

Punjab-Haryana High Court

Sardara Singh And Ors. vs The Financial Commissioner And ... on 26 March, 2008

Equivalent citations: (2008) 151 PLR 297

Author: K Garewal

Bench: K Garewal, S Mittal, R Madan

JUDGMENT K.S. Garewal, J.

1. Preface Law envisages three simple steps to take land from a landowner under land reform legislation for fulfillment of the socialistic objective of distributing it to tenants/landless persons. First, the entire land holding is identified and taken into account. Thereafter, the landowner makes a reservation of the area that he wishes to reserve for himself. Lastly, he surrenders the surplus area and gives it up altogether. The process sounds simple but to say that the legal procedure is also simple would be an understatement.

2. In 1953/1955 law permitted landowners to keep only 30 acres. In 1972 the permissible area came down to 7 hectares for the landowner and his family. Many other changes were also enacted. It would have been easy if the landowner was an eccentric die-hard socialist. Such a landowner would have willingly given up surplus land without demur but such individuals were a rare breed. By and large landowners tenaciously hung on to every piece of their holding and did not surrender even a fraction of an acre, without a legal fight right up to the Supreme Court. Therefore, the question which arises in the mind is; which is that precise moment when the landowner well and truly gets divested of his surplus land.

3. It is important to know that moment of divestiture of surplus land because should the landowner die the question would arise regarding estate to be inherited by his heirs-whether through intestate or testamentary succession. Is the land of the deceased landowner inherited in accordance with laws of succession or is there some other law?

4. The various stages through which a surplus area case must travel, from start to finish, can be demarcated as declaration of holding, separation of permissible from surplus area and finally handing over of the surplus area to the landless tenant. But as the legal process is never smooth, the journey from start to finish could take years and sometimes even decades. The factors which impact on the calculation of the permissible area are many. Some of the main factors are the quality of land, whether it is under assured irrigation, whether it is under an orchard having fruit bearing trees, the composition of the family etc. During the intervening period many landowners may die, laying open the question of inheritance by his heirs. Which is that moment of divestiture of land because until that moment arrives the land would continue to stand in the name of the landowners.

Reference to Full Bench

5. This Full Bench was constituted to decide the reference made by the Division Bench consisting of Hon'ble Mr. Justice V.K. Bali and Hon'ble Mr. Justice S.K. Mittal. The reference was made on August 13, 2002 in the following terms:

There appears to be a marked distinction between the cases where there is a determination of surplus area under the provisions of the Punjab Security of Land Tenures Act, 1953 and the one that may come into being on the dint of the provisions contained in the Punjab Land Reforms Act, 1972. Be that as it may, if learned Single Judge has doubted the decision of Division Bench of this Court in Jasbir Kaur's case (supra) which judgment, as mentioned above, is of the Division Bench and which is directly on the point involved in this case, the present matter need to be determined by a Full Bench and not by a Division Bench.

Section 11(5) & (7) of the Punjab Land Reforms Act, 1972

6. At the outset, the provisions of Section 11(5) and (7) of the Punjab Land Reforms Act, 1972 need to be reproduced for facility of reference, in order to understand the legal controversy.

11. Disposal of Surplus Area.

(1) .

(2) .

(3) .

(4) .

(5) 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 the surplus area under the Punjab law, the Pepsu law or this Act, shall affect the vesting thereof in the State Government or its utilization under this Act.

(6) .

(7) Where succession has opened after the surplus area or any part thereof has been determined by the collector, the saving specified in favour of an heir by inheritance under Sub-section (5) shall not apply in respect of the area so determined.

7. Punjab was earlier covered by the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Punjab law). The areas which were formerly under PEPSU were governed by the Pepsu Tenancy & Agricultural Lands Act, 1955 (hereinafter referred to as the Pepsu law). The Punjab Land Reforms Act, 1972 (hereinafter referred to as this Act) came into effect from January 24, 1971, which date was designated as the appointed day.

Inheritance by heirs For the purpose of answering this reference what is required to be considered in depth is the effect on surplus land by the landowner's death. Does the surplus area which has once been determined, require redetermination in the hands of his heirs or is the determination of

surplus area final and binding on the heirs? This question has to be decided on the basis of interpretation of Section 11(5) and (7) of this Act.

