

Hari Chand and ors. Vs. the Financial Commissioner and ors.

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Court : Punjab and Haryana

Decided On : Jan-25-2000

Reported in : (2000)125PLR491

Judge : Arun B. Saharya, C.J. and; V.K. Bali, J.

Acts : [Punjab Security of Land Tenures Act, 1953](#) - Sections 18; Punjab Security of Land Tenures Rules, 1966 - Rule 6

Appeal No. : Letters Patent Appeal No. 874 of 1985

Appellant : Hari Chand and ors.

Respondent : The Financial Commissioner and ors.

Advocate for Def. : G.S. Dhillon, A.A.G. and; R.K. Joshi, Adv.

Advocate for Pet/Ap. : U.S. Sahni, Sr. Adv. and ; Tribhuwan Singla, Adv.

Disposition : Appeal dismissed

Judgement :

V.K. Bali, J.

1. The appellant, all through has been craving for setting aside the orders vide which some land, which earlier came into the surplus pool, was taken out to be tenants' permissible area on the sole ground that before modifying the original

order of declaration of surplus area, he was not heard in the matter. During the pendency of the writ, however, taking cue from the Full Bench judgment in *Ranjit Ram v. The Financial Commissioner, Revenue, Punjab and Ors.*, (1981)83 P.L.R. 492 (F.B.), he added another dimension to his case which was not raked through before any of the authorities. The plea added, during the pendency of the writ petition, was that the surplus land, which was so declared under the [Punjab Security of Land Tenures Act, 1953](#) (here-in-after referred to as the 'Act of 1953') had since not been utilised till such time the Punjab Land Reforms Act, 1972), came into force, the earlier order of declaration of surplus area would not hold the field any more and that there has to be fresh computation of his area under the provisions of the Act of 1972 to find out if there is any surplus land. It is this new dimension, added to the case, which met with a partial success before the learned Single Judge and is sought to meet in entirety in this Letters Patent Appeal filed by him under Clause X of the letter Patent. Before we may, however, notice the contentions of the learned counsel representing the appellant, in his ultimate prayer for setting aside of the orders passed by the concerned authorities and . also to modify the order passed by the learned single judge, it shall be useful to give backdrop of the events culminating into filing of present appeal.

2. Appellant Hari Chand was a big land owner. He owned land in more than one village and for that reason his case for declaration of surplus area under the Act of 1953 came before a Special Collector, Punjab, who, vide order dated May 5, 1961, held that the landowner was entitled to permissible area of 60 ordinary acres or 30 standard acres which had since been selected by him in villages Batoli, Siri Pindian, Sathwan, Raoli and Gawal Chak Shingaru. After giving details of this permissible area, it was further stated by the Special Collector that the area to the extent of 209 ordinary acres or 0-11 and half standard acres in villages Sathwan was under orchard since 1952-53 and that land measuring 573 ordinary acres or 4-3 and half standard acres in village Bela Lodhar Chak was with the tenants since the year 1952-53. It was further observed by the Special Collector that the landowner had 178.38 ordinary acres or 50.1-1/4 standard acres surplus in nine different villages. It is this area which was declared to be surplus. Aggrieved, the tenants, who were old ones, i.e. having come into possession before passing of the Act of 1953, made an application for review on August 3, 1961 and stated that

