

Gurcharan Singh and Others

Vs

Prithi Singh and Others

Civil Appeal No. 1950 1967

(V. R. Krishna Iyer, V. R. Krishna Iyer, R. S. Sarkaria JJ)

14.11.1973

JUDGMENT

SARKARIA, J. –

1. This appeal by certificate is directed against the order dated the 3rd August, 1966 of the High Court of Punjab and Haryana 'dismissing the appellants' writ petition in limine. The facts as alleged in the writ petition are as under :
2. Respondent No. 1 herein owned 186 standard acres and 4-1/2 units of agricultural land at the time of the commencement of the Punjab Security of Land Tenures Act, 1953 (Act X of the 1953) (hereafter called the Act), in several villages in the State of Punjab. Thereafter, he transferred part of his land in favour of his sons, Respondents 2 and 3. On March 3, 1958, Respondent No. 1 sold 76 Bighas and 13 Biswas of land situate in the area of village Dewan Khera for Rs. 80,000 to the appellants. On the same date, Respondent No. 2 sold 3 Bighas and 6 Biswas of land in the same village, for Rs. 4,000 to the appellants. A third sale was also made of 17 Bighas and 16 Biswas of land, situate in Dewan Khera, by Respondent No. 3 in favour of the appellants for Rs. 16,000. Mutations in favour of the vendees-appellants on the basis of the sales were sanctioned by the Revenue Officer concerned in 1958. Most of the area thus transferred by Respondents 1 to 3 in favour of the appellants, was on 15-4-1953 i.e. at the commencement of the Act under tenants who had no other land in any capacity in the State of Punjab. The land-owners had not made any reservation in 1953 or selection in 1958 of their permissible area. In 1964, the Circle Revenue Officer started proceedings for determination of the surplus area. The village Patwari prepared the necessary statement in Form 'D' relating to all the lands held by Respondent No. 1, as on 15-4-1953. In this Form, he also showed appellants as transferees of a part of that area, from Respondent No. 1. On 15-9-1964, the Collector made an order declaring 155 standard acres and 12-3/4 units of land as surplus area of Respondent No. 1. Against that order, the appellants preferred an appeal before the Commissioner, who dismissed it on November 6, 1955. The appellants' revision before the Financial Commissioner, also met the same fate on March 3, 1966.
3. On 20-6-1966, the appellants filed the writ petition under Articles 226/227 of the Constitution in the High Court impugning the aforesaid orders of the Collector, the Commissioner and the Financial Commissioner, as being illegal and without jurisdiction, inter alia on these grounds.
 - (i) That no notice as required by Rule 6 of Punjab Security of Land Tenure Rules, 1956 was issued to the appellants; nor were they afforded by the Collector, an opportunity to put forth their objections against the inclusion of the lands purchased by them, in the surplus area;

(ii) That in view of the mandate in s. 2 (5) (2) of the Act, the lands purchased by the appellants, could not be included in the surplus area of Respondent No. 1, as on the crucial date i.e. 15-4-1953, these lands were in the occupation of tenants whose total holdings did not exceed the permissible limit;

(iii) That the Commissioner erred in himself calling and examining the Khasra Girdawri, and then without even examining the Patwari who had made the entries therein, in holding, on mere conjectures, that the record had been tampered with. Hearing at the appellate stage was no substitute for hearing at the original enquiry. The Commissioner ought to have remanded the case to the Collector and thus afforded the appellants an opportunity to lead evidence to "rebut" the erroneous view of the Commissioner endorsed in revision by the Financial Commissioner;

(iv) That Respondent 1 had represented that he would get the lands sold to the appellants included in his permissible area which had not been reserved or selected by him within the prescribed period. The Collector therefore should have included these lands in the permissible area of Respondent 1.

