

Before Ajay Tewari, J.

GURDEV SINGH,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

CWP No. 3345 of 1987

6th October, 2010

Constitution of India, 1950—Art. 226—Land declared surplus—Petition remained pending for about 23 years—Landowner died during pendency of petition—Redetermination of surplus area in hands of heirs of landowner in view of Full Bench decision in Ajit Kaur case—Orders declaring land surplus set aside and matter remitted back to Collector for redetermination afresh in accordance with law.

Held, that this writ petition is allowed though not on the grounds urged therein but for the reason that during this interregnum the original petitioner (i.e. the big land owner) has died and, therefore, the surplus area has to be redetermined in the hands of his heirs. Consequently, the impugned orders are set aside and the matter is remitted back to respondent No. 4 for redetermination afresh, in accordance with law.

(Para 4)

S.K. Jain, Advocate, *for the petitioner.*

S. S. Gill, DAG Punjab, *for the respondents.*

AJAY TEWARI, J. (ORAL)

(1) By the instant writ petition, the petitioner has challenged the declaration of surplus area. At the time when the original petition was filed, certain grounds were taken. However, thereafter there has been a sea change in so much as the original petitioner died on 1st August, 1997.

(2) Counsel for the petitioner states that he is not urging the grounds taken in the writ petition for the simple reason that admittedly the original petitioner was in possession of the land on the date when the writ petition

was filed and that at the time of motion hearing, interim order had been passed by this Court directing that *status quo* would be maintained during the pendency of this writ petition. As per the learned counsel, since during the pendency of this petition the original petitioner died, it would be incumbent upon the respondents to redetermine the surplus area in the hands of his heirs (on the date of death of the original petitioner). He has relied upon a Full Bench decision of this Court in **Ajit Kaur and others versus The Punjab State and others, (1)** wherein it has been held as follows :-

“33. Having travelled through the schemes and the provisions of the Punjab law, PEPSU law and the Reform law it is clear that the latent intention is to create a class of peasant proprietor. All the three laws have beneficently let retrieved surplus area to walk out from the clutches of its confiscatory provisions, in the event of the death of a land-owner if he is being succeeded by heirs holding or not remaining to hold, more than the permissible area. The social conditions in the State demanded that the spare land with a land-owner 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 land-owner, prior to third party interests 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.

34. As a sequel to the aforesaid discussion, it is held :-

- (1) Sub-section (7) of section 11 of the Reform law would be attracted to all cases of surplus area declared under the Punjab law, the PEPSU law or the Reform law, but it envisages that stage of determining by snapping or de-linking the ties of the land-owner by divesting him of the possession and title under the orders of the Collector, of the surplus area so declared.
- (2) The protection available to heirs under sub-section (5) of section 11, under either of the aforesaid three laws, would be available till the time the State Government divests the

land-owner of his land under section 8 of the Reform law or causes its utilisation under section 11, prior to the death of the land-owner.

- (3) The formal re-declaration or de-declaration of the surplus area in the hands of the heirs after the death of the land-owner, whether at a time when the Punjab law or the PEPSU law as applicable or thereafter when Reform law was applicable, would not be necessary and the protective legislation of sub-section (5) of section 11 would give a protection umbrella against the vesting of such area in the State Government or the utilisation thereof.
- (4) Sections 7(1) and 11(7) are operative in mutually exclusive fields inasmuch as the former applies at the declaratory stage and the latter at the executory stage in order to de-link permanently the land-owner with his surplus area : and
- (5) the Letters Patent Bench's decision in **Jagar Singh's case** (*supra*) is held not to be good law and hereby overruled."

(3) Counsel for the respondents has fairly conceded that there is no judgment taking a contrary view.

(4) In the circumstances, this writ petition is allowed though not on the grounds urged therein but for the reason that during this interregnum the original petitioner (i.e. the big land owner) has died and, therefore, the surplus area has to be redetermined in the hands of his heirs. Consequently, the impugned orders are set aside, and the matter is remitted back to respondent No. 4 for redetermination afresh, in accordance with law. Parties, through their counsel, are directed to appear before respondent No. 4 on 1st December, 2010.

(5) As the main petition has since been allowed, all the pending civil miscellaneous applications, if any, also stand disposed of.