Before Arun B. Saharya, C. J. & V. K. Bali, J

MOHAN SINGH—*Appellant*

versus

JAI NARAIN SINGH & OTHERS—*Respondents*

L.P.A. No. 374 of 1991

26th November, 2001

Punjab Security of Land Tenures Act, 1953—S. 18—Haryana Ceiling on Land Holdings Act, 1972—S. 12 (3)—Haryana Utilisation of Surplus and other Areas Scheme, 1976—Cl. 4—Declaration of surplus area of land—Landowner losing his cause by exhausting all remedies upto the final authority constituted under the 1953 Act as also the High Court—Land-owner challenging the orders declaring his land to be surplus by filing a civil suit without arraying tenants as party—Civil Court passing a decree in favour of the land-owner-1st Appellate Court and the High Court affirming the judgment of the trial Court—Challenge thereto—Provisions of S. 18 of the 1953 Act entitle the tenants to purchase the land forming part of their tenancy prior to introduction of the 1972 Act—Tenants in possession of the land not in the permissable area of the land-owner are also entitled to allotment of land by virtue of the 1976 Scheme—being the tenants and necessary party to the suit they are not bound by the judgment & decree of the Civil Court—Appeal allowed, order of the learned Single Judge set aside while upholding the orders of the Financial Commissioner setting aside the eviction of the tenants.

Held, that by virtue of provisions contained in Section 18 of the 1953, Act, it is not disputed that a tenant had right to purchase the land which was not in the permissible area of land owner on reserved price calculated on the basis of average of sale instances of locality over a period of 6 years immediately preceding the presentation of application under Section 18. Under the Haryana Ceiling of Land Holdings Act, 1972, a scheme known as the Haryana Utilisation of Surplus and other Areas Scheme, 1976 has since been framed. Clause 4 of the scheme specifies the category of eligible persons and inter se priority for allotment of surplus land. Category BB, which is third

category in order of preference makes a tenant, who has been in possession of land since 15th April, 1953 or prior to that date and such land is not included in the permissible area of land owner entitled to allotment. The appellants-tenants, were certainly entitled by virtue of provisions contained in Section 18 of the 1953 Act to purchase the land forming part of their tenancy prior to introduction of the 1972 Act and after the Act they were entitled to allotment of the land which was not in the permissible area of land owner. Concededly by dint of the order passed by the authorities constituted under the Act of 1953 declaring land in the tenancy of the appellants as surplus, which was certainly not in the permissible area of land owner, they were entitled to purchase the same. They were also entitled to allotment of the said land by virtue of Scheme of 1976. That being the position, they were not only proper but necessary parties to the litigation that resulted in setting aside the surplus area orders. The tenant-appellants could succeed on the only ground that they shall not be bound by the judgment and decree of the Civil Court, where they were not even arrayed as party respondents, even though they were necessary party in light of the fact that order declaring land as surplus belonging to land-owner, insofar as they are concerned, had attained finality.

(Paras 14 & 17)

Ashwani Kumar Chopra, Sr. Advocate with Harminder Singh, Advocate *for the appellant*

Harsh Aggarwal, Advocate *for the respondents.*

JUDGMENT

V.K. BALI, J

(1) This marathon litigation between land owner and tenants has already consumed 28 years. A brief resume of the facts, spanned over past more than two and half decades, would need a necessary mention.

(2) An application on form 'L' under section 14 (A) (1) of Punjab Security of Land Tenures Act (Act No. 10 of 1953) (hereinafter to be referreed as 'the Act of 1953') came to be instituted against the tenant Mam Raj pertaining to land measuring 17 Kanals 16 Marlas in village Sarala, Tehsil Palwal on the sole ground that tenant had not paid the rent of the land for the period from Kharif 1968 to Rabi 1973 without any sufficient cause.

