

A

AMAR SINGH AND ORS.

v.

AJMER SINGH AND ORS.

JULY 11, 1994

B

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

Haryana Ceiling on Land Holdings Act, 1972—Section 12(3)—Vesting of surplus land in State Government—Surplus area declared under the Punjab Security of Land Tenures Act, 1953—Proceedings finalised in 1961/62—Held:

C

Cannot be reopened—Non-utilisation of surplus land possession continued to be with land owner—Held: Would not make any difference.

Proceedings under the Punjab Security of Land Tenures Act, 1953 were initiated against 'M', father of the first respondent. He owned 61 standard acres and 9 units of land. There was a partition decree by the Civil Court partitioning the lands among 'M' and his sons. After taking this into account, the Collector declared as surplus 9 acres and 3-3/4 units of land owned by 'M'. A review petition filed against the said order was dismissed.

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As per s. 12(3) of the Haryana Ceiling on Land Holdings Act, 1972 the surplus land declared under the Punjab Act vested in the State from 24.1.1971. Accordingly the first respondent was dispossessed of the land and the possession given to the appellant. The first respondent challenged the same but was unsuccessful. Later, he moved an application before the Sub Divisional Officer for correction of the revenue record. The application was dismissed on the ground that the decree of the Civil Court regarding partition was already taken into consideration by the Collector while determining the surplus area under the Punjab Act in the year 1961/1962. Thereafter the first respondent filed a writ petition before the High Court and a Single Judge allowed the petition and quashed the order of the competent authority. The Letters Patent Appeal was dismissed. Hence this appeal.

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Allowing the appeal, this Court,

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HELD: 1. The High Court fell into patent error in allowing the Writ Petition as the surplus proceedings under the Punjab Security of Land

Tenures Act, 1953 had been finalised way back in 1961/1962 and there is no provision under the Haryana Ceiling on Holdings Act, 1972 to reopen the surplus determined under the Punjab Act. [315-D-E]

Jaswant Kaur & Anr. v. State of Haryana & Anr., (1977) P.L.J. 230, distinguished.

2. Simply because the surplus land declared under the Punjab Act was not utilised and it remained in possession of the first respondent would not make any difference so far as the position in law is concerned. The language of Section 12(3) of the Haryana Act is unequivocal and clear. According to it the surplus land declared under the Punjab Act stood vested in the State. The non-utilisation of surplus land till the date of vesting (December 23, 1972) is of no consequence and makes no difference.

[315-F-G]

Smt. Bhagwanti Devi & Anr. v. State of Haryana & Anr., (1994) 1 Scale 861, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3146 of 1989.

From the Judgment and Order dated 3.11.87 of the Punjab & Haryana High Court in L.P.A. No. 391 of 1987.

V.C. Mahajan, K.G. Bhagat for S.K. Jain for the Appellants.

S.K. Bisaria for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Maru Ram (deceased), father of Ajmer Singh, respondent in the appeal herein, was a big landowner. The Punjab Security of Land Tenures Act, 1953 (Punjab Act) came into force with effect from April 15, 1953. On that date Maru Ram owned 61 standard acres 9 units of land. It was stated that there was a partition decree by the civil court on the basis of which the holding of Maru Ram was partitioned amongst him and his three sons namely Prithi Singh, Surat Singh and Ajmer Singh. Proceedings under the Punjab Act were initiated and 9 acres and 3-3/4 units of land owned and possessed by Maru Ram was declared surplus by the Collector, Karnal, on March 10, 1961. The Collector, Karnal, took into

A consideration the partition decree and all other material placed before the Collector. Against the order dated March 10, 1961, the three sons of Maru Ram filed a review petition which was heard by the Collector, Karnal on merits and was dismissed by his order dated July 26, 1962. It is not disputed before us by the learned counsel appearing for Ajmer Singh-respondent that the orders dated March 10, 1961 and July 26, 1962 have achieved finality.

