

Ujjagar Singh (Dead) By Lrs.

Vs

Collector, Bhatinda and Another

Hazara Singh and Others

Vs

State of Punjab and Others

Civil Appeals Nos. 1208 and 1209 of 1975

(N. P. Singh, Kuldip Singh, M. M. Punchhi, M. K. Mukherjee, S. Saghir Ahmadi JJ)

(Kuldip Singh, M. M. Punchhi, M. K. Mukherjee, N. P. Singh, S. Saghir ahmed JJ)

01.08.1996

JUDGMENT

N. P. SINGH, J. -

1. The original appellant held lands in Village Guru Sar Sainwala, District Bhatinda out of which 218 kanals of land were declared surplus under the Pepsu Tenancy Agricultural Lands Act, 1955 (hereinafter referred to as "the Pepsu Act"). However, the surplus land so declared was never utilised by the State Government and remained in possession of the appellant.
2. The Punjab Land Reforms Act, 1972 (hereinafter referred to as "the Punjab Act") came into force with effect from 2-4-1973, the appointed date fixed under the Act being 24-1-1971. Fresh steps were taken for declaring the lands held by the appellant as surplus. The appellant filed objection saying that on the relevant date he had four adult sons namely Hardial Singh, Gurucharan Singh, Gurbanta Singh and Gurdial Singh and as such there was no surplus land held by him. It appears that the Secretary, Department of Revenue, issued a letter to the Collector of the district, directing that the immediate possession of 218 kanals which had been declared surplus in the year 1961-62 under the Pepsu Act be taken. Proceedings under Sections 8 and 9 of the Punjab Act were also initiated directing the appellant to hand over the possession of the surplus land declared under the old Act. Thereafter a writ petition was filed on behalf of the appellant questioning the validity of the action of the respondents to the said petition, in initiating proceedings for taking possession of the lands which had been declared surplus under the old Pepsu Act and possession whereof had not been taken till the date of the coming into force of the Punjab Act. The writ petition was dismissed by the High Court on 3-9-1974 in limine. However, this Court granted leave to appeal giving rise to the present appeal which in due course has been referred to the Constitution Bench.
3. Section 3 of the Pepsu Act fixed the permissible limit for holding the land at thirty standard acres. Sub-section (2) of Section 3 provided the procedure for computing the permissible limit under sub-section (1) of Section 3. In view of Section 5 every landowner owning land exceeding thirty standard acres was entitled to select for personal cultivation from the land held by him as a

landowner which was to be reserved for his personal cultivation. Section 6 required the Collector to notify in such form and manner as may be prescribed the particulars of all lands so reserved for personal cultivation of the landowner concerned under Section 5 aforesaid. Section 32-E which is relevant provided :

"32-E. Vesting of surplus area in the State Government. - Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, and subject to the provisions of Chapter IV, as from the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, then -

(a) in the case of the surplus area of a landowner, or in the case of the surplus area of a tenant which is not included within the permissible limit of the landowner, such area shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest including the contingent interest, if any, recognised by any law, custom or usage for the time being in force of all persons in such land shall be extinguished, and such rights, title and interest shall vest in the State Government free from encumbrances created by any person; and

(b) in the case of the surplus area of a tenant which is included within the permissible limit of the landowner, the rights and interest of the tenant in such area shall stand terminated :

Provided that, for the purposes of clause (a), where any land falling within the surplus area is mortgaged with possession, only the mortgage rights shall vest in the State Government."

Section 32-F enabled the Collector to take possession of the surplus area so declared :

"32-F. Power to take possession of surplus area. - (1) The Collector may by order in writing at any time after the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, direct the landowner or the tenant or any other person in possession thereof within ten days of the service of the order on him to such person as may be specified in the order.

(2) If the landowner or the tenant or any other person in possession of the surplus area refuses or fails without reasonable cause to comply with the order made under sub-section (1), the Collector may take possession of the surplus area and may for that purpose use such force as may be necessary."