(3) The Assistant Collector,—*vide* his order dated 28th February, 1975 directed dispossession of the tenant, holding that he had not, paid the rent for the period from Kharif 1968 to Rabi, 1972 without any sufficient cause. Constrained Mam Raj carri :d an appeal against the order of learned Assistant Collector, which was dismissed by the Collector on 31st March, 1976. Still aggrieved revision came to be filed before the learned Commissioner but with no success as the same was dismissed,—*vide* order dated 5th December, 1976. In the second revision that came to be filed against the order aforesaid before the learned Financial Commissioner, the fate of the parties fluctuated as,—*vide* order dated 22nd February, 1980 the learned Financial Commissioner set aside the orders passed by the Assistant Collector, Collector and Commissioner respectively and dismissed the application filed by the land owner for eviction of tenant on the ground of non-payment of rent by primarily holding that land had since declared surplus and by virtue of provisions contained in the Haryana Ceiling on Land Holdings Act, 1972 the same had vested with the State. Application for eviction of the tenants was held to be wholly incompetent as the land owner was divested of all rights, title and interest in the land subject matter of dispute. The land owner successfully agitated against order passed by learned Financial Commissioner dated 22nd February, 1980 before this Court in Civil Writ Petition No. 3178 of 1980 as the same was allowed,—*vide* order dated 15th March, 1991. By the order aforesaid learned Single Judge decided two connected writ petitions bearing No. 3177 of 1980 and 3178 of 1980 as common question of law and fact were involved in both the petitions. It requires to be mentioned here that land owner had two tenants on two different parcels of land and had sought eviction of both of them on non payment of rent without any sufficient cause and it is for that precise reason that all through the matter was decided by a common judgment rendered in both the cases. We propose to do likewise.

(4) In the context of the controversy that has been raised in the present appeal filed by the tenants against the orders passed by learned Single Judge referred to above, the facts that need notice would reveal that one Baljit Singh was a big landowner in terms of his holding in view of the provisions contained in the Act of 1953. He owned 60 acres 18 marlas of land situated in village Lohsinghani, Teh. Gurgaon. He was also owner of one half share of 211 kanals situated in village Sarala, Tehsil Palwal as also owner of one third share of

the land measuring 390 kanals 10 marlas situated in village Kabulpur, Tehsil Ballabgarh on 15th April, 1953, when the Act of 1953 came into force. *Vide* order dated 20th March, 1963, Collector (Surplus) declared whole of his land situated in village Lohsinghani and Sarala and 55 kanals of land situated in village Kabulpur as surplus. This order was challenged by Baljit Singh in an appeal that was dismissed on 6th November, 1962. The revision carried against the order aforesaid was dismissed by learned Financial Commissioner on 31st October. 1963. Baljit Singh then tried his luck by filing a review application against the aforesaid order, which too did not find favour and was consequently dismissed on 25th January, 1965. Baljit Singh then filed a Civil Writ Petition against order dated 25th January, 1965, which also did not find favour as the same came to be dismissed vide order dated 6th February, 1970. After two years when Baljit Singh had lost his cause before the authorities constituted under the Act of 1953 as also High Court, he filed a civil suit challenging the orders declaring his land to be surplus without arraying tenants as party to the suit and was successful in obtaining a decree in his favour,—*vide* which orders declaring his land to be surplus were set aside. State of Haryana unsuccessfully carried appeals against the judgment and decree recorded by the Civil Court and that of the District Judge. It is quite apparent from the records of the case that whereas Assistant Collector, Collector and Commissioner determined the controversy based upon the judgment of civil court holding that the orders passed by the authorities constituted under the Act of 1953 pertaining to surplus area of land owner, were illegal, learned Financial Commissioner, who, as mentioned above, decided the matter in favour of tenants, ignored the said judgment on variety of grounds. The core controversy in the present case, thus, centres around the binding nature of judgment and decree of Civil Court in light of the fact that tenants were not arrayed as party respondents in the said case.

(5) Mr. Ashwani Chopra, learned Senior counsel representing the appellants in these appeals filed under Clause X of Letters Patent against the order passed by learned Single Judge dated 15th March, 1991 vehemently contends that the orders pertaining to declaration of surplus area of land owner had assumed finality and the same could not be reopened by a civil suit, particularly when jurisdiction of the civil court to determine controversy pertaining to declaration of surplus area had been specifically barred under the provisions of the Act of

1953. In any case, a judgment and decree of the civil court which may have been affirmed upto the High Court could not bind the tenants/ appellants, who were concededly not a party in such civil suit as any order passed at the back of necessary parties will be of no avail to his adversary further contends the learned counsel.

(6) Mr. Harsh Aggarwal, counsel representing the legal heirs of Baljit Singh, who died during the pendency of litigation seeks to support the judgment of learned Single Judge on the basis the same came to be rendered.