Sardara Singh's case (C.W.P. No. 4930 of 1982)

8. Hari Singh owned 301 Kanals 4 Marias in Bhaironpur, Tehsil Sirhind, District Patiala (now Fatehgarh Sahib). In the proceedings under this Act, 66 Kanals 9 Maria of his holding were declared surplus by the Collector on August 20, 1975. Hari Singh had filed an appeal which was dismissed by the Commissioner on November 21, 1978. But while Hari Singh's revision petition was before the Financial Commissioner, he died on May 29, 1981, an childless bachelor. His estate was inherited by petitioners 3 to 8 on the basis of his Will. According to the pedigree table of the family, Hari Singh's grand father Sahib Singh had a brother Buta Singh who had two grand sons Maghar Singh and Sardara Singh. Petitioners 3 to 6 are Gurnam Singh, Baldev Singh, Kaka Singh and Amarjit Singh, sons of the aforesaid Sardara Singh while petitioners 7 and 8 are Mukhtiar Singh and Piara Singh, sons of the aforesaid Maghar Singh. It would be seen that Hari Singh's grand father and the grand father of Maghar Singh and Sardara Singh were brothers. Hari Singh's heirs are his cousin brother's grand sons.

Death of landowner

9. After Hari Singh's death on May 29, 1981, the petitioners applied on July 27, 1981 pleading that as Hari Singh had died, succession had opened in their favour. Therefore, the question of surplus area was required to be determined again as Hari Singh's estate came to vest in them.

10. According to the petitioners, Hari Singh had remained in cultivating possession of his entire holding and no part of it had been taken possession of under the Act, his ownership had never ended and the land in dispute did not vest in the State. The petitioners had become owners of land by inheritance, the question of surplus was required to be determined again in their hands.

11. The heirs of the original landowner continued in possession of the land inherited by them, even though it was declared surplus in the hands of their predecessor-in-inter-est. Therefore, the argument was that the land had not yet vested in the State Government, free from all encumbrances. It would vest only on the date on which possession was taken. This was provided by Section 8 of the Act. As possession had not been taken, according to Section 9 the land did not vest in the State Government.

12. By giving the facts of Hari Singh's case, the interpretation of Section 11(5) and (7) of the Act, as well as the application of the Full Bench judgment in *Ajit Kaur v. The Punjab Stated* reported as 1980 P.L.J. 354 (F.B.), becomes comparatively less complicated as the confusion with regard to the factual matrix has become somewhat clear. It is another matter that conflicting judicial opinion shall continue to confound.

Arguments

13. The learned Senior counsel appearing for the petitioners opened his arguments by briefly referring to the facts of the case. He took us through the various provisions of law. Reference was made to Section 32-E of the PEPSU law which provided that surplus area of the landowner shall, on the date on which possession thereof is taken by order on behalf of the State Government, be deemed to have been acquired by the State Government for public purpose. All rights, title and interest of all persons in such land were extinguished and such rights, title and interest vested in the State Government free from encumbrances.

14. Reference was then made to the provisions of Section 10-A(b) and 10-B of the Punjab law which provided that if the landowner died after the commencement of the Punjab law, and his land was inherited before utilization by the State, his heirs could take the advantage of the exemption in Section 10-A(b) but this relief would be denied to the heirs if the landowner had died after land had been utilized. Therefore, utilization was the crucial land mark.

15. Reference was lastly made to the provisions of Section 11(5) and (7) of the Act which were similar to the provisions of Section 10-A(b) and 10-B of the Punjab Law but the difference was only in the nomenclature used in Section 11(7). It was this difference which was required to be understood and interpreted. Under the Punjab law the surplus land came to vest in the tenants when possession was taken, the manner of taking possession was also given. The opinion of Hon'ble Single Judge in Ajit Kaur's case (supra) particularly in paragraphs 29 and 34 of the judgment were read out in detail, paragraph 11 of the majority view was also read.

