

MALA SINGH

v.

THE FINANCIAL COMMISSIONER AND OTHERS

OCTOBER 15, 1993

[KULDIP SINGH AND S.P. BHARUCHA, JJ.]

*The Punjab Security of Land Tenures Act, 1953—Ss.2(3), 2(5A), 5-B, 5-C, 10-A, 10-B, 18—Land owner—Permissible area—Proceedings for declaration of surplus area—Surplus land in occupation of tenant—Declared as tenant's permissible area—Utilization of surplus area—Held, land declared as tenant's permissible area stood utilized by virtue of declaration.*

*The Haryana Ceiling on Land Holdings Act, 1972—Ss.12(3), 33(2)(i)—Vesting of surplus area—Land declared as 'tenant's permissible area' under Punjab Security of Land Tenures Act—Application of tenant for purchase of—Introduction of Act during pendency of application—Held, application to be disposed of as if Act had not been passed—S.12(3) not relevant for determination of question whether before coming into force of Act, surplus land under Punjab Act had been utilized or not.*

*Words and Phrases—Expression "utilized" occurring in ss. 10-A and 10-B of the Punjab Security of Land Tenures Act, 1953—Interpretation of.*

The appellant was a tenant in cultivatory possession of certain land owned by the father of respondents no. 3-5, who was a big land-owner under the provisions of the Punjab Security of Land Tenures Act, 1953. During the proceeding under the Act against the land-owner certain land owned by him including that in occupation of the appellant was declared as surplus. On appellant's application the land in his occupation was reserved as tenant's permissible area. After land-owner's death in September 1971, respondents no. 3-5 filed an application for ejectment of the appellant on the ground that they had become small land-owners and as such were entitled to the land possessed by the appellant as a tenant, and the appellant applied under s.18 of the Act for purchase of the said land.

The Assistant Collector allowed the application of the appellant and rejected that of the respondents. The appeal of the respondents was

- A dismissed by the Collector holding that the tenant's permissible area was equal to the area as utilized, which could not revert back to the respondents. On revision petitions being filed by the respondents, the Commissioner recommended to the Financial Commissioner to dismiss the application of the appellant and to redetermine the question whether the respondents were small land-owners.

B

The Financial Commissioner accepted the revision petitions and held that since the application by the tenant for purchase of the land in dispute was made during the life time of the land-owner on whose death the succession opened, the question whether the heirs were small land-owner assumed importance. He also held that in view of s.12(3) of the Haryana Ceiling on Land Holdings Act, 1972, the tenant's permissible area under the Act vested in the State Government with effect from the appointed day and, therefore, the land in dispute could not be held to be utilized. Aggrieved, the tenant filed the appeal by special leave.

C

D

Allowing the appeal, this Court

E

HELD : 1.1. On January 24, 1971, when the surplus land in possession of the appellant was declared as tenant's permissible area, it stood utilized by virtue of the said declaration. The land-owner having died after the utilization of the land in dispute, his successors could not take advantage of the fact that they had become small land-owners after the death of their father. [413-B-C]

F

G

1.2. The expression "utilized" though not defined under the Act, has been used in ss. 10-A and 10-B of the Act to indicate that the surplus area of a land-owner gets utilized on the re-settlement of tenants on the said land. Under the scheme of the Act the surplus area of a big land-owner could be used for the resettlement of landless tenants and ss.10-A and 10-B of the Act provided that as and when it was done, the said surplus area was taken to be utilised. If the surplus land allotted to the landless tenants stood utilized, the surplus land declared as tenant's permissible area would also be considered to be utilized. [412-G-H, 413-A]

H

1.3. The Financial Commissioner erred in relying on s.12(3) of the Haryana Act and holding that the land in possession of the appellant was not utilised. The said section is not relevant for determining the question as to whether before coming into force of the Haryana Act the surplus land

under the Act had been utilized or not. It provides that the area declared surplus under the Act whether utilized or not and the area declared as 'tenant's permissible area' stood vested in the State Government, whereas under the Punjab Security of Land Tenures Act the surplus area on which the tenants were settled as also the area declared as tenant's permissible area continued to be under the ownership of the land-owner and he was entitled to receive rent as permitted under the Act. [413-E-F, A]

2. Since the application of the appellant under s.18 of the Punjab Security of Land Tenures Act, 1953 for purchase of the land was pending immediately before the commencement of the Haryana Ceiling on Land Holdings Act, 1972, the same was to be disposed of in terms of s.33(2)(i) of the Haryana Act as if the said Act had not been passed. The Assistant Collector and the Collector were justified in allowing the application of the appellant for the purchase of the land in dispute. [413-D]

*Jaswant Kaur v. State*, AIR (1977) P&H 221 and *Nand Lal v. Haryana*, [1980] 3 SCR 1181, held inapplicable.

