SUPREME COURT OF INDIA

Brij Lal (Dead) by Lrs.

Vs.

State of Haryana

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

13.12.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Challenge in these appeals is to the judgment of a Division Bench of the Punjab and Harayan High Court dismissing the three writ petitions filed by the appellant while allowing the Civil Writ Petition No.6395 of 1999 in view of the fact that Dalip Singh, who was respondent had made a categorical statement before the Assistant Collector First Grade on 6th December, 1967 to the effect that the appellant is a small landholder and he has no objection to his ejectment from the land and did not want any compensation.

2. The controversy arises in the background of Section 10- A(b) of the Punjab Security of Land Tenures Act, 1953 (in short the Act). Few dates need to be noted for resolving the controversy.

3. On 26.7.1961, the Collector Surplus Area, Sirsa assessed the surplus area of Pat Ram under the Act. On 24.7.1962 an appeal was filed against the said order before the Commissioner, Ambala Division. But it was not pressed in view of the enactment of Punjab Security of Land Tenures (Amendment and Validation) Act, 1962 (in short Amendment Act). On the appeal by two tenants namely Bishan Singh and Dalip Singh against the order of the Collector dated 26.7.1961, the Commissioner, remanded the surplus area case and directed the Collector to re-decide the issues. Pat Ram died subsequently on 7.2.1966. On 15.7.1969, the Special Collector, Haryana pursuant to the order of remand, initiated proceedings for deciding surplus area case of Pat Ram afresh. His order dated 15.7.1969 is of considerable importance and will be dealt with later. On 23.12.1972, in fact, while the proceedings were pending the Haryana Ceiling on Land Holdings Act, 1972 (in short the Haryana Act) came into force. On 20.7.1977 the Sub-Divisional officer (Civil) cum the Prescribed Authority, Dabwali decided the surplus area cases of Sohan Lal, Brij Lal and Hazari Lal under the Haryana Act and held that the total land in respect of each of them was less than the permissible limit. Simlarly the surplus area cases of Dhonkan Ram, Ami Lal and Shankar Lal were decided under the Haryana Act and it was held that there was no surplus area. On 12.10.1989 Brij Lal and others filed an application under the Act for ejectment of the Balbir Singh, Bhola Singh, Jagat Singh and Harpal Singh, sons of Bishan Singh before the Assistant Collector, First Grade, Dabwali on the ground that the appellants were small land owners and they required the land for self cultivation. On 28.8.1991 an order of ejectment was passed. It was held that Balbir Singh and others were not entitled for resettlement on any alternative land as they were already in possession of other land. On 22.1.1992 appeal of the respondents Balbir Singh and others against the order of ejectment was dismissed by the Collector Sirsa. The revision petition filed by the respondents Balbir Singh and

others against the order of the Collector was dismissed by the Commissioner. On 8.4.1993 which is a very crucial date, Balbir Singh and others filed revision petition , ROR No. 398 of 1992-93, under Section 18(6) of the Haryana Act for invoking suo moto powers of the Financial Commissioner for setting aside the orders dated 20.7.1977 and 9.8.1977 passed by the SDO (Civil) cum Prescribed Authority, Dabwali regarding the surplus area cases of Sohan Lal, Brij Lal, Hazari Lal and Dhokan Ram under the Haryana Act. On 29.6.1993 Jagat Singh and Harpal Singh, sons of Bishan Singh and Balbir Singh and Bhola Singh, sons of Kartar Singh filed another petition under Section 18(6) of the Haryana Act for invoking suo moto powers of the Financial Commissioner for setting aside the order dated 15.7.1969 of the Special Collector, Haryana. On 12.9.1997 the Financial Commissioner, Haryana passed an order remanding the cases to the Collector, Surplus Area, Sirsa being of the view that the surplus area cases of Pat Ram, notwithstanding his death on 7.2.1966, before the commencement of the Haryana Act, and of his six sons was to be decided under the Act and thereafter the rights of the tenants to purchase the land was to be determined. A review application was filed which was rejected by order dated 10.3.1999. Writ petitions were filed challenging the orders dated 12.9.1997 and 10.3.1999 of the Financial Commissioner, Haryana.

4. On 26.7.1961 certain lands were declared to be surplus in the hands of the original allottee Pat Ram who died on 7.2.1966 leaving behind six sons. According to the appellant on the date of his death, inheritance opened and, therefore, it was to be further decided that the appellants were small landholders. It was submitted that there are three stages. First is the stage when the possession of the surplus land after declaration of the surplus is taken. Thereafter, the allotment can be made, and lastly possession has to be given to the tenant. There was an order dated 15.7.1969 made by the Special Collector, Haryana, Hissar Camp in case no.SC 340 holding, inter alia, as follows:

Today the tenants Bishan Singh and Dalip Singh are present. They have disclosed that Pat Ram has since died leaving behind six sons named Shankar Lal, Dhonkal Ram, Hazari Lal, Brij Lal, and Amin Lal. The death took place two or 2-1/2 years back but after the decision in appeal, the situation has thus changed and fresh proceedings against the heirs of Pat Ram are to be taken except to the extent the area declared surplus has been utilized. These proceedings are under the circumstances filed. The Collector Agrarian, Sirsa, may be informed and requested to start proceedings according to law against the heirs of the deceased allottee Pat Ram for determination of their status and surplus area, if any with them.

