

note by assignee—assignor—original payee is a proper party, is of no help to the petitioners in the present case.

The findings of this Court in *Surjit Kaur's case* (supra) relied upon by the petitioners, are also not attracted to the facts of the case in hand, as on facts it was found that the party sought to be impleaded had a direct interest as distinguished from the commercial interest, in the subject-matter of the litigation, in that case Daulat Singh had set up a case to the disputed property of Chand Singh defendant, on the ground that the latter had gifted away the property to him, besides adopting him as a son. Under these circumstances, it was held that in a suit for declaration filed by the plaintiff regarding the ownership of the disputed property belonging to Chand Singh, wherein the latter had admitted the claim of the plaintiff, the adopted son of the latter was a necessary party. Reliance in that case was placed on the findings of the Supreme Court in *Razia Begum v. Sahebzadi Anwar Begum and others*, (7), wherein, in turn, it was held that in a dispute relating to the property, the party sought to be impleaded should have direct interest in the subject-matter of the litigation and not only a commercial interest. In the instant case also, the prospective vendees had a commercial interest in the subject-matter of the litigation only and not a direct interest because there are so many hurdles to be crossed they would be able to purchase the property and become owners thereof.

For the foregoing reasons, it cannot be said that the trial Court had wrongly dismissed the application of the petitioners for being impleaded as a party. Consequently, this petition fails and is hereby dismissed but the parties are left to bear their own costs.

S.C.K.

Before : G. C. Mital and K. S. Bhalla, JJ.

KARNAIL SINGH,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4797 of 1987.

September 15, 1988.

Punjab Land Reforms Act (X of 1973)—Sections 8 and 9—Land declared surplus—Possession, however, taken after death of land-owner and land allotted to tenant for resettlement—Effect of death on

(7) AIR 1958 S.C. 886.

Karnail Singh v. The State of Punjab and others
(G. C. Mital, J.)

order of allotment, stated—Heirs of deceased landowners—Whether have a right to re-determination of surplus area on devolution.

Held, that the Government has indefeasible right to utilise the surplus area without limitation of time and the land-owner cannot claim it back but this right is subject to two exceptions. If before utilisation part of the land of the landowner is acquired by the State Government or he dies then the surplus area has to be redetermined so that on redetermination whatever is found surplus can be utilised for the resettlement of the tenants. Since possession was not taken before the date of death, the taking of possession after the death of the landowner as also the order of allotment are without jurisdiction and liable to be set aside. (Paras 9 & 10).

Petition Under Articles 226/227 of the Constitution of India praying that :—

- (a) *a writ of certiorari quashing the impugned order Annexure P/1 be issued;*
- (b) *any other writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case be also issued;*
- (c) *Service of notices on the respondents and supplying the certified copies of the Annexure P/1 to P/3 be dispensed with.*

It is further prayed that till the pendency of this Writ Petition, the operation of the impugned order (P/1) be stayed.

A. S. Rupal, Advocate, for the Petitioner.

Ravinder Chopra, Advocate, for Respondents 4 and 5.

D. S. Brar, DAG for Respondents 1 to 3.

JUDGMENT

Gokal Chand Mital, J.

(1). 13 standard acres and $7\frac{1}{4}$ units of land were declared surplus by the Collector, Rampura Phul,—*vide* order dated 22nd April, 1959. in the hands of Mukand Singh under the Punjab Security of Land Tenures Act. 1953 (hereinafter called 'the 1953 Act'). In spite of declaration of the surplus area, no proceedings were taken either

for taking possession or for allotting the surplus area to an ejected tenant or a landless farmer till 15th February, 1983, when a notice was issued under Section 9 of the Punjab Land Reforms Act, 1972 (hereinafter referred to as 'the 1972 Act'), for taking possession. In pursuance thereto the State Government took possession on 28th March, 1983 and the Collector Agrarian, Rampura Phul,—*vide* order Annexure P3 dated 30th March, 1983 allotted certain area out of the surplus area in the hands of Mukand Singh to Bhag Singh.

(2) When sons of Mukand Singh came to know of the aforesaid, they took the matter in appeal before the Commissioner and argued that on 11th January, 1983 Mukand Singh had died and, therefore, the question of surplus area had to be re-determined in their hands in accordance with the 1972 Act and if any surplus area was found in their hands only then question of making allotment could arise.

(3) The learned Commissioner came to the conclusion that the actual date of death of Mukand Singh was not correctly stated and he appeared to be alive on 28th February, 1983, and thus dismissed the appeal. On revision to the Financial Commissioner, it was found that Mukand Singh died on 11st January, 1983, as copy of the death certificate was produced before him and since on the date of death the possession was of the land-owners, that is before the utilization of the surplus area, the matter had to be re-assessed in the hands of the legal heirs. The revision was allowed and the allotment orders were quashed,—*vide* order dated 12th March, 1987, copy Annexure P1.

(4) Against the aforesaid order, Karnail Singh, son of the allottee, came to this Court in petition under Articles 226/227 of the Constitution of India.

(5) At the motion hearing, *Sher Singh and others v. Financial Commissioner of Planning, Punjab and others* (1) was cited for the proposition that by the declaration of the surplus area, the land gets vested in the State Government and it does not matter whether possession is taken by the State Government or allotment is made under the utilization scheme. The case was admitted to D.B.

(6) Before we proceed to consider the decided case and the provisions of the 1972 Act, it is necessary to bear in mind the found facts of the case.

