

(2014) 07 P&H CK 0795

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3160 of 1992 (O&M)

Dharam Kaur

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision: July 18, 2014

Acts Referred:

- Haryana Ceiling on Land Holdings Act, 1972 - Section 12, 12(1), 12(3), 8

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Sudhir Mittal, Advocate for the Appellant; D.D. Gupta, Additional Advocate General, Ashok Gupta and Malkeet Singh, Advocate for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

CM No. 6538 of 2014

Exemption granted.

Application stands disposed of.

CM No. 6539 of 2014

For the reasons stated in the application, the same is allowed and the writ petition is restored to file.

CM No. 8645 of 2011

Impleadment ordered as sought for subject to all just exceptions.

Application stands disposed of.

Civil Writ Petition No. 3160 of 1992

1. The writ petition is a challenge to an assessment made on 23.07.1987 by the authorities constituted under the Haryana Ceiling on Land Holdings Act, 1972 that there was an extent of 18 standard acres and 12 1/2 units as surplus. This order passed by the competent authority was confirmed in appeal and revision. The orders are assailed by the petitioner on a plea that the determination of this extent as surplus made through an order passed on 14.01.1965 under P1 was itself a subject of challenge in CWP No. 524 of 1977 when the Division Bench of this court has held through a judgment dated 04.02.1986 that the decision was erroneous and it had set it aside. In the same writ petition, there was also a challenge to the allotment made to some tenants on 31.01.1977 based on the declaration made on 14.01.1965. The effect of the order setting aside the declaration on 14.01.1965 was also, therefore, consequential to affect the order of allotment made on 31.01.1977.

2. Section 12(3) of the Haryana Ceiling on Land Holdings Act is the governing provision relating to the vesting of surplus area in the State where the declaration had not been effected already. Section 12(1) lays down that the surplus area for the landowner shall be from the date when it was declared as such. Section 12(1) of the Haryana Ceiling on Land Holdings Act is reproduced as under:-

12. VESTING OF SURPLUS AREA.--(1) The surplus area of a landowner shall, (from the date on which it is declared as such shall be deemed to have been acquired by the State Government for a public purpose) (Vide Act No. 17 of 1976) and all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force) of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance:

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.

(2).....

(3).....

(4)....

Admittedly on the date of the Act, there had been no declaration made under the Act. Sub clause 3 of Section 12 is applicable in cases where a declaration is made under the Punjab law and which had not so far vested with the State Government shall be deemed to have been vested from the appointed day. Clause 3 operates only in cases where the declaration is made under the Punjab law. I have already pointed out that the declaration already made on 14.01.1965 was set aside on 04.02.1986 in the writ petition in CWP No. 524 of 1977. Consequently, any determination of surplus ought to take notice of the entitlement of the legal heirs if

the original landowner had died. Section 8 protects certain transfers and dispositions which include holding of an heir by inheritance. If there had been death of a landowner whose right fell to be inherited by the legal heirs, it is bound to be taken note of before a declaration is made. A fresh redetermination was necessary to take into account the fact of succession on the death of the original landowner. There cannot be merely repetition of an order declaring the property as surplus without minding the fact that the original landowner is not alive and without applying the effect of Section 8 under the Haryana Act.

3. The impugned order is set aside and there shall be a direction to the authorities to serve notice on the legal representatives and allow them to give their statements and redetermine the holding of the legal representatives as heirs and in their own personal capacity and pass appropriate order in accordance with law. The writ petition is allowed on the above terms. It appears that there have been some transfers effected during the lifetime of the big landowner. The effect of transfers will be considered to the extent to which the holding would require to be assessed in the hands of the legal representatives of the original landowners.