

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.12634/1998

(From the judgement and order dated 30/07/1998 in CWP 11100/98
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

HERNEK SINGH

Petitioner (s)

VERSUS

FINANCIAL COMM., APPEALS PUNJAB & ORS.

Respondent (s)

(With Appln(s). for impleading party & exemption from filing O.T.)
(With prayer for interim relief)
(For Final Disposal)

Date : 06/12/2000 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI
HON'BLE MR. JUSTICE S.N. PHUKAN

For Petitioner (s) Mr. PC. Jain, Sr.Adv.
Mr. Manoj Swarup, Adv.
Mr. Hiren Dasan, Adv.
Mr. Nitin Bhardwaj, Adv.

For Respondent (s) Mr. DS. Bali, Sr.Adv.
Mr. Rajesh K. Sharma, Adv.
Ms. Shalu Sharma, Adv.
Mr. Goodwill Indeevar, Adv.

Mr. Rajeev Kumar Sharma, Adv.

Mr. Uday U. Lalit, Adv.

UPON hearing counsel the Court made the following
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Leave is granted.
The appeal is allowed with no order as to costs.

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(S.Thapar) (Kanwal Singh)@@
AA
PS to Registrar Court Master@@
AA

The signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2000@@
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(Arising out of SLP(C)No.12634/1998)

Hernek Singh

Appellant (s)

Versus

Financial Commnr., Appeals, Punjab & Ors.

Respondent (s)

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Impleadment is not opposed by the appellant. It is allowed accordingly. They may be impleaded as party respondents.

Exemption allowed.

Leave is granted.

The appellant who claims to be the legatee of the owner of the land of late Daljit Singh. He assails the order of the High Court of Punjab & Haryana passed in CWP.No.11100/98 dated 30th July, 1998. By the impugned order the High Court confirmed the order of the Financial Commissioner (Appeals) in case No. R.O.R.285 of 1984-85 dated March 5, 1987 who by order dated 29.6.98 declared not to

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interfere in the order of the Commissioner dated 22.9..97. Proceedings were initiated on the application of Respondents 5 to 10 praying for delivery of possession of the land in question on the ground that the same was allotted to them on 22.9.80. The Collector dismissed the application on April 17, 1997. The said respondents carried the matter in appeal before the Commissioner who allowed the appeal and remanded the case to the Collector for passing a speaking order. That order was passed on September 22, 1997. The said Daljit Singh filed a revision against the said order before the Financial Commissioner (Appeals-II) (East Punjab) which was dismissed on June 26, 1998. The appellant claiming to be the legatee of the said Daljit Singh filed a writ petition assailing the validity of the said order of the Financial Commissioner of June 26, 1998. The Writ Petition was dismissed by the High

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Court on July 30, 1998. It is against that order that the appellant is in appeal before us.

Mr. P.C. Jain, the learned senior counsel appearing for the appellant contends that after determination of surplus land under the PEPSU Tenancy Agricultural Lands Act, 1955 (for short PEPSU Act) there had been redetermination under the provisions of the Punjab Land Reforms Act, 1972 (for short the Land Reforms Act). Without such determination or without the land having been vested in the State, the alleged allotment of

land in favour of Respondents 5 to 10 is without authority of law and, therefore, the order passed by the Commissioner and confirmed by the High Court are liable to be quashed.

Mr. D.S. Bali, the learned senior counsel appearing

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for respondents 5 to 10, on the other hand, contends that the land in question has vested on June 29, 1976 when the Collector passed order declaring surplus land of 16.98 standard acre under PEPSU Act. Learned counsel further submits that there was no necessity for any determination under the provisions of Land Reforms Act and that Section 8 is not attracted. It is by virtue of proviso (1) to sub-section (2)(i) of Section 28, the land stood vested on the declaration of the surplus land by the Collector.

To appreciate the contentions raised by the learned counsel, it would be necessary to refer to the facts leading to the passing of the order dated 29.6.76 and the developments thereafter.

