

CASE NO.:
Appeal (civil) 6489-6490 of 1998

PETITIONER:
Ajmer Kaur

RESPONDENT:
State of Punjab and ors.

DATE OF JUDGMENT: 07/05/2004

BENCH:
BRIJESH KUMAR & ARUN KUMAR.

JUDGMENT:
JUDGMENT

ARUN KUMAR, J.

These appeals are directed against the judgment of the Punjab and Haryana High Court dismissing in limine a Writ Petition filed by the petitioner challenging the order of the revenue authorities regarding declaration of a portion of land owner by predecessor in interest of the appellant as surplus under The Punjab Land Reforms Act, 1972(hereinafter referred to as the 'Act'). Briefly the facts are that Daya Singh, father of the petitioner filed a return regarding his and his wife Kartar Kaur's holding of lands under Section 5 of the Act. After scrutinizing the return, the Collector found that the holding in their hands came to 10.12 hectares of first quality land. Out of that they were entitled to 7 hectares of land. Thus 3.12 hectares of land was found to be surplus which the land owners were required to surrender. Daya Singh filed an appeal against the said order before the Commissioner. One of the objections taken by Daya Singh in his appeal was that the land held by his wife Kartar Kaur could not be clubbed with the land held by him. This objection was turned down by the Commissioner. It was observed that according to Section 3(4) of the Act a "family" in relation to a person means a person, wife or husband, as the case may be, of such person and his or her minor children. The appeal was dismissed by the Commissioner. Kartar Kaur wife of Daya Singh died on 9th October, 1980. In 1982, the surplus land was mutated in favour of the State Government and in 1983 it was allotted to third parties. On 21st June, 1985 Daya Singh filed an application under Section 11(5) of the Act for re-determination of the land holding in view of death of Kartar Kaur. The Collector vide his order dated 23rd July, 1985 disposed of the said application holding that there was no surplus area of land with Daya Singh. The land declared surplus vide earlier order dated 30th September, 1976 was ordered to be restored to Daya Singh and the mutation in favour of the State Government was cancelled. On 19th May, 1986, the Collector sought permission from the Commissioner to review the order dated 23rd July, 1985. The Commissioner granted the requisite permission on 14th August, 1986. In view of the permission granted to him, the Collector heard the matter all over again and vide his order dated 22nd December, 1986 held that Daya Singh was in possession of surplus land. The order dated 30th September, 1976 passed by the Collector earlier declaring 3.12 hectares of first quality land as surplus was maintained and the Mutation No. 2760 vide which ownership and possession of surplus land was

sanctioned in favour of the State Government was restored. Appeal filed by Daya Singh against the said order was dismissed by the Commissioner vide his order dated 11th November, 1987. On 22nd December, 1987, Daya Singh died. Revision filed by Ajmer Kaur (appellant herein) before the Financial Commissioner against the order of Commissioner was dismissed on 27th January, 1994. This order of the Financial Commissioner was challenged in the Punjab and Haryana High Court by way of a Writ Petition. The Writ Petition was however dismissed on 3rd October, 1994 permitting the petitioner to approach the Financial Commissioner by way of a Review Petition wherein she could raise all the questions sought to be raised in the Writ Petition. Thus the matter went back to the Financial Commissioner by way of Review applications. The review applications were dismissed by the Financial Commissioner vide order dated 10th March, 1998. The order of the Financial Commissioner was again challenged by way of Writ Petitions filed in the Punjab and Haryana High Court at Chandigarh. The Writ Petitions were again dismissed by the High court vide order dated 30th July, 1998. The present appeals are directed against the said orders of the High Court.

Mr. Manoj Swarup, the learned counsel appearing for the appellant raised the following points in support of the appeals :

1. The order dated 23rd July, 1985 passed by the Collector on application under Section 11(5) of the Act holding that there was no surplus land had become final and the same could not be reviewed or reopened by the Collector particularly after 90 days in view of Section 81 of the Act.

2. Section 11(5) of the Act conferred a right on the land owner which could not be defeated by sub-section (7) of Section 11 of the Act.

Regarding the first point it was contended that at the most the respondents (Revenue authorities) could take the benefit of a period of ninety days to file review against the order dated 23rd July, 1985 whereby declaration of surplus land was re-determined and it was held that there was no surplus land in the hands of Daya Singh. The Collector sought review after about nine months which was clearly barred by time. In reply the learned counsel for respondents submitted that there is power to condone delay with the authorities in exercise of which time to seek review can be extended. In support of the submission, our attention was invited to Section 82 of the Act which contains provision regarding review of orders of revenue authorities. According to sub-clause (b) of Section 82(1) "no application for review of an order shall be entertained unless it is made within ninety days from the passing of the order or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period." We have considered the rival contentions. In our view the bar of limitation does not come in the way of the Collector re-determining the permissible land holding of Daya Singh. A bare reading of clause (b) of sub-section (1) of Section 82 shows that review can be made even after expiry of period of ninety days where the Revenue Officer is satisfied about cause for delay. The fact that the Commissioner granted permission to the Collector to review his order suggests that

the hurdle of limitation had been successfully crossed.

Coming to the second point a conflict is suggested between sub-sections (5) and (7) of Section 11 of the Act. We would like to quote the relevant provisions :

"Section 11 :

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(2)\005\005\005

(3)\005\005\005

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(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 the Act.

(6) \005\005..

(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."

According to sub-section (5) no transfer or other disposition of land which comprised in the surplus area shall affect the vesting thereof in the State Government or its utilisation under the Act. However, exception is created in cases of :

(1) acquisition of land by the State Government;

(2) inheritance, that is, devolution of interest in the land on account of death etc. in the family which will be a case of involuntary transfer.