3. The orders of the Commissioner, the Financial Commissioner and of the High Court are set aside and that of the Assistant Collector as upheld by the Collector restored.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2357 of 1989.

From the Judgment and order dated 26 May, 1988 of the Punjab and Haryana High Court at Chandigarh in Civil Writ Petition No. 1925 of 1983.

K.K. Mohan for the Appellant.

M.R. Sharma and Ms. S. Janani for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Kishan Dutt, father of respondents 5 to 7 in the appeal herein, was a big land-owner under the provisions of The Punjab Security of Land Tenures Act, 1953 (the Act). Mala Singh, the appellant, was a tenant since 1951-52 in a part of the land owned by Kishan Dutt. Mala Singh was shown in the revenue records as a tenant in cultivating

- A possession of the land. Since Kishan Dutt was a big land-owner, proceedings under the Act were initiated and the Collector, Sirsa by its order dated January 31, 1962, declared certain area owned by Kishan Dutt including the land in Mala Singh's possession, as surplus under the Act. Kishan Dutt was permitted to retain the permissible area reserved by him under the Act. Mala Singh filed an application before the Revenue Officer praying that the land in his possession be reserved as "tenant's permissible area" and be taken out of the surplus pool. The application was allowed by the Revenue Officer vide his order dated December 24, 1963. The net result was that Kishan Dutt was permitted to retain his permissible area under the Act and the land in possession of Mala Singh was declared as tenant's permissible area.

- C Section 18 of the Act provided that a tenant who was in continuous occupation of the land for a minimum period of six years was entitled to purchase the same provided the said land was not included in the reserve area of the land-owner. Mala Singh filed an application on June 24, 1972, under Section 18 of the Act for the purchase of the land under his possession as a tenant. It would be relevant to mention that Kishan Dutt died on September 4, 1971, leaving his son Madan Mohan and two daughters. Madan Mohan and his sisters filed an application dated November 23, 1971, for ejectment of Mala Singh from the land in dispute, on the ground that after the death of their father, the three successors had become small land-owners and, as such, were entitled to the land, possessed by Mala Singh as tenant.

- D Both the applications came for consideration before the Assistant Collector 1st Grade, Sirsa, who by his order dated June 18, 1977 rejected the application of Madan Mohan and allowed the application of Mala Singh for the purchase of the land. Madan Mohan along with his sisters filed appeal before the Collector, Sirsa against the order of the Assistant Collector. The Collector dismissed the appeal on the following reasoning:-

- E "In this case, the land in dispute is the tenant's permissible area and this area is equal to the area as utilised. This area cannot be reverted back to the appellants. The rulings cited by the appellants are only applicable when the surplus land was not utilised. Under the circumstances I feel that the order passed by the Assistant Collector allowing the purchase application is perfectly legal and

after the purchase, application for ejectment of the tenant has no meaning. Hence, the appeals filed by the appellants are hereby dismissed."

Madan Mohan and his sisters filed two revision applications before the Commissioner, Hissar Division. The Commissioner allowed the revision petitions and recommended to the Financial Commissioner to dismiss the application of the tenant for the purchase of the land and to have the question whether the land-owners were small land-owners redetermine. The Financial Commissioner by his order dated November 11, 1982, accepted the recommendations of the Commissioner and dismissed the application of Mala Singh for the purchase of the land. The Financial Commissioner accepted the revision petitions on the following reasoning:-

"It is obvious that an application for the purchase of the land was made during the life time of the original land-owner. The succession opened as soon as the death of the original land-owner took place and the question whether the heirs were small land-owners assumed importance. Furthermore, a plain reading of Section 12(3) of the new Act show that the tenant's permissible area under the old Act vested in the State Government with effect from the appointed day. This being so, the land in dispute could not be held to be utilised. I, therefore, agree with the view expressed by the learned Commissioner."

Mala Singh challenged the order of the Financial Commissioner by way of writ petition under Article 226 of the Constitution before the High Court of Punjab and Haryana which was dismissed by the High Court on May 26, 1988. This appeal by Mala Singh by way of special leave is against the order of the Financial Commissioner as upheld by the High Court.

The Haryana Ceiling on Land Holding Act, 1972 (Haryana Act) came into force on December 23, 1972. Sections 12(3), 33(1) and 33(2)(i) of the Haryana Act which are relevant are as under:-

"12. Vesting of surplus area.—(3) The area declared surplus or tenants permissible area under the Punjab Law and the area declared surplus under the Pepsu Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area

A which may be so declared in pending proceedings to be decided under the Punjab Law or Pepsu Law shall be deemed to have vested in the State Government with effect from the date of such declaration.

