

SUDARSHAN NATH AND ORS.

v.

STATE OF PUNJAB AND ORS.

APRIL 4, 2000

[S. SAGHIR AHMAD AND DORAISWAMY RAJU, JJ.]

Tenancy and Land Laws :

Punjab Security of Land Tenures Act, 1953 :

Sections 2, 3 and 24-A(2)—Surplus land—Allotment of—Collector allotted surplus land of big landowner to his tenant—Such tenant deposited purchase price—Landowner kept on challenging declaration of surplus land—Financial Commissioner declared such tenant as owner of surplus land on the basis of deposit of purchase price—Held : High Court rightly upheld order of Financial Commissioner—Punjab Utilisation of Surplus Area Scheme, 1973—Punjab Land Reforms Act, 1972 ss. 8 and 9(1).

Section 18(4)—Surplus land—Allotment of—Tenant of a big landowner deposited purchase price of surplus land allotted to him—Held : On the deposit of purchase price or even the first instalment thereof such tenant is deemed to be the owner of the land.

Constitution of India, 1950 :

Article 226—Writ petition—Summary dismissal of—Held : Even if High Court approves of the orders of courts below it ought to give some reasons to disclose application of its mind—It is not proper to reject the writ petition by a cryptic order.

The ceiling area of R, who was a big landowner and the predecessor-in-interest of the appellants, was determined by the Collector under Sections 3 and 4 of the Punjab Security of Land Tenures Act, 1953 and a certain area of land was declared surplus. However, after completion of the consolidation proceedings the Collector declared that no area was left surplus. J, the predecessor-in-interest of respondent Nos. 2 and 3, filed a suit for a declaration that he, being the tenant of R, was entitled to allotment of the surplus land. The suit was decreed but the decree could not be executed since R's appeal against the declaration of surplus land was pending.

A In the meanwhile, the Collector allotted the surplus land to J who
duly deposited the purchase price under Section 18(4) of the Land Tenures Act. The Commissioner confirmed this order. R did not specifically challenge the allotment of surplus land. However, R filed a revision petition before the Financial Commissioner against the order of the Commissioner. The Financial Commissioner disposed of the revision petition with a direction that R should be given an opportunity to select the permissible area under Section 24-A(2) of the Land Tenures Act and the allottee accommodated elsewhere on an equivalent land. In fact the Financial Commissioner adversely commented upon the lack of *bona fide* in the transfer of some of the holdings of R said to have been effected in 1954.

C Pursuant to the order of the Financial Commissioner, the Collector cancelled the allotment made in favour of J by holding that there was no surplus land and that J should be accommodated elsewhere. The Commissioner dismissed J's appeal on the ground that the area declared surplus did not vest in the State under Section 8 of the Punjab Land Reforms Act, 1972 for want of notice as required under Section 9(1) of the Land Reforms Act. It was also held that J had not proved his possession of the land. The Financial Commissioner allowed the revision petition filed by the LRs. of J. J was declared to be the owner of the surplus land since he had already deposited the purchase amount in respect of the surplus land. D
E The High Court dismissed the writ petition filed by the appellants. Hence this appeal.

On behalf of the appellant strong reliance was placed upon the Collector's order holding that no area was left as surplus. It was also contended that the appellants had acquired rights to retain the entirety of the lands, in view of the fact that the lands declared surplus were not also utilised by taking over possession of the same, that there was no vesting of the lands declared surplus in accordance with law and, therefore, the Financial Commissioner committed an error in interfering with the orders of the Commissioner and the Collector; that the High Court dismissed the writ petition without giving reasons and, therefore, the appeal merited acceptance.