they were old tenants settled on the land belonging to Hari Chand and that Circle Revenue Officer had reported that land to the extent of 17-8 and half standard acres in village Ban Karanpur was with the tenants since 1952-53 and, therefore, that land could not be included in the surplus area and had to be held as tenants' permissible area under the provisions of Act of 1953. The Special Collector, after examining the report of verification, found the plea of tenants to be correct and, thus, area to the extent of 17-8 and half standard acres in village Ban Karanpur, Tehsil Dasuya, District Hoshiarpur, was excluded from the surplus area of Hari Chand. Details of the said area have since been given in order dated October 26, 1961, Annexure P-2. Aggrieved by this order, Annexure P-2, Hari Chand, filed an appeal after a period of nine years before the Commissioner, Jalandhar Division, Jalandhar, by only pleading that before the impugned order was passed, he was not issued any notice. The plea raised by him was rejected. The learned Commissioner observed that there was no change in the permissible area of the landlord which had since already been declared. Only that part of the area which was previously declared as surplus was declared to be tenants' permissible area and the surplus area was accordingly reduced. This order could not have adversely affected the rights of the land owner inasmuch as the area in dispute had remained surplus area, the land owner would still have no right to choose his tenants and the area would be available for resettlement of tenants by the State. Insofar as landowner is concerned, it made no difference whether the tenants in whose favour the permissible area had been determined, remained his tenants or tenants inducted by the State. An other Plea, which was quite insignificant and that was raised by the appellant herein, that since the area in question had been declared surplus, the tenants had been able to purchase it under Section 18 of the Act and in that way it affected his rights, was also repelled by observing that Section 18 of the Act which entitled the tenants to purchase the land, did not pertain only to surplus area. An application under Section 18 for purchase could be made with regard to land which was not a permissible area. In other words, an application for purchase could be made even with regard to tenants' permissible area. Still not satisfied, the appellant filed a revision before the Financial Commissioner, who too rejected the only plea of the appellant, noted above. The learned Financial Commissioner observed as follows:-

'Since the order dated 26th October, 1961 of the Collector merely converted part of surplus area into tenant's permissible area, it did not affect the landowner at all and he had no legitimate grievance. The provisions with regard to hearing the landowner under rule 6 of the Punjab Security of Land Tenures Rules, 1966 are applicable only to proceedings for determining the surplus area and permissible area of the landowner and were obviously not applicable which determining the tenant's permissible area out of the area already declared surplus with the landowner'.

3. It is in wake of the orders, referred to above, i.e. Annexures P-2, P-3 and P5 that present petition was filed in the year 1977. As mentioned above, during the pendency of this petition, a Full Bench of this Court in Ranjit Ram's case (supra), held that 'the landowner whose land has been declared surplus under [Punjab Security of Land Tenures Act, 1953](#) or under Pepsu Tenancy and Agricultural Lands Act, 1955 and who has not yet been divested of ownership of surplus area before enforcement of Punjab Land Reforms Act, was entitled to select permissible area for his family and for each of his adult sons in view of provisions of Section 4 read with Section 5(1) of the Punjab Land Reforms Act.' It was further held that the landowner was entitled to get permissible area for his adult sons out of his land held or possessed by him whether already declared surplus or not and the landowner while making selection under Section 5(1) of the Punjab Land Reforms Act for himself as also for his adult sons could include the area declared surplus under the Punjab Law or the Pepsu Law of which possession had not been taken over by the State Government till commencement of Punjab Land Reforms Act'. Taking cue from this judgment, additional pleadings in tune with the findings recorded by the Full Bench; as mentioned above, came to be filed. It is significant to mention at this stage that the respondent-tenants had by then purchased the land under Section 18 of the Act of 1953. Besides applicability of Full Bench in Ranjit Ram's case (supra), a further question, thus, came to be mooted before the learned Single Judge as to whether the purchase applications having been allowed before the appointed date under the Act of 1972 would result in utilising the land, thus, giving benefit of the aforesaid decision to the land owner.

4. No doubt, the plea of non-hearing before taking out of surplus pool the tenants' permissible area, was not given up. All these matters, thus, came to be discussed by the learned Single Judge in the impugned judgment dated February 1, 1985. The plea of non-hearing was negated by the learned Single Judge on parity of reasons given by the concerned authorities, i.e. the Special Collector, Commissioner and Financial Commissioner. The law laid down in Ranjit Ram's case (supra) was presumed to be applicable to the facts of this case. Insofar as appellant is concerned, he had only stated that application for purchase by the tenants was allowed before the appointed date. The respondent-tenants, however, in their pleadings came up with better details regarding time when orders permitting purchase under Section 18 were passed by the concerned authorities. Going by the pleadings of the parties, learned Single judge observed that the applications for purchase made by the respondents 4 to 17 and 24 to 34 had been allowed by the competent authority before 24th January, 1971, i.e., the date of enforcement of the land Reforms Act and that they had already deposited the purchase price of the land and had become owners thereof. The land owner, therefore, had been divested of the ownership of surplus land which had been purchased by respondents 4 to 17 and 24 to 34. Insofar as respondents 18 to 23 were concerned, they had filed applications under Section 18 of the Act of 1953 which were stated to be pending on the appointed date and the land owner had not been divested of the ownership of the land occupied by the said tenants. It was further observed that with regard to this land, i.e., the land occupied by respondents 18 to 23, Full bench Decision in Ranjit Ram's case was applicable. On the basis of the findings, as detailed above, writ petition was dismissed qua respondents 4 to 17 and 24 to 34 but was allowed against respondents 18 to 23. It is against this part of the order passed by the learned Single Judge, vide which writ against respondents 4 to 17 and 24 to 34 has been dismissed, that the present appeal has been filed.

