Sher Singh & Ors vs Financial Commissioner Of ... on 26 March, 1987

Equivalent citations: 1987 AIR 1307, 1987 SCR (2) 691, AIR 1987 SUPREME COURT 1307, (1987) 2 JT 63 (SC), 1987 PUNJ LJ 209, 1987 UJ(SC) 2 111, 1987 3 JT 63, (1987) 1 SUPREME 452, (1987) 2 LANDLR 43, (1987) 2 SCJ 431, 1987 (2) SCC 439

Author: V. Khalid

Bench: V. Khalid, G.L. Oza

PETITIONER:
SHER SINGH & ORS.

Vs.

RESPONDENT:
FINANCIAL COMMISSIONER OF PLANNING,PUNJAB & ORS.

DATE OF JUDGMENT26/03/1987

BENCH:
KHALID, V. (J)
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KHALID, V. (J)
OZA, G.L. (J)

CITATION:
1987 AIR 1307 1987 SCR (2) 691
1987 SCC (2) 439 JT 1987 (2) 63
1987 SCALE (1)644

ACT:
Punjab Reorganisation Act, 1966 sections 88 and 89 and the Haryana Adaptation of Laws (States and Concurrent Subjects) Order 1968, clauses 10 and 11, scope and effect of--Whether orders passed by an Authority which has become final would continue after reorganisation.
Punjab Security of Land Tenures Act, 1930, sections 9(1)(i), 10A(a), 10A(b) and 10B--Rights and duties under--Effect of the order passed thereunder.

HEADNOTE:
Balwant Singh was a displaced person from West Pakistan. He owned in all 67 standard acres of land distributed in

various villages. On 8.11.1960 when proceedings under the Punjab Security of Land Tenures Act, 1930 were initiated, the Special Collector, Punjab, declared 29 standard acres belonging to him as surplus area. While doing so, the transfers made by him were ignored. He had an option to choose the property which fell to his share. He opted for the entire land belonging to him and situated in village Semani as his permissible area and did not opt for any area in Mohamad Pera, District Ferozepure. The Special Collector reserved for him about 18 standard acres out of his holding in village Dhav Kharial in order to make up his permissible area of 50 standard acres. This part of the order of the Special Collector became final.

On 1.11.1966, the Punjab Reorganisation Act, 1966 came into force and as a result thereof, the original properties that belonged to Balwant Singh fell within the new State of Punjab and the new State of Haryana. In December 1966, Balwant Sigh, his wife and his minor son filed a writ petition for the issuance of necessary directions to the States of Punjab and Haryana restraining them from utillsing the surplus area declared by the Special Collector by his order dated 8.11.1960. A learned Single Judge repelled all the following three contentions; (1) that after the States Reorganisation, persons owning lands both in the State of Punjab and Haryana could claim that they should be allowed
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permissible area in both the States separately; (2) that orders passed regarding surplus area prior to 1st November, 1966, and which area had not been utilised till then, should be deemed to have no effect; and (3) that the proceedings declaring surplus land were bad for want of notice to the transferees.

When the matter was taken up in appeal, the Division Bench felt that an important question was involved and therefore referred the appeal to a Full Bench. The Full Bench considered the matter in detail and held that the order declaring the area to be surplus passed before Ist November, 1966, would continue to have effect after that date, even if that order had not been implemented and persons owning land in the newly created States is not, in law, entitled for a separate allotment under the Act. Hence the appeal by certificate.

Dismissing the appeal, the Court,

HELD: 1.1 Under the scheme of the Punjab Security of Land Tenure Act, 1930, It is the entire holding of a person on 15th April, 1953, that is to be taken into consideration for determining his surplus area. The Government acquires the right to utilize the surplus area of a person against whom an order of declaration has been made for the resettlement of tenants ejected or to be ejected. [696D-E]

1.2 It is true that alongwith the order declaring the land of an owner as surplus, a corresponding right and duty accrues to the Government to utilise the surplus area for

the re-settlement of tenants. In other words, the rights on the land declared as surplus get vested in the Government to be distributed amongst the tenants for re-settlement. This is an indefeasible right that the Government secures. Therefore, the appellant cannot get back the land, if the surplus land had not been utilised. [697A-C]

