

Before K. Kannan, J.

SARV MITTAR AHUJA,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 12718 of 1990

10th May, 2011

Constitution of India, 1950—Art. 226/227—Punjab Lands Reformer Act,—S.7—Punjab Security of Land Tenures Act,—Surplus land—Authorities declared as surplus area in hands of Landowner and land to vest in State—Tenant filed appeal alleging no notice—Appeal accepted—Commissioner declared land to be shown as Tenants permissible area—Petitioner claims that if property was to be taken as falling within tenant's permissible area the he should be declared as the landowner and not State.

Held, That in the scheme of the Punjab Security of Land Tenures Act, there exists a distinction between a landowner, who could not hold properties any more than the permissible area, but who could own the property in excess of what would be legitimately a tenant's permissible area. A property that falls within tenant's permissible area need not necessarily be a surplus area to become available for vesting with the State. In my view, the distinction was lost and the authority has, therefore, rejected the petitioner's plea that he should be entered as the owner in the requisite column.

(Para 3)

The impugned order stands modified and the writ petition is allowed to the above extent of directing the State to correct the entry in the column relating to ownership by substituting the name of the petitioner instead of the State.

(Para 4)

R. C. Setia, Senior Advocate, with Vishal Ranjan, Advocate, *for the petitioner.*

K.S. Sivata, DAG, Punjab, for respondents 1 and 2.

None for respondent No. 4.

K. KANNAN, J. (ORAL)

(1) The writ petition challenges the order passed by the Financial Commissioner on 15th June, 1990, when in a revision filed at the instance of one Nihal Singh, a tenant of the property in dispute, the original landowner as a third respondent, claimed that his name must stand entered in the revenue record under the column of ownership. The Financial Commissioner rejected the petitioner's claim and being aggrieved, he has filed the writ petition.

(2) In a proceeding undertaken by the Additional Deputy Commissioner-cum-Collector under Section 7 of the Punjab Land Reforms Act, the authority declared 2.08 hectares as surplus after allowing 7 hectares as his permissible area. This decision was challenged by Nihal Singh claiming that he was a tenant in the property which was declared as surplus and such a declaration could not have done without serving a notice on the tenant. This contention was accepted by the Commissioner (Appeals) and he directed that the property must be entered as within the tenant's permissible area. There was also an inter se dispute between the said Nihal Singh and one Gurdial Singh when Nihal Singh contended that Gurdial Singh was not a tenant and he alone was a tenant in respect of the property. This contention was also upheld. It was under these proceedings that the petitioner complained that if the property was to be taken as falling within the tenant's permissible area, then he should be declared as the landowner and the property cannot stand mutated in favour of the Government. He, therefore, argued for rectification of the entry in the column of ownership.

(3) In the scheme of the Punjab Security of Land Tenures Act, there exists a distinction between a landowner, who **could not hold** properties any more than the permissible area, but who **could own** the property in excess of what would be legitimately a tenant's permissible area. A property that falls within tenant's permissible area need not necessarily be a surplus area to become available for vesting with the State. In my view, the distinction was lost and the authority has, therefore, rejected the petitioner's plea that he should be entered as the owner in the requisite column. Although the landowner himself did not prefer any appeal against the order declaring 2.08 hectares as surplus when the order was passed on 15th December, 1976, at a time when the tenant's plea to treat the said tenant as falling within

the tenant's permissible area that benefit availed to the landowner to contend that the tenant's permissible area must be vis-a-vis his own ownership. The fact that he has not preferred an appeal against the order dated 15th December, 1976 cannot defeat the landowner's right to contend that the property which was declared as surplus would require to be nullified by the finding rendered in the appeal filed by Nihal Singh that he was entitled to the said extent as falling within the tenant's permissible area.

(4) The learned counsel for the State and the counsel for Nihal Singh would contend that proper remedy for the landowner was only be to apply for rectification before the revenue authorities by filing a civil suit and he cannot have any relief in an appeal filed by Nihal Singh, where the petitioner was merely a respondent in the appeal and the revision. The objection is not one of substance but a matter of procedure. I will not allow myself to be fettered in my jurisdiction to deny to the petitioner the relief of what could come through a civil litigation when I have already found that the petitioner entitled to be treated as a landowner of the property. The impugned order stands modified and the writ petition is allowed to the above extent of directing the State to correct the entry in the column relating to ownership by substituting the name of the petitioner instead of the State.

Before Mahinder Singh Shollar J.

CONST. BHUPINDER SINGH, DRIVER,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

CWP No. 14509 of 1991

7th April, 2011

Constitution of India, 1950—Art. 226—Punjab Civil Service (Punishment & Appeal) Rules, 1970—Rl. 10—Motor Vehicle Act, 1988—94 & 146—Petitioner while driving vehicle in discharge of official duty met with accident—MACT allowed claim—Neither State nor petitioner filed appeal—Respondent—State decided to recover awarded amount of petitioner—SSP issued order of recovery from salary—Order challenge—Petition accepted.