

“otherwise Recently This Court Has Dealt with the Vs. State of Haryana and Others

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Court : Punjab and Haryana

Decided On : Aug-20-2013

Appellant : “otherwise Recently This Court Has Dealt with the

Respondent : State of Haryana and Others

Judgement :

LPA No.541 of 2013(O & M) -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH (1) LPA No.541 of 2013(O & M) Surender SinghAppellant Versus State of Haryana & othersRespondents (2) LPA No.487 of 2013(O & M) Didar Singh & othersAppellants Versus State of Haryana & othersRespondents Date of decision:20.08.2013 CORAM: HON'BLE MR.JUSTICE JASBIR SINGH HON'BLE MR.JUSTICE G.S.SANDHAWALIA Present: Mr.N.D.Achint, Advocate, for the appellant (in LPA No.541 of 2013). Mr.Vikram Singh, Advocate, for the appellants (in LPA No.487 of 2013). Mr.D.Khanna, Addl.A.G., Haryana, for respondents No.1 to 5. Mr.H.N.Mehtani, Advocate, for respondent No.10. ***** G.S.Sandhawalialia J.

1. This order shall dispose of LPA Nos.541 & 487 of 2013. Facts are being taken from LPA No.541 of 2013 titled as Surender Singh Vs. State of Haryana & others arising out of CWP No.11028 of 2000 decided on 06.12.2012.

2. Gurbax Singh, predecessor-in-interest of the present appellant, filed CWP No.11028 of 2012, challenging the order wherein his application under Sailesh Ranjan 2013.09.03 13:37 I attest to the accuracy and integrity of this document LPA No.541 of 2013(O & M) -2- Section 8 of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter to be referred to as '1972 Act'), for exemption from surplus area, was rejected which has been upheld by all the authorities and also by the Learned Single Judge who dismissed the writ petition. The facts of the case would show that Gurbax Singh alongwith Laxman Singh, predecessor-in-interest of respondents No.16 to 18, who are appellants in the connected appeal, purchased 79 bighas 8 biswas of land falling in khasra No.3714 to 3726, as per jamabandi for the year 1953-54 from one big land owner, namely, Ram Chander, in Village Ardana, Tehsil Assandh, District Karnal, vide sale deed dated 21.05.1957, to the extent of half share each and were put in possession. The land was also mutated in their favour on 24.09.1959 and the appellants continued in possession of the land in question.

3. On 31.01.1961, land of Ram Chander was declared surplus, without issuing any notice to the appellants and they continued in possession. The surplus land was mutated in favour of the State of Haryana on 11.01.1983. At that stage, the appellants filed an application for purchase of the land on the ground that it was purchased before 15.04.1966 which was rejected vide order dated 17.01.1985 on the ground that the land was allotted to the allottees and was exempted from the surplus pool. The appellants' appeal before the Collector was dismissed on 30.01.1986 and was upheld by the Commissioner on 01.06.1988 and the Financial Commissioner dismissed the revision on 07.08.1999 on the ground that the land had been utilized and could not be exempted from the surplus pool.

4. Resultantly, the appellants filed writ petitions taking the plea that the State had issued instructions dated 15.09.1976 and that the appellants were in actual possession, as per revenue record and there were never any allottee whose interest was affected. Submission was also made that transfer made prior to Sailesh Ranjan 30.07.1958 would be protected under Section 8 of the Act. 2013.09.03 13:37 I attest to the accuracy and integrity of this document LPA No.541 of 2013(O & M) -3- 5. The Learned Single Judge dismissed the writ

petitions on the ground that earlier CWP No.20585 of 2009 titled as Ram Karan & another Vs. The State of Haryana & others decided on 05.11.2012 wherein a similar view had been taken by the said Bench that surplus area proceedings had become final and could not be reopened. The Learned Judge also observed that in CWP No.11631 of 2009 titled as Smt.Bhagwani & others Vs. Financial Commissioner, Revenue Department, Haryana, Chandigarh & others, decided on 19.11.2012, a similar view had been taken, after placing reliance upon the observations of the Apex Court in Smt.Bhagwanti Devi & another Vs. State of Haryana & another AIR 199.SC 1869.The Full Bench decisions of this Court in Smt. Jaswant Kaur & another Vs. The State of Haryana & another 1977 PLJ 23.and in State of Haryana & others Vs. Chandgi 1981 PLJ 49.were not followed in view of the subsequent judgment of the Apex Court in Smt.Bhagwanti Devi (supra) on the ground that the surplus area proceedings could not be reopened which had already become final. Relevant observations of the Learned Single Judge read as under: Otherwise, recently this Court has dealt with the entire issue in detail in the case C.W.P. No.20585 of 2009 titled as Ram Karan and another vs. The state of Haryana and others decided on 05.11.2012 where it is held as under: xxxx xxxx xxxx In the present case also, the land was declared surplus on 31.1.1961. The petitioner has not taken any action to challenge this order on the ground that he is a bonafide purchaser. A perusal of Annexure P-5, an order passed by Commissioner would show that petitioner, Gurbax Singh, moved an application stating that he had purchased this land in the year 1960-61. While moving this application, the petitioner had even not impleaded the allottees. Even the Collector has noticed that the land was purchased in the year 1960. The petitioner has even not made any approach Sailesh Ranjan for challenging the order, declaring the land surplus. Rather, 2013.09.03 13:37 I attest to the accuracy and integrity of this document LPA No.541 of 2013(O & M) -4- the application filed by the petitioner is to seek permission to purchase this land, he being in possession thereof. Once the land was declared surplus and this order is not challenged in any manner, mere possession of the petitioner would not entitle him to claim his right to purchase this land as the land by virtue of the Haryana Act already stood vested in the State Government. The possession of the petitioner would be illegal and unauthorized. The petitioner so far has not challenged the

order declaring the land surplus and even if he so desires, he may not be in a position to challenge that order as by virtue of the Haryana Act, the land would stand vested in the State. Even if the possession continues with the petitioner, that would be illegal and unauthorized possession, as held in Smt.Bhagwanti Devi's case (supra). I do not find any reason to interfere in the impugned order, in view of the detailed discussion above and also on account of the delay on the part of the petitioner in making the present approach, which he has not explained. The writ petition is accordingly dismissed.

