

## **Bhagwan Singh And Ors. vs State Of Punjab And Ors. on 3 February, 1987**

**Equivalent citations: AIR1987SC1197, 1987(1)SCALE286, (1987)2SCC117, 1987(1)UJ365(SC), (1987) 2 SCJ 153, 1987 (2) SCC 117, AIR 1987 SUPREME COURT 1197, 1987 REV LR 196, 1987 PUNJ LJ 149, 1987 (1) UJ (SC) 365, 1987 UJ(SC) 1 365, (1987) 1 LANDLR 323, (1987) 1 SUPREME 273**

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**Bench: E.S. Venkataramiah, M.P. Thakkar**

### **JUDGMENT**

M.P. Thakkar, J.

1. A Writ Petition Writ Petition No. 27170 of 1985 instituted by the appellants in the High Court of Punjab and Haryana, which not only should have been admitted but should have been allowed for the mere asking of it, having been dismissed, the original Writ Petitioners have approached this Court by way of the present appeal by special leave.

2. The appellants were allotted different parcels of land between 1967 and 1973 On 31-7-67, 11-8-67, 5-1-73, 6-7-73, 6-8-73 and 27-1-73 from out of the surplus area declared from the holding of one Abdul Latif Khan under the relevant provisions of the Pepsu Tenancy and Agriculture Lands Act (Act). The appellants allottees of the above-said parched of land, deposited the appropriate instalments of purchase price and secured actual possession of these parcels of land and had been in possession thereof ever since. The allotment was made in their favour in order to resettle them on the lands which were declared surplus. An order was passed by the Commissioner of Patiala Division on January 14, 1981 in the wake of the death of the original land-holder Abdul Latif Khan, who died on January 9, 1978 The Commissioner by his aforesaid order directed that the appellants were liable to be dispossessed by reason of the fact that in view of the death of the original land-holder the permissible area which could be retained by the land-holder and the surplus area under the relevant provisions of law was required to be redetermined. He then recorded the finding that there was no surplus and directed the dispossession of the appellants. The appellants challenged the order passed by the Commissioner, before the Financial Commissioner by way of revision. The Financial Commissioner upheld the contention of the appellants in an extremely well-considered order and set aside the order of the Commissioner. Thereupon, the heirs of the deceased land-holder applied for review of the order passed by the Financial Commissioner on the ground that no such review was competent. The Financial Commissioner upheld this plea and set aside his previous order. Thereupon the appellants approached the High Court by way of the Writ

Petition giving rise to the present appeal. The High Court, by a non-speaking order, dismissed the Writ Petition in limine. Hence the present appeal. The following facts emerge from the record :

That in respect of the holding of the original holder Abdul Latif Khan taking into account the land, the permissible area is the surplus area available for resettlement of the ejected tenants, was determined on January 16, 1963, As per the determination the surplus area available for utilisation for resettlement was computed at 52-8 acres 101/2 units. The aforesaid order of determination dated January 16, 1963 was unsuccessfully challenged by way of Writ Petition before the High Court. The order dated December 17, 1970 dismissing the Writ Petition was confirmed by a Division Bench in a Letters Patent Appeal filed by the original holder. Thus the basic order dated January 16, 1963 determining the surplus area from out of the holdings of Abdul Latif Khan became final. There is no provision for reopening of such an order which has become final. The land holder Abdul Latif Khan died 15 years after the determination of the surplus area, on January 9, 1978. The death of the original land-holder would have no impact on the determination made in 1963 of surplus from out of the original holding which had become final in 1970. Even so the Commissioner came to the conclusion that the surplus area of the holding of the original holder required to be re-determined and passed the impugned order which was initially set aside by the Financial Commissioner, but was restored upon realising that he had no powers of the review.

3. The Commissioner appears to have passed this order in the course of proceedings initiated by one Gulab Singh and Piyara Singh and some others on the premise that they were bonafide transferees to whom Abdul Latif Khan had transferred the lands on which the appellants had been settled before July 30, 1958 and that they should be accepted as transferees under Section 31 of the Pepsu Tenancy and Agricultural Lands Act. They prayed that the lands transferred to them should be excluded from the surplus area declared from out of the estate of the original land-holder, Abdul Latif Khan. These applications were rejected by the Commissioner after affording them an opportunity of hearing. The aforesaid order passed by the Commissioner has become final. Now, at no stage was there an occasion for the heir of deceased land holder Abdul Latif Khan to apply for reopening of the surplus order declared from the estate of the deceased land-holder which was inherited by them. Even so, the Commissioner thought that in view of the death of the original land-holder and in view of the fact that some of the persons claiming to be transferees had made an application for excluding their land from the surplus order, the determination made in 1963 which had become final by virtue of the dismissal in 1970 of the Writ Petition challenging the determination, could be reopened in the context of Section 32-FF.3 This contention was altogether devoid of substance and was based on thorough misunderstanding. The Financial Commissioner had in the order which he was subsequently obliged to revoke on the ground of lack of jurisdiction had dealt with the merits in a lucid manner, in the following passage :

As is seen from the narration of the facts and their analysis made before, it is factually incorrect that the surplus area had not been declared finally during the lifetime of the Abdul Latif Khan deceased or that it had not been utilised before his death. The

surplus area had initially been declared on 16-1-63 but after making a modification therein in compliance of the remand orders of the Commissioner it was finally determined on 28-8-1975 when an area of 42.02 S. Acres was declared surplus area. The landlord Abdul Latif Khan was alive then. Also, the said surplus area had been finally allotted to and taken possession of by the allottees on various dates starting from 1967 to 1973 and even then Abdul Latif Khan landlord was alive. He had died on 9-1-1978 by which date the matter regarding the declaration as well as utilisation of surplus area, as far as Abdul Latif Khan was concerned had already been finalised. In this situation, the question of re-assessing surplus area in the hands of the heirs of the said Abdul Latif Khan under the provisions of the Punjab Land Reforms Act, 1972 does not arise and the orders of the learned Commissioner dated 14-1-1981 to this effect are erroneous and unjustified. These orders are, therefore, set aside and the orders dated 15-1-1979 of the Collector Agrarian, Malerkotla along with his previous orders dated 28-8-1975 are upheld as final. This revision petition is, therefore, accepted accordingly.