Dismissing the appeal, this Court

H HELD : 1.1. The fact that J was a tenant on the appointed date, as a consequence of which only the lands were allotted to him has not also

been disturbed or specifically set aside. Except for the fact that the Financial Commissioner, in passing those orders merely took into account Section 24-A(2) of the Punjab Security of Land Tenures Act, 1953 to grant a further opportunity to select the permissible area, by observing that "another opportunity to separate the area after consolidation has to be given to the landowner", there is no interference even by the authority of the fact that the ceiling and surplus in respect of this landholder has been already fixed, since then only the question of selecting the permissible area arise, for the landholder. The Financial Commissioner specifically recorded a finding about the lack of *bona fide* in the sale claimed to have been made by the landholder in 1954. [934-C-E]

1.2. So far the facts of the present case are concerned, the sales were held to be not *bona fide* by all the authorities and this fact also has been approved by the very orders of the Financial Commissioner. [935-E-F]

Bhagat Gobind Singh v. F.C., Punjab, (1972) PLJ 319, held inapplicable.

1.3. In construing Section 18(4) of the Land Tenures Act, this Court had held that on the deposit of even the first instalment of the purchase price the tenant shall be deemed to have become the owner of the land. [935-F]

Rameshwar v. Jot Ram, [1976] 1 SCC 194, relied on.

2. The dispute sought to be raised with reference to the vesting as well as taking possession also has no merit. Since the lands were already in the possession of the tenant J, who happened to be the allottee also, there is no substance in the challenge. The landholder or his heirs, having not challenged specifically the order of allotment of surplus land to J cannot be allowed to dispute this factual position at all. The Financial Commissioner chose to give relief to the heirs of J only on the ground that the lands declared surplus came to be also utilised effectively under the Punjab Utilisation of Surplus Area Scheme, 1973 before the landholder died and, therefore, there was nothing for the appellants to re-agitate the matter once over again to revise the ceiling area taking advantage of the death of the erstwhile landholder. The reasons, which weighed with the Financial Commissioner for granting relief to the heirs of J cannot be said to be either illegal or suffer from any serious infirmities whatsoever

A to call for any interference in this appeal. [935-G-H; 936-A-B]

B 3. The impugned orders of the Financial Commissioner only analysed all the relevant aspects in their proper perspective and no exception could be taken to the action of the High Court in declining to interfere, though it would have been proper and desirable for the High Court to have given some reasons to disclose its mind, instead of rejecting the writ petition by a cryptic order. [933-G-H; 934-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7946 of 1996.

C From the Judgment and Order dated 20.8.91 of the Punjab and Haryana High Court in C.W.P. No. 3062 of 1991.

Suresh Ambe, Mahabir Singh and S.R. Sharma for the Appellant.

D G.K. Bansal, Sudhir Walia, Ms. Binu Tamta, Ranjit Kumar, Rajiv Dutta and Uday Kumar for the Respondents.

The Judgment of the Court was delivered by

E RAJU, J. The appellants, who are the legal representatives of the original landholder Raghubinder Nath and were unsuccessful before the High Court, have come up before this Court against the order dated 20.8.91 of the Division Bench of the Punjab and Haryana High Court in Civil Writ Petition No.3062 of 1991, declining to interfere with the order dated 1.8.90 passed by the Financial Commissioner (Appeals). Late Raghubinder Nath, who was said to be a big landowner, was governed by the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the Land Tenures Act').

F By a proceeding dated 30.6.60 in exercise of the powers of the Collector under Sections 3 and 4 of the Land Tenures Act, the ceiling area of the said landowner came to be determined and an extent of 3 Standard Acres and 9 1/4 Units were declared as surplus. On 31.3.76, the Collector Agrarian, Gurdaspur, after completion of the consolidation proceedings in the area,

G passed an order declaring that there is no area left surplus and ordered the case to be filed. While matter stood thus, the predecessor-in-interest of respondents 2 and 3, Late Jagat Ram, to whom 20 kanal and 13 marlas were said to have been given on lease even prior to 1953, filed a suit for declaration that he, being a tenant, is eligible for the allotment of the surplus area measuring about 56 kanal and 4 marlas with a consequential direction to the

H Collector, Gurdaspur, to allot the surplus land to him. No doubt, to these

proceedings the landowner was not impleaded as a party but only the State, represented by the Collector, was made a party. The said suit came to be decreed on 7.11.79, *ex-parte*. When the said plaintiff filed the Execution Petition No.5 of 1980, the learned Subordinate Judge adverted to the fact that the legal heirs of Raghubinder Nath have filed an appeal against the order of the Collector and inasmuch as the matter has been stayed, the vesting cannot take effect and the allotment order could not be issued at that stage. On that view, the execution proceedings were held to be premature and consequently dismissed on 1.11.81.

