

*Before Mehtab S. Gill and Rakesh Kumar Jain, J*

**ANOOP SINGH AND OTHERS,—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

L.P.A. No. 106 of 2005 in

C.W.P. No. 5989 of 1983

19th February, 2008

***Constitution of India, 1950,—Art 226—Punjab Security of Land Tenures Rules, 1956—Rl.6(3)—Predecessor-in-interest of appellants making transfer of land in their favour by way of registered gift deed—Land declared surplus—Record showing separate ownership & possession in respect of land prior to order declaring land surplus—No notice given to transferees—Rl.6(3) of 1956 Rules provides that at the time of determination of surplus area of landowner, notice to persons interested is mandatory—Violation of principles of natural justice—Form ‘F’ not served upon transferees—Limitation for filing appeal against order of surplus starts from receipt of form ‘F’—Order of Single Judge dismissing petition on ground of delay is not sustainable—Appeal allowed.***

*Held*, that since the names of the appellants are recorded in the revenue record i.e. jamabandi for the year 1959-60 prior to order of declaration of surplus area on 15th May, 1961, therefore, notice on Form ‘F’ was sine qua non to the appellants, who were transferees/donees. In the absence of notice on Form ‘F’ to the appellants, the surplus proceedings have vitiated because provision of notice is imperative and even the presence of the father and grand-father of appellants is not sufficient compliance with the requirement of law.

(Paras 20 & 21)

*Further held*, that so far as the point of limitation is concerned, once we have held that service on Form ‘F’ is mandatory, which has not

been served upon the present appellants, the limitation would start from the receipt of Form 'F' because order passed under sub rule (6) together with statement in Form 'F' constitutes actual decision of the Collector.

(Para 22)

L.N. Verma, Advocate *for the appellants.*

S.K. Bishnoi, DAG Haryana *for the respondents.*

**RAKESH KUMAR JAIN, J.**

(1) This appeal is directed against the order dated 29th September, 2004 passed by learned Single Judge, dismissing the writ petition, in which the petitioners had challenged the orders dated 15th May, 1961 (Annexure P-1), 7th September, 1961 (Annexure P-3), 8th January, 1963 (Annexure P-4), 18th April, 1983 (Annexure P-7) and 2nd August, 1983 (Annexure P-9) whereby area measuring 34.14 (ordinary acres) in the hands of Jia Lal, predecessor-in-interest of the appellants, has been declared surplus and the gift of land made by him in favour of his son and grand-son (present appellants) has been held to be invalid.

(2) Stated briefly, the facts of the case are that Jia Lal predecessor-in-interest of the appellants was the absolute owner in exclusive possession of agricultural land measuring 94.14 acres in the revenue estate of village Samani Bholan, District Hisar as on 15th April, 1953. As per the appellants,—*vide* registered gift deed dated 18th April, 1957, Jia Lal transferred an area measuring 58.67 acres to his son Karam Chand and grand-son Bharat Singh. *Vide* order dated 15th May, 1961 (Annexure P-1), the Collector Surplus Area, Hisar, declared area measuring 34.14 (ordinary acres) as surplus in village Samani Bholan, Tehsil Fatehabad of the then District Hisar as detailed in Appendix 'A' attached with the order, without any notice to the appellants (transferees) ignoring the transfer dated 18th April, 1957 made by Jia Lal in their favour. Order dated 15th May, 1961 (Annexure P-1) was challenged by Jia Lal by way of an appeal before respondent No. 4, who,—*vide* his order dated 7th September, 1961 (Annexure P-3) allowed it in part and remitted the case back to the Collector Surplus Area, with a direction to allow Jia Lal to select permissible area of his choice. After the remand, during the pendency of the proceedings before

the Collector, the surplus area case was transferred to the Special Collector, Punjab, without any notice to Jia Lal himself or said transferees/appellants. The Special Collector, Punjab,—*vide* his order dated 8th January, 1963 (Annexure P-4) consigned the case to the records while observing that notice was given to Jia Lal, however, specific directions of the Commissioner/respondent No. 3 given,—*vide* remand order dated 7th September, 1961 (Annexure P-3) were not considered. As per the appellants, they had no notice of surplus area proceedings at any stage up to the passing of order dated 8th January, 1963 (Annexure P-4) and they came to know about the decision of surplus area case of Jia Lal for the first time on 11th March, 1983. Copy was applied on 11th March, 1983 itself and an appeal (Annexure P-5) along with an application under Section 5 of the Limitation Act for condonation of delay was preferred. The Commissioner,—*vide* his order dated 18th April, 1983 (Annexure P-7) dismissed the appeal observing that “It could not be believed that the petitioners were not aware of this order.”