It is no doubt true that the Financial Commissioner had no powers of review vis-a-vis the order passed by the Commissioner. However, the view taken by him on merits was perfectly right. The High Court should have taken into consideration the reasoning reflected in the aforesaid passage for examining the validity of the order passed by the Commissioner whereby the appellants were sought to be deprived of 3. "32 FF - Save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance or upto 30th July, 1958 by a landless person, or a small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, for consideration upto an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit, no transfer or other disposition of land effected after the 21st August, 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition.

Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it to make compensation for it, to the person from whom he received it.

the lands allotted to them between 1967 and 1973 on the ground that the original land-holder had died in 1978 and the re-determination of the surplus was required to be made. In any case that was not done and that is why the matter is now before this Court.

4. There are three very good reasons why the impugned order must be quashed and set aside :

(1) The question as regards the permissible area which could be retained by the original land-holder Abdul Latif Khan, and the surplus area from out of his estate, had become final when the Writ Petition challenging the order of the basic

determination passed in 1963 was dismissed by the High Court in 1970. Therefore there was no authority under any provision of the law to reopen the determination in this behalf.

(2) In any view of the matter, the area which was declared surplus in 1963 as confirmed by the High Court in 1970 had been allotted to the appellants in a lawful manner. They had already deposited the purchase price required to be deposited and the appellants had already secured possession of these lands and they had been cultivating these lands for more than 10 years. Under the circumstances the fact that Abdul Latif Khan had died was altogether irrelevant, and the surplus land from out of his original holding which had been utilised for re-settling the ejected tenants viz. the appellants could not be disturbed.

(3) The appeal preferred by the heirs of Abdul Latif Khan in the course of which the impugned order was passed by the Commissioner was not at all competent for there was no order adverse either to Abdul Latif Khan or to his heirs which had been passed by the Collector and which could be subjected to appeal.

5 In our opinion the aforesaid submissions urged by the learned Counsel for the appellants are well founded and there is no valid answer to the same. The surplus area as determined in 1963 stood confirmed by the order passed in the Writ Petition challenging the same in 1970. There was no occasion for re-determining the surplus area in respect of the holding of the said Abdul Latif Khan upon his death. The permissible area and the surplus area had to be determined in the context of the holding of the said Abdul Latif Khan and not in the context of the lands inherited by the heirs of the said Abdul Latif Khan on his demise. If the holding were now to be re-determined it will be re-determining the permissible area which the heirs can hold and the surplus area in the context of their holding. Under the Act, the surplus area in respect of the holding of Abdul Latif Khan was rightly determined and it had become final and there was neither any occasion nor any warrant in law for re-determining the same. The mere fact that some persons had applied on the footing that Abdul Latif Khan had transferred some lands to them prior to July 30 1958 did not provide any occasion for reopening the surplus area of Abdul Latif Khan. If the said application had succeeded the transferees would have been allowed to retain the land from out of the surplus instead of allotting the same to the rejected tenants for the purpose of re-settlement. Their applications however failed and were rejected. It is difficult to comprehend how this proceeding could provide an occasion to the heirs of Abdul Latif Khan to pray for re-determination of the surplus area in respect of the holding of their predecessor in title. There was no warrant in any provision of the Act for such re-determination. The fact that Abdul Latif Khan died meanwhile is a matter of no consequence from the point of view of the determination of the permissible area which could have been retained by him during his life-time and the surplus area declared in the context of such determination. Thus, there was neither any occasion nor any warrant for entertaining any appeal preferred by the heirs of the original holder. The Commissioner had no jurisdiction to entertain such an appeal. The appeal was not directed against any order which had been passed against the heirs and the whole proceeding was thoroughly misconceived. What is more, in any view of the matter, the surplus area which had already been allotted to the appellants could not be disturbed, the purchase money

having been collected from them, and they having been put in possession of the land in question. Since the surplus land had already been utilised in accordance with the provisions of law and the rights of the appellants had been created in a lawful manner in respect of the lands allotted to them, there was no question of dispossessing them and handing back the said lands to the heirs of the original land-holder viz. Abdul Latif Khan. There was no warrant in law for re-determining the surplus in the context of Section 33-FF at all, and the impugned order was wholly without jurisdiction and erroneous. We need not undertake the further exercise of analysing or interpreting the said provision for the purposes of the present matter as the appeal must succeed for the aforesaid reasons. The impugned order passed by the Commissioner dated January 16, 1963 is illegal and unwarranted. It must therefore be quashed and set aside. We are given to understand that the appellants have been dispossessed in the wake of the impugned order passed by the Commissioner. We, therefore, direct that possession shall be restored to them within sixty days from today. The Collector is directed to ensure that the appellants are put back in possession in time in compliance with this order. The appeal is allowed accordingly. There will be no order regarding costs.