

Financial Commissioner, Punjab

Vs

Smt. Chand Kaur and Others

Civil Appeal No. 1876 of 1973

(M. P. Thakkar, B. C. Ray JJ)

05.03.1987

JUDGMENT

1. In the present case the land holder (respondent 1 herein) had sold certain lands in favour of the pre-emptors who were respondents 3 to 5 in the writ petition giving rise to the present appeal. The Collector came to the conclusion that the lands sold by the land holder to the pre-emptors should be treated as being sold from out of the surplus pool. It was obviously a very unjust decision because the Collector was treating surplus lands vested in the State for re-distribution to the landless as lands belonging to the land holder which she could sell. In other words it amounted not only to permitting respondent 1 to sell lands which did not belong to her but also to retain the sale price thereof. It amounted to increasing her holding beyond the ceiling and diminishing the surplus pool with unjust advantage to her. That is why the Financial Commissioner reversed the order passed by the Collector and held that the area sold by the land owner and pre-empted by respondents 3 to 5 be included in the permissible limit of the land holder. This order was challenged by way of a writ petition in the Punjab and Haryana High Court. The matter came up before R. S. Sarkaria, J. (as he then was) who came to the conclusion that what had been sold by the land holder cannot be treated as having been sold out of surplus but must be treated as having been sold out of the permissible area to be retained by the land holder having regard to Section 10-A read with Section 19-B (2) of the Punjab Security of Land Tenures Act (Punjab Act 10 of 1953), 1953, and the Financial Commissioner was perfectly justified in making the choice on behalf of the land holder in this manner. In this view of the matter the writ petition was dismissed by Sarkaria, J. The land owner preferred a Letters Patent Appeal. The two learned judges hearing the appeal differed. The matter was, therefore referred to a third learned judge. In the light of the decision rendered by the third learned judge to whom the matter was referred, the Letters Patent Appeal was allowed and the decision of Sarkaria, J. rendered in the writ petition was set aside. In doing so the learned judges constituting the majority relied on a decision rendered by another Bench of the same court in the matter of Sampuran Singh v. State of Punjab (1965 Punj LJ 112). Now it High Court allowed the Letters Patent Appeal, the judgment in Sampuran Singh case which had been followed by them, came to be reversed by this Court in State of Haryana v. Sampuran Singh ((1975) 2 SCC 810 : (1976) 1 SCR 626 : AIR 1975 SC 1952). This Court has taken the view that the scheme of the Act was to ensure that no land holder held land in excess of the permissible area and that even if his holding was augmented by virtue of inheritance the area to be retained by the land holder cannot exceed the ceiling limit. In view of this decision reversing Sampuran Singh case (1965 Punj LJ 112) decided by the Punjab High Court the very basis of the judgment of the Division Bench which is the subject matter of the present appeal disappears. The decision rendered by the learned Single Judge Sarkaria, J. must accordingly be restored. The appeal is, therefore allowed. The order passed by the Division Bench is set aside and the order passed by the learned Single Judge dated April 16, 1971 is

restored. The writ petition giving rise to the present appeal will accordingly stand dismissed. There will be no order as to costs.

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