Before Harbans Lal, J.

BHARPAI AND ANOTHER,—*Petitioners*

versus

THE FINANCIAL COMMISSIONER, HARYANA, CHANDIGARH AND OTHERS,—*Respondents*

C.W.P. No. 5296 of 1981

23rd July, 2008

Constitution of India, 1950—Art. 226-Punjab Security of Land Tenures Act, 1953-S.24-A(2)-Gift deed in favour of petitioners—Sanction of mutation—Land already declared surplus with original land owner—Whether non-issuance of notice to petitioners violates cardinal canons of natural justice—Held, no—Petition dismissed.

Held, that the reasons lead to an irresistible conclusion and an inescapable inference that the petitioners hardly fall within the phrase 'interested persons' as on the day the land came to be declared surplus, they had no legal right in the land. As per provisions of Section 24-A(2), if the land of an owner is subjected to the process of consolidation in between the declaration of the surplus area and before the utilization thereof, the officer referred to in sub-section (1) of Section 24-A shall be competent to keep the surplus area of such person out of the area of land obtained by him or her after consolidation.

(Para 15)

Further held, that Bhagwani in order to get over the relevant provisions of the Act, executed and registered gift deed in favour of her own daughters qua her land. It implies that the land had not come to the petitioners on the opening or acceleration of succession. She had not completely effaced herself. Thus, notice was not required to be issued to the petitioners or non-giving of the notice to them in no manner amount to violation of cardinal canons of natural justice.

(Para 16)

Arun Jain, Senior Advocate with Amit Jain, Advocate *for the petitioners.*

Ravi Dutt Sharma, Deputy Advocate General, Haryana *for the respondents.*

JUDGEMENT

HARBANS LAL, J.

(1) This Civil Writ Petition has been filed by Bharpai wife of Jitu as well as Piari (deceased through Santra, Bimla, Saroj and Patasa) wife of Shree Chand, residents of Issapur Kheri, Tehsil Gohana, District Sonepat, against the Financial Commissioner, Haryana, Chandigarh, The Commissioner, Ambala Division, Ambala, The Sub-divisional Officer (Civil)-cum-Collector Agrarian, Rohtak, Dhani Ram and Jage Ram son of Sheo Chand under Article 226/227 of the Constitution of India for issuance of a writ of certiorari quashing the impugned orders dated 31st January, 1978 (Annexure P-1), 17th August, 1979 (Annexure P-2) and 12th February, 1980 (Annexure P-4) passed by the respondents No. 1, 2 and 3.

(2) The brief facts giving rise to this petition are that Shrimati Bhagwani, made a gift on 13th January, 1960 in favour of her daughters Bharpai and Piari, referred to above. Mutation No. 1444 dated 29th October, 1963 of the area measuring about 34 standard acres was sanctioned. As its consequence, the petitioners became full owners of the land. The Sub-Divisional Officer (Civil)-cum-Collector Agrarian, Rohtak-respondent,—*vide ex-parte* order dated 9th December, 1976 declared the area of the petitioners surplus with the original land owner Bhagwani under Section 24-A(2) of the Punjab Security of Land Tenures Act, 1953 (for brevity, 'the Act'), without giving any notice or opportunity of being heard to the petitioners, who came to know about this order in the month of December, 1977 when the respondents tried to dispossess them from the land. The petitioners moved an application before the above mentioned respondent-Sub-Divisional Officer (Civil)-cum-Collector Agrarian, Rohtak, on 12th January, 1978 on the ground that they had become full owner in the year 1960 and had a right to be heard before passing any order against their interest. This respondent rejected

their application,—*vide* order dated 31st January, 1978 (Annexure P-1). They carried appeal to the Commissioner, Ambala Division, Ambala-respondent, who also dismissed the same,—*vide* order dated 17th August, 1979 (Annexure P-2). Then, they went in revision before the Financial Commissioner, Haryana, who also dismissed the same,—*vide* his order dated 12th February, 1980 (Annexure P-4). On the advice of a lawyer at Rohtak, the petitioners filed miscellaneous application before The Sub-Divisional Officer (Civil)-cum-Collector Agrarian, Rohtak and got the stay of dispossession. That application was dismissed 20 days ago and now the authority is bent upon to oust the petitioners from the land in dispute. The impugned orders, Annexures P-1, P-2 and P-4 have been challenged on the grounds embodied in this petition.