(3) Dissatisfied with the order of the Commissioner, the appellants preferred a revision (Annexure P-8) before the Financial Commissioner but that also met the same fate as it was dismissed,—*vide* order dated 2nd August, 1983 (Annexure P-9) which led to the filing of the above writ petition in which orders dated 15th May, 1961 (Annexure P-1), 7th September, 1961 (Annexure P-3), 8th January, 1963 (Annexure P-4) 18th April, 1983 (Annexure P-7) and 2nd August, 1983 (Annexure P-9) were challenged. The learned Single Judge,—*vide* his order dated 29th September, 2004, dismissed the writ petition primarily on the ground of delay.

(4) On notice of this appeal, the respondent-State of Haryana has put in appearance. At the time of admission, it was ordered that status quo in respect of nature, title and possession of the subject land shall be maintained.

(5) Counsel for the appellants has submitted that the land in question has not been utilised so far and is in their possession, which fact is not controverted by the counsel for the respondents.

(6) During the course of hearing, counsel for the parties were asked to submit written arguments along with the relevant law. Pursuant

to that, counsel for the appellants has submitted written arguments and the case law.

(7) Counsel for the appellants has argued that orders dated 15th May, 1961 (Annexure P-1), 7th September, 1961 (Annexure P-3), 8th January, 1963 (Annexure P-4), 18th April, 1983 (Annexure P-7) and 2nd August, 1983 (Annexure P-9) are vitiated for want of notice to transferees/appellants. He submitted that Jia Lal had transferred 58.67 acres of his land to the appellants by way of gift on 18th April, 1957, who stood recorded in revenue record as owners in possession thereof. He drew the attention of the Court to the evidence available on record as Annexure P-10, a jamabandi for the year 1959-60 in which the appellants are recorded as owners in possession of 1/2 share each of the land received by them by way of gift from Jia Lal and were given new numbers after consolidation. He also indicated towards document (Annexure P-II), a jamabandi for the year 1959-60 pertaining to land remained with Jia Lal after the gift, in which he is shown in new capacity as owner in self cultivation.

(8) Counsel for the appellants has argued that no notice was issued to them either by the Collector, Surplus Area or by the Special Collector before declaring the land gifted to them as surplus. He has submitted that transferee from a big landowner is entitled for hearing before any order is passed qua declaration of land as surplus and an order without notice, is a nullity. In this regard, he has relied upon various judgments of this Court reported as **Hardev Singh and others versus The State of Punjab and others (1)**, **S. Balwant Singh Chopra and others versus Union of India and others, (2) Dharam Vir versus The Financial Commissioner, Haryana and others (3) and Des Raj and another versus Chanann Mal Newar and others, (4)** to contend that according to Rule 6 Sub Rule 3 of Punjab Security of Land Tenures Rules, 1956 (for short the 'Rules, at the time of determination of surplus area of landowner, notice to persons interested is mandatory. The notice has to be issued to persons mentioned in Form 'D' or whose names may be shown in revenue records. Absence of notice to persons interested shall vitiate the entire proceedings.

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- (1) 1971 PLJ 283 (D.B.)
  - (2) 1971 PLJ 315 (F.B.)
  - (3) 1980 PLJ 403 (S.B.)
  - (4) 1995 PLJ 5 (D.B.)

(9) On the strength of these judgments, counsel for the appellants has argued that they being the transferees, were entitled to a notice under Rule 6 (3) as their names are recorded in the revenue record (Annexure P-10). It was further contended that in the absence of notice to them, the entire proceedings stood vitiated.

(10) Counsel for the appellants has also highlighted that “audi alteram partem” is an integral part of natural justice, which can not be allowed to be violated. He has gone to the extent to submit that even the presence of their father does not dispense with the notice. In this regard, reliance has been placed upon **Jagroop Singh Gill and others versus State of Punjab and others (5)**, **Ram Gopal and others versus State of Punjab and others (6)** and **Indraj Singh and others versus The State of Punjab and others (7)** to contend that hearing is a must and notice to transferee is necessary even if his father is present in the proceedings.