5. Records of the case would bear it out that when the matter came up for hearing on October 22, 1997, it was observed that on 7.4.1997 the appellant was directed to file an affidavit together with certified or even uncertified copy of the order to show the date of purchase by respondents No.4 to 17 and 24 to 34 and the date when the first instalment was deposited. Pursuant to this order, the appellant failed

to file any affidavit though the case was adjourned to 21.4.1997 and 12.5.1997. It has further been observed that the learned counsel for the appellant sought one more opportunity to file the affidavit. In the interest of justice, final opportunity was granted to file the affidavit within two weeks with an advance copy to the learned A.G., Punjab, subject to payment of costs of Rs. 1000/- which were to be deposited by the appellant with the Free Legal Aid Cell, Punjab. No such affidavit was, however, filed and it is during the course of arguments before us that permission has been sought to place on record the required affidavit. Kewal Krishan son of Shri Hari Chand, vide affidavit dated November 17, 1997 which, as mentioned above, has been produced in court during the course of arguments, states that he is son and attorney of Hari Chand and is conversant with the facts of the case. He further states that the applications of respondents 4 to 17 and 24 to 34 were pending on 24.1.19.71 (the appointed day under the Act of 1972) and had not been allowed by the competent authority before this date. He further states that from the record available with the appellant, it is revealed that these applications for purchase were decided on 26.2.1974 and 30.3.1971, except the applications of Sita Ram respondent No.20 which was decided on 30.5.1969 and Babu Ram, respondent No.30, which was decided on 30.3.1968. He further states that against the decision of the competent authority allowing the purchase applications of these respondents, the appellant/land owner had filed appeals before the Collector, Hoshiarpur. A copy of the order passed by the competent authority in the case of respondent No. 15, namely, Kanshi Ram has been placed on records. It has further been stated that the orders with regard to respondents 9 to 17 and 32 would be produced at the time of hearing, no orders other than the one in the case of Kanshi Ram, has, however, been produced.

6. Learned counsel for the respondents, vehemently contends that the purchase applications filed by the respondents had since already been decided far prior to the appointed date under the Act of 1972 and despite several opportunities given to the appellant, even during the currency of the appeal, neither any affidavit was filed nor certified copies of the orders were placed on records.

7. The appellant, but for making an omnibus averment in his application for amendment of the petition that he had not been divested of the ownership of the

part of area declared surplus by the Special Collector and the same was no longer surplus, did nothing else. In para 10 of the petition it has also been mentioned that the applications were still pending before respondent No.3 when the Act of 1972 came into force and were finally decided by identical orders on 26.2.1974. No date as to when the purchase applications were filed was stated in the petition.

8. Respondents 4, 5, 7 to 10, 12, 14, legal representatives of respondent 15, respondents 16, 19 to 34 in their joint written statement filed by them stated that the purchase applications of respondents 4 to 17 and 24 to 34 were decided in their favour earlier to the appointed date, as defined in Section 3(1) of the Act of 1972. However, applications for purchase of tenancy lands filed by respondents 18 to 23 were still pending.

9. The appellant having given no particulars as to when the purchase applications were allowed, it appears, the learned Single Judge relied upon the information supplied by the respondents aforesaid to observe that the applications of respondents 18 to 23 were pending on the appointed day whereas applications of respondents 4 to 17 and 24 to 34 had since been allowed.

