

Sher Singh and Others

Vs

Financial Commissioner of Planning, Punjab and Others

Civil Appeal No. 341 of 1973

(G. L. Oza, V. Khalid JJ)

26.03.1987

JUDGMENT

V. KHALID, J. -

1. This is an appeal by certificate against the judgment of Full Bench of the Punjab and Haryana High Court dated November 20, 1970. The question involved in this appeal is ingenious but untenable. The question referred to the full bench reads as follows :

Whether after the re-organisation of the state of Punjab the land owners owing land in both the States of Punjab and Haryana can claim to retain the permissible area in each State separately after November 1, 1966. If so, whether an order declaring the area to be surplus passed prior to the date abovesaid, but which order has not been implemented and the surplus land so declared has not in fact been utilised would continue to have effect after said date ?

Now the facts. Balwant Singh was a displaced person from West Pakistan. He owned in all 67 standard acres of land distributed in various villages. According to him he had sold some properties to strangers and the remaining in favour of his wife and minor son in 1957. On November 8, 1960, when proceedings under the Punjab Security of Land tenures Act, 1930 (for short 'the Act') were initiated, the special Collector, Punjab, declared 29 standard acres belonging to him as surplus area. While doing so, the transfers made by him mentioned above, were ignored. He had an option to choose the property which fell to his share. He opted for the entire land belonging to him and situated in village Samani as his permissible area and did not opt for any area in Mohamad Pera, District Ferozepore. The Special Collector reserved for him about 18 standard acres out of his holding in village Dhab Khariyal in order to make up his permissible area of 50 standard acres. This part of the order of the Special Collector, though challenged in appeal, was confirmed by the commissioner, Jullundar Division on January 5, 1965, since the appeal before him was held to be barred by limitation. The appellant pursued the matter before the Financial Commissioner, Planning, Punjab, by filing a revision. This was dismissed on February 19, 1965.

2. On November 1, 1966, the Punjab Re-Organisation Act, 1966, (for short 'Re-organisation Act') came into force. The state of Punjab was distributed under the act to the present state of Punjab, state of Haryana, Union Territory of Chandigarh and Union Territory of Himachal Pradesh. In December 1966, Balwant Singh, his wife and his minor son filed a writ petition for the issuance of necessary directions to the states of Punjab and Haryana restraining them from utilising the surplus area declared by the Special Collector by his order dated November 8, 1960. It is relevant to note here that the original properties that belonged to him fell within the new State of Punjab and the

new State of Haryana.

3. The matter came before a learned Single Judge. The following questions were raised before him : (1) That after the States' re-organisation, persons owning lands both in the state of Punjab and Haryana could claim that they should be allowed permissible area in both the States separately, (2) that orders passed regarding surplus area prior to November 1, 1966, and which area had not been utilised till then, should be deemed to have no effect and (3) that the proceedings declaring surplus land were bad for want of notice to the transferees. These contentions were repelled by the learned Single Judge.

4. He took the matter in appeal. The division Bench before whom the appeal was posted felt that an important question was involved and therefore referred the appeal to a larger bench.

5. The Full Bench considered the matter in detail and held that the order declaring the area to be surplus passed before November 1, 1966, would continue to have effect after that date, even if that order had not been implemented and persons owning land in the newly created States are not, in law, entitled to a separate allotment under the Act. It is this conclusion of the Full Bench that is assailed before us on the strength of a certificate issued by the court.

6. Balwant Singh had more than the permissible area, viz., 50 standard acres with him. The excess area was liable to be declared as surplus. Surplus area was declared by the Special Collector, by his order dated November 8, 1960. It was confirmed in appeal and in revision. The revisional order is dated February 19, 1965, that is before November 1, 1966, when the Re-organisation Act came into force. As indicated above, by virtue of the re-organisation of the two States, a part of his holdings fell in the territory of the State of Haryana and another part in the State of Punjab. He evolved a contention that he could have 50 standard acres of land in each of the two States. On this basis, he questioned the order dated November 8, 1960. He supported this argument with the additional plea that the said order had not been implemented and the land declared surplus not utilised.

7. The question that fell to be decided by the Full Bench was whether the order which had become final would continue to have effect after the date of enforcement of the Re-organisation Act when that order had not been given effect to and the surplus area had not been utilised by the government.

8. Under the scheme of the Act, it is the entire holding of a person on April 15, 1953, that is to be taken into consideration for determining his surplus area. The government acquires the right to utilize the surplus area of a person against whom an order of declaration has been made for the resettlement of tenants ejected or to be ejected. Sections 9(1)(i) and 10-A(a), which read as follows, made the position clear :

9(1). Notwithstanding anything contained in any other law for the time being in force, no land owner shall be competent to eject a tenant except when such tenant

(i) is a tenant on the area reserved under this Act or is a tenant of a small land owner; or ...

