

Before Ranjan Gogoi and Rajan Gupta,, JJ.

ABNASH RANI,—Appellant

versus

STATE OF PUNJAB AND OTHERS,—Respondents

LPA No. 124 of 2006

in CWP No. 5055 of 1983

8th October, 2011

Constitution of India, 1950—Art. 226—Punjab Security of Land Tenures Act, 1959—Rl. 4(b)(1)—Land of two brothers declared surplus—Appeal filed by one accepted by Commissioner—Matter remanded to Collector—Death of land owner during pendency of proceedings—Collector accepting plea of legal heirs of deceased and ordering ½ of surplus area falling to share of another brother would continue as surplus—Order declaring land as surplus attained finality—Daughter of second brother claiming redetermination of surplus area after 17 years on basis of a sale deed—No interference in orders passed by Commissioner as upheld by Financial Commissioner—No infirmity in judgment of Single Judge—Appeal dismissed.

Held, that the appellant only purchased a fraction of the entire area which was declared surplus. While the area, which was declared surplus is 43 standard acres, the appellant claims to have purchased about 2-½ acres. Neither the sale deed has been brought on record nor the terms thereof are clear. It, thus, appears that the plea of the appellant is without any substance. In case she is daughter of Anant Ram, the transaction of sale in her favour cannot be termed as a bona fide transaction. In any case, there is no sale deed on record to show that the appellant was a bona fide purchaser of the land in question. This apart, the appellant seeks redetermination of the area declared surplus only on the basis of fraction thereof purchased by her. The appellant cannot claim redetermination of the entire surplus area (43 standard acres) merely because she purchased 2-½ acres in 1973 by way of alleged sale deed. Besides, it appears that the entire issue was settled by order of the Collector dated October 10, 1961 and the said order attained finality. Appellant raised her plea for the first time in the year 1978 i.e. after 17 years of the area had been declared surplus.

(Para 6)

Further held. that Anant Ram appeared before the Assistant Collector 1st Grade, Amritsar on 30th January, 1975 and stated that the land in question had been declared surplus and had been allotted to Gian Singh. He even stated that some area had been sold by him to the appellant after disclosing that same had been declared surplus. He submitted that said fact had been recorded in the sale deed. Thus, it is clear that Anant Ram was well aware of the fact that the order dated 17th April, 1961 declaring the land as surplus had attained finality. It is noteworthy that Anant Ram never challenged the said order though he was alive till 1976. He never raised the plea that the land, which was Banjar Qadim had been taken into consideration while considering the issue of surplus area. The challenge to the impugned order was made on this ground by Abnash Rani, appellant for the first time, 17 years after the order attained finality. We are, thus, of the considered view that the order passed by the Commissioner, as upheld by the Financial Commissioner, warranted no interference

(Para 6)

B.S. Bedi, Advocate *for the appellant.*

Rajesh Bhardwaj, Addl. Advocate General, Punjab.

Premjit Kalia, Advocate *for respondents No. 2 to 11.*

B.R. Mahajan, Advocate with Ms. Gaganpreet Kaur *for respondent No. 12.*

RAJAN GUPTA, J.

(1) Aggrieved by the judgment dated 15th February, 2006, passed by a Single Judge of this court, the appellant Abnash Rani has preferred the instant appeal.

(2) Brief factual background of the case as requires to be noticed at the outset, is that a case pertaining to Anant Ram and Swaran Singh both sons of Nathu Ram was decided by the Collector by order dated May 31, 1960. An area measuring 86 standard acres and 10-1/4 units was declared surplus in the hands of land owners in village Mandiala and some other villages. Aggrieved by the said order, daughters and widow of Swaran Dass, one of the land owners, filed an appeal before Commissioner, Jalandhar Division. The appeal was accepted by the Commissioner on the ground that

in view Rule 4 (b) (1) of the Punjab Security of Land Tenures Act, 1959, only Collector was competent to decide the case. The Commissioner, thus, quashed the said order and remanded the case to Collector for decision afresh,—*vide* his order dated 17th April, 1961. One of the land owners, namely Swaran Dass died on 27th October, 1960 leaving behind his legal heirs. It was, thus, contended before the Collector that after death of Swaran Dass, his legal heirs had been rendered small land owners and thus, there was no surplus area in their hands. This plea on behalf of Swaran Dass was accepted. However, position as regards Anant Ram remained unchanged. The Collector, thus, decided that one half of the surplus area falling to the share of Anant Ram would continue as surplus as before and would be utilized in accordance with the Rules. This order was passed by the Collector on 10th October, 1961. The order passed by the Collector was challenged by Abnash Rani (appellant herein) raising the issue that the area, which was Banjar Qadim, had been wrongly taken into account by the Collector while deciding the issue of surplus area. She claimed that she had purchased a part of the surplus area from Anant Ram by virtue of sale-deed dated March 21, 1973 and thus, she was entitled to raise this plea. She also took a stand that being a transferee from Anant Ram, she was entitled to exemption from surplus area. Another appeal was preferred by Smt. Agyawati and others taking the same plea that Banjar land had been included in the holding of Anant Ram while assessing the surplus area. It was also contended that after death of Anant Ram, his legal heirs had become small land owners and thus, no surplus area could be assessed in their hand. Both the appeals were heard by the Commissioner and were dismissed. Revision was also preferred before the Financial Commissioner but fate remained the same. Aggrieved, the appellant preferred a writ petition, which was decided by a Single Bench of this court on 15th February, 2006 and the plea of the petitioner (appellant herein) was turned down. The said order has been impugned in the instant appeal.