1.3 There is nothing in the Act which imposes any time limit for the government to utilise the land for the purpose mentioned in the Act. Nor is there any provision enabling the owner of the land to claim back the land and to get it restored to him if utilization is not made by the government within a specified period. All that the Act contains by way of exception is what is seen in section 10A(b). If at the time of the commencement of the Act, the land is acquired by the government under the relevant acquisition laws or when it is a case of inheritance, the owner could claim exclusion of such land from his land for fixation of his ceiling under the Act. The second exception itself is further lettered
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by the provision in section lOB that where succession had opened after the surplus area or any part thereof had been utilised under section 10A(a), the saving specified in favour of an heir by inheritance would not apply in respect of the area so utilised. To put it short, the government had under the Act an unfettered right without time limit to utilise the land for re-settlement of tenants subject to the two exceptions. Though it is desirable that re-settlement should be done as expeditiously as possible, inaction on the part of the government to resettle the tenants will not clothe the owner with a power for restoration of the land. [697B-F]

2.1 The appellant is not entitled to have the best of the two worlds; in other words to have his quota of full 50 acres in Punjab and another 50 acres in Haryana, this is so because Section 88 of the Punjab Reorganisation Act, 1966 makes the provisions of the Act which was applicable to the old State of Punjab would continue to apply to the new State. In other words, the order passed before 1.11.1966, which became final, declaring the surplus area would be given effect to and the order would be implemented uninfluenced by the division of the State. [697F-G; 698B]

2.2 A combined reading of clauses 10 and 11 of the Haryana Adaptation of Laws (States and Concurrent Subjects) Order, 1968 also makes it clear that any order made or anything done or any liability incurred or a right accrued before the 1st November, 1966 would not be affected by the coming into force of the order. [698G-H]

2.3 Clauses 10 and 11 show unambiguously that the respective State Governments would be entitled to give effect to orders passed before 1st November, 1966, declaring the surplus area by utilising them for the re-settlement of the tenants, despite the re-organisation of the State of Punjab. The orders passed will be respected by both the States. The

fact that the land belonging to a particular owner, under fortuitous circumstances, fail in the two newly formed States, will not in any way affect the operation of the orders which had become final prior to 1st November, 1966. To accept the appellant's contention would create anomalies. Persons against whom proceedings under the Act were taken and became final prior to 1st November, 1966, would be entitled to claim lands in both the States wile those whose petitions are pending on the date the States Re-organisation Act came into force would be in a disadvantageous position. This is not the object of the Act. Nor the scheme behind it. The States re-organisation was a historical accident. The land owners cannot take advantage of this accident, to the detriment of ejected tenants or tenants in need of re-set-tlement. [698H; 699A-C]
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 341 of 1973.

From the Judgment and Order dated 26.2.1971 of the Punjab and Haryana High Court in L.P.A. No. 566/1968. Harbans Singh for the Appellants.

R.S. Sodhi and S.K. Sinha for the Respondents. The Judgment of the Court was delivered by KHALID, J. This is an appeal by certificate against the Judgment of a full bench of the Punjab and Haryana High Court dated 20th November, 1970. The question involved in this appeal is ingenious but untenable. The question re- ferred to the full bench reads as follows:

> "Whether after the re-organisation of the State of Punjab the land owners owning land in both the States of Punjab and Haryana can claim to retain the permissible area in each State separately after 1st of November, 1966. If so, whether an order declaring the area to be surplus passed prior to the date above said, but which order has not been implemented and the surplus land so declared has not in fact been utilised would continue to have effect after said date?"