(11) Mr., L.N. Verma, Counsel for the appellants, while challenging the findings of the learned Single Judge, submitted that the writ petition was solely dismissed on the ground of delay. It has been argued that limitation for filing an appeal against the order of surplus, commences from the date of service of Form ‘F’ and not from the date of order even if the landowner is present when order is pronounced because the order of Collector and the statement in Form ‘F’ together constitute the actual decision of the Collector affecting the land owner and since Form ‘F’ was never served upon the appellants, therefore, no delay can be attributed to them. In this regard, he has relied upon **Vir Singh versus The State of Punjab and others, (8)**, **Tek Ram versus State of Haryana and others (9)**, **Bharat Starch and Chemicals Ltd. versus State of Haryana and others (10)**,

(12) In the alternative, he submitted that an appeal against the *ex parte* order commences from the date of knowledge and not from the date of the order and cited **Ganga Ram versus The Financial Commissioner (Revenue) Haryana and others (11)**.

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(5) 1995 PLJ 166

(6) 2002(1) PLJ 32

(7) 1965 PLJ 66

(8) 1970 P.L.J. 70

(9) 1992 PLJ 642

(10) 1994 PLJ 392

(11) 1973 PLJ 305

(13) Learned counsel for the appellants drew our attention to the observations of the learned Single Judge which he claims to be erroneously recorded submitting that neither the claim of the appellants was examined by the Collector nor it could be said that the appellants were aware of the order dated 15th May, 1961 (Annexure P-1).

(14) Mr. L.N. Verma, counsel for the appellants further asserted that the Special Collector respondent No. 6 was bound by the remand order,—*vide* order dated 7th September, 1961 (Annexure P-3) which has not been done and pointed out that it is an illegality in view of a decision rendered in the case of **Shree Guru Granth Sahib Nanaksar, Patti Bir Singh Bahadur versus The State of Punjab and others**, (12).

(15) Lastly, it is submitted that all transfers made by a big land owner in excess of his permissible area prior to 30th July, 1958 enjoy production of Section 8(1)(a) of the Haryana Ceiling on Land Holdings Act, 1972 (for short, “the Haryana Act”) irrespective of his relationship with the transferee and the mode of transfer and the transferred area, even if, subsequently declared surplus, would not vest in the State Government under Section 12 (3) of the Haryana Act so as to be available for utilisation under the Utilisation Scheme, 1976 framed under the Haryana Act and the transferee would be entitled to retain the transferred area despite having been declared surplus in the hands of transferor. It is also claimed that order declaring such area as surplus would be rendered inoperative and for that purpose, reference is made to Full Bench decision of this Court in the case of **Smt. Jaswant Kaur and another versus The State of Haryana and another** (13) and another Full Bench judgment of this Court in the case of **The State of Haryana and others versus Chandgi**, (14).

(16) In reply, Shri S.K. Bishnoi, DAG Haryana has vehemently argued that transfer of the land by way of gift deed, was held to be invalid by the Authorities concerned. It was further argued that the appellants were not minors at that time and therefore, it can not be presumed that they were not aware of the facts of the case and therefore, the plea of lack of notice cannot be taken by them. He has also showed notice on Form ‘F’, which

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(12) 1997 (2) PLJ 323

(13) 1977 P.L.J. 230

(14) 1981 PLJ 494

is issued to Jia Lal, predecessor-in-interest of the appellants but admittedly no notice is shown to have been given to the transferees/the present appellants. He has further argued that no relief can be given to the appellants as they have approached the Court after 20 years, therefore, the orders passed by the Courts below are in accordance with law and the findings recorded by the learned Single Judge in the impugned order dated 29th September, 2004 deserves to be upheld.

(17) We have heard learned counsel for the parties and have perused the record. We found that this appeal merits acceptance.

(18) Certain facts are admitted, namely, that Jia Lal was the predecessor-in-interest of the appellants. He was the absolute owner in exclusive possession of agricultural land measuring 94.14 acres in revenue estate of village Samani Bholan as on 15th April, 1953 his case for surplus area was decided on 15th May, 1961 and 34.14 acres land was declared surplus in his hands,—*vide* order dated 15th May, 1961 (Annexure P-1) in which the transfer made by him by way of registered gift deed on 18th April, 1957 has not been noticed. The jamabandis Annexures P-10 and P-11 on record show separate ownership and possession of the appellants and Jia Lal in respect of the land in question which is much prior to the order declaring land surplus on 15th May, 1961. Counsel for the respondents—State could not show us firstly, any notice having been given on Form 'F' to the appellants/transferees and also the basis on which the registered gift deed has been declared to be invalid. In view of these facts coupled with the documents Annexure P-10 and Annexure P-11, we find that Courts below have erred in appreciating the facts and have decided the lis on conjectures and surmises.

