contrary to law. The second objection was that the petitioner''s contention regarding opening of succession, though had not been stated originally before the Collector had been brought before the Financial Commissioner and, therefore, the issue was still at large that required a fresh recomputation. The third objection was that the property owned by the landowner was situated in two districts and consequently, in terms of Rule 4(b) issued under the Punjab Security of Land Tenures Rules, 1956, the jurisdiction vested only with the Special Collector and the decision taken by the Collector was without jurisdiction.

3. All the objections taken by the petitioner are refuted by the counsel appearing on behalf of the contesting respondent who is the tenant-Meja Singh to point out that the declaration made on 09.04.1962 had indeed become final and if it was reviewed nearly 11 years later by a revision petition filed before the Financial Commissioner, it was required only for the limited purpose of accommodating the petitioner''s own concession that the declaration made would require to be reassessed only for the purpose of taking into account a civil court decree providing for a 1/4th share to the brother''s widow and the order must be therefore seen in the context of such concession. It ought not to be seen as making possible for the petitioner to reopen the issue that there existed no surplus at all. Taking up the issue relating to the effect of succession where the determination of surplus had not been finalized, the contention in reply would be that the declaration made on 09.04.1962 had not been

challenged anywhere till after a decree was said to have been obtained by the sister-in-law and what would apply as a matter of concession was the admission by Sohan Singh himself that his holding was in excess of the ceiling area. The effect of succession cannot be operative except in situations where the declaration had not been come final. In this case, the declaration of property as falling within surplus had become final and a recomputation was being undertaken only by a measure of concession for allowing for the actual extent of property in surplus after providing a right of reservation by computing 1/4th share in the whole extent instead of 1/3rd as originally taken. The objection regarding want of jurisdiction by the Collector was on the issue that although the properties were situate in two districts, the petitioner himself had offered to seek for a recomputation only with reference to property in one district, namely, in the District at Naushera Pannuan and hence, the jurisdiction exercised by the Collector was in order.

4. I am of the view that the objections taken by the respondents are potent and the petitioner''s challenge to the impugned order cannot prevail. I will have no difficulty in accepting as a proposition that where a declaration made had itself been a subject of challenge in various higher forums and it had not become final, the effect of death of the landowner would affect the status of holding in so far as it needs to provide for the law of succession to take place to benefit the major sons and accord to them the respective entitlements as per the Act. Where, however, an order of declaration had become final when it was issued in the year 1962 and it was sought to be reopened for the first time after a civil court decree obtained by the sister-in-law for a limited purpose of a recomputation to be made, where the petitioner himself had stated that recomputation would still yield to a property in surplus, it must only be taken that the order of the Financial Commissioner was not to reopen the whole issue of whether he owned any property in surplus and whether the death of the original landowner could make a difference. I would affirm the objections taken that but for the concession that the petitioner was making before the Financial Commissioner, it should have been simply possible for the Financial Commissioner to close proceedings and thwart any attempt on his part to seek for a recomputation and secure to himself the benefit of making fresh list of property which he wanted to hold and declare the property which he wanted to surrender surplus. The petitioner was actually coming by a benefit of securing to himself a fresh option of properties which he could surrender. He knew what he was bargaining for. It would be too late in the day to state that he would be entitled to reopen the issue of what was concluded on 09.04.1962 by certain fortuitous act that came in the interregnum viz., of a decree for 1/4th share secured by his sister-in-law on stiff contest upto High Court by the petitioner himself and the subsequent reduction of his entitlement. It should have been possible for the State to simply discard the decree obtained by the sister-in-law as not to be a matter which it could take note of, for, if any other person had a right in the property which was declared as surplus, it should have been a matter of lis between such a third party and the

State and could not be taken advantage of by the big landowner. It could not have been possible for the landowner to seek for reopening the matter unless he admitted to certain legal incidence that had become final, which, in this case, was as regards the declaration of property as surplus and the recomputation had to be made only for the limited purpose of what was conceded by the petitioner before the Financial Commissioner.

5. The order passed is just and accords with the circumstances that were admitted before the Financial Commissioner for which limited purpose alone, it had been remitted to the Collector for consideration. The recomputation itself was for property in Village Naushera Pannuan and hence even the decision was not required to be undertaken by the Special Collector. I find no scope for any intervention in the writ petition. The writ petition is dismissed.