Financial Commissioner, Haryana And ... vs Kela Devi And Another on 31 October, 1979

Equivalent citations: 1980 AIR 309, 1980 SCR (1)1120, AIR 1980 SUPREME COURT 309, 1980 (1) SCC 77, 1980 REV LR 251, (1980) CURLJ(CCR) 34, 1980 PUNJ LJ 121, 1980 UJ (SC) 237, (1980) 1 SCR 1120 (SC), (1980) 1 SCWR 10, (1980) 2 SCJ 93

Author: P.N. Shingal

Bench: P.N. Shingal, N.L. Untwalia, A.D. Koshal

PETITIONER:
FINANCIAL COMMISSIONER, HARYANA AND OTHERS

Vs.

RESPONDENT:
KELA DEVI AND ANOTHER

DATE OF JUDGMENT31/10/1979

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
UNTWALIA, N.L.
KOSHAL, A.D.

CITATION:
1980 AIR 309 1980 SCR (1)1120
1980 SCC (1) 77

ACT:
Punjab Security of Land Tenures Act, 1953 Section 10(a)-Scope of-Allotment of surplus land to tenants-When completed.

HEADNOTE:
Out of 46-odd acres of land held by the original owner (husband of respondent No. 1 and son of respondent No. 2), the Collector declared six odd acres as surplus area under section 2(3) of the Punjab Security of Land Tenures Act, 1953 and allotted them to two other tenants. On the death of the original owner the two heirs (respondents 1 and 2) made an application stating that since the land inherited by each

of them in equal shares was below the permissible area of 30 standard acres, there was no surplus area with them and that, therefore, no part of the land could be utilized for allotment to other tenants. The Collector rejected their application on the ground that the surplus area having been declared during the life time of the original owner, it could not be excluded from the holding in the hands of the two respondents. The respondents failed in appeal and revision before the Commissioner and the Financial Commissioner.

A single Judge of the High Court allowed their petition under Articles 226 and 227 of the Constitution in so far as it related to the application of the land of which possession had not been given to the other tenants. A Division Bench rejected the appellants appeal.

On the question whether mere allotment of land to other tenants amounted to utilization of the surplus area when the re-settled tenant had not taken possession.

Dismissing the appeal,

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HELD: 1. While section 10A(a) of the Act empowers the State Government to utilize any surplus area for re-settlement of tenants, the Act does not define what is meant by order of utilization under the section. Clause (b) of the section, however, has the effect of saving the land comprised in the surplus area if it has been acquired by an heir by inheritance. Therefore, when an heir succeeds by inheritance that basic fact would affect the utilization of the surplus area, even if an order had been made under section 10A(a) for its utilization for the resettlement of other tenants but that order had not been implemented. [1122H, 1123A-B]

2. A conspectus of the rules made under the Act also shows that while allotment of land is an initial stage in the process of utilization of the surplus area, it does not complete that process as it is necessary for the allottee to obtain a certificate of allotment, take possession of the land within the specified period and execute necessary documents thereafter. A mere order of allotment does not have effect of completing that process. Rule 20D also points to the con-

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clusion that a completed title does not pass to the allottee on a mere order of allotment and that order is defeasible if the other conditions prescribed by law are not fulfilled. [1123 F-G]

In the instant case since the process of utilization of surplus area had not been completed by the time the heirs made the application it was permissible for the authorities to re-examine the question whether there was any surplus area at all after the heirs had inherited the land in equal shares so as to reduce the area of the holding of each one of them below the permissible area. [1124 B-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2522 of 1969.

From the Judgment and Order dated 12-5-1969 of the Punjab and Haryana High Court in L.P. No. 8/69.

Ravindra Bana and M. N. Shroff for the Appellant. T. S. Arora and M. L. Lahoty for the Respondent. The Judgment of the Court was delivered by SHINGHAL, J. One Nathi held 36 standard acres and 8 standard units of land in village Bhanguri, and as the "permissible area" within the meaning of clause (3) of section 2 of the Punjab Security of Land Tenures Act, 1953, (hereafter referred to as the Act) in his case was 30 standard acres, Collector (Surplus) Nuh, declared 6 standard acres and 8 standard units of land as "surplus area", by his order dated November 25, 1959. Nathi died on July 14, 1965, leaving his widow Smt. Kela Devi respondent No. 1, and his mother Smt. Mando respondent No. 2, as heirs. The two heirs made an application under sections 10-A(b) and 10B of the Act stating that as the land of Nathi had been inherited by them in equal shares, and the holding with each one of them was much below the "permissible area" of 30 standard acres, there was no "surplus area" within the meaning of clause (5-