10-A(a) The State Government or any officer empowered by it in this behalf, shall be competent to utilise any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of Section 9.

9. It was contended before the High Court and repeated before us that the order did not get finality

unless the surplus area had in fact been utilised, and tenants resettled there. This contention did not find favour with the High Court. We will presently examine whether the contention has any merit. It is true that along with the order declaring the land of an owner as surplus, a corresponding right and duty accrue to the government to utilise the surplus area for the resettlement of tenants. In other words, the rights on the land declared as surplus get vested in government, to be distributed amongst the tenants for resettlement. This is an indefeasible right that the government secures. The appellant is not well founded in his contention that he could get back the land, if the surplus had not been utilised. There is nothing in the Act which imposes any time limit for the government to utilise the land for the purpose mentioned in the Act. Nor is there any provision enabling the owner of the land to claim back the land and to get it restored to him if utilisation is not made by the government within a specified period. All that the Act contains by way of exception is what is seen in Section 10-A(b). If at the time of the commencement of the Act, the land is acquired by the government under the relevant acquisition laws or when it is a case of inheritance, the owner could claim exclusion of such land from his land for fixation of his ceiling under the Act. The second exception itself is further fettered by the provision in Section 10-B that where succession had opened after the surplus area or any part thereof had been utilised under Section 10-A(a), the saving specified in favour of an heir by inheritance would not apply in respect of the area so utilised. To put it short, the government had under the Act an unfettered right without time limit to utilise the land for resettlement of tenants subject to the two exceptions mentioned above. It is, of course, desirable that resettlement should be done as expeditiously as possible. Inaction on the part of the government to resettle the tenants will not clothe the owner with a power for restoration of the land. The contention of the appellant based on non utilisation of the land has, therefore, to fail.

10. The second question is whether the appellant is entitled to have the best of the two worlds. In other words, to have his quota of full 50 acres in Punjab and another 50 acres in Haryana. Section 88 of the Re-organisation Act makes the position clear. It reads as follows :

The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the state of Punjab shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

As per this section the provisions of the Act which was applicable to the old State of Punjab would continue to apply to the new State. In other words the order passed before November 1, 1966, which became final, declaring the surplus area, would be given effect to and the order would be implemented uninfluenced by the division of the State. After the Re-organisation Act, the Governor of Haryana in exercise of the powers conferred by Section 89 of the Re-organisation Act passed an order by name Haryana Adaptation of Laws (States and Concurrent Subjects) Order, 1968, on October 23, 1968 making it to take effect retrospectively from November 1, 1966. Clauses 10 and 11 of the order read as follows :

10. The provisions of this order which adapt or modify any law so as to alter the manner in which, the authority by which, or the law under or in accordance with which any powers are exercisable shall not render invalid any notification, order, licence, permission, award, commitment, attachment, bye-law, Rule or regulation duly made or issued, or anything duly done, before the appointed day; and any such notification, order, licence, permission, award, commitment, attachment, bye-law,

rule, regulation or thing may be revoked, varied or undone in like manner, to the like extent and in the like circumstances as if it has been made, issued, or done after the commencement of this order by the competent authority and under in accordance with the provisions then applicable to such a case.

11. Nothing in this order shall affect the previous operation of, or anything duly done or suffered under any existing state law or any right, privilege, obligation or liability already acquired accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

11. A combined reading of these two clauses makes it clear that any order made or anything done or any liability incurred or a right accrued before November 1, 1966 would not be affected by the coming into force of the order. These two clauses show unambiguously that the respective State Governments would be entitled to give effect to orders passed before November 1, 1966, declaring the surplus area by utilising them for the resettlement of the tenants, despite the re-organisation of the State of Punjab. The orders passed will be respected by both the States. The fact that the land belonging to a particular owner, under fortuitous circumstances, fall in the two newly formed state, will not in any way affect the operation of the orders which had become final prior to November 1, 1966. To accept the appellant's contention would create anomalies. Persons against whom proceedings under the Act were taken and became final prior to November 1, 1966, would be entitled to claim lands in both the state while those whose petitions are pending on the date the State Re-organisation Act came into force would be in a disadvantageous position. This is not the object of the act. Nor the scheme behind it. The states re-organisation was historical accident. The land owners cannot take advantage of this accident, to the detriment of ejected tenants or tenants bases of resettlement. For the above reasons, we hold that the high court was justified in answering the question referred to it against the appellant. The appeal is accordingly dismissed. There will be no order as to costs.

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