(3) In their joint written statement, the respondents No. 1 to 3 have averred that Bhagwani made the gift of agricultural land in favour of the petitioners on 13th January, 1960 and not on 13th January, 1980. The mutation of land measuring 34.4 standard acres was sanctioned,—*vide* Mutation No. 1444 dated 29th October, 1963 in favour of the petitioners, who never became the owners of the land on the basis of the alleged gift as the same was executed on 13th January, 1960 i.e. after the declaration of surplus area on 1st January, 1960. Out of the total holding measuring 73 standard acres and 3-1/4 units belonging to Bhagwani, 30 standard acres was retained by her as permissible area. The land measuring 34 standard acres and 4 units was declared as tenants permissible area, whereas 8 standard acres and 15-1/4 units was declared as surplus area. Since the said land was declared as such on 1st January, 1960, any transfer by way of any means becomes null and void. The petitioners were never parties to the issue or the case, therefore, the question of giving any notice to them or hearing them did not arise. The so called transfer of land by way of gift on the said date was illegal and was to be ignored outrightly. The order under Section 24-A(2) *ibid* was, therefore, legal. The area left out as "tenants permissible area" was got released from these tenants and was shown under self cultivation. The entire holding of Bhagwani got reduced by 10 acres as a consequence of consolidation which took place in the year 1965-66. Therefore, the Collector Agrarian, Rohtak after allowing 30 standard acres as permissible area, declared 33 standard acres and

6-1/4 units as surplus. The impugned orders are strictly in accordance with the provisions and the rules framed thereunder. The claim of the petitioners that they were interested parties and entitled to notice is untenable and based on wrong assumptions. The transfer of land by Bhagwani on 13th January, 1960 by way of gift was void *ab initio* and the land never vested in the petitioners. Therefore, the question of issuance of any notice does not arise. Bhagwani transferred the whole of the "tenants permissible area" in favour of the petitioners on 13th January, 1960 after the declaration of this land as tenants permissible area. The findings of the learned Courts below regarding the gift made by Bhagwani are correct and legal. She executed the gift simply to reduce the area. In these circumstances, this petition merits dismissal with costs.

(4) I have heard the learned counsel for the parties.

(5) Mr. Arun Jain, Senior Advocate appearing on behalf of the petitioners, strenuously contended that the petitioners being the daughters of Bhagwani were the interested persons and that being so, they were required to be summoned and afforded an opportunity of being heard. He further puts that a plain reading of the rules made under the Act would show that the interested persons had a right to be heard. As such the petitioners ought to have been heard as Bhagwani had abdicated all her rights in their favour as far back as in the year 1960. He further canvassed at the bar that only that area which was actually held by her as owner-in-possession, could be declared surplus in proceedings under Section 24-(A)(2) *ibid.* The petitioners being small land owners, the area in their hands could not be declared as surplus under the provisions of the Act. The dispossession of the petitioners from their holdings is absolutely null and void on the basis of order dated 9th December, 1976. The findings returned by the learned Courts below to the effect that the stated gift was made to dispose of the surplus area are totally uncalled for and baseless. To drive home his contentions, he has sought to place abundant reliance upon the observations rendered in re: **Shri Babu Ram and others** *versus* **The State of Punjab and others (1),** and **Ashok Kumar** *versus* **State of Haryana and others (2).**

(1) 1974 PLJ 158
(2) 1975 PLJ 140

(6) To tide over these submissions, Mr. Ravi Dutt Sharma, Deputy Advocate General, Haryana, pressed into service that the execution of the alleged gift deed by Bhagwani in favour of her daughters-petitioners soon after her land was declared surplus on 1st January, 1960 in itself is indicative of the fact that she had devised this Scheme to save her land. The land having been declared surplus before the alleged gift, the petitioners in no manner were the interested persons. Therefore, the authorities were not obligated to give them an opportunity of being heard. To buttress this stance, he referred to **Pritam Singh and others** *versus* **The State of Punjab and others (3),** and **S. Balwant Singh Chopra and others** *versus* **Union of India and others (4).**

(7) I have given a deep and thoughtful consideration to the rival contentions.