a) of section 2 of the Act and no part of it could therefore be utilized for allotment to other tenants. That application was however dismissed by Collector (Surplus) on March 13, 1967, on the ground that the "surplus area" declared in Nathi's life time had already been allotted to other tenants and could not be excluded from the holding in the hands of his widow and mother. An appeal was taken to the Commissioner of Ambala, but it was dismissed on January 30, 1968, as he took the view that the order of allotment of the "surplus area" of Nathi's holding amounted to "utilisation" of that land under section 10-A(a). A revision was taken to the Financial Commissioner, but it was rejected on May 8, 1968, for the same reason. Smt. Kela Devi and Smt. Mando then approached the High Court of Punjab and Haryana by a writ petition under articles 226 and 227 of the Constitution. It was opposed by the present appellants on the ground that as the "surplus area" had been declared and allotted to various tenants during the life time of Nathi (except for an area of 8 kanals in village Ghelab) the writ petitioners were not entitled to succeed, as the "surplus area" had already been utilized. It was also pleaded that possession of eight pieces of land had already been delivered to the tenants before the death of Nathi. The controversy before us does not relate to those pieces of land which had been allotted to various tenants and of which possession was given to them during the life time of Nathi.

The learned Single Judge of the High Court who initially heard the writ petition allowed it by his judgment dated October 29, 1968, in so far as it related to the portion of land of which possession had not been given to other tenants and, to that extent, he set aside the above mentioned orders of the Collector, the Commissioner, and the Financial Commissioner by which the application of Smt. Kela Devi and Smt. Mando was rejected. An appeal was taken to a Division Bench of the High Court, but it was dismissed on May 12, 1969. That is why the present appeal has been filed on the basis of

the High Court's certificate under Article 133 (1)(c) of the Constitution.

The only question which therefore arises for consideration is whether the High Court was right in taking the view that mere allotment of land to other tenants under section 10-A(a) of the Act did not amount to utilisation of the "surplus area" when the resettled tenants had not taken possession under the allotment orders.

It is not in controversy that it had been finally decided that the "surplus area" in the case of Nathi was 6 standard acres and 8 standard units, and a decision to that effect was taken in his life time on November 25, 1959. It is also not in dispute that orders were made for the allotment of the "surplus area" to other tenants under section 10-A(a) of the Act which reads as follows-

> "10-A(a) The State Government of any officer empowered by it in this behalf shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of section 9."

While therefore the section empowers the State Government or its authorised officer to "utilise" any "surplus area" for the resettlement of tenants, the Act does not define what is meant by an order of utilisation under the section. A clue to what is actually meant by that expression, is however to be found in clause (b) of section 10-A which provides as follows,-

> "10-A(b) Notwithstanding anything contained in any other law for the time being in force and 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 no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a)."

The clause therefore has the effect of saving the land comprised in the "surplus area", if it has been acquired by an heir by inheritance. So where an heir succeeds by inheritance, as in this case, that basic fact would affect the utilisation of the surplus area even if only an order has been made under clause (a) of section 10-A for its utilisation for the resettlement of other tenants but that order has not been implemented.

In order to understand the full meaning and effect to the provisions of section 10-A, it is necessary to make a cross-reference to rules 18, 20-A, 20-B and 20-C of the Punjab Security of Land Tenures Rules, 1956 (hereafter referred to as the Rules). Rule 18 deals with the procedure for allotment of "surplus area" to other resettled tenants. Rule 20-A provides for the issue of certificates of allotment of lands to them, and rule 20-B provides for delivery of possession and makes it obligatory for the resettled tenant to take possession of the land allotted to him within a period of two months or such extended period as may be allowed by the officer concerned. Rule 20-C provides, inter alia, for the execution of a "qabuliyat" or "patta" by a resettled tenant. It would thus appear that while allotment of land is an initial stage in the process of utilisation of the "surplus area", it does not complete that process as it is necessary for the allottee to obtain a certificate of allotment, take possession of the land within the period specified for the purpose, and to execute a "qabuliyat" or "patta" in respect

thereof. The process of utilisation contemplated by section 10-A of the Act is therefore complete, in respect of any "surplus area", only when possession thereof has been taken by the allottee or the allottees and the other formalities have been completed, and there is no force in the argument that a mere order of allotment has the effect of completing that process.

Reference in this connection may also be made to rule 20-D of the Rules which provides that in case a tenant does not take possession of the "surplus area" allotted to him for resettlement within the period specified therefor, the allotment shall be liable to be cancelled and the area allotted to him may be utilized for the resettlement of another tenant. It cannot therefore be dobted that a completed title does not pass to the allottee on a mere order of allotment, and that order is defeasible if the other conditions prescribed by law are not fulfilled.

So when the process of utilisation of Nathi's "surplus area" had not been completed by the time his heirs by inheritance made the aforesaid application to the authorities concerned, it was permissible for those authorities to re-examine the question whether there was any "surplus area" at all after Nathi's holding had been inherited by his two heirs in equal shares so as to reduce the area of the holding of each one of them below the permissible area. The High Court therefore rightly allowed the writ petition of the respondents.

As there is no force in this appeal, it is dismissed but, in the circumstances, we do not make any order as to the costs.

P.B.R. Appeal dismissed.