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The proceedings for determination of surplus land were initiated under the PEPSU Act and on January 23, 1963 the Special Collector declared that Daljit Singh held 22.15 standard acres as surplus land. That order was carried in appeal. The appeal was dismissed on August 25, 1963. The said Daljit Singh raised a plea that there was orchard on the land and therefore the land comprising of the orchard could not have been computed as surplus land, but that plea was rejected and the case was remanded for fresh consideration by the Commissioner on January 27, 1965. While so the Land Reforms Act came into force on April 2, 1973. It appears, under the Land Reforms Act Daljit Singh filed a declaration on which the Collector, (Agrarian), Malerkotla, passed orders holding that according to Section 5(1) of the Punjab Land Reforms Act, 1972, the land owner was entitled to reserve two

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units of land as permissible area i.e. one unit for himself and one unit each for his major sons. Therefore, it was clear that there was no surplus area with that land owner and as such no action was required to be taken in that case which was filed. While so, the Collector, Malerkotla, in the proceedings which were pending under the PEPSU Act declared that the land owner was having surplus land of 20.75 standard acres. On appeal by the said Daljit Singh, Commissioner, Patiala, remanded the case to consider the fact of the decree of the Civil Court. On fresh consideration the Collector, Malerkotla, by his order dated June 29, 1976 declared the land owner to be in possession of surplus land to the extent of 16.98 standard acres. We are told that on appeal when the said order was filed before the Commissioner, but it was dismissed on November 15, 1979 and which was again dismissed

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on revision, was filed by Daljit Singh which was allowed and the case was remanded on 1.9.83. But inasmuch as copies of those two orders are not filed, we do not propose to deal with

the same. What is represented before us is that the order of the Commissioner dated 4.9.84 which set aside two orders dated 29.6.76 passed under the Land Reforms Act and also an order passed on July 30, 1982 which was passed on the application of Gurbarinder s/o land owner (the impleaded respondent No.11) staying further proceedings. However, he uphold the order passed by the Collector, Malerkotla under the PEPSU Act on 29.6.76 (Exhibit P-2). On further revision to Financial Commissioner (Appeals) the order of the Commissioner dated 4.9.84 was set aside, insofar as it related to Exhibit P-1 and the order dated 30th July, 1982. However, the order Exhibit P-2 an order dated 29th June, 1976 passed under the PEPSU Act

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was upheld. But for the application filed by respondents 5 to 10 the matter would have rested there. It was on their application that the present litigation started which resulted in the impugned order. It may not be necessary to refer to many provisions of the PEPSU Act except that a reference to Section 32-E which deals with vesting of surplus area in the State Government is necessary. A perusal of the said provision shows that after the date on which the final statement in respect of a land owner or tenant was published in the Official Gazette, the surplus area of the land owner which would deem to have been acquired by the State Government for a public purpose and all rights, title and interest shall be extinguished and shall vest in the State Government on the date on which possession thereof was taken. It may be pointed out here that before the order of Collector, Malerkotla,

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Exhibit P-2 was passed on 29th June, 1976 long before the Land Reforms Act came into force on April 2, 1973. Section 28 of the Land Reforms Act, which is relevant for our purpose is extracted herein:

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Section 28 : Repeal and Saving. - (1)
The Punjab Security of Land Tenures Act, 1953 and the PEPSU Tenancy and Agricultural Lands Act, 1955, in so far as these are inconsistent with the provisions of the Act, are hereby repealed.

(2) The repeal of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactments, shall not affect -

(i) The proceedings for the determination of the surplus area pending immediately before the commencement of this Act under either of the said enactments, which shall be continued and disposed of as it this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by, the State Government in accordance with the provisions of this Act:

Provided that such proceedings shall, as far as may be, be continued and disposed of from the stage these were immediately

before and commencement of this Act, in accordance with the procedure specified by or under this Act (and the cases pending before the commencement of this

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Act shall stand transferred to the collector of the district concerned for disposal).

Provided further that nothing in this section shall affect the determination and utilisation of the surplus area, other than the surplus area referred to above, in accordance with the provisions of this Act;

(ii) the previous operation of the said enactments or anything duly done or suffered thereunder;

(iii) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments, in so far as such right, privilege, obligation or liability is not inconsistent with the provisions of this Act and any proceeding or remedy in respect of such right, privilege, obligation or liability may be instituted, continued or enforced as if this Act had not been passed.

Section 28 of the Act does not confer any right or new rights on the landlords. This section merely clothes determination of surplus area under the Punjab and Pepsu Laws with continued legality as a measure of abundant caution.