10. As mentioned above, insofar as this court is concerned, despite repeated opportunities having been given to the appellant to furnish proper information with regard to purchase applications made by respondents 4 to 17 and 24 to 34, all that has been furnished is an affidavit of the son of Hari Chand, which appears to have been drafted in the year 1997 which is as scanty as the information given by Hari Chand before the learned Single Judge and it is not even known nor the court has been informed as to whether the costs were also paid or not which was a condition precedent for filing the affidavit. We are of the firm view that it was for the appellant-landlord to prove that the surplus land had since not been utilised when the Act of 1972 came into force and the kind of information given to this Court is not sufficient to prove the said fact.

11. This Court might have shown some indulgence to the appellant to support the file with proper material but the learned counsel representing the respondents vehemently contends that in the facts and circumstances of this case, the appellant does not deserve any further opportunity for the additional reason that

even if the relevant information is placed on record now and even if it is found that the purchase applications were allowed after the appointed date, it would not make the least difference in the case. We may, however, hasten to add that as per the affidavit filed by the son of appellant concededly, the applications filed by some of the tenants were allowed before the appointed date. The contention of Mr. Joshi, learned counsel for the respondents is that this Court is not dealing with a surplus area which might have not been utilised before the Act of 1972 came into being. The Court is dealing with the tenants' permissible area which by its declaration as such, automatically stood utilised. Elaborating his contention, counsel states that under the Act of 1953, there was a concept of 'Permissible Area', 'Surplus Area' and 'Tenant's permissible area'. A landlord, under the provisions of Act of 1953 could select his permissible area if he had a holding more than the prescribed ceiling. If the remaining area was occupied by the tenants, who came to occupy the land prior to the introduction of Act of 1953, the said land had to be declared as tenant's permissible area and it is only the land still left out which could be declared as surplus area. Any such surplus area, where there were no tenants and the same as such continued to be in possession of the land owner and as such was not utilised, could be recomputed after introduction of the Act of 1972 as the land owner had not been divested of the ownership thereof as held by the Full bench of this Court in Ranjit Ram's case (supra). However, insofar as land which stood allotted to the tenant/re-settled tenant as envisaged under the Scheme of Allotment, the land owner had since been divested of the same under the provisions of Act of 1972 and to such lands, the judgment of Full Bench in Ranjit Ram's case could not apply. In any case, contends the counsel, any land which was declared to be tenant's permissible area, the landlord stood divested of its ownership as the same stood automatically utilised, the tenant already sitting over the same. He further contends that by virtue of provisions contained in Section 15 of the Act of 1972, tenant's right to purchase land under Section 18 of the Act of 1953 was saved notwithstanding anything contained in the Act of 1972.

12. Confronted with this situation, Mr. Sahni, learned counsel for the appellant could not urge anything but for the state that the matter had proceeded before the learned Single Judge on an assumption that the law laid down by Full Bench in

Ranjit Ram's case would apply to the facts of this case and, therefore, it is on that premise alone that this case has to be examined.

13. After hearing learned counsel for the parties at great length and examining the records of the case, we find, absolutely no merit in this appeal. Insofar as the point raised by appellant that he was not heard before the land in dispute was declared to be tenant's permissible area is concerned, no arguments whatsoever have been raised. Even otherwise, we concur with the view expressed by the Special Collector which has been affirmed by subsequent authorities as also learned Single Judge. As mentioned above, insofar as land owner is concerned, he had reserved the permissible area, i.e. upto the brim of ceiling provided under the Act of 1953. It is conceded position and so is recorded in the impugned orders that on some of the land declared surplus earlier in point of time, old tenants were there. It could also not be disputed at any stage that such land has to be declared tenant's permissible area. The only grouse of the appellant throughout had been that he was not heard in the matter before some land out of surplus pool was taken and declared as tenant's permissible area. This argument could be appreciated only if the appellant was to be in any way adversely affected and not otherwise. It would have made no difference to him if the said land was declared surplus or tenant's permissible area. Insofar as he is concerned, he had selected 30 standard acres of land of his choice, in view of what has been said above, we affirm the findings recorded by the learned Single judge on the issue of non-issuance of notice and non-hearing of the appellant while taking out some land from the surplus area and declaring it to be tenant's permissible area.