(1) AIR 1987 S.C. 1307.

Karnail Singh v. The State of Punjab and others
(G. C. Mital, J.)

(7) On 22nd April, 1959, the Collector Surplus Area had declared 13 standard acres and $7\frac{1}{4}$ units in the hands of Mukand Singh. Mukand Singh died on 11th January, 1983 and he remained in possession of the land which was declared surplus. On 25th February, 1983, notice under Section 9(1) of the 1972 Act was issued and when the landowners failed to deliver possession within the notified time, the Collector took possession on 28th March, 1983, in exercise of powers under Section 9(2) of the 1972 Act, and the order of allotment was made on 30th March, 1983. Under Section 8 of the 1972 Act, the land vests in the State Government free from all encumbrances only on the date on which possession thereof is taken by or on behalf of the State Government. In this case when possession was taken, that is, on 28th March, 1983, the landowner had died and it has to be seen whether the matter of surplus area had to be re-determined in the hands of his heirs or the taking of possession after the death of landowners was in accordance with law.

(8) The matter stands concluded in favour of the heirs of the landowner in view of *Financial Commissioner, Haryana v. Smt. Kela Devi* (2), a decision of the Supreme Court, *Smt. Ajit Kaur v. The Punjab State* (3) (Full Bench) and *Ranjit Ram v. The Financial Commissioner* (4) (Full Bench), and the same view was taken in *Sher Singh's case* (supra). In *Sher Singh's case* (supra) view has not been taken contrary to the aforesaid decisions, which is clear from the following observations contained therein :—

“All that the Act contains by way of exception is what is seen in Section 10(A) (b). If at the time of the commencement of the Act, the land is acquired by the Government under the relevant acquisition laws or when it is a case of inheritance, the owner could claim exclusion of such land from his land for fixation of his ceiling under the Act. The second exception itself is further fettered by the provision in Section 10-B that where succession had opened after the surplus area or any part thereof had been utilised under Section 10A(a), the saving specified in favour of an heir by inheritance would not apply in respect of the area so utilised. To put it

(2) 1980 P.L.J. 121.

(3) 1980 P.L.J. 354.

(4) 1981 P.L.J. 259.

short, the Government had under the Act an unfettered right without time limit to utilise the land for re-settlement of tenants *subject to the two exceptions mentioned above.*"

If the case falls in any of the two exceptions noticed in the quoted portion then the Government loses the right to utilise the land for re-settlement of tenants. These exceptions also come into being only before the land is utilised. If after utilisation land is acquired or the landowner dies his heirs cannot take benefit and seek redetermination of the surplus area.

(9) The learned counsel without reading the aforesaid quotation wanted to read earlier part of the judgment contained in the same paragraph which is as follows :—

"It is true that along with the order declaring the land of an owner as surplus, a corresponding right and duty accrue to the Government to utilise the surplus area for the re-settlement of tenants. In other words, the rights on the land declared as surplus get vested in the Government, to be distributed amongst the tenants for re-settlement. This is an indefeasible right that the Government secures. The appellant is not well founded in his contention that he could get back the land, if the surplus had not been utilised. There is nothing in the Act which imposes any time limit for the Government to utilise the land for the purpose mentioned in the Act. Nor is there any provision enabling the owner of the land to claim back the land and to get it restored to him if utilization is not made by the Government within a specified period."

If the above question is read disjunctively with the quotation noticed earlier, the matter can be sought to be confused but if whole of para 9 of the reported judgment is read and understood then the matter is clear and plain that the Government has indefeasible right to utilise surplus area without limitation of time and the landowner cannot claim it back but this right is subject to two exceptions that if before acquisition part of the land of the landowner is acquired by the State Government or he dies then the surplus area has to be redetermined so that on redetermination whatever if found surplus can be utilised for the resettlement of the tenants.

State of Haryana and others *v.* Kartar Singh and others.
(G. R. Majithia, J.)

(10) Now adverting to the facts of the case, which are distinguishable from *Sher Singh's case* (supra), the landowner died on 11th January, 1983 and it is thereafter that notice under Section 9(1) of the 1972 Act was issued directing the landowner to deliver possession and it is thereafter that on 28th March, 1983 the possession was taken in purported exercise of powers under Section 9(2) of the 1972 Act and allotment to the father of the petitioner before us was made thereafter on 30th March, 1983. Therefore, the surplus area declared was not utilised before the death of the landowner nor its possession was taken by the State Government. Even if possession had been taken by the State Government before the death of the landowner in whose hand the area was declared surplus by virtue of Section 8 of the 1972 Act, the land would have vested in the State Government free from all encumbrances from the date of taking of possession. Since even possession was not taken before the date of death, the taking of possession on 28th March as also the order of allotment dated 30th March, 1983 are without jurisdiction and were rightly set at naught by the learned Financial Commissioner.

(11) For the reasons recorded above, the writ petition is devoid of merit and is dismissed but with no order as to costs.

R.N.R.

Before : V. Ramaswami, CJ and G. R. Majithia, J.

STATE OF HARYANA AND OTHERS,—Appellants.

versus

KARTAR SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 832 of 1986.

September 16, 1988.

Punjab Municipal Act (III of 1911)—Section 3(18) (b)—Haryana Municipal Act (XXIV of 1973)—Sections 203 to 210—Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act (XLI of 1963)—Section 4(1) (b)—Government notifying area within municipal limits as 'unbuilt area' under Section 3(18) (b)—Request for framing of Town Planning Scheme made