On a plain reading of clause (a) of Section 32-E aforesaid it appears that in case any surplus area of the landowner which is not included within the permissible limit of such landowner "such area shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired" by the State Government for public purpose and all rights, title and interest of all persons in such land shall be extinguished and such rights, title and interest shall vest in the State Government free from encumbrances. In other words, in view of the aforesaid statutory provision, only when the possession of the land which has been declared as surplus area is taken over by the State Government, then only it shall be deemed that such surplus area has been acquired by the State Government and all rights, title and interest of person concerned in such land are

extinguished and vest in the State Government. As such if the possession of any surplus area of land owner has not been taken by or on behalf of the State Government, it shall not be deemed that such surplus area has been acquired and title of the landowner has been extinguished.

4. The stand of the appellant is that in view of the admitted position that the possession of the land which had been declared surplus in the year 1961-62 under the Pepsu Act had never been taken till the Punjab Act came into force in the year 1973 and as the appellant continued in possession thereof throughout, the respondent-authorities or the State Government was not entitled to take possession of such surplus area after the coming into force of the Punjab Act and the ceiling has to be determined afresh in accordance with the provisions of the Punjab Act. It appears that there is no dispute that when the Punjab Act came into force, the appellant had four adult sons and if the ceiling is fixed afresh in accordance with the provisions of the Punjab Act, the appellant had no surplus land.

5. The learned counsel, appearing for the State of Punjab, could not point out as to how in view of the admitted position that some area had been declared surplus in the year 1961-62 under the Pepsu Act, the possession thereof had not been taken either by or on behalf of the State Government till the coming into force of the Punjab Act, the right, title and interest of the appellant in the land which had been declared surplus under the Pepsu Act was extinguished. The taking of possession was a must, in absence whereof it shall be deemed that right, title and interest of the appellant had never been extinguished and the said land which had been declared surplus never vested in the State; fresh steps for fixation of the ceiling had to be taken in accordance with the provisions of the Punjab Act.

6. A similar controversy had arisen in the case of Financial Commr., Haryana State v. Kela Devi [(1980) 1 SCC 77] in connection with the Punjab Security of Land Tenures Act, 1953. Section 10-A(a) enabled the State Government or any officer empowered by it in that behalf 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 of that Act. In this connection, it was said : (SCC pp. 79-80, para 5)

"In order to understand the full meaning and effect of the provisions of Section 10-A, it is necessary to make a cross-reference to Rules 18, 20-A, 20-B and 20-C of the Punjab Security of Land Tenures Rules, 1956 (hereafter referred to as the Rules). 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 a 'qabuliyat' or 'patta' by a resettled tenant. It would thus appear that while 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 of any 'surplus area', only when possession thereof has been taken by the allottee or the allottees and the other formalities have been completed, and there is no force in the argument that a mere order of allotment has the effect of completing that process."

Construing the scope of Section 10-A of the aforesaid Act, this Court pointed out that allotment of land was an initial stage in the process of utilisation of the "surplus area" and such utilisation was not complete till the allottee obtained a certificate of allotment and took possession of the land within the period specified for the purpose. It was pointed out that the process of utilisation contemplated under Section 10-A of the said Act was complete in respect of any "surplus area" only when possession thereof had been taken by the allottee and other formalities had been completed - by mere order of allotment there was no question of completion of the process of utilisation. The same was the position in respect of the Pepsu Act in view of Section 32-E(a). Unless the possession had been taken of the surplus area by the State Government or on its behalf, right, title and interest of the landowner was not extinguished and such surplus area never vested in the State Government. A Full Bench of the Punjab and Haryana High Court in the case of *Ranjit Ram v. Financial Commr., Revenue* [(1981) 83 Punj LR 492 : AIR 1981 P&H 313] said :