14. We do find substance in the contention of Mr. Joshi that no occasion arises at this stage to further adjourn the matter enabling the appellant to produce on record copies of orders passed in purchase applications filed by respondents 4 to 17 and 24 to 34. At no relevant stage spanning over a period of 18 years, such an effort was ever made. As mentioned above, the appellant was satisfied to simply state that all such applications were pending at a time when the Act of 1972 came into force which, according to his own showing, is incorrect. Copies of orders, certified or otherwise, were neither placed on records when the matter was before the learned Single Judge nor even during the pendency of the appeal, despite orders,

reference whereof has been given above. It is only during the course of arguments before us that an affidavit of 1997 has been filed.

15. Be that as it may, the appellant bases his entire case on the Full Bench judgment of this Court in Ranjit Ram's case (supra) which in turn deals with surplus area and not tenant's permissible area. Section 2(1) of the Act of 1953 defines 'land owner' to mean a person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and includes an 'allottee' and 'lessee' as defined in clauses (b) and (c) respective, of Section 2 of the East Punjab Displaced persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949). Sub Section (3) of Section 2 defines permissible area in relation to a landowner or a tenant, which means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres, Sub Section (4) of Section 4 defines 'reserved area' to mean the area lawfully reserved under the Punjab Tenants (Security of Tenures) Act, 1950. Sub Section (5-A) of Section 2 defines 'surplus area' to mean the area other than the reserved area, and where no area has been reserved, the area in excess of the permissible area selected under Section 5-B or the area which is deemed to be surplus area under sub section (1) of Section 5-C and includes the area in excess of the permissible area selected under Section 19-B but it does not include a tenant's permissible area.

16. The provisions of the Act of 1953, as reproduced above and, in particular, definition of 'Surplus area', would leave no one in doubt that the said area, i.e. surplus area, does not include tenant's permissible area.

17. The ratio of the judgment undeniably is that the land which is declared surplus either under the Punjab law or Pepsu Law and which has since not been utilised, and the land owner continues to be in possession thereof, has to be recomputed after introduction of Act of 1972. Of such a land alone the land owner is not divested of ownership. The crucial question is of utilisation of land by allotment of the same to tenants or Others mentioned in the scheme of allotment and consequential dispossession of the landlord.

18. Surplus area, as mentioned above, does not include tenant's permissible area. It is only non utilisation of surplus area that would come to the rescue of a landlord by dint of the provisions contained in the Act of 1972 and by virtue of judgment of Full bench in Ranjit Ram's case (supra). Insofar as tenants' permissible area is concerned, the same stood utilised by dint of the fact that the tenants had already occupied the same and of which landlord was not in possession. Such land, in our view, stood utilised, the day it was declared to be tenants permissible area. True, this matter was not argued before the learned Single judge but it is too well settled that the respondents are entitled to defend the order on the grounds other than mentioned in the impugned order or even for that matter on the grounds which have gone against them by the impugned order.

19. The matter does not rest there. Section 15 of the Act of 1972, to the extent it is applicable to the facts of this case and has a great bearing on the decision of question involved in this case, reads thus :-

'15. Saving of certain rights of tenants to purchase land :- (1) Notwithstanding anything contained in this Act, a tenant who was entitled to purchase the land comprised in his tenancy, under Section 18 of the Punjab law or Section 22 of the PEPSU law, as the case may be immediately before the commencement of this Act, shall be entitled to purchase such land from the landowner on the same terms and conditions, as were applicable immediately before such commencement: Provided that:

(i) the amount payable by the tenant for the land shall be equivalent to ninety times the land revenue (including rates and cesses) payable for such land or five hundred rupees per hectare, whichever is less; and

ii) the procedure for purchase of such land shall be as is specified hereinafter and the period of limitation for exercise of such a right shall be one year from the date of commencement of this Act. xx xx xx

20. Assuming, that the respondent-tenants made an application with regard to the land which was declared surplus and it was not tenant's permissible area, the provisions of Act of 1972 could not possibly apply to such tenants, provided, of

course, they were entitled to purchase the land comprised in their tenancy under Section 18 of the Act of 1953. The right of tenants to purchase under Section 18 was not disputed in this case at any stage whatsoever. The pendency of applications made under Section 18 on the appointed date would not have made any difference to the right of tenants to purchase the land. They could even move such an application within a year from the appointed date.

21. For the reasons recorded above, we find no merit in this appeal and, thus, dismiss the same with costs quantified at Rs. 3000/-.

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