

*Before K. Kannan, J.*

**CAPT. JAGE RAM AND OTHERS,—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

**CWP No. 601 of 1989**

13th May, 2010

*Constitution of India, 1950—Art.226—Property declared surplus treating one person as absolute owner—Civil Court declaring ownership of 299 persons of property in dispute—State ought to have made endeavour to find out whether one person was owner of property in view of dispute that had been raised by petitioners—Impugned orders set aside and matter remitted to first authority/prescribed authority for eliciting details with reference to properties over which petitioners stake claim and compare property declared as surplus.*

*Held*, that when a claim was made by the petitioners before the SDO that the property could not have been treated as surplus treating Chatter Singh as absolute owner, it ought to have been the endeavour to find out whether the said person was the owner of the property in view of the dispute that had been raised by the petitioners. It was to be then seen whether the property which was declared as surplus was also the property over which a Civil Court decree had been passed, when Chatter Singh himself was a party. If it turned out that the mutation No. 1392 referred to the very same property which was the property declared surplus, then it was to be only held that such declaration was not valid and it would not operate to create a transfer of title favour of the State in order to declare the property as surplus.

(Para 5)

*Further held*, that the impugned orders are set aside and the matter is remitted to the first authority who is the prescribed authority under the Haryana Ceiling or Land Holdings, Karnal to serve notices to the petitioners, who are before this Court as representatives of all the 299 persons and elicit details with reference to the properties over which they stake claim and compare the property which the State had declared as surplus. If the property that is claimed by the petitioners is identified to be the very same

property which is declared as surplus then the proceedings shall be conducted by treating all the 299 persons as owners and the ascertainment of surplus or otherwise shall be taken on such a basis. If the properties which the petitioners claim, are not the same as the properties which are declared as surplus already, then the proceedings which had already culminated in treating the properties as surplus would remain.

(Para 5)

C.B. Goel, Advocate, and Nitin Jain, Advocate and  
Ms. Radhika Jain, Advocate, *for the petitioners.*

Ravi Dutt Sharma, Deputy Advocate General, Haryana.

**K. KANNAN, J (ORAL)**

(1) By virtue of the impugned proceedings, a property in an extent of 1366 kanals and 4 marlas had been treated as surplus under the Haryana Ceiling on Land Holdings Act of 1972, treating the whole as belonging to Shri Chattar Singh, resident of Village Padha. An application for review of this decision taken by the prescribed authority (Sub Divisional Officer, Karnal), was filed by certain persons claiming themselves to be the joint owners of the property. Such ownership as obtaining on 299 persons, had been declared in a Civil Court decree in Civil Suit No. 224 of 1969 before the learned Sub Judge, 3rd Class, Panipat, on 21st January, 1972 but an order had been passed rejecting the application stating that there was no power to review. The revision had been filed before the Commissioner, Ambala Division, by the petitioners, who had applied for review and the revision was also dismissed. A still further revision had also filed before the Financial Commissioner, Haryana, which was also dismissed. The petitioners are before this Court contending that the property had been declared as surplus treating Chattar Singh, who was only a co-proprietor, as the absolute owner of the whole extent of lands when there was a Civil Court's declaration that Chattar Singh as only a co-proprietor with 299 persons.

(2) The learned counsel appearing on behalf of the petitioners states that Chattar Singh was the first defendant in a Civil Suit No. 224 of 1969 before the Sub Judge, 3rd Class, Panipat, for a declaration that the decree which had been passed on 25th June, 1956 earlier at the instance of Chattar Singh and 4 others was in a representative capacity on behalf

of 299 persons and the decree itself therefore should be understood as enuring to the benefit of all the 299 proprietors. This suit had been decreed and the Civil Court held that the property belonged to all the persons on whose behalf the earlier suit had been filed. Still later, Manga Ram and 4 others filed another suit in 1974 before the Sub Judge, 1st Class, Panipat, that they were the owners of the property measuring 7475 kanals and 1 marla comprised in khewat No. 413, situated in Village Padha and that suit was also dismissed on 27th October, 1986, making reference to the fact that the plaintiffs in that case, were estopped from challenging the proprietors' right that was upheld in the earlier decree dated 21st January, 1972.

(3) It appears that Chattrar Singh, who one of the plaintiffs in the first suit in the year, 1952 had given a declaration that he was the owner of the property of the entire extent on the basis of which the proceedings had been taken to declare the properties as surplus beyond ceiling area. An application for review of this decision was filed by 5 persons as representatives for 299 persons in whose favour the mutation No. 1392 had been sanctioned. The application for review had not been rejected on the ground that the properties over which the petitioners were staking a claim were not held by them in joint ownership and that the property was not covered by the earlier decree. On the other hand, the authority dismissed it on the ground that he had no power to review. In the revision to the Commissioner, he observed that there was no mention of the khasra numbers and they had not even identified the order which was sought to be reviewed. A still further revision was also rejected on the same grounds.

(4) To the initial query as to how the property was declared as surplus by treating only one of the persons as the absolute owner, the learned counsel appearing on behalf of the State would contend that none of the petitioners could urge for ownership of the property nor have they been able to identify the property over which they were making a claim and the property which had been declared as surplus. In my view, it is rather strange for a State to contend that the petitioners had not set out the details of ownership when the State ought to know what is the property that they declared as surplus and who was treated to be the owner. If the issue were only to be considered from the point of view on how the proceedings do not refer to the khasra numbers over which the petitioners were making a claim, then I think unnecessary technicalities need not hamper the process of getting at the relevant details and take an appropriate decision.

(5) When a claim was made by the petitioners before the SDO that the property could not have been treated as surplus treating Chattar Singh as absolute owner, it ought to have been the endeavour to find out whether the said person was the owner of the property in view of the dispute that had been raised by the petitioners. It was to be then seen whether the property which was declared as surplus was also the property over which a Civil Court decree had been passed, when Chattar Singh himself was a party. If it turned out that the mutation No. 1392 referred to the very same property which was the property declared surplus, then it was to be only held that such declaration was not valid and it would not operate to create a transfer of title favour of the State in order to declare the property as surplus. The impugned orders are set aside and the matter is remitted to the first authority who is the prescribed authority under the Haryana Ceiling on Land Holdings, Kamal to serve notices to the petitioners, who are before this Court as representatives of all the 299 persons and elicit details with reference to the properties over which they stake claim and compare the property which the State had declared as surplus. If the property that is claimed by the petitioners is identified to be the very same property which is declared as surplus then the proceedings shall be conducted by treating all the 299 persons as owners and the ascertainment of surplus or otherwise shall be taken on such a basis. If the properties which the petitioners claim, are not the same as the properties which are declared as surplus already, then the proceedings which had already culminated in treating the properties as surplus would remain. The ultimate decision would, therefore, arise by an appraisal of the properties that are treated as surplus and the property over which the mutation No. 1392 has been ordered on the basis of Civil Court decree. It shall not avail for the State to contend that the Civil Court decree would not bind, for, if the property is acquired from a particular individual treating the property as his holdings and if it is seen that such an individual himself had been a party to the Civil Court proceedings, not claiming exclusive ownership but he has sought to assert a right only on behalf of all the 299 persons, then his own conduct in the civil proceedings still bind the State also for the source of title for the State itself is the person against whom proceedings are pending. This is by way of clarification, so that there is no unnecessary attempt to reopen an issue which is settled through this order.

(6) The impugned proceedings are set aside and the writ petition is allowed on the above terms.

*R.N.R.*