

Financial Commissioner, Haryana State and Others

Vs

Smt. Kela Devi and Another

Civil Appeal No. 2522 of 1969

(N.L. Untwalia, P.N. Shinghal, A.D. Koshal JJ)

31.10.1979

JUDGMENT

SHINGHAL, J. -

1. One Nathi held 36 standards acres and 8 standard units of land village Bhanguri, and as the 'permissible ares' within the meaning of clause (3) of Section 2 of the Punjab Security of Land Tenures Act, 1953, (hereafter referred to as the act) in his case was 30 standards acres, Collector (Surplus) Nuh, declared 6 standards acres and 8 standards units of land as 'surplus area' by his order dated November 25, 1959 Nathi died on July 14, 1965, leaving his widow Smt. Kela Devi respondent 1, and his mother Smt. Mando respondent 2 as heirs. The two heirs made an application under the Section 10-A(b) and 10-B of the Act stating that as the land of Nathi had been inherited by them in equal shares, and the holding with each one of them was much below the "permissible area" of 30 standard acres, there was no 'surplus area' within the meaning of clause (5-a) of Section 2 of the Act and no part of it could thereof be utilised for allotment to other tenants. That application was however dismissed by Collector (Surplus) on March 13, 1967, on the ground that the 'surplus area' declared in the Nathi's lifetime had already been allotted to the other tenants and could not be excluded from the holding in the hands of his widow and mother. An appeal was taken to the Commissioner of Ambala, but it was dismissed on January 30, 1968, as he took the view that the order of allotment of the "surplus area" of Nathi's holding amount to "utilisation" of that land under Section 10-A(a). A revision was taken to the Financial Commissioner, but it was rejected on May, 8, 1968 for the same reason. Smt. Kela Devi and Smt. Mando then approached the High Court of Punjab and Haryana by a writ petition under Articles 226 and 227 of the Constitution. It was opposed by the present appellants on the ground that the as the "surplus area" had been declared and allotted to various tenants during the lifetime of nathi (excepts for an area of 8 kanals in village Ghelab) the writ petitioner ware not entitled to succeed, as the "surplus area" had already been utilised. It was also pleaded that the possession of eight pieces of land had already been delivered to the tenants before the death of the Nathi. The controversy before us does not relate to those pieces of land which had been allotted to various tenants and of which possession was given to them during the lifetime of Nathi.

2. The learned single Judge of the High Court who initially heard the writ petition allowed it by his judgment dated October 29, 1968, insofar as it related to the portion of land of which possession had not been given to other tenants and, to that extent, he set aside the above-mentioned orders of the Collector, the Commissioner, and the Financial Commissioner by which the application of Smt. Kela Devi and Smt. Mando was rejected. An appeal was taken to a division bench of the High Court, but it was dismissed on the May, 12 1969. That is why the present appeal has been filed on the basis of the High Court's certificate under Articles 133(1)(c) of the Constitution.

3. The only question which therefore arises for consideration is whether the High Court was right in taking the view that mere allotment of the land to the other tenants under Section 10-A(a) of the Act did not amount to utilisation of the 'surplus area' when the resettled tenants had not taken possession under the allotment orders.

4. It is not in controversy that it had been finally decided that the "surplus area" in the case of Nathi was 6 standards acres and 8 standards units and a decision to that effect was taken in his lifetime on November 25, 1959. It is also not in dispute that order were made for the allotment of the "surplus area" to the other tenants under Section 10-A(a) of the Act which reads as follows :

10-A(a). The state Government or any officer empowered by it in his this behalf shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under the clause (i) of sub-section of the Section 9.

While therefore the Section empowers the State Government or its authorised officer to "utilise" any "surplus area" for the resettlement of tenants, the Act does not define what is meant by an order of utilisation under the section. A clue to what is actually meant by that expression, is however to be found clause (b) Section 10-A which provides as follows :

10-A(b). Notwithstanding anything contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or an heir by inheritance no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act, shall affect the utilisation thereof in clause (a).

The clause therefore has the effect of saving the land, comprised in the "surplus area", if it has been acquired by an heir by inheritance. So where an heir succeeds by inheritance, as in this case, that basic fact would affect the utilisation of the surplus area if only an order has been made under clause (a) of Section 10-A for its utilisation for the resettlement of other but that order has not been implemented.

5. In order to understand the full meaning and effect of the provisions of Section 10-A, it is necessary to make a cross-references to Rules 18, 20-A, 20-B and 20-C of the Punjab Security of Land Tenures Rule 1956 (hereafter referred to the as Rule) Rule 18 deals with the procedure for allotment of "surplus area" to other resettled tenants. Rule 20-A provides for the issue of certificates of allotment of lands to them, and Rule 20-B provides for delivery of possession and makes it obligatory for the resettled tenant to take possession of the land allotted to him within a period of two months or such extended period as may be allowed by the officer concerned. Rule 20-C provides, inter alia, for the execution of the "qabuliyat" or "patta" by a resettled tenant. It would thus appear that which allotment of land is an initial stage in the process of utilisation of the "surplus area", it does not complete that process as it is necessary for the allottee to obtain a certificate of allotment, take possession of the land within the period specified for the purpose, and to execute a "qabuliyat" or "patta" in respect thereof. The process of utilisation contemplated by Section 10-A of the Act is therefore complete in respect allottee or the allottees and the other formalities have been completed, and there is no force in the arguments that a mere order of allotment has the effect of completing that process.

6. Reference in this connection may also be made to Rule 20-D of the Rules which provides that in the case a tenant does not take possession of the 'surplus area' allotted to them for resettlement

within the period specified therefor, the allotment shall be liable to be canceled and the area allotted to him may be utilised for the resettlement of another tenant. It cannot therefore be doubted that the completed title does not pass to the allottee on the mere order of allotment, and that order is defeasible if the other conditions prescribed by the law are not fulfilled.

7. So when the process of utilisation of Nathi's "surplus area" had not been completed by the time his heirs by inheritance made the aforesaid application to the authorities concerned, it was permissible for those authorities to re-examine the question whether there was any 'surplus area, at all after Nathi's holding had been inherited by his two heirs in equal shares so as to reduce the area of the holding of each of them below the permissible area. The High Court therefore rightly allowed the writ petition of the respondent.

8. As there is no force in this appeal, it is dismissed but, in the circumstances, we do not make any order as to the costs.

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