Now the facts. Balwant Singh was a displaced person from West Pakistan. He owned in all 67 standard acres of land distributed in various villages. According to him he had sold some properties to strangers and the remaining in favour of his wife and minor son in 1957. On 8th November, 1960, when proceedings under the Punjab Security of Land Tenures Act, 1930 (for short the Act) were initiated' the Special Collector, Punjab, declared 29 standard acres be- longing to him as surplus area. While doing so, the trans- fers made by him mentioned above, were ignored. He had an option to choose the property which fell to his share. He opted for the entire land belonging to him and situated in village Samani as his permissible area and did not opt for any area in Mohamad Pera, District Ferozepore. The Special Collector reserved for him about 18 standard acres out of his holding in village Dhab Kharial in order to make up his permissible area of 50 standard acres. This

part of the order of the Special Collector, though challenged in appeal, was confirmed by the Commissioner, Jullundar Division on 5th January, 1965, since the appeal before him was held to be barred by limitation. The appel- lant pursued the matter before the Financial Commissioner, Planning, Punjab,_by filing a revision. This was dismissed on 19-2-1965.

On 1st November, 1966, the Punjab Re-Organisation Act, 1966, (for short, Re-organisation Act) came into force. The State of Punjab was distributed under the Act to the present State of Punjab, State of Haryana, Union Territory of Chand- igarh and Union Territory of Himachal Pradesh. In December, 1966, Balwant Singh, his wife and his minor son filed a writ petition for the issuance of necessary directions to the States of Punjab and Haryana restraining them from utilising the surplus area declared by the Special Collector by his order dated 8-11-1960. It is relevant to note here that the original properties that belonged to him fell within the new State of Punjab and the new State of Haryana. The matter came before a learned Single Judge. The following questions were raised before him: (1) That after the States Reorganisation, persons owning lands both in the State of Punjab and Haryana could claim that they should be allowed permissible area in both the States separately, (2) that orders passed regarding surplus area prior to 1st November, 1966, and which area had not been utilised till then, should be deemed to have no effect and (3) that the proceedings declaring surplus land were bad for want of notice to the transferees. These contentions were repelled by the learned Single Judge.

He took the matter in appeal. The Division Bench before whom the appeal was posted felt that an important question was involved and therefore referred the appeal to a larger bench.

The full Bench considered the matter in detail and held that the order declaring the area to be surplus passed before 1st November, 1966, would continue to have effect after that date, even if that order had not been implemented and persons owning land in the newly created States is not, in law, entitled for a separate allotment under the Act. It is this conclusion of the Full Bench that is assailed before us on the strength of a certificate issued by the Court Balwant Singh had more than the permissible area, viz., 50 standard acres with him. The excess area was liable to be declared as surplus. Surplus area was declared by the Spe- cial Collector, by his order dated November 8, 1960. It was confirmed in appeal and in revision. The revisional order is dated 19th February, 1965, that is before 1st November 1966, when the Re-organi- sation Act came into force. As indicated above, by virtue of the Re-organisation of the two States, a part of his hold- ings fell in the territory of the State of Haryana and another part in the State of Punjab. He evolved a contention that he could have 50 standard acres of land in each of the two States. On this basis, he questioned the order dated 8th November., 1960. He supported this argument with the addi- tional plea that the said order had not been implemented and the land declared surplus not utilised.

The question that fell to be decided by the full Bench was whether the order which had become final would continue to have effect after the date of enforcement of the Re- organisation Act when that order had not been given effect to and the surplus area had not been utilized by the Govern- ment.

Under the Scheme of the Act, it is the entire holding of a person on 15th April, 1953, that is to be taken into consideration for. determining his surplus area. The Govern- ment acquires the right to

utilize the surplus area of a person against whom an order of declaration has been made for the resettlement of tenants ejected or to be ejected. Sections 9(1)(i) and 10A(a), which read as follows, make the position clear:

> "9(1). Notwithstanding anything contained in any other law for the time being in force, no land owner shall be competent to eject a tenant except when such tenant
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> (i) is a tenant on the area reserved under this Act or is a tenant of a small land owner; or....."
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> "10A(a) The State Government or any officer empowered by it in this behalf, shall be competent to utilise any surplus area for the re-settlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of Section 9."