6. As noticed above, the Learned Single Judge has relied upon a judgment passed in Ram Karan's case (supra) which came up for consideration before this Bench in LPA No.77 of 2013 decided on 30.07.2013 and the said judgment was set aside after taking into consideration the provisions of Section 8 of the 1972 Act and the observations made by the Full Bench of this Court in Smt.Jaswant Kaur (supra). It was further noticed that in terms of Section 8, regarding the land which had been declared surplus under the Punjab Security of Land Tenures Act, 1953 (for short, the '1953 Act'), any transfer made prior to 30.07.1958, would be saved and would not affect surplus area. The instructions dated 15.09.1976, relied upon by the petitioner, were also considered in detail by the Full Bench and it was noticed that the State itself had recognized the benefit which was to be granted in cases where such transfers have taken place before 30.07.1958. Reliance was also placed upon Ajmer Singh Vs. State of Haryana & others 1987 PLJ 53.wherein a similar view had been taken. The fact that Sailesh Ranjan 2013.09.03 13:37 I attest to the accuracy and integrity of this document LPA No.541 of 2013(O & M) -5- Apex Court in Jodha Ram (dead) by legal representatives Vs. Financial Commissioner, Haryana & others 1994 PLJ 2.had approved the observations of the Full Bench and in the judgment passed in Sampuran Singh Vs. State of Haryana 1994 (2) PLR 42.also were not brought to the notice of the Single Judge. Consequently, the submission of the State that Section 8 would be applicable to only those where surplus area was not determined under the provisions of 1953 Act, was rejected. The relevant observations read as under: Above issue has elaborately been dealt with by a Full Bench of this Court in Jaswant Kaur's case (supra), which has been approved by the Hon'ble Supreme Court in various judgments, as referred to above. Otherwise also, it is coming out from the judgment of Jaswant Kaur's case

(supra) that to clarify such like disputes, the State of Haryana had also issued instructions from time to time. It is noted in the judgment that vide instructions dated 29.10.1976, it was specifically ordered that the surplus area which was transferred or disposed of a the land owner before 30.07.1958 shall not vest in the State Government as per the provisions of Section 12 of the 1972 Act and such area cannot be utilized in accordance with the scheme prepared in the year 1976. Reliance on the ratio of judgment of the Hon'ble Supreme Court in the case of Smt. Bhagwanti Devi's case (supra) was not justified. In that case, facts were altogether different. The effect of conjoint reading of provisions of Section 8 and 12 of the 1972 Act were not discussed. In a different context, it was said that the proceedings which had become final determining surplus area under the 1953 Act cannot be reopened. The ratio of the judgment is not applicable to the facts of the case in view of the facts mentioned hereinbefore. Same is the situation so far as ratio of the judgment in the case of Mohan Singh's case (supra) is concerned. In that case, the sale deed in question was executed on 18.06.1974 and not before 30.07.1958, as is the issue in the present appeal. In view of the facts mentioned above, we allow this Sailesh Ranjan 2013.09.03 13:37 appeal. I attest to the accuracy and integrity of this document LPA No.541 of 2013(O & M) -6- Order passed by the learned Single Judge dated 05.11.2012 and that of the Financial Commissioner dated 22.05.2003, Commissioner dated 26.04.2002 and prescribed authority dated 29.04.1999 are set aside and order of the Collector dated 07.06.2000 is restored. It is declared that the land measuring 16 kanals falling in Khasra No.24//3-4 village Kutana, Tehsil and District Rohtak shall not vest in the State of Haryana.

7. While reversing the judgment in Ram Karan's case (supra), view in Smt.Jaswant Kaur (supra) and Chandgi (supra) was followed by the present Bench and the judgment in Smt.Bhagwanti Devi (supra) was distinguished on the ground that provisions of Section 8 were not a subject matter of consideration in that case.

8. Accordingly, keeping in view the fact that the judgment which had been relied upon by the Learned Single Judge in Ram Karan's case (supra) has been set aside by this Bench and in view of the binding observations made in Smt.Jaswant Kaur (supra) and Smt.Chandgi (supra), the present appeals are allowed. The

orders dated 17.01.1985, 30.01.1986, 01.06.1988 and 07.08.1999, passed by the authorities below, are set aside alongwith the order passed by the Learned Single Judge on 06.12.2012 in CWP No.11028 of 2000. Consequently, the writ petitions are allowed and the land in the hands of the appellants, mentioned in the sale deed dated 21.05.1957 (Annexure P1) are deemed not to vest in the State of Haryana. (G.S.SANDHAWALIA) JUDGE 20 08.2013 (JASBIR SINGH) sailesh JUDGE Sailesh Ranjan 2013.09.03 13:37 I attest to the accuracy and integrity of this document

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