In the meanwhile, on 29.9.80 the Collector Agrarian, Gurdaspur, passed an order declaring 3 Standard Acres and 9 1/4 Units to be the surplus area. This order was challenged by the original landholder on an appeal before the Commissioner, Jalandhar Division, but the same came to be dismissed on 10.2.82. The challenge was further pursued before the Financial Commissioner by means of a Revision Petition. When the above proceedings were pending, the Collector, Gurdaspur, appears to have allotted the surplus land, as declared, to Late Jagat Ram on 24.3.82. Pursuant to the allotment so made, on 30.3.82 Jagat Ram was said to have deposited Rs.5,900/-.

The revision filed by Raghubinder Nath before the Financial Commissioner against the order passed by the Commissioner came to be disposed of on 10.3.83 with a direction that the landowner should be given an opportunity of selecting permissible area and the allottee accommodated elsewhere on an equivalent land. In doing so, the revisional authority was of the view that the Revenue Officers are bound to give an opportunity to a landowner of being heard and selecting his permissible area under Section 24-A(2) of the Land Tenures Act, after consolidation proceedings, if the land declared surplus had not been utilised by them. It is interesting to notice that even the revisional authority did not approve of the *bona fide* nature of the transfers said to have been effected in 1954 and adversely commented upon the omission to produce copies of the Khasra girdawaris for the period subsequent to the execution Sale Deed dated 2.5.54. On 2.2.84, the original landowner Raghubinder Nath died and the mutation was said to have been sanctioned on 16.1.86 in favour of the appellants.

Pursuant to the order dated 10.3.83 passed by the Financial Commissioner, the Collector Agrarian pursued the matter further and by his proceedings dated 10.6.86 came to the conclusion that the heirs of Late Raghubinder Nath were entitled to reserve the area for themselves in accordance with the

A provisions of the Punjab Land Reforms Act, 1972 (hereinafter referred to as 'the Land Reforms Act') and that the total land holding of Raghubinder Nath worked out to 43 Std. Acres 2 Units (33 Std. Acres 9 1/4 Units plus 9 Std. Acres 8 1/4 Units sold already). Since Raghubinder Nath died leaving seven legal heirs, there is no surplus land with them and consequently the allotment made in favour of Jagat Ram was not only held bad but stood cancelled and

B he has to be accommodated elsewhere in terms of the directions of the Financial Commissioner dated 10.3.83. The Naib Tehsildar (Agrarian) was directed to put up a proposal for allotment of alternative land equivalent to the area to be given to Jagat Ram. As against the said proceedings, Jagat Ram filed an appeal before the Commissioner. During pendency of the same, Jagat

C Ram died on 2.10.86 and the legal representatives were brought on record on 13.1.87. This appeal came to be dismissed on 16.5.88 on the ground that the area declared surplus did not vest in the State under Section 8 of the Act for want of notice as required under Section 9(1) of the Act. The allottee Jagat Ram was also held to have not proved his possession of the lands. Thereupon,

D the legal heirs of Jagat Ram pursued the matter before the Financial Commissioner by filing a revision and his legal heirs continued the same on account of his death. By the proceedings dated 1.8.90, the revision petition was allowed and the orders of the Commissioner dated 16.5.88 came to be set aside holding that the declaration of the surplus area in the year 1960/1980 held the field and was never set aside and that Jagat Ram, the allottee, having

E deposited the purchase amount on 30.3.82 in the Treasury, became the owner of the land on such deposit. It was also held that in view of the death of the original landowner in the year 1984 and the utilisation of the land even during the life- time of the landowner, who did not challenge the same successfully, the orders of the Commissioner cannot be sustained. Aggrieved against the

F said proceedings, the heirs of the Raghubinder Nath approached the High Court unsuccessfully. Hence, this appeal.