(7) Before we may advert to the controversy in issue, it would be appropriate to mention that order dated 31st October, 1963 passed by learned Financial Commissioner in a revision petition preferred before him against orders dated 20th March, 1962 and 6th November, 1962 passed by the Collector and Commissioner respectively, had attained finality as the same was not further agitated by way of writ petition in this Court. However, as mentioned above, the review petition was indeed filed but the same was entirely on different grounds. The land owner had sought review on the ground that area sold by him before 1958 could not be computed for calculating the total holding that he owned and possessed on the date when the Act of 1953 came into force. This review petition, as mentioned above, was dismissed on 25th January, 1965 against which writ petition was filed which too was dismissed,—*vide* order dated 6th February, 1970. In the order that came to be passed by the High Court, it was specifically mentioned that legality and correctness of the order of Collector passed in review had been challenged and further that the order of review came to be passed on the assertion made by the land owner that area that has been sold by him in the year 1957 had been illegally included in his reserved area. The only contention of the counsel that came to be considered by this Court was dealt with by observing as follows :—

> "The only contention raised before me by the learned counsel for the petitioner is that the area sold by the petitioner could not legally be included in his reserve area. The proper opportunity when this objection could be raised was at the time when the area was declared surplus by the Collector, I am told by the learned counsel that the objection was taken but did not prevail with the

appropriate authorities. It is also admitted by the learned counsel that the review application was filed because of the interpretation of law given on this aspect of the matter in the Division Bench decision of this court, in Bhagat Gobind Singh *vs.* Punjab State and others 1963 PLR 105. It is also contended by the learned counsel that in the case of the brother of the petitioner, the area which was sold by him, has been excluded from the reserved area and as such the petitioner should have been given same relief. It is well settled proposition of law, so far as this Court is concerned that any subsequent interpretation of law would not entitle a revenue officer to review his previous order which had become final. Thus, the order of the Collector, in refusing to review his previous order is perfectly legal and cannot be interfered with by this Court in its extraordinary jurisdiction under Articles 226/227 of the Constitution of India. No other point is urged."

(8) Having lost his cause with regard to declaration of surplus area first by exhausting his remedies up to the final authority in the hierarchy of authorities constituted under the Act of 1953 the land owner still agitated the matter by way of review application and writ petition against the order rendered on the review application with the result mentioned above, and then tried his luck by way of civil suit and as mentioned above without arraying the tenants as party-defendants therein. In the eviction proceedings land owner placed on record the judgment passed by District Judge. Neither the plaint nor the judgment and decree passed by the trial court were brought on record. However, from the judgment of the learned District Judge, it would appear that burden of the plaint was that he was owner of land measuring 60 killas 18 marlas situated in village Lohsinghani, Tehsil Gurgaon, and owner of one half share of 211 Kanals situated in village Sarala, Tehsil Palwal and owner of one-third share of land measuring 390 kanals 10 marlas situated in village Kabulpur, Tehsil Ballabgarh and that sum total of the land situated in three villages was less than 30 standard acres or 60 ordinary acres as on 15th April, 1953 the date of the commencement of the Act of 1953. The entire land being in his permissible area could not be declared surplus and

yet Collector had declared the whole of his land situated in village Lohsinghani and Sarala and 55 kanals of his land situated in village Kabulpur as surplus. He further averred that area which was in possession of the mortgagee the area consisting of Banjar Kadim, banjar Jadid and gairmumkin and the permissible area under the tenants as also the area in the possession of the transferees prior to 30th July, 1958 should have been excluded by the Collector while determining his permissible area from the total land that he owned in three villages. The judgment rendered by learned District Judge would further reveal that State of Haryana did not file any reply and, therefore, its defence was struck off. Natha, Sukh Ram, Randhir and Banta, who were arrayed as party-respondents in the suit aforesaid in their capacity as allottees of surplus land, pleaded that they had been rightly settled in the disputed land declared surplus and as such they were not liable for eviction and that civil court had no jurisdiction to entertain and hear the claim and suit was not maintainable. The limited defence projected by defendants arrayed in the suit aforesaid gave rise to the following issues :—

1. Whether the Civil Court has no jurisdiction ? OPP

2. Whether the order dated 20th March, 1962 of the Collector (Surplus) is without jurisdication, illegal and void ?

3. Whether the suit for possession does not lie against the defendants Nos. 2 and 3 ?

4. Relief.

(9) On the basis of evidence of Madan Kishore, Patwari Circle Sarala, examined as PWI and Sham Dass, Patwari Village Lohsinghani as also Lekh Raj, Patwari Bhankpur, the Court came to the conclusion that land owner had no area under his cultivation in Village Sarala and further that he had land measuring 30 Kanals 18 Marlas only under his cultivation in Village Lohsinghani and 44 ordinary acres of land under his self cultivation in Village Kabulpur and that his total area on 15th April, 1953 under his cultivation in all the three villages came to be 47½ ordinary acres. That being the position, it was observed that "the order of the Surplus Collector declaring the plaintiff's land measuring 60 Kanals 18 Marlas situated in Village Lohisnghani

and one half share of his land situate in Village Sarala and 50 Kanals of land situated in Village Kabulpur as surplus is, thus, obviously beyond his power and jurisdiction vested in him under the Act."