"As already observed, even if the land of a landowner has been declared surplus, either under the Punjab law or under the Pepsu law, and if the land of landowner has not been utilised and further has not been purchased by the tenants in case of Punjab law, and if the landowner has not been dispossessed by the Government under the provisions of the Pepsu law, he continues to be a landowner of the land and also holds the same even though his land has been declared surplus, till he is divested of its ownership by taking possession of the land under Section 8 of the Reforms Act, where it has been provided that the surplus area declared as such under the Punjab law or the Pepsu law, which has not been utilised till the commencement of the Reforms Act, shall on the date or the date on which the possession thereof is taken by or on behalf of the State Government, vests in the State Government free from all encumbrances. It would thus be seen that such landowners' surplus area shall vest in the State Government on the date of taking of possession by the State Government under Section 8 of the Reforms Act and till then the landowners are not divested of the ownership of the surplus land. Thus, if a landowner owns or holds land which is beyond the permissible area as defined under Sections 4 and 5 of the Reforms Act, his case shall have to be processed again by the Collector and the determination of the permissible area and the surplus area has to be according to the mandate of Sections 4 and 5 of the Reforms Act. Sub-section (1) of Section 4 of the Reforms Act contains a clear bar that no person shall own or hold land in excess of the permissible area and when the case is reprocessed by the Collector, the permissible area as provided for in Sections 4 and 5 of the Reforms Act has to be allowed to the landowner. It may be observed that the permissible area as defined under sub-section (2) of Section 4 of the Reforms Act is subject to the provisions of Section 5 of the Reforms Act. This is so because a clear provision has been made to this effect in sub-section (1) of Section 4 of the Reforms Act. Under Section 5 of the Reforms Act if a landowner has an adult son, he shall also be entitled to select separate permissible area in respect of such son out of the land owned or held by him, subject to the condition that the land selected together with the land already owned or held by such son, shall not exceed the permissible area of each such son. It would thus be seen that merely because the case of a landowner had already been processed under the Punjab law or the Pepsu law would not be a bar for the application of the provisions of Section 4 read with Section 5 of the Reforms Act. The provisions of sub-section (1) of Section 5 of the Reforms Act entitle the landowner to select permissible area for his adult son from the land owned or held by him in addition to the permissible area

of the family. It is clear that the rest of the provisions made in sub-sections (1) and (2) of Section 5 of the Reforms Act are procedural."

It may be mentioned that in the aforesaid judgment "Punjab law" refers to Punjab Security of Land Tenures Act, 1953, "Pepsu law" refers to Pepsu Tenancy Agricultural Land Act, 1955 and "Reforms Act" refers to Punjab Land Reforms Act, 1972. According to us, the majority judgment of the Full Bench has correctly appreciated the scope of the three enactments referred to above. Once the lands declared as surplus under the Pepsu Act did not vest in the State Government, as possession thereof had not been taken, there has to be a fresh determination in respect of the area which the appellant is entitled to hold in the light of the Punjab Act.

7. The learned counsel, who appeared for the State, did not take a stand that under the Punjab Act, the appellant is holding any surplus area. He, however, placed reliance on the judgment of this Court in the case of *Amar Singh v. Ajmer Singh* [1994 Supp (3) SCC 213] where it has been said that merely because the land had not been utilised and remained in possession of the heirs of the landowner, was inconsequential. The aforesaid decision of this Court relates to the Haryana Ceiling on Land Holdings Act, 1972 which came into force w.e.f. 23-12-1972. From a bare reference to the aforesaid judgment, it shall appear that the vesting under that takes place on the appointed date. There is no provision under that Act like Section 32-E(a) of the Pepsu Act under which the surplus area had been declared so far the appellant is concerned. As such the aforesaid judgment in the case of *Amar Singh v. Ajmer Singh* [1994 Supp (3) SCC 213] is of no help to the respondent-State. In normal course, we would have directed the respondent-State to examine the question of surplus land held by the appellant along with his four adult sons in accordance with the provisions of the Punjab Act, but in view of an admitted position that if a fresh proceeding is to be initiated under the Punjab Act, there is no question of declaration of any land as surplus area, no useful purpose will be served by issuing any such direction. Accordingly, the appeal is allowed. The order of the dismissal passed by the High Court on the writ petition filed on behalf of the appellant is set aside. All proceedings initiated against the appellant either under the provisions of the Pepsu Act or the Punjab Act are quashed. In the facts and circumstances of the case there shall be no order as to costs.

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8. Even in this appeal, the lands held by the appellants had been declared surplus under the Pepsu Act in the year 1961-62 but possession thereof was never taken on behalf of the State Government. The appellants continued to remain in possession thereof till the Punjab Act came into force. The assertion of the appellant that before fresh proceedings could be initiated under the Punjab Act for determination of the surplus area, the members who were not entitled to hold the land under the Pepsu Act became entitled to hold the same even when the ceiling had been reduced, does not appear to have been disputed. In that view of the matter, we do not consider it necessary to remit the case for fresh examination under the provisions of the Punjab Act. Accordingly, this appeal is also allowed. There shall be no orders as to cost.