B 33. Repeal and savings:— (1) The provisions of the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, which are inconsistent with the provisions of this Act are hereby repealed.

C (2) The repeal of the provisions of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactments, shall not affect—

D (i) the applications for the purchase of land under Section 18 of the Punjab Law or Section 22 of the Pepsu Law, as the case may be pending immediately before the commencement of this Act, which shall be disposed of as if this Act had not been passed;"

E It is not disputed that the appellant was a tenant in the area owned by Kishan Dutt which was declared surplus under the Act. It is further not disputed that the area in possession of the appellant was declared as tenant's permissible area. The only question before the authorities under the Act was whether the area in possession of the appellant as a tenant could be considered to have been utilized before the death of Kishan Dutt. The Assistant Collector and the Collector gave the answer in the affirmative whereas the Commissioner and the Financial Commissioner came to the conclusion that the area in possession of the appellant was not utilized.

F We have heard learned counsel for the parties. We are of the view that the revisional authorities under the Act and the High Court fell into patent error in holding that the surplus area of Kishan Dutt which was declared tenant's permissible area on January 24, 1971 had not been utilised on September 4, 1971 when Kishan Dutt died. The expression "utilized" has not been defined under the Act. It has been, however, used in sections 10-A and 10-B of the Act to indicate that the surplus area of a land-owner gets utilized on the resettlement of tenants on the said land. Under the scheme of the Act the surplus area of a big land-owner could be used for the resettlement of landless tenants and Sections 10A and 10B of the Act provided that as and when it was done, the said surplus area

H

was taken to be utilized. If the surplus land allotted to the landless tenants under the Act stood utilized, we see no reason why the surplus land which was declared as tenant's permissible area under the Act, be not considered to be utilized. The appellant was an old tenant of the land-owner. The land under his possession was declared surplus. He was permitted to continue in the said land by declaring the same as a tenant's permissible area. We are of the view that on January 24, 1971 when the surplus land in possession of the appellant was declared as tenant's permissible area, it stood utilized by virtue of the said declaration. The land-owner, Kishan Dutt, having died after the utilization of the land in dispute, his successors could not take advantage of the fact that they had become small land-owners after the death of their father.

Since the application of the appellant under Section 18 of the Act, for the purchase of the land was pending immediately before the commencement of the Haryana Act, the same was to be disposed of in terms of section 33(2)(i) of the Haryana Act as if the said Act had not been passed. The Assistant Collector and the Collector, Sirsa, were thus justified in allowing the application of the appellant, Mala Singh, for the purchase of the land in dispute. The said authorities were further justified in rejecting the ejection application of Madan Mohan and his sisters.

The reliance by the Financial Commissioner on section 12(3) of the Haryana Act for reaching the conclusion that the land in possession of the appellant was not utilized, is wholly misplaced. The said provision has an entirely different purpose. Under the Act, the surplus area on which the tenants were settled and also the area which was declared as tenant's permissible area, continued to be under the ownership of the land-owner and he was entitled to receive rent as permitted under the Act. Under section 12(3) of the Haryana Act the area declared surplus under the Act, whether utilised or not, and the area declared as 'tenant's permissible area' stood vested in the State Government. Section 12(3) of the Haryana Act has nothing to do with the question as to whether before coming into force of the Haryana Act, the surplus land declared under the Act had been utilized or not. The Financial Commissioner fell into patent error and, as such, the conclusions reached by him cannot be sustained. Although, there are ample provisions under the Haryana Act for the allotment of land, which stood vested in the State Government under section 12(3) of the Haryana Act, to the tenants but it is not necessary for the appellant to follow

A that route. His application for purchase of the land under section 18 of the Act was pending immediately before the commencement of the Haryana Act and, as such, he was entitled to have a decision on the said application under section 33(2)(i) of the Haryana Act. The said application was rightly allowed by the Assistant Collector, Sirsa.

B Mr. Mela Ram Sharma, learned senior advocate, appearing for the respondent landlords vehemently contended that the appellant has no right to purchase the land in view of the law laid down by a Full Bench of Punjab and Haryana High Court in *Jaswant Kaur v. State*, AIR (1977) P & H 221. The said judgment of the Punjab and Haryana High Court was affirmed by this Court in *Nand Lal v. Haryana*, [1980] 3 SCR 1181. We do not agree with the learned counsel. *Jaswant Kaur's* case has no relevance to the facts of the present case.

D We allow the appeal, set aside the orders dated December 4, 1980 of the Commissioner, dated November 11, 1982 of the Financial Commissioner and also of High Court dated May 26, 1988. We restore the order of the Assistant Collector, Sirsa as upheld by the Collector, Sirsa. The appellant shall be entitled to his costs which we quantify as Rs.10,000.

R.P.

Appeal allowed.