(10) By relying upon a Full Bench judgement of this Court reported as 1970 PLJ, 402 it was further observed by the District Judge that "he is found to have taken the land of the plaintiff in possession of the mortgagees in possession of the tenants and lying as banjar Kadim, banjar Jadid and ghair mumkin into consideration while determining the surplus area of the plaintiff contrary and in contravention of the definitions given in the Act as stated above."

(11) On the basis of yet another judgment ***Santa Singh*** Vs. ***The State of Punjab (1),*** it was held that "ouster of jurisdiction of the civil court was not to be readily inferred and the statute which excluded such jurisdiction had to be construed very strictly and that consequently if the Collector over stepped his jurisdiction and passed an order, which could not be made in pursuance of the Act, the bar of no jurisdiction would not be operative. This view of the law is found to have been further adopted in 1973 PLJ 811 the State of Haryana and others *Vs.* Hari Singh and others."

(12) The judgments cited by the State counsel with regard to civil court having no jurisdiction ***Balbir Singh*** vs. ***Sarmukh (2), Dhaunkal*** v. ***Man Kauri & Ors. (3)*** and ***Ganga Ram*** v. ***State of Haryana & Ors. (4),*** were held not applicable.

(13) We are not really called upon to determine validity of the judgment and decree passed by the Civil Court, which as mentioned above, has since been affirmed by the District Judge and also High Court in appeal preferred by the State of Haryana but the question that still needs serious thought and determination is as to whether said judgment would bind the tenants in their right to purchase land under section 18 of the Act of 1953 and for allotment under the Haryana Utilisation of Surplus and other Areas Scheme, 1976 by the Government despite the fact that they were not a party respondents in the aforesaid suit. Before we might determine this question, it will

(1) 1972 PLJ 240
(2) 1969 PLJ 101
(3) 1970 PLJ 402
(4) 1970 PLJ 690

be appropriate to mention that this question seems to have been debated before the learned Single Judge as well. The contention of the tenants was repelled by the learned Single Judge by observing thus :—

> "The dispute whether the land owner has surplus area or not is primarily between the State and the land owner. Of course, the affected party has got a right to be heard. That eventuality has not arisen in the instant case."

(14) By virtue of provisions contained in Section 18 of Act of 1953, it is not disputed that a tenant had right to purchase the land which was not in permissible area of land owner on reserved price calculated on the basis of average of sale instances of locality over a period of 6 years immediately preceding the presentation of application under Section 18. Under the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred as "the Act of 1972"), a scheme known as the Haryana Utilisation of Surplus and Other Areas Scheme , 1976 has since been framed. Clause 4 of the scheme aforesaid specifies the category of eligible persons and inter-se priority for allotment of surplus land. Category BB, which is third category in order of preference makes a tenant, who has been in possession of land since 15th April, 1953 or prior to that date and such land is not included in the category of eligible and inter-se priority for allotment of surplus land. Category BB, which is third category in order of preference makes a tenant, who has been in possession of land since 15th April, 1953 or prior to that date and such land is not included in the permissible area of land owner entitled to allotment. The appellant-tenants, in our view, were certainly entitled by virtue of provisions contained in section 18 of the Act of 1953 to purchase the land forming part of their tenancy prior to introduction of Act, 1972 and after the Act aforesaid they were entitled to allotment of the land which was not in the permissible area of land owner. Concededly by dint of the order passed by the authorities constituted under the Act of 1953 declaring land in the tenancy of the appellants as surplus, which was certainly not in the permissible area of land owner, they were entitled to purchase the same. They were also entitled to allotment of said land by virtue of scheme of 1976.

That being position, in our view, they were not only proper but necessary parties to the litigation that resulted in setting aside of the surplus area orders. Finding of the learned Single Judge, that "the dispute whether the land owner has surplus area or not is primarily between the State and the land owner and further that of course, the affected party has got a right to be heard but that eventuality has not arisen in the instant case", cannot possibly be sustained. It has been the case of tenants that they were old tenants. Reference may be made to the findings recorded by the Commissioner, Ambala Division in his order dated 5th December, 1978, wherein, on the contention raised on behalf of none other than the counsel for the land owner, it was found that the tenant is in possession for the last thirty years. Even though, finding aforesaid came to be recorded on the contention of counsel representing the landowner that the tenants were not entitled to any compensation on account of their being in possession for thirty years, but the fact remains that the parcel of land being in possession for the last thirty years of the appellants as tenants was accepted. From the aforesaid finding of the Commissioner, it emerges that the appellants came to be inducted as tenants before 1953.