5. It is further submitted that long after the order was passed in 1969 i.e. in the year 1992-93 challenge was made to the orders. Similarly, in the year 1977 there was a declaration that the appellants were small landholders. Without availing statutory remedies appeal and revision after long lapse of time the non-official respondents could not have moved the forum for unsettling the settled position.

6. In the proceedings orders adverse to the appellants were passed. They were challenged before the High Court in Writ Petitions. All other writ petitions except one writ petition wre dismissed.

7. It was submitted that the High Court referred to the decisions of this Court in State of Maharashtra v. Annapurnabai and other (AIR 1985 SC 1403) and State of U.P. v. The Civil Judge, Nainital and Ors. (AIR 1987 SC 16) to decide against appellants. It is urged that these decisions related to Maharashtra and Uttar Pradesh respectively and there is no provision similar to Section 10-A(b) in the said State Acts and, therefore, this conceptual distinction has been lost sight of. In the present cases, possession after allotment has not been taken and therefore there is no utilization

which is the fundamental requirement.

8. Learned counsel for the respondent on the other hand submitted that certain factual aspects have not been highlighted by the appellants. It is not a case where allotment after possession had not been taken and, therefore, there was full utilization of the land declared as surplus. A suit was filed in the year 1961 and an appeal was also preferred which was subsequently not pressed. Reference is also made to judgment of learned Additional District Judge, Sirsa, dated August 20, 2001, in which according to him, contains findings recorded which have great relevance and the appellants are, therefore, clearly disentitled to raise the plea on the factual aspects raised presently.

9. It is to be noted that as rightly contended by the learned counsel for the appellant the High Court has not recorded any finding to the effect whether the Maharashtra and Uttar Pradesh Statutes have any provision similar to Section 10A(b) of the Act.

10. At this juncture, it would be appropriate to take note of a decision of this Court in Financial Commissioner, Haryana State and Ors. v. Smt. Kela Devi and Anr. (1980 (1) SCC 77) where question as to when it can be said that utilization has taken place was dealt with.

3. The only question which therefore arises for consideration is whether the High Court was right in taking the view that mere allotment of land to 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 standard acres and 8 standard units, and a decision to that effect was taken in his life time on November 25, 1959. It is also not in dispute that orders were made for the allotment of the "surplus area" to other tenants under Section 10-A(a) of the Act which reads as follows- 10-A (a) The State Government of any officer empowered by it in this behalf shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under Clause (i) of Sub-section (1) of 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 in Clause (b) of 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 by 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 utilization 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 (sic)an heir succeeds by inheritance, as in this case, that basic fact (sic) affect the utilisation of the surplus area even if only an order (sic)been made under Clause (a) of Section 10-A for its utilisation for (sic)settlement of other tenants but that order has not been (sic).

5. In order to understand the full meaning and effect to 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.

6. Reference in this connection may also be made to Rule 20-D of the Rules which provides that in case a tenant does not take possession of the "surplus area" allotted to him for resettlement within the period specified therefore, the allotment shall be liable to be cancelled and the area allotted to him may be utilised for the resettlement of another tenant. It cannot therefore be dobted that a completed title does not pass to the allottee on a mere order of allotment, and that order is defeasible if the other conditions prescribed by 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 (sic) in equal shares so as to reduce the area of the holding of each (sic) them below the permissible area. The High Court therefore (sic) allowed the writ petition of the respondents.

11. Apparently, the High Court has not taken note of this decision. It has also not recorded any finding as to whether after a long lapse of time, the action taken by the non official respondents in challenging the order in favour of the appellants disentitle them from any relief. Though the expression used in Section18(6) of the Haryana Act is at any time, obviously it has to be a reasonable time and if action is taken to impugn the order after long passage of time, the Court has to examine whether it would be proper to grant a relief prayer for the same.

12. As the basic issues have not been dealt with by the High Court we remit the matter to the High Court to decide the case afresh after taking note of what has been stated by this Court in Smt. Kela Devis case (supra).

13. The parties shall be permitted to place fresh materials in support of their respective stands if they do not already form part of the record. Since the matter is pending since long, we request the High Court to dispose of the cases as early as practicable preferably by the end of September, 2008.

14. The appeals are allowed to the aforesaid extent. There will be no order as to costs.