The learned counsel for the appellants placed strong reliance upon the orders dated 31.3.76 under which the Collector held that there is no area left as surplus, the further orders dated 10.3.83 passed by the Financial Commissioner holding that the landholder should be given an opportunity to select the permissible area and the tenant Jagat Ram should be accommodated elsewhere on an equivalent land, and the orders passed on 10.6.86 by the Collector as well as that of the Commissioner made on 16.5.88 to contend that the appellants had acquired rights to retain the entirety of the lands, in view

G of the fact that the lands declared surplus were not also utilised by taking over

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possession of the same. It was also strenuously contended that there was no vesting of the lands declared surplus in accordance with law and, therefore, the Financial Commissioner committed an error in interfering with the orders of the Commissioner and the Collector. Argued the learned counsel further that the High Court, in dismissing the Writ Petition without assigning any reason whatsoever, committed a serious mistake and, therefore, the appeal before this court merits acceptance.

Per Contra, the learned counsel for the respondents, who are the legal heirs of Jagat Ram, contended that the orders of the Financial Commissioner dated 1.8.90 has considered the issues arising in their proper perspective on the indisputable position arising out of the fixing of ceiling and declaration of surplus lands of the landholder as early as on 30.6.60, the subsequent allotment in favour of Jagat Ram on 24.3.82 and the deposit of a sum of Rs.5900/- on 30.3.82 which proved utilisation of the surplus land even during the life time of the landholder who died only on 2.2.84. It was further contended for those respondents that the possession of the lands declared surplus and allotted to Jagat Ram were always in his possession and this position being an indisputable fact on record the Commissioner and the Collector in passing orders on 10.6.86 and 16.5.88 merely proceeded on surmises to sustain the claim of the appellants and therefore the Financial Commissioner was right in granting relief to the respondents, on a proper appreciation of all the facts and by applying the correct principles of law. The appeal, according to them, had no merits.

The first respondent-State also affirmed the factual position that the area in question was declared surplus and utilised during the life time of the big landholder Raghubinder Nath and, therefore, the appellants have no rights whatsoever to be vindicated and consequently the appeal only merited rejection.

We have been taken through the various orders passed at different times by the concerned authorities and we are only surprised to notice that such orders were being made from time to time taking into account one or the other of the facts without a comprehensive consideration of the totality of facts and the law governing the case on hand. The impugned orders of the Financial Commissioner dated 1.8.90 only analysed all those relevant aspects in their proper perspective and no exception could be taken to the action of the High Court in declining to interfere, though it would have been proper and desirable for the High Court to have given some reasons to disclose its mind,

A instead of rejecting the Writ Petition by a cryptic order.

B Shorn of all controversies, there are certain unalloyed facts which can
neither be ignored nor can escape the attention of anyone expected to
adjudicate the controversy in issue and which have, in our view, been rightly
taken note of by the Financial Commissioner, in passing the impugned order
dated 1.8.90. Even the Financial Commissioner who passed orders on 10.3.83
on a revision petition filed by the landholder Raghubinder Nath recognised
C certain facts which are indisputable on record and the appellants, who
strongly rely upon it to derive benefits given thereunder cannot afford to
ignore or go behind the same. The fact that Jagat Ram was a tenant on the
appointed date, as a consequence of which only the lands were allotted to him
has not also been disturbed or specifically set aside. Except for the fact that
the Financial Commissioner, in passing those orders merely took into account
D Section 24-A(2) of the Land Tenures Act to grant a further opportunity to
select the permissible area, by observing that "another opportunity to separate
the area after consolidation has to be given to the landowner", there is no
interference even by this authority of the fact that the ceiling and surplus in
respect of this landholder has been already fixed, since then only the question
of selecting the permissible area arise, for the landholder. The Financial
Commissioner specifically recorded a finding about the lack of bona fide in
the sale claimed to have been made by the landholder in 1954 in the following
E terms:

F "The petitioner has however, failed to prove his *bona fides* regarding
the land transferred by him in 1954. The revenue record does not
show that possession of the land alleged to have been sold in 1954
was actually transferred to the vendee in 1954. This transfer as
claimed has not been accepted as *bona fide* by the learned Collector.
If the land had been transferred, the landowner should have produced
copies of the khasra girdawaris of the crop subsequent to the
execution of the sale deed dated 2.5.54. Since this has not been done,
the transfer of the land as claimed by the landowner has been rightly
G disallowed by the learned Collector and endorsed by the learned
Commissioner."