16. The main contention of the petitioners is that the phrase "has been determined by the Collector" used in Section 11(7) does not mean that it is the process under Section 7 by which "the Collector shall, by an order determine the permissible area and the surplus area of a landowner". These words mean that the Collector has finally and conclusively completed the process and determined the surplus area. Until the final determination of surplus area, it is Section 11(5) that shall apply and not Section 11(7). The final determination is the stage when calculation of surplus area has been completed, whether by the Collector or in appeal/revision by the hierarchy of the revenue courts upto the Financial Commissioner. It would be only when the remedy of final appeal/revision has been exhausted that it could be said that surplus area had been finally determined. In the present case the landowner died when his petition was before the Financial Commissioner. The matter had not been finally determined although the Financial Commissioner relied upon Section 11(7) and the majority view in Ajit Kaur's case (supra) to dismiss the petition.

Rattan Devi S case (C.W.P. 5338 of 1082)

17. Rattan Devi's husband Kishan Singh's land was declared surplus under the Punjab law. Subsequently on June 23, 1976, 6.4 hectares of Kishan Singh's land was declared surplus under this Act. This land had not been utilized till Kishan Singh's death on June 17, 1978. No redetermination of the permissible area under this Act in the hands of his widow and son was undertaken after his death. On August 30, 1982 the petitioners filed objections under Section 9 of the Act, in reply to notice issued for taking of possession of the surplus land of the deceased. The petitioners also filed an application for review of the earlier order passed on June 23, 1976. The objection petition and the

review application were both dismissed by the Collector on November 22, 1982 on the basis of the Full Bench judgment in Ajit Kaur's case. Consequently, an order was passed for delivery of possession of surplus area to various allottees.

18. The learned Counsel representing Rattan Devi argued that under Section 11(5) of this Act when the landowner dies before possession of surplus area has been taken, his heirs succeed. Therefore, the surplus area does not become available for disposal to the allottees. This benefit to the heirs has been provided uniformly, irrespective of the area being declared surplus under the Punjab law or Pepsu law or this Act. However, by virtue of Section 11(7) of this Act it appears that the benefit given to the heirs under Sub section (5) has been withdrawn.

19. According to the learned Counsel there could be three possible interpretations of Section 11(7). It could be said that this sub section applied only to cases where surplus has been declared under this Act. Alternatively it could be argued that this sub-section came into operation only after possession of the surplus land has been taken and the land had come to vest in the State. Thirdly, the restriction on the rights of the heirs imposed by the said sub-section took place only after the order declaring land as surplus, passed by the Collector under this Act, had become final.

20. According to the learned Counsel there were two basic rules of interpretation of Statutes which were required to be kept in mind while interpreting Section 11(7). The first rule was that the legislature never intends to take away with one hand what it has given with the other. Reference is made to *Krishan Kumar v. State of Rajasthan and Ors.* (paragraph 11). The second principle was of harmonious construction requiring that interpretations should be done in such a way that all provisions become workable. Learned counsel relied on *Salem Advocate Bar Association v. Union of India* (2005) S.C.C. 344. Furthermore, reference is made to *State of Punjab v. Ajaib Singh and Anr.* (paragraph 14). Summing up his arguments it was contended that the only valid interpretation of Section 11(7) was to interpret it to mean that it came into operation after possession of surplus land had been taken. The reason for adopting this interpretation was that any other interpretation would lead to discrimination between two similarly situated persons, one whose area has been declared surplus under this Act and one whose area was yet to be declared surplus. Interpretation that Section 11(7) could become operative even before possession has been taken, although the area surplus attained finality would also lead to confusion because land was yet to vest in the State. Therefore, the only valid interpretation was that subsection (7) would apply after possession had been taken and not before.

Ajmer Kaur's case 2004(7) S.C.C. 381

21. The original landowner was Daya Singh (Ajmer Kaur's father). Daya Singh alongwith wife Kartar Kaur, who also held some land, filed a return under this Act which after scrutiny was found to constitute 10.12 hectares of first-quality land. Out of his area they were entitled as a family to 7 hectares 3.12 hectares was surplus. Daya Singh went in appeal before the Commissioner but failed. However, Kartar Kaur died thereafter on October 9, 1980. In 1982 the surplus land was mutated in favour of the State Government and allotted to private respondents in 1983. Daya Singh filed an application under Section 11(5) in 1985 for redetermination of his holding in view of Kartar Kaur's

death. The Collector first decided in favour of Daya Singh but later reviewed the order and held that the earlier surplus order declaring 3.21 hectares of land be restored. Daya Singh filed an appeal against this order before the Commissioner which was dismissed on November 11, 1987. Daya Singh died on December 22, 1987. Daya Singh's daughter Ajmer Kaur filed a revision before the Financial Commissioner which was dismissed in 1994.