(15) Having held that appellants were necessary parties to the suit instituted by the land owner challenging order declaring his land to be surplus under the provisions of the Act of 1953, the only thing that remains to be examined is as to whether the appellants would be bound by the judgment of the Civil Court. The facts of the case as fully detailed above would clearly reveal that tenants have since been prejudicially affected by the Civil Court decree inasmuch as their clear right to purchase the land under section 18 of the Act of 1953 and for allotment under the scheme of 1976 stood obliterated by virtue of decree aforesaid. It is well settled that any order/judgment or decree that may adversely affect the vested rights of a party cannot bind it unless they have been heard in the matter. A Full Bench of five Judges of this Court in ***Harnek Singh and others*** **Vs.** ***State of Punjab and others (5),*** while considering right of hearing of a person, who was transferee from big land owner in the matter of declaring surplus area in the hands of owner has held that "transfer is made by a land-owner after 21st August, 1956, the transferee is a person interested in participating in the proceedings for declaration

(5) 1972 PLR 127

of surplus area and he must be given an opportunity of being heard to avoid his interest being prejudicially affected before declaring the surplus area of his transeror under the Act.....further, that even if the statute and the rules framed thereunder are silent on the point, it appears to us to be necessary for satisfaying the principles of natural justice, without which it is impossible to maintain the rule of law, to give an adequate opportunity to a transferee to safeguard his interest in proceedings which can possible culminate in a decision prejudicially affecting him and his property rights. The interests of such a transferee are always in jeopardy in proceedings for determination of the surplus area of his transferor."

(16) The observations of the Full Bench, as extracted above, would apply to the facts of this case far more pronouncedly as the appellant-tenants had a right to purchase or be allotted the land detailed in order dated 20th March, 1962 declaring some land of the land owner as surplus, a part of which was admittedly in their tenancy and it is this parcel of land from which they have been ordered to be evicted by the impunged judgment of learned Single Judge.

(17) After having determined that judgment and decree passed by the Civil Court could not bind the appellant-tenants in view of their vested right to be allotted the land under their tenancy, the contention of Mr. Chopra has to be accepted that under section 12(3) of the Act of 1972, the area which had since been declared surplus under the provisions of the Act of 1953, would automatically vest in the State and that being so, the landowner had no right to seek eviction of tenants from land which had since been declared surplus way back in 1962. There is no need to go into the question as raised by learned counsel that order declaring land belonging to land owner as surplus forming part of tenancy of appellant had attained finality and, thus, could not be reopened by way of a civil suit and that as to whether the civil Court had no jurisdiction to determine the question, which was in exclusive domain of the authorities constituted under the Act of 1953. We would, however, hasten to add that a Division Bench of this Court in ***Amar Sarjit Singh*** **Vs.** ***The State of Punjab and others, (6),*** held that the nature and subject matter of the inquiry

(6) 1968 PLJ 19

before the Collector relates to the determination of the surplus area. The question whether certain land could or could not be included in the surplus area falls within the jurisdiction of the tribunal and if no objection is raised on this score the Collector has the power to determine it and further that Collector's order does not become a nullity merely because the result may have been different in a subsequent decision if a superior Court gives a somewhat different interpretation to the point in issue. This Division Bench judgment in ***Amar Sarjit Singh*** **Vs.** ***The State of Punjab and another (7).*** The Single Bench of this Court likewise in *Ganga Ram Vs. State of Haryana and another,* (Supra) held that the question of conversion of ordinary acres into standard acres is within the exclusive jurisdiction of the revenue authorities and their decision on that question cannot be described as non est. In the present case the order of Collector, Commissioner and Financial Commissioner were set aside by the civil Court on the only ground that some area which could not be taken into consideration for the purpose of computing surplus area was wrongly included. It is on this ground alone that it was held that the civil court would have jurisdiction in the matter. As mentioned above, we are not dealing with the correctness of decision rendered by the civil court as no necessity arises to do so. The tenant-appellants, in our view, could succeed on the only ground that they shall not be bound by the judgment and decree of the Civil Court where they were not even arrayed as party-respondents, even though they were necessary party in light of the fact that order declaring land as surplus belonging to land-owner, insofar as they are concerned had attained finality.

(18) In view of the discussion made above, these appeals are allowed. The order passed by the learned single Judge is set aside and order dated 22nd February, 1980 passed by Financial Commissioner is restored. Consequently, petition of eviction filed by the land owner is dismissed. In view of the fluctuating fate of the parties, there shall, however ,be no order as to costs.

R.N.R.

(7) 1968 PLJ 297