Sub-section (7) seems to take away the benefit conferred by sub-section (5) regarding reopening of determination of surplus land in cases specified in the said sub-section. According to sub-section (7) where succession opens after the surplus area or any part thereof has been determined by the Collector, the exception provided in sub-section (5) shall not apply in respect of the surplus land.

It is argued that sub-section (7) takes away the right conferred by sub-section (5), therefore the same has to be ignored. In support of his contention the learned counsel for the appellant relied upon a Full Bench decision of the Punjab and Haryana High Court in Ajit Kaur and ors. Vs. State of Punjab and ors. (1980) Punjab Law Journal 354. The said judgment indicates that the Full Bench posed a conflict between the two provisions and tried to resolve the same.

In our view, it is not necessary for us to enter into the controversy regarding the alleged conflict between the provisions of sub-sections (5) and (7) of Section 11 of the Act. In the circumstances of the case, we feel that these appeals can be decided on the basis of the fact that the initial order whereby the Collector declared 3.12 hectares of

land as surplus was passed on 30th September, 1976. The appeal against the said order filed by Daya Singh, land owner, was dismissed on 27th March, 1979. Kartar Kaur wife of Daya Singh, along with whom Daya Singh had filed a joint return with respect to the lands, died on 9th October, 1980. The surplus lands were mutated in favour of the State Government in the year 1982 and the State Government allotted the same to third parties including the respondents No..5 to 7 herein in the year 1983. Respondent No.7 has filed an affidavit stating that he is in possession of the land allotted to him. Kartar Kaur is said to have made a Will on 15th October, 1979 regarding a portion of land declared surplus in favour of a Gurudawara which has been impleaded as respondent No.8 in this appeal. On 15th October, 1979 when Kartar Kaur made her Will she was left with no interest or title in the land and therefore she could not have made a Will with respect thereto. Daya Singh filed an application for re-determination of the surplus land under Section 11(5) of the Act only on 21st June, 1985. on the basis of the fact that Kartar Kaur had died and succession had re-opened. This application was made almost 5 years after the death of Kartar Kaur. In our view, this delay in making the application is fatal for Daya Singh and the application for re-determination ought to have been dismissed on this ground alone. Assuming that Daya Singh had a right to make an application under section 11(5) of the Act but the right had to be exercised within a reasonable time. It cannot be said that the right under Section 11(5) can be exercised at any time at the sweet will of the applicant. The order regarding determination of surplus land by the Collector has serious consequences:

1. So far as the land owner is concerned he is divested of the land.
2. The surplus land vests in the State Government.
3. The State Government utilizes the surplus land in accordance with law which includes allotment of the surplus land to third parties like landless persons for purposes of cultivation etc.

Permitting an application under Section 11(5) to be moved at any time would have disastrous consequences. The State Government in which the land vests on being declared as surplus, will not be able to utilize the same. The State Government cannot be made to wait indefinitely before putting the land to use. Where the land is utilized by the State Government a consequence of the order passed subsequently could be of divesting it of the land. Taking the facts of present case by way of an illustration, it would mean the land which stood mutated in the State Government in 1982 and which was allotted by the State Government to third parties in 1983, would as a result of reopening the settled position, lead to third parties being asked to restore back the land to the State Government and the State Government in turn would have to be divested of the land. The land will in turn be restored to the land owner. This will be the result of the land being declared by the Collector as not surplus with the land owner. The effect of permitting such a situation will be that the land will remain in a situation of flux. There will be no finality. The very purpose of the legislation will be defeated. The allottee will not be able to utilize the land for fear of being divested in the event of deaths and births in the family of the land owners. Deaths and births are events which are bound to occur. Therefore, it is reasonable to read a time limit in sub-section (5) of

Section 11. The concept of reasonable time in the given facts would be most appropriate. An application must be moved within a reasonable time. The facts of the present case demonstrate that re-determination under sub-section (5) of Section 11 almost 5 years after the death of Kartar Kaur and more than 6 years after the order of Collector declaring the land as surplus had become final, has resulted in grave injustice besides defeating the object of the legislation which was envisaged as a socially beneficial piece of legislation. Thus we hold that the application for re-determination filed by Daya Singh under sub-section (5) of Section 11 of the Act on 21st June, 1985 was liable to be dismissed on the ground of inordinate delay and the Collector was wrong in re-opening the issue declaring the land as not surplus in the hands of Daya Singh and Kartar Kaur.

The above reasoning is in consonance with the provision in sub-section (7) of Section 11 of the Act. Sub-section (7) uses the words "where succession is opened after the surplus area or any part thereof has been determined by the Collector". The words "determined by the Collector" would mean that the order of the Collector has attained finality. The provisions regarding appeals etc. contained in Sections 80, 81 and 82 of the Punjab Tenancy Act, 1887, as made applicable to proceedings under the Punjab Land Reforms Act, 1972, show that the maximum period of limitation in case of appeal or review is ninety days. The appeal against the final order of the Collector dated 30th September, 1976 whereby 3.12 hectares of land had been declared as surplus was dismissed on 27th March, 1979. The order was allowed to become final as it was not challenged any further. Thus the determination by the Collector became final on 27th March, 1979. The same could not be re-opened after a lapse of more than 6 years by order dated 23rd July, 1985. The subsequent proceedings before the Revenue authorities did not lie. The order dated 23rd July, 1985 is non-est. All the subsequent proceedings therefore fall through. The issue could not have been reopened.

As a result of above discussion, we find no merit in these appeals. The same are dismissed leaving the parties to bear their respective costs.