

(2014) 05 P&H CK 0684

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5664 of 1991 (O&M)

Suraj Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 26, 2014

Acts Referred:

- Punjab Land Reforms Act, 1972 - Section 3(1), 4(7)

Citation: (2014) 4 RCR(Civil) 409

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Sarjit Singh, Senior Advocate and Jagdev Singh, Advocate for the Appellant;
Ranbir Singh Pathania, D.A.G. and Manjit Sooch, Advocate for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

CM No. 6788 of 2014.

Application is allowed, as prayed for. Documents-Annexures P5 and P6 are taken on record.

Civil Writ Petition No. 5664 of 1991.

1. The writ petition challenges the order passed by the Financial Commissioner allowing a civil revision filed at the instance of the allottees of properties from the surplus pool. The revision was brought against the order of the Commissioner and the Collector who had respectively upheld the claims of the widow of Amar Singh-the landowner in whose hands the surplus was declared. The original declaration had been made on 11.06.1976 on the concurrence of Amar Singh that certain properties could be declared as surplus. After the declaration was made and allotments were said to have been also effected, his wife Suraj Kaur and his grandchildren filed independent appeals against the declaration and contended that

they were respectively the owners and donees of properties from Amar Singh before coming into force of the Act on 02.04.1973 and that the mutations had also been effected entering their names in respect of the property so held/alienated. The Commissioner had passed an order on 22.05.1979 setting aside the order of declaration and directed a fresh consideration. The fresh consideration yielded to the orders passed by the Collector and the Commissioner, referred to above, in the years 1980 and 1983 respectively. They had to contend with an additional fact at the time of remand, namely, of the death of Amar Singh on 16.08.1978 and the effect of succession that had opened. Both the authorities held that there was no surplus in the hands of Amar Singh and such determination could not be made when the proceedings were still not concluded. These orders were set aside by the Financial Commissioner, which are in challenge.

2. The counsel appearing on behalf of the allottees would contend that in terms of Section 4(7) of Punjab Land Reforms Act for evaluating the land of any person at any time under the Act, the land held by him before the commencement of the Act and the property that was acquired subsequent to the Act by inheritance, bequest or gift will have to be reckoned and that evaluation will be made as if it was made on the appointed day which was on 24.01.1971. The counsel would therefore urge that the property as on 24.01.1971 alone has to go into computation.

3. I would reject this argument, for, Section 4(7) of the Act uses two distinct expressions viz., of the relevance of the holding before "commencement of the Act" and the reckoning to be evaluated as if on the "appointed day". The Act received assent of the President on 24.03.1973 and, therefore, that would be taken to be the date as the date of commencement of the Act. The "appointed date" is defined u/s 3(1) as "24.01.1971". Any transaction of transfer that had been made before the commencement of the Act, namely, on 24.03.1973 will have to therefore kept out of reckoning, save for transfers which were mere sham transactions. The evaluation of whether it is sham or genuine would become possible only after the notices are sent to the persons in whose names the entries stand in jamabandi. At the previous hearing, I had directed the petitioner to furnish the details of alienation made by the original landowner and an application in C.M. No. 6788 of 2014 has been filed to place on record the jamabandi entries during the relevant period of 1971-73. The gift deed in favour of grandchildren on 22.04.1972 is also placed on record. These surely record the fact of transactions of transfers before the date of the commencement of the Act. There could not have been a declaration of surplus made on a mere statement of Amar Singh. If the mutations had taken effect and the State had records in its hands that they did not all stand in the name of the landowner, any determination without service of notice on persons who staked their claims would violate the principle of natural justice. Such determination, though had consent of Amar Singh, cannot bind the persons who held their claims to the property. I set aside the order passed by the Financial Commissioner upholding the claim of the allottees without consideration the claims of the persons who claimed

as alienees.

4. The counsel for the respondents was fair to admit that the notices would be necessary but then it would be necessary only if the transactions are bona fide. The issue of bona fides against the alienees cannot be decided in their absence. To that extent shall be the requirement of joining them in the proceedings before an adjudication is made.

5. The learned senior counsel also points out to me that even the original declaration made on the consent of Amar Singh cannot conclude the issue, for, even when the declaration was put in challenge at the instance of Suraj Kaur and the grandchildren, Amar Singh himself had died and it must be taken therefore that the proceedings for declaration had not come to a finality. This, according to him, would be material for application of the principle brought out by the decision of Full Bench in [Sardara Singh and Others Vs. The Financial Commissioner and Others](#), That reckoning would require to be made by taking note of the inheritance of the heirs after the death of the original landowner. The order of the Financial Commissioner is set aside and it shall be open to the State to reopen the matter by serving notices to all the persons in whose names the mutations had been effected and the revenue entries stood before 02.04.1973 and also consider the effect of succession in the manner laid down in Sardara Singh's case (supra). The writ petition is allowed on the above terms. The right of allottees will abide by the ultimate decision that is taken with reference to the holding of the landowner and the persons claiming under him.