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A perusal of the provision extracted above shows that the provisions of the Punjab Security of Land Tenures Act, 1953 and the PEPSU Tenancy and Agricultural Lands Act, 1955 insofar, as they were inconsistent with the provisions of the Land Reforms Act were repealed. Sub-section 2 of the said

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section which is a saving provision enacts that the proceedings for the determination of the surplus area pending immediately before the commencement of the Land Reforms Act under either of the said enactments referred to above shall be continued and disposed of as if the Land Reforms Act had not been passed and the surplus area so determined shall vest in and be utilised by the State Government in accordance with the provisions of the Act. This clause has two provisos. The first proviso says that such proceedings as far as may be continued and disposed of from the stage they were immediately before the commencement of that Act from the State in accordance with the procedure specified under the Land Reforms Act and that the cases pending before PEPSU Land Commission immediately before the date of commencement of that Act shall stand transferred to the Collector of the District concerned

for disposal. The second proviso which is not really in dispute says that nothing in that section shall affect the determination and utilisation of the surplus area other than the surplus area referred to above in accordance with the provisions of this Act.

What Mr. Bali contends is that Clause (1) of sub-section 2 should be understood to direct vesting of the surplus area determined under the provisions of the PEPSU Act immediately and passing of the order declaring surplus. We are afraid we cannot accept the said contention of the learned counsel. Literal reading of the said provision indicates that the surplus area so determined would vest in and can be utilised by the State Government in accordance with the provisions of the Land Reforms Act. The relevant provisions of Section 8 reads as under:

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Section 8: Vesting of unutilised surplus area in the State Government. - Notwithstanding anything contained in any law, custom or usage for the time being in force, but subject to the provisions of Section 15, the surplus area declared as such under the Punjab law or the Pepsu law, which has not been utilised till the commencement of this Act and the surplus area declared as such under this Act, shall, on the date on which possession thereof is taken by or on behalf of the State Government, vest in the State Government free from all encumbrances and in the case of surplus area of a tenant, which is included within the permissible area of the landowner, the right and interest of the tenant in such area shall stand terminated on the aforesaid date:

Provided that where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government.

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A careful reading of Section 8 indicates that the surplus area declared under the Pepsu Act which had not been utilised till the commencement of that Act (a) the surplus area declared under the Pepsu Act and Punjab Law which has not been utilised till the commencement of this Act and (b) the surplus area declared as such under the Land Reforms Act shall

on the date on which possession thereof was taken by and on behalf of the State Government vest in the State Government free from all encumbrances. It would also be useful to refer to the provisions of Section 11 of the Land Reforms Act which provides that the surplus area which has vested in the State

Government under Section 8 shall be at the disposal of the State Government. The State Government is unable to frame scheme for utilisation of the surplus area under the Punjab Law and the Pepsu Law. It is, thus, clear that the vesting of the land is pre-requisite of framing of the scheme of a particular land and its allotment and as we have indicated above without taking of possession, there cannot be a vesting of land in the State Government. Here it would be necessary to mention that the provisions of these two acts came up for consideration of a full bench decision of the Punjab and

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Haryana High Court in Punjab Law Reporter Vol. 58. This Court in Ujjagar Singh (dead) by Lrs. Vs. The Collector, Bhatinda@
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& Anr. JT 1996 (6) SC 713 quote the declaration of law by the@
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Punjab & Haryana High Court approves the same and observed "according to us the majority judgment of the full bench has correctly appreciated the scope of the three enactments referred to above. Once the land declared as surplus under the Pepsu Act did not vest in the State Government as possession thereof had not been taken. There has to be a fresh determination in respect of the area which the appellant is entitled to hold in the light of the Punjab Act. This being the position in law the land in question had not vested in the State Government as admittedly, the possession had not been taken which is clear from the averment made in the reply filed by the State. "It is correct that the land had been

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declared surplus. It is also clear that the allotment order was passed in the year 1980. It is also correct that the possession of the land owner continued and still continues to be that of the land owners." In view of this averment it cannot be legitimately contended that the land had vested in the State Government and therefore the allottees had any right in respect of land which is said to have been allotted on 22nd September, 1980. The order of the High Court confirming the order of the Financial Commissioner (Appeals) dated 22.6.98 is, therefore, unsustainable and it is accordingly set aside. The appeal is accordingly allowed but in the circumstances of the case we make no order as to costs.

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The allotment of the land in respect of respondents 5 to 10 is, therefore, of no legal sanctity and is bad in law.

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.....J
(Syed Shah Mohammed Quadri)

New Delhi,
December 06, 2000

.....J
(S.N. Phukan)