(8) The cynosure for determination is as to whether the petitioners fall within the statutory definition of "interested/concerned persons" ? Rule 6(3) of the Punjab Security of Land Tenures Rules, 1956 reads as follows :—

> "6(3) The circle revenue officer, shall, after holding such inquiry as he thinks fit and after giving the persons concerned, an opportunity of being heard, forward his report to the Collector."

(9) From a bare reading of this language, it can be culled out that an opportunity of being heard is to be afforded to the persons concerned. The person concerned is that who is likely to be prejudiciously and vitally affected by an order to be passed by the prescribed authority under the provisions of the Act in the relevant proceedings. In other words, such persons are those whose interest is likely to be affected by such declaration of surplus area. They may be the original owners of the land, old tenants and the persons who have a legal right in the land which is subject matter of the proceedings and the right which is recognized or recognizable under the Act. The proceedings in this case were carried out by the Collector Agrarian, Rohtak under Section 24-

(3) 1966 PLJ 83
(4) 1968 PLJ 311

A(2) of the Act. Bhagwani was holding 73 standard acres, 3-1/4 units of land out of which 30 standard acres being permissible area and 34 standard acres being tenants permissible area was left out and 8 standard acres 15-3/4 units was declared as surplus,—*vide* order dated 1st January, 1960. Later on, in consequence of consolidation her area got reduced by 10 acres in 1965-66, therefore, the Collector after allowing 30 standard acres as permissible area, declared 33 standard acres and 6-1/2 units as surplus. It is own case of the petitioners that Bhagwani had gifted all the land to her daughters (referring to the petitioners),—*vide* registered gift deed dated 13th January, 1960 which is ostensibly is the land declared surplus. In re: **Shri Babu Ram and others** *(supra),* several years prior to the starting of the proceedings for declaring the surplus area, the land owner had gifted most of his land and the donees were recorded as owners-in-possession of that land in the revenue records. Notice was not issued to the donees. It was in these circumstances, held that the donees who were recorded as owners-in-possession of the land were "interested persons" within the definition of Rule 6(3) *ibid.* Thus, on a combined reading the facts of **Shri Babu Ram's** case *(supra)* are poles apart from the present one. In re: **Ashok Kumar** *(supra),* Chaudhry Manohar Lal owned 174 bighas 1 biswa of land in village Bhandor. After his death, his wife Maqtul Kaur adopted the petitioner as a son to Manohar Lal by means of a registered adoption deed dated 27th July, 1952. After this adoption, she gifted 33 bighas of land situated in the said village to the petitioner. After adoption of the petitioner, his relations with her became strained, with the result, she sold about 41 bighas of land to Phulu Ram etc. in 1957 and 1958 and gifted the remaining land to her daughters on 20th May, 1958. The petitioner challenged these alienations through a suit filed in the Court of Subordinate Judge Ist Class, Rewari, claiming possession that after his adoption, Maqtul Kaur had no right title or interest in the land. The suit was decreed and the decree was maintained by this Court. On the basis of the decree, he obtained possession. During the pendency of the above litigation, proceedings against Maqtul Kaur were started for declaration of surplus area and in those proceedings ultimately 95 standard acres was declared to be surplus in her hands. Thus, again the observations made in this case are of no assistance to the present petitioners.

(10) Section 19-B of the Act reads as under :—

"19-B. Future acquisitions of land by inheritance in excess of permissible area.

(1) Subject to the provisions of Section 10-A, if after the commencement of this Act, any person, whether as landowner or tenant acquires by inheritance or by bequest or gift from a person to whom he is an heir any land or if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement by land, or if after such commencement any person acquires in any other manner any land, which with or without the lands already owned or held by him, exceeds in the aggregate the permissible area then he shall, within the period prescribed, furnish to the Collector, a return in the prescribed form and manner giving the particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which he desires to retain, and if the land of such person is situated in more than one patwar circle, he shall also furnish a declaration required by section 5-A.

(2) If he fails to furnish the return and select his land within the prescribed period, then the Collector may in respect of him obtain the information required to be shown in the return through such agency as he may deem fit and select the land for him in the manner specified in sub-section (2) of Section 5-B.

(3) If such person fails to furnish the declaration, the provisions of section 5-C shall apply.

(4) The excess land of such person shall be at the disposal of the State Government for utilization as surplus area under clause (a) of section 10-A

or for such other purposes as the State Government may by notification direct."