(19) In the cases of **Hardev Singh** (*supra*), **S. Balwant Singh Chopra** (*supra*), **Dharam Vir** (*supra*) and **Des Raj** (*supra*) while interpreting Rule 6(3) of the Rules, it has been held that requirement of service of notice on all persons interested is based upon principles of natural justice requiring an opportunity being afforded to any person who is likely to be prejudicially affected by an order which might be passed in the relevant proceedings. It was further held that want of such a notice cannot be dispensed with or ignored on the mere ground that particular transferees who may otherwise be deemed to be the persons interested in the proceeding

have really no good defence to the proposed order, therefore, it was held that it is manifest that notice under Rule 6(3) has to be issued in the proceedings before the Circle Revenue Officer only to such persons whose names may be mentioned in Form 'D' prepared by the Patwari or whose names may be shown in the relevant revenue records available to the Circle Revenue Officer as either vendees or donees or other transferees or tenants of the land which is proposed to be included in the surplus area of the original landowner. In the absence of notice, it was held that the entire proceedings shall vitiate.

(20) Since the names of the appellants are recorded in the revenue record i.e. Jamabandi (Annexure P-10) for the year 1959-60 prior to order of declaration of surplus area on 15th May, 1961, therefore, notice on Form 'F' was *sina qua non* to the appellants, who were transferees/donees.

(21) We are in agreement with the submissions made by the counsel for the appellants that in the absence of notice on Form 'F' to the appellants, the surplus proceedings have vitiated because in view of **Indraj's case** (*supra*), provision of notice is imperative and even the presence of the father and grand-father of appellants is not sufficient compliance with the requirement of law.

(22) So far as the point of limitation is concerned, once we have held that service on Form 'F' is mandatory, which has not been served upon the present appellants. The limitation would start from the receipt of Form 'F' as held in the cases of **Vir Singh** (*supra*), **Dharam Vir** (*supra*), **Tek Ram** (*supra*) and **Bharat Starch and Chemicals Ltd.** (*supra*) because order passed under sub Rule (6) together with statement in Form 'F' constitutes actual decision of the Collector.

(23) In one of the cases i.e. **Bharat Singh and Chemical Ltd.** (*supra*), the issue of delay was raked up by the respondents because in that case surplus area declared in the year 1962 was upheld in appeal in the year 1963 but the same was challenged in the year 1991 after about three decades but this Court held that the petitioners in that case can not be debarred from agitating on merits since Form 'F' was not served, therefore, order of the Collector is vitiated.



(24) According to the respondents themselves, Form 'F' was served on Jia Lal and not to the transferees, who are the present appellants.

(25) Lastly, in view of Section 8(1) (a) of the Haryana Act, irrespective of the relationship with the transferee and the mode of transfer, the transferred area declared surplus would not vest in the State Government under Section 12(3) of the Haryana Act and the transferee shall be entitled to retain that area. This argument has merit in it as it has been decided in Full Bench and Division Bench judgments of this Court in the cases of **Jaswant Kaur** (*supra*) and **State of Haryana versus Chandgi** (*supra*).

(26) As a consequence of the above findings recorded by us, the impugned order passed by the learned Single Judge, cannot be sustained and is set aside. Resultantly, the present appeal is allowed and as a consequence thereof, orders dated 15th May, 1961 (Annexure P-1), 7th September, 1961 (Annexure P-3), 8th January, 1963 (Annexure P-4), 18th April, 1983 (Annexure P-7) and 2nd August, 1983 (Annexure P-9) are declared to be illegal and are quashed as such. There shall be however, no order as to costs.

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**R.N.R.**

**Before Hemant Gupta & Mohinder Pal, JJ.**

**O.P. GUPTA,— Petitioner**

*versus*

**LIFE INSURANCE CORPORATION OF INDIA & OTHERS,—  
Respondents**

C.W.P. No. 2846 of 2006

4th February, 2008

**Constitution of India, 1950-Art. 226—Transfer of a Senior Bank Manager—Request for cancellation of transfer due to family problem & application for grant of leave submitted—No decision communicated on leave application or on representation—Absence from duty—Exparte proceedings initiated—Exparte inquiry report—Show cause notice issued—Removal from service—Appeal dismissed—Challenge in respect of quantum of punishment—**