H The predecessor-in-interest of the appellants late Raghubinder Nath was
considered to be a big landholder and by an order dated 30.6.60, the ceiling
was fixed in respect of his holding and after ignoring the sales claimed to
have been made after 15.4.53 (the appointed date for purposes of the 1953

Land Tenures Act) an extent of 3 Std. Acres 9 1/4 Units of land were declared surplus. After consolidation, the area in the hands of the landowner seem to have increased to 35 Std. Acres-10 1/2 Units and thereafter on 29.9.80 the extent of 3 Std. Acres 9 1/4 Units was once again declared surplus by, specifying the items of lands also viz., "Khasra Nos.86-R/13 (6K- 4M), 1461/ 2 (0-15M), 1461/3 (1K-17M) 1462 (20K-12M) total measuring 29 K - 9 Marlas - 3 Standard Acres 9 1/4 Units". The remaining area of the landowner was held to be his reserved area. Thereafter, on 24.3.82, the Collector allotted the surplus land to Jagat Ram and thereupon Jagat Ram deposited the sum of Rs.5900/-. This allotment in his favour was on the basis that he was the tenant of the lands which came to be declared surplus, also. It is only in view of all these, the learned counsel on either side concentrated at the time of hearing before us on the basic question as to whether the lands declared surplus could be said to have been utilised even during the life time of the landholder viz. prior to 2.2.84 when Raghubinder Nath died.

The decision in *Bhagat Gobind Singh v. F.C. Punjab*, (1972) PLJ 319 on which strong reliance was placed for the appellants may not be of any assistance in this case. It could be seen from the said judgment that the remand and further opportunity given for the landholder was in the context of the orders/instructions of the State Government dated 22.7.61 to save, if at all, *bona fide* sales made between 15.4.53 and 30.7.58 and more so, due to the reason that there was no scope in that case when the ceiling was fixed and surplus declared to undertake such an exercise. So far as the facts of the present case are concerned, the sales were held to be not *bona fide* by all the authorities and this fact also has been approved by the very orders of the Financial Commissioner dated 10.3.83. So far as the decision of this court reported in *Rameshwar & Ors. v. Jot Ram & Anr.*, [1976] 1 SCC 194 = (1975) PLJ 454 is concerned, in construing Section 18(4) of the Land Tenures Act, this Court held that on the deposit of even the first instalment of the purchase price the tenant shall be deemed to have become the owner of the land. The dispute sought to be with reference to the vesting as well as taking possession also has no merit. Since the lands were already in the possession of the tenant Jagat Ram, who happened to be the allottee also, there is no substance in the challenge. The landholder or his heirs, having not challenged specifically the order dated 24.3.82, cannot be allowed to dispute this factual position at all. The Financial Commissioner chose to give relief to the heirs of Jagat Ram only on the ground that the lands declared surplus came to be also utilised effectively under the Punjab Utilisation of Surplus Area Scheme, 1973 before

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- A 2.2.84 when the landholder died and therefore, there was nothing for the appellants to re-agitate the matter once over again to revise the ceiling area taking advantage of the death of the erstwhile landholder. The reasons, which weighed with the Financial Commissioner for granting relief to the heirs of Jagat Ram by passing the order dated 1.8.90, cannot be said to be either illegal or suffer any serious infirmities whatsoever to call for any interference in this appeal.

The appeal consequently fails and shall stand dismissed. The parties shall bear their own costs.

- C V.S.S. Appeal dismissed.