22. Ajmer Kaur challenged the order before the High Court, but was again unsuccessful. The Supreme Court held that in Section 11(7), where words used were "where succession has opened after the surplus area or any part thereof has been determined by the Collector", the phrase "determined by the Collector" meant that the order of the Collector has attained finality. The order of the Collector was passed in 1976 and 3.12 hectares of land was declared surplus, appeal was dismissed in 1979. Thus the determination by the Collector became final in 1979. It could not be reopened in 1985 on Daya Singh's application under Section 11(5) of the Act, after Kartar Kaur's death.

23. In respect to Section 11(5) of the Act it was held that an application under this provision could have disastrous consequences. Land had been mutated in favour of the State Government in 1982 and allotted to a third party in 1983. If this settled position was unsettled after Kartar Kaur's death, it would require the allottee to restore possession of the land to the State Government. The State Government would then have to be divested of the land, for it be restored to the landowner. The effect of such a situation would be that the land should remain in a state of flux and there would be no finality.

24. The learned counsel, taking a clue from Ajmer Kaur's case, argued that the Supreme Court had not finally interpreted the provision of Section 11(7) because the matter was decided on the basis of the Collector's order which had attained finality. Although inheritance had opened before the vesting of surplus land yet the application for redetermination had been filed long after the landowner had been divested of surplus area.

25. Ajit Kaur's case is the main judgment on the subject that we are concerned with. One Pakhar Singh owned 51 standard acres. On December 10, 1959, 20 standard acres was declared surplus under the Punjab law by the Collector. On appeal the matter was remanded back but the order was maintained. Further appeal and revision also proved unsuccessful. Pakhar Singh died on November 1, 1965. His estate was inherited by his son Harbans Singh and grand son Achhar Singh (son of his pre-deceased son). Out of the land declared surplus, 8-1/2 standard acres was utilized for resettlement under the Punjab law while the remaining area remained unutilized and in the possession of Pakhar Singh deceased. In proceedings under Section 10-B of the Punjab law, the Collector through an exparte order passed on January 2, 1973 declared the entire area surplus as having vested in the Punjab Government. Subsequently the entire area of 20 standard acres was also held to be surplus under Section 8 of this Act. That order was challenged before the Commissioner and upheld on December 26, 1978. The Full Bench unanimously held that since Pakhar Singh had died before coming into force of this Act, his heirs were entitled to the protection under Section 10-A of the Punjab law and the surplus area was required to be redetermined in their hands. It was also held that since no order had been passed under this Act, Section 11(7) of this Act was not attracted.

26. Nevertheless, the Full Bench had also been required to interpret an earlier Division Bench judgment of this Court in Secretary to Government Punjab Revenue Department and Ors. v. Jagar Singh and Ors. 1977 P.L.J. 88. The Division Bench judgment was held to be no longer good law and was overruled. However, as regards the operation of Section 11(5) and (7) of this Act, there was divergence of opinion.

The majority view (per Harbans Lal and P.C. Jain, JJ.) was that-

(i) Section 11(7) shall be attracted only to those cases where surplus area was determined under this Act, if death of the landowner occurred after the above decision, the succession in favour of his heirs will not effect on the surplus area already determined.

(ii) where surplus area had been determined under the Punjab law or Pepsu law and thereafter landowner died, the protection to the heirs as embodied in Section 11(5) would be fully available.

(iii) Section 11(7) of this Act would be attracted only in those cases where surplus area is declared for the first time under this Act (the landowner being within the permissible area under the Punjab law and the Pepsu law). However, once surplus area was determined under this Act, whether for the first time because no such order had been passed under the previous law or after the death of the landowner subsequent to the order regarding surplus area the acquisition of the land by the heirs shall not be saved under Section 11(5), it would be fully covered by Section 11(7).