(11) Section 10-A of the Act reads as under :—

"10-A. Surplus area for resettlement of ejectedly tenants.—

(a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of Section 9.

(b) 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 a surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).

Explanation.—Such utilization of any surplus area will not affect the right of the land-owner to receive rent from the tenant so settled.]

(c) For the purpose of determining the surplus area of any person under this section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored."

(12) Section 24-A of the Act reads as under :—

[24-A. Power to separate share of landowners in joint lands.—

(1) Where a landowner owns land jointly with other landowners and his share of such land or part

thereof, as ascertained from the record of rights, has been or is to be declared as surplus area, the officer competent to declare such area, or, where such area has been declared, the officer competent to utilize it, may on his own motion, after summary enquiry and affording to the persons interested in such land an opportunity of being heard, separate his share of such land or part thereof in the land owned by him jointly with other landowners.

(2) Where after the declaration of the surplus area of any person and before the utilization thereof, his land has been subjected to the process of consolidation, the officers referred to in sub-section (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation."

(13) Here in this case, in Annexure P-1, the order dated 31st January, 1978, it has been mentioned that it was argued by Sub Tehsildar Agrarian that the applicants (referring to the present petitioners) had purchased the land which was not in the permissible area of big land owners and so it had been kept separate under Section 24-A(2) *ibid* and that the applicants had purchased the land under the tenants and had taken the same as self cultivated. The Sub-Divisional Officer (Civil)-cum-Collector Agrarian, Rohtak-respondent in this order has observed that "this transfer of the land has been effected only to demolish the surplus land." In paragraph 4 of Annexure P-2, the Commissioner, Ambala Division, Ambala-respondent has observed that "it is clear from the order of the Collector Agrarian, Rohtak, dated 31st January, 1978 that the transfer was not from the permissible area of the big land owner and so it should be ignored. Therefore, it was not necessary to give notice to the appellants in the proceedings under Section 24-A(2) *ibid* and only land owner can be heard. It has been observed by the Commissioner "I am fully in agreement with the decision of the Collector Agrarian, Rohtak that the transfer was done

to destroy the surplus land and the appellants (referring to the present petitioners) cannot be exempted from the surplus pool. The Financial Commissioner-respondent in his order dated 12th February, 1980 (Annexure P-4) has observed that "but it appears for some reason or the other, the said tenants were no longer in occupation of the land where the Collector on 9th December, 1976 passed orders under Section 24-A(2) of the 1953 Act and, therefore, the entire tenants permissible area was also declared surplus." It has been further observed that "it is unexpedient in the terms of Section 84 (U) of the Punjab Tenancy Act, 1887 to interfere in revision with the orders already passed, especially since the only parties who could possibly have been aggrieved by the impugned order, namely the old tenants have not challenged it any where."

(14) It emerges out of these orders that the tenants were no longer in occupation of the land which being tenants permissible area was exempted from the surplus pool. Such land was taken by the petitioners for their self cultivation by evicting the tenants. As regards the gift deed set up by the petitioners, the same came into being after the area was declared surplus. It gives an inkling that this deed was brought into being to save the land which was declared surplus.

(15) The reasons enumerated above lead to an irresistible conclusion and an inescapable inference that the petitioners hardly fall within the phrase 'interested persons' as on the day the land came to be declared surplus, they had no legal right in the land. As per the provisions of Section 24-A(2) *ibid*, if the land of an owner is subjected to the process of consolidation in between the declaration of the surplus area and before the utilization thereof, the officer referred to in sub-section (1) of Section 24-A *ibid* shall be competent to keep the surplus area of such person out of the area of land obtained by him or her after consolidation. In Annexure P-1, it has been mentioned that in the proceedings under Section 24-A(2) *ibid,* it came to the knowledge that due to consolidation of holdings the land has been decreased by 1 standard acre and 1-1/2 units and the land under tenants had also been released by the land owners and, as such, the rest 33 standard acres,

6-1/4 units was declared surplus." It is further mentioned that they (referring to the present petitioners) have got the land evicted from the tenants and in the proceedings under Section 24-A(2) this land has been included in the surplus pool and this application has been given after one year from the declaration of surplus land. In re : **Pritam Singh and others** *(supra)*, the last male holder had gifted a part of his land to his sons and daughters. The Full Bench of this Court held that "where the last male holder kept back all the land with himself and in order to get over the provisions of Pepsu Tenancy and Agricultural Lands Act, parted with the surplus land in favour of his sons and daughters, the gifts in the present case cannot be held to be acceleration of succession. The doctrine of "acceleration succession" will only apply where the last male holder completely effaces himself ."