It was contended before the High Court and repeated before us that the order did not get finality unless the surplus area had in fact been utilised, and tenants re- settled there. This contention did not find favour with the High Court. We will presently examine wheth- er the contention has any merit. It is true that along with the order declaring the land of an owner as surplus, a corresponding right & duty accrues to the Government to utilise the surplus area for the re-settlement of tenants. In other words, the rights on the land declared as surplus get vested in the Government, to be distributed amongst the tenants for re-settlement. This is an indefeasible right that the Government secures. The appellant is not well rounded in his contention that he could get back the land if the surplus had not been utilised. There is nothing in the Act which imposes any time limit for the Government to utilise the land for the purpose mentioned in the Act. Nor is there any provision enabling the owner of the land to claim back the land and to get it restored to him if utili- zation is not made by the Government within a specified period. All that the Act contains by way of exception is what is seen in Section 10A(b). If at the time of the com- mencement of the Act, the land is acquired by the Government under the relevant acquisition laws or when it is a case of inheritance, the owner could claim exclusion of such land from his land for fixation of his ceiling under the Act. The second exception itself is further lettered by the provision in Section 10-B that where succession had opened after the surplus area or any part thereof had been utilised under Section 10A(a), the saving specified in favour of an heir by inheritance would not apply in respect of the area so uti- lised. To put it short, the Government had under the Act an unfettered right without time limit to utilise the land for re-settlement of tenants subject to the two exceptions mentioned above. It is, of course, desirable that re-settle- ment should be done as expeditiously as possible. Inaction on the part of the Government to re-settle the tenants will not clothe the owner with a power for restoration of the land. The contention of the appellant based on non-utilisa- tion of the land has, therefore, to fail.

The second question is whether the appellant is entitled to have the best of the two worlds; in other words, to have his quota of full 50 acres in Punjab and another 50 acres in Haryana. Section 88 of the Re-organisation Act makes the position clear. It reads as follows:

> "The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provid- ed by a competent Legislature or other compe- tent authority, be construed as meaning the territories within that State immediately before the appointed day."

As per this Section the provisions of the Act which was applicable to the old State of Punjab would continue to apply to the new State. In other words the order passed before 1st November, 1966, which became final, declaring the surplus area, would be given effect to and the order would be implemented uninfluenced by the division of the State. After the Re-organisation Act, the Governer of Haryana in exercise of the powers conferred by Section 89 of the Re- organisation Act passed an order by name Haryana Adaptation of Laws (States and Concurrent Subjects) Order, 1968, on 23-10-1968 making it to take effect retrospectively from 1st November, 1966. Clauses 10 and 11 of the order read as follows:

> "10. The provisions of this order which adapt or modify any law so as to alter the manner in which, the authority by which, or the law under or in accordance with which any powers are exercisable shall not render invalid any notification, order, licence, permission, award, commitment, attachment, by-law. Rule or regulation duly made or issued, or anything duly done, before the appointed day; and any such notification, order licence, permission, award, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in likemanner, to the like extent and in the like circumstances as if it has been made, issued, or done after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case.
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> 11. Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under any existing State law or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law."

A combined reading of these two clauses makes it clear that any order made or anything done or any liability in- curred or a right accrued before the 1st November, 1966 would not be affected by the coming into force of the order. These two clauses show unambiguously that the respective State Governments would be entitled to give effect to orders passed before 1st November, 1966, declaring the surplus area by utilising them for the re-settlement of the tenants, despite the reorganisation of the State of Punjab. The orders passed will be respected by both the States. The fact that the land belonging to a particular owner, under fortuitous circumstances, fall in the two newly formed States, will not in any way affect the operation of the orders which had become final prior to 1st November, 1966. To accept the appellant's contention would create anomalies. Persons against whom proceedings under the Act were taken and became final prior to 1st November, 1966, would be entitled to claim lands in both the States while those whose petitions are pending on the date the

States Reorganisation Act came into force would be in a disadvantageous position. This is not the object of the Act. Nor the scheme behind it. The States re-organisation was a historical accident. The land owners cannot take advantage of this accident, to the detriment of ejected tenants or tenants in need of re-set- tlement. For the above reasons, we hold that the High Court was justified in answering the question referred to it against the appellant. The appeal is accordingly dismissed. There will be no order as to costs.

S.R. Appeal dis-
missed.