27. The minority view per (MM. Punchhi, J.) may now be considered. Therein the conclusions reached by the learned Single Judge were:

(i) Provision of Section 11(7) would be attracted to all cases of surplus area declared under the Punjab law, Pepsu law or this Act but it envisages that stage of determining by snapping or de-linking the ties of the landowner by divesting him of the possession and title under the orders of the Collector, of the surplus area so declared.

(ii) The protection available to heirs under Section 11(5), under either of the aforesaid three Acts would continue to be available till the Government divested the landowner of land under Section 8 of this Act or utilized it under Section 11, prior to the death of the landowner.

(iii) The formal re-declaration or de-declaration of the surplus area in the hands of the heirs after the death of the landowner, under either of the three laws would not be necessary because the protective umbrella against vesting or utilization under Section 11(5) would be available.

(iv) Sections 7(1) and 11(7) operates in mutually exclusive fields. The former applies at the declaratory stage while the latter at the executory stage. The exact scope of the Reference to the Full Bench

28. When some of the present petitions came up before the Hon'ble Single Bench on May 14, 1997, during arguments the learned Counsel laid stress on two Division Bench judgments of this Court -

Jasbir Kaur and Anr. v. Financial Commissioner and Anr. (1996-2) 13 P.L.R. 635 : 1996 P.L.J. 205 and Ranjit Ram v. Financial Commissioner and Ors. 1981 P.L.J. 259 (F.B.). These judgments had taken the view that land had to be reassessed in the hands of the heirs of the deceased landowner. The Hon'ble Single Judge was of the view that the judgment in Jasbir Kaur's case is based on wrong premises and the judgment in Ranjit Ram's case did not apply. Therefore, the matter was referred to the Division Bench.

29. On August 22, 2002 the Division Bench felt that the Single Judge had doubted the views of the Division Bench in Jasbir Kaur's case (supra), therefore, the matter was required to be determined by Full Bench. The matter that has been referred to the Full Bench is with regard to the doubt expressed regarding the Division Bench judgment of this Court in Jasbir Kaur's case which had also been followed in Manjit Kaur's case 1996 P.L.J. 369. Consequently, we shall have to revisit the judgment of this Court in Jasbir Kaur's case (supra).

Jasbir Kaur's case 1996 P.L.J. 205

30. The facts in that case were that the original landowner Sant Kaur filed a declaration under this Act before the Collector. She had a daughter and an adopted son. The total holding of the family was 24.86 ordinary hectares. The Collector declared 5.25 hectares as surplus. The landowner sold 16 Kanals 6 Maras on April 27, 1972 to the first petitioner and 80 Kanals 10 Maras to the second petitioner. These sales were bonafide and for valuable consideration. The landowner later executed a Will on September 30, 1976 bequeathing her property to her three grand-sons.

31. However, the landowner's adopted son Jagjit Singh had also obtained decree from a civil court to the effect that he was owner in possession of 2/3rd share and in joint possession of 1/3rd share. The civil court had held that Jagjit Singh was Sant Kaur's adopted son.

32. When surplus area of Sant Kaur was considered, the Collector ignored the sales in favour of her grand-daughters but the order was set aside by the Commissioner and the matter was remanded back on July 30, 1979. After remand Sant Kaur died on February 3, 1980. On July 23, 1980 the Collector declared land to be surplus while ignoring the sales and also ignoring Sant Kaur's Will. The petitioners' contention was that Sant Kaur had died during the surplus area proceedings, therefore, her surplus area had to be redetermined in the hands of her heirs but the Collector had ignored this plea. In appeal the matter was remanded back but in the fresh order passed by the Collector for determining the surplus area the sales were ignored. The appeal before the Commissioner was dismissed.

33. The main contention in the petition was that Sant Kaur had died during the proceedings after remand but before surplus area had been determined, the surplus area had to be determined again in the hands of the heirs of the original landowner. The Collector had placed reliance upon the decision of the Supreme Court in Bhikoba Shankar v. Mohan Lal Punchand, a case under the Maharashtra law wherein it had been held that the proceedings could not be dropped because of the death of the landowner, the heirs of the deceased were entitled to participate in the said proceedings but would be entitled as heirs only to such land that may remain after surplus area has been



determined. On the basis of this the Collector came to the stunning conclusion that death of Sant Kaur did not make any difference to the declaration of surplus area, as the proceedings did not become infructuous.