(3) Learned Counsel for the appellant has assailed the impugned order by contending that Anant Ram was similarly placed as Swaran Dass. His land having been exempted from the surplus proceedings, Anant Ram was entitled to same concession. According to him, the appellant is a *bona fide* purchaser of land from Anant Ram,—*vide* registered sale deed dated 21st March, 1973. The said land being *Banjar Qadim*, could not have been

declared surplus. Learned counsel further contended that the land could not be declared surplus without making a declaration in accordance with law. Besides, the land remains unutilized till date and thus mere passing of the order declaring it as surplus will not be sufficient. He submits that in case the land remains unutilized, the same cannot be said to have vested in the State Government. This apart, according to him, there is nothing to show that Form 'F' was ever supplied thereby depriving the land owner to know which portion of the land had been declared surplus. In view of same, entire proceedings are vitiated.

(4) Learned counsel appearing for respondent No. 12, the contesting respondent in this case, has contended that at no stage the appellant had produced the sale-deed dated 21st March, 1973, which would enable the court to examine the same as regards bonafide sale, if any. Learned counsel further contended that the plea that land remained unutilized, has been taken for the first time before this court and this issue was not raised before the appellate or revisional Forums by the appellant. He further submitted that the contention regarding non-service of Form 'F' was never raised by Anant Ram who was an Advocate by profession and remained alive till 1976. He submitted that in fact Anant Ram had no intention to file an appeal. The same was filed by his daughter Abnash Rani after a lapse of 17 years. In any case, according to him, non-service of Form 'F' is not fatal if case is decided in presence of land owner and he selects his permissible area. He further submitted that after the land in question was declared surplus, possession thereof was delivered to respondent No. 12 Gian Singh on 21st October, 1963,—*vide* warrant of possession, Annexure R-12/1.

(5) We have heard learned counsel for the parties and given careful thought to the facts of the case.

(6) It is evident that entire claim of the appellant is based upon a sale deed dated March 21, 1973. She has claimed that by virtue of the said sale-deed, she became a transferee from Anant Ram and was, thus, entitled to raise the plea that *Banjar* land had been taken into account while deciding the issue of surplus holding in the hands of Anant Ram. The said order was, thus, against law and deserves to be set-aside. It appears, the land in question was declared surplus in the year 1961. At that time Anant

Ram alongwith Swaran Dass were owners of the land. After the order declaring the land as surplus was set-aside by the Commissioner, Jalandhar Division and the case was remanded to the Collector for deciding the same afresh, a plea was raised before him that Swaran Dass had died on 27th October, 1960 and thus, his legal heirs had become small land owners. This plea was accepted by the revenue authority. However, the area falling to the share of Anant Ram was declared as surplus as position regarding him remained unchanged. The order attained finality as it was never challenged by Anant Ram, who later died in 1976. The order was challenged for the first time by Abnash Rani by setting up a sale deed dated March 21, 1973 whereby she claimed that she had purchased the land from Anant Ram. Abnash Rani is stated to be daughter of Anant Ram. Admittedly, Abnash Rani only purchased a fraction of the entire area which was declared surplus. While the area, which was declared surplus is 43 standard acres, the appellant claims to have purchased about 2-½ acres. Neither the sale-deed has been brought on record nor the terms thereof are clear. It, thus, appears that the plea of the appellant is without any substance. In case she is daughter of Anant Ram, the transaction of sale in her favour cannot be termed as a bonafide transaction. In any case, there is no sale deed on record to show that the appellant was a bonafide purchaser of the land in question. This apart, the appellant seeks redetermination of the area declared surplus only on the basis of fraction thereof purchased by her. In our considered view, the appellant cannot claim redetermination of the entire surplus area (43 standard acres) merely because she purchased 2-½ acres in 1973 by way of alleged sale-deed. Besides, it appears that the entire issue was settled by order of the Collector dated October 10, 1961 and the said order attained finality. Appellant Abnash Rani raised her plea for the first time in the year 1978 i.e. after 17 years of the area had been declared surplus. It is necessary to take note of the warrant of possession, Annexure R-12/1, placed on record by respondent No. 12 Gian Singh whereby she claims possession of the surplus land, delivered on 21st October, 1963. The plea of the appellant that the proceedings are vitiated because of non-service of Form 'F', is also without any merit. Admittedly, Anant Ram appeared before the Assistant Collector 1st Grade, Amritsar on 30th January, 1975,— *vide* his statement Annexure R-12/7 and stated that the land in question had been declared surplus and had been allotted to Gian Singh. He even stated that some area had been sold by him to the appellant after disclosing

that same had been declared surplus. He submitted that said fact had been recorded in the sale deed. Thus, it is clear that Anant Ram was well aware of the fact that the order dated 17th April, 1961 declaring the land as surplus had attained finality. It is noteworthy that Anant Ram never challenged the said order though he was alive till 1976. He never raised the plea that the land, which was *Banjar Qadim*, had been taken into consideration while considering the issue of surplus area. The challenge to the impugned order was made on this ground by Abnash Rani apellant for the first time, 17 years after the order attained finality. We are, thus, of the considered view that the order passed by the Commissioner, as upheld by the Financial Commissioner, warranted no interference. The Single Judge thus rightly dismissed the writ petition. Learned counsel for the appellant has not been able to convince us regarding any infirmity with the impugned judgment. The appeal is, thus, without any merit and is hereby dismissed.

R.N.R.