(16) In the instant case, it is abundantly clear that Bhagwani, in order to get over the relevant provisions of the Act, executed and registered gift deed in favour of her own daughters *qua* her land. It implies that the land had not come to the petitioners on the opening or acceleration of succession. She had not completely effaced hereself. Thus, notice was not required to be issued to the petitioners or non-giving of the notice to them in no manner amount to violation of cardinal canons of natural justice. In re : **S. Balwant Singh Chopra and others** *(supra),* it has been held as under :—

> "Rule 6 of the Punjab Security of Land Tenures Rules, 1956, relates to the land owner and the tenants and notice has to be given to the persons who have a legal right in the land which is the subject-matter of the proceedings and which right is recognized or recognizable under the Punjab Security of Land Tenures Act. Since the transfers after 15th April, 1953 have to be ignored, the transferees who obtained the land in 1957 by transfer from the landowner, had no legal right in the land and, therefore, were not entitled to any notice of the proceedings before the Special Collector for declaring any part of the land held by the landowner as surplus."

(17) In re : **State of Haryana and others** versus **Sampuran Singh and Others, and State of Punjab and another** versus **Pardam Singh and others (5),** the Apex Court observed as under :—

> "The provisions of Section 19B show that regardless of the source of excess area, be it inheritance, bequest or gift, the capacity to own is conditioned by the permissible limit. Section 10A does not militate against this mandate of Section 19B. Section 10A(a) is wide in its terms and encompasses all surplus area, howsoever obtained. Even Section 10A(b) strikes no discordant note. All that it says and means is that lands acquired by an heir by inheritance are saved in so far as dispositions of such lands are concerned. The drafting of the saving clause is cumbersome but the sense is and, having regard to the conspectus, can only be that although in the hands of the propositus, it is surplus land, if among the heirs it is not, then their transfers will not be affected by the interdict of Section 10A(a). Assuming some inconsistency, primacy goes to Section 19B which effectuates the primary object.
>
> Gift to one's relative is repugnant to the basic scheme because the surplus pool will be adversely affected if gifts and other transfers which will skim off surplus were to be allowed.
>
> Now, Section 19B directs the owner who, by inheritance, comes to own an excess area, to make a declaration of his lands within a prescribed time. This does not mean that the time lag is statutorily given for executing gifts and transfers to defeat the law itself. Such a conclusion would be obviously absurd. What is intended is to give some time to the heir to ascertain the assets he has inherited, make the choice of his 'reserved area' which he likes to keep and make the necessary declaration."

(18) In the instant case, the petitioners have alleged that they got the land on the basis of the gift deed dated 13th January, 1960 which is obviously after 15th April, 1953. Thus, on viewing the matter

(5) (1975) 2 S.C.C. 810

in the light of the above extracted observations, no notice was required to be issued to the petitioners nor it was warranted to afford an opportunity of being heard to them.

(19) The alleged gift in favour of the petitioners is repugnant to the basic Scheme of the Act. The area stood already declared surplus on 1st January, 1960 by the competent authority. Bhagwani was, in fact, given time to make choice of her reserved area which she liked to retain and make the necessary declaration. During this interregnum, she made an endeavour to thwart the substantive object of the law by executing and registering the gift deed in favour of her own daughters.

(20) In view of the preceding discussion, no case is made out for issuance of desired writ quashing the impugned orders. Consequently, this petition is dismissed.

R.N.R.

Before Permod Kohli, J.

SARUP SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 5513 of 1984

11th December, 2008

Constitution of India, 1950—Arts. 16(4) and 226—Instructions dated 4th October, 1967, 22nd December, 1980 and 5th December, 1975 issued by State Government—A member of reserved category seeking promotion to post of S.E.-Reservation policy—Whether applied to permanent vacancies only—Held, no—Instructions provide that reservation policy also applicable to temporary, short term including deputation vacancies—Respondents applying reservation policy only to permanent vacancies—Petitioner entitled to be considered for promotion as S.E. against one of temporary and deputation vacancies—Petition allowed.