34. The petitioner had asserted that there was a distinction between the Maharashtra law and this Act. Under the former land vested in the Government while under the latter it vested only when the Government took possession and utilized it and till then the landowner continued to be the owner. On his death the surplus land had to be redetermined in the hands of the landowner's heirs. It was in this context that reliance had been placed upon *Ranjit Ram v. Financial Commissioner Revenue* 1981 P.L.J. 259 (F.B.), *Karnail Singh v. State of Punjab* 1989 P.L.J. 95 and *Sukhdarshan v. State of Punjab* 1991(2) All India Land Laws Reporter 99. All these judgments had taken the consistent view that if the landowner dies during the pendency of the case and the State has not taken possession of the surplus area, the surplus area was required to be determined afresh under this Act. Frankly speaking we are unable to understand how the view of the Division Bench in *Jasbir Kaur's* case can be upheld because *Ajit Kaur's* case was completely overlooked.

*Manjit Kaur's* case 1996 P.L.J. 369

35. In *Manjit Kaur's* case 0.6480 hectares of land had been declared surplus on October 10, 1983 but possession had not been taken. Resultantly, under this Act it did not vest in the Government. During this period the landowner died and later the landowner's widow also died on December 5, 1984. The Division Bench relied upon the Full Bench decision in *Ajit Kaur's* case and held that in such eventualities surplus area in the hands of the heirs shall have to be redetermined but overlooked the majority view.

A comment on judgment of the minority view in *Ajit Kaur's* case

36. It seems to us that the basic premise which the Hon'ble Judge relied upon was of succession. What happens to the property held by the deceased when he dies? Therefore, what is the extent of the property held by the deceased at the time of his death, if proceedings are against his holdings under any of the land reforms laws. The rights enjoyed by a landowner, until he is divested of them upon possession being taken from him, were some of the questions which the Hon'ble Single Judge had on his mind when he proceeded to tackle the ticklish questions of determination/declaration of surplus area vesting/possession of surplus area, succession/inheritance. In this regard we would like to reproduce the following from the minority judgment:

24. Thus till the landowner loses his title to the land absolutely under both laws, he remains entitled to compensation of land in the event of its being acquired by the State Government under any other law, obviously causing affectation to the surplus area declared as such. The second involuntary transfer causing affectation is the case of inheritance received by heirs to the deceased landowner.

29. Thus the act of declaring a surplus area under either of the three laws would neither cause divestiture of title or deprive of possession of the landowner, and since he would keep holding a valid title thereto, his death would cause inheritance and necessary affectation and to the

anticipated vesting of land in the State Government or its utilization, under the Reform law. One has again to remind oneself that property would not remain in abeyance even for a single moment. The result would be incongruous if inheritance is to be kept in abeyance, so as to cater to the unripened claims of the State Government trampling the legitimate rights of the heirs.

31. Now the word "determine" carries besides others, two mutually exclusive meanings depending on the context. While in one sense, it means to fix or settle or to define or to decide. In another sense, it means to put an end to or to come to end.

To me, it appears that the word "determine" used in the context of Section 7(1) of the Reform law means in the first sense depicted hereto before i.e. to fix or settle or to define or to decide. That is the nature of an order of declaration that so much has been determined as the permissible area and the remaining as the surplus area. The word "determined" used in Sub-section (7) of Section 11 of the Reform law appears to me to have been used in the context in the second sense i.e. "to put an end to or to come to an end." The meaning employed therein, contra-distinct of causing a declaration, is in the nature of putting an end to the surplus area by snapping the ties and the links of the landowner with his surplus land."

33. The social conditions in the State demanded that the spare land with a landowner on the standards of the "enough" set up uniformly, be made over to the 'have-nots', but if the same object stands achieved by the death of the landowner, prior to third party interest or of the State coming in to cause divestiture, the 'have-nots' yet to be ascertained and earmarked.

Interpreted in this manner can we only provide "force and life" to the intention of the Legislature.