4. Mr. Manchanda, appearing on behalf of the appellants does not press grounds (i) and (iv) before us, obviously because there is no substance in them. With regard to ground (iii), however, the learned Counsel has vehemently contended that the Commissioner was wrong in brushing aside the Khasra Girdawri - which would have furnished the factual premises of ground (ii) - merely because the binding of the register was untidy or there were suspicious erasures in some entries which were not relevant to this case. Khasra Girdawri - it is stressed - is a public record prepared by a public servant in the discharge of his official duties, and as such, carries with it a presumption of correctness. It is urged that the case should be remanded to enable the appellants to produce evidence.

5. We find no merit in this contention. A perusal of the Collector's order would show that Mal Singh, General-Attorney of the appellants was present and heard by the Collector. The Collector noted that Mal Singh "alleged some..... purchases, but he has not produced any proof". The Financial Commissioner was therefore, right in observing that "the petitioners were represented before the Collector but did not raise any objection to the declaration of the surplus area".

6. Further, it is noteworthy that in the memorandum of appeal before the Commissioner (which was filed through the said Mal Singh), all that was alleged; was, that the Collector had not allowed the appellants full opportunity to put their case, that since there was no selection and no reservation in this case, the purchasers were entitled to be fitted in the permissible area of the landlord, and that the accounting was wrong inter alia for the reason that the tenancy areas had not been deducted. The material facts constituting the grounds (i), (ii) and (iv), were not pleaded; yet the main contention canvassed was No. (ii) only. The Commissioner could have dismissed the appeal on the short ground that the pleas had not been raised either, before the Collector or in the memo of appeal. It was only as a matter of grace and caution that he suo motu sent for and examined the Khasra Girdawri, the object being to find out if the belated point canvassed before him, had a factual basis. The condition of the record, as observed by the Commissioner raised serious doubts about its authenticity. What was intended to be a concession cannot be allowed to be turned into a grievance, particularly when no request was made that the Patwari should be summoned along with his Roznamcha to explain the suspicious features of the Khasra Girdawri. Though Khasra Girdawri record is admissible under rs. 35, Evidence Act, yet it may be remembered that the statutory

presumption of correctness that attaches to record of rights and Jamabandis under s. 44 of the Punjab Land Revenue Act, does not extend to the Khasra Girdawri. Nor could the optional presumption under Illustration (c) of s. 114, Evidence Act, be invoked specially when on the face of it the record was suspicious. Appellants did not show before the Commissioner - or even was suspicious. Appellants did not show before the Commissioner - or even before the Financial Commissioner - any adequate reason why they had failed before the Financial Commissioner - any adequate reason why they had failed to set up objections or produce evidence in support of their claim, despite the to set up objections or produce evidence in support of their claim, despite the hearing given by the Collector. There was therefore, no justification whatever for remanding the case for a de novo enquiry by the Collector.

7. Nor do we find any force in the contention that since the sales were made, before the permissible area of the vendor (Respondent) had become fixed by voluntary reservation or selection, the lands sold should have been included by the Collector in the permissible area of the vendor in proceedings under s. 5-B (2) of the Act. While it is true that a landowner who fails to reserve or select his permissible area within the prescribed period, cannot exercise that right subsequently, and thereafter it is for the Collector to determine the defaulter's permissible and surplus areas, in exercising this power under s. 5-B, the Collector has to act judicially. He is bound to give notice to the landowner, and the transferees from him, if known. Thereafter he has to hear the parties who appear, and to take into consideration their representation and then pass such order as may be just. On so exercising his discretion, the Collector may, subject to the adjustment of equities on both sides, include the Collector may, subject to the adjustment of equities on both sides, include the transferred area in the 'permissible area' or the 'surplus area' of the landowner. Thus, in the process the Collector is not to ignore altogether the wishes of the landowner. He may accept them to the extent they are consistent with the equities of the case. In the instant case, the appellants did not furnish even the particulars of the purchases made by them, much less did they oppose the preference expressed by the landowner being accepted by the Collector. In the circumstances there was no equity in favour of the transferees.

8. For the foregoing reasons, we negative the contentions advanced by the learned Counsel for the appellants, and dismiss this appeal with costs.

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