The Haryana Ceiling on Land Holdings Act, 1972 (Haryana Act) came into force with effect from December 23, 1972. The provisions of the Punjab Act which were inconsistent with the provisions of the Haryana Act were repealed by Section 33 of the Haryana Act. Section 12(3) of the Haryana Act which is relevant is reproduced hereunder:—

"12(3). The area declared surplus or tenant's permissible area under the Punjab Law and the area declared surplus under the Pepsu law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab law or the Pepsu law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration."

It is clear from the language of Section 12(3) of the Haryana Act that the surplus land declared under the Punjab Act stood vested in the State with effect from the appointed day (January 24, 1971). 9 acres and 3-3/4 units of land belonging to late Maru Ram and his sons which was declared surplus in the year 1961/1962 also stood vested in the State of Haryana in terms of Section 12(3) of the Haryana Act. The said land having vested in the State Government was allotted to the appellant and respondents 3 and 4 in the year 1981. Ajmer Singh-respondent, was dispossessed from the land and the possession was handed over to the appellant. Ajmer Singh-respondent, challenged the allotment made to the appellant by way of a revision petition before Collector, Kurukshetra. The Collector by his order dated May 26, 1982 dismissed the petition. The Collector came to the conclusion that the surplus proceedings against Maru Ram and his sons having achieved finality in the year 1961/1962 under the Punjab Act, the same could not be reopened. Ajmer Singh moved another application

before the Sub Divisional Officer, Thanesar for the correction of the revenue record. The said application was made on the basis of the partition decree of the civil court dated June 16, 1958. The Sub Divisional Officer dismissed the application on the ground that the decree of the civil court was taken into consideration by the Collector, Karnal while determining the surplus area under the Punjab Act in the year 1961/1962. Thereafter, Ajmer Singh filed writ petition before the Punjab and Haryana High Court. A learned single Judge of the High Court allowed the writ petition and quashed the order of the competent authority allotting the land to the appellant. The High Court relied upon the full Bench judgment of the Punjab and Haryana High Court in *Jaswant Kaur & Anr. v. State of Haryana & Anr.*, (1977) P.L.J. 230.

We have heard learned counsel for the parties. The High Court fell into patent error in allowing the writ petition on the basis of the ratio in *Jaswant Kaur's* case (supra). The said case is not even remotely relevant to the facts of the present case. The learned Judge failed to appreciate that in the present case the surplus proceedings under the Punjab Act had been finalised as back as 1961/1962. There is no provision under the Haryana Act to reopen the surplus determined under the Punjab Act. Based on wholly erroneous assumptions the learned Judge allowed the writ petition. The Letters Patent Bench of the High Court mechanically dismissed the appeal *in limine*.

Learned counsel for Ajmar Singh—respondent, has contended that although the surplus proceedings against Maru Ram was finalised in the year 1961/1962 but the possession of the surplus land remained with Ajmar Singh, respondent, till 1981 when the same was handed over to the appellant. Simply because the surplus land declared under the Punjab Act was not utilised and it remained in possession of Ajmer Singh—respondent would not make any difference so far as the position in law is concerned. The language of Section 12(3) is unequivocal and clear. According to it the surplus land declared under the Punjab Act stood vested in the State. The non-utilisation of surplus land till the date of vesting (December 23, 1972) is of no consequence and makes no difference. The view we have taken is supported by the judgment of this Court in *Smt. Bhagwanti Devi & Anr. v. State of Haryana & Anr.*, (1994) 1 Scale 861. We, therefore, allow the appeal, set aside the impugned judgment of learned single Judge of the

A High Court dated September 23, 1987 and also the order of the Letters Patent Bench dated November 3, 1987. Civil Writ Petition No. 163 of 1986 filed by Ajmer Singh in the High Court stand dismissed. The appellant shall be entitled to his cost which we quantify as Rs.11,000. Costs to be paid by respondent-Ajmer Singh.

G.N.

Appeal allowed.