The majority view in Ajit Kaur 's case

37. The majority view in Ajit Kaur's case proceeds on the basic premise that Section 11(5) and 11(7) of the Act have to be interpreted by reading their plain meaning. Section 11(5) grants certain benefits to the heirs by providing that no transfer or disposition of land which is included in the surplus area under either Punjab Law, Pepsu Law or this Act, shall affect its vesting in the State Government or its utilization under this Act. However, land acquired by the State Government or land inherited by an heir is exempted from the provisions of Section 11(5). This means that heirs of the landowner who inherit land, which has been declared surplus under any of the three laws causes affectation to the surplus area. In simple terms, when a landowner dies his surplus area shall be redetermined. According to the majority view this benefit has been withdrawn by Section 11(7), since inheritance by an heir on the death of the landowner, after surplus area has been determined shall not be redetermined. The majority view is that Section 7(1) and 11(7) would be attracted in those cases where death of the landowner occurred before the surplus area was determined. However, if the death occurred after the surplus area had been determined, the succession in favour of the heirs of the deceased would not affect the surplus area already determined.

Conclusion

38. We are of the view that the controversy can be resolved either through reading the plain meaning of words or through harmonious construction, if the plain meaning of words does not yield any result. The majority view had taken the plain meaning of the words and come to the definite conclusion which has been reproduced above. Nevertheless, the minority view is also based on the plain meaning of certain words occurring in Section 11(7). The difference between the two views is with regard to the meaning of "determine" and "determined". The majority view appears to be to take "determine" and "determined" to mean the same thing but the minority view is that "determine" means to decide while "determined" used in Section 11(7) means to put to or come to an end.

39. We may take the assistance of the judgment of the Supreme Court in Ajmer Kaur's case (supra) where the phrase "determine by the Collector" used in Section 11(7) was read to mean that the order of the Collector had attained finality. In that case the order of the Collector had been passed in 1976 when the land was declared surplus. The appeal was dismissed in 1979. Subsequently, the surplus land had been mutated in favour of the State Government in 1982 and allotted to private individuals in 1983. The landowner had filed an application in 1985 for redetermination in view of the death of his wife but the Supreme Court held that determination by the Collector in 1979 had become final and could not be reopened in 1985.

40. The arguments of the learned Counsel for Rattan Devi may not be required to be examined in detail because we are harmoniously constructing Sections 11(5) & 11(7) of the Act. This necessarily implies that Section 11(7) is not to be declared otiose or unworkable, as the learned Counsel had tried to advance before us.

41. We are, therefore, of the considered opinion that in order to harmoniously read the two views in Ajit Kaur's case and to give correct interpretation of the provision of Section 11(5) and 11(7) of this Act, we ought to take the aid of Supreme Court's judgment in Ajmer Kaur's case. We hold that until the surplus area has been finally determined by the Collector and appeals/revisions have been dismissed, the death of the land owner would certainly cause affectation to the surplus area which would be required to be redetermined in the hands of his heirs.

42. Resultantly, where the surplus area has not been finally determined, and the matter is pending in appeals or revisions before the Revenue Courts or before this Court under Article 226 of the Constitution, or before the Supreme Court of India, death of the landowner would cause affectation of surplus area which would be required to be redetermined in the hands of the heirs of the deceased landowner. Such an interpretation would harmoniously construct the provisions of Section 11(5) and 11(7) and also give a proper interpretation to both the views expressed in Ajit Kaur's case. However, we are unable to uphold the judgments of this Court in Jasbir Kaur's case because Ajit Kaur's case was not at all considered by the Hon'ble Division Bench. As regards Manjit Kaur's case, even though Ajit Kaur's case was considered, the majority view had been entirely overlooked.

43. This reference is decided in above terms.

Epilogue Since we had prefaced our judgment with a few introductory remarks, it is in the fitness of things that we conclude by making some observations on the manner in which the State hopelessly failed to implement land reforms.

After framing laws to take land from the landowners, so much time was consumed in enforcing the law that when finally surplus land was taken possession of and allotted, the legislation did not have the desired socio-economic impact. Landowners employed all types of legal subterfuge to keep their holdings intact, while the landless kept running from pillar to post for years for allotments to materialise. During this time landowners death would change the status of the holdings in the hands of the heirs. This was the problem which we were confronted with and to which we hope we have provided the final solution.

Writ petitions be placed before the Hon'ble Single Judge for decision on the basis of this judgment.