



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Reserved on: 20.12.2024
Date of Pronouncement: 13.02.2025
RSA-367-1999 (O&M)**

Smt. Khazani and others **...Appellants**
VERSUS
State of Haryana and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr.Kashmir Singh, Advocate
for the appellants.

Mr. Ravi Pratap Singh, DAG, Haryana,
for respondents No.1 and 2.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 10.12.1996 and 23.11.1998 passed by the Courts below, whereby suit for declaration and permanent injunction filed at the instance of appellants/ plaintiffs (hereinafter referred to as 'the appellants') stands dismissed.

2. Briefly stating, the appellants sought declaration challenging the order dated 11.12.1990 passed by the prescribed authority whereby 113 kanals 12 marlas of land situated in the revenue estate of Village Lochab, Tehsil and District Jind was declared as surplus in the hands of their predecessor-in-interest- Baljora. Challenge was also laid to an order dated 30.05.1991, whereby the abovementioned land was ordered by the Prescribed



Authority to be included in the surplus pool besides impugning the order dated 06.09.1991 passed by the Collector dismissing the appeal filed by the appellants as well. The appellants also sought permanent injunction praying for restraining respondents No.1 and 2/ defendants No.1 and 2 (hereinafter referred to as 'respondents No.1 and 2') from utilizing the suit property any further.

3. The primary grouse set up by the appellants was that after submission of declaration form on 12.08.1976 in terms of Section 9 of the Haryana Ceiling on Land Holding Act, 1972, (for short 'the 1972 Act'), their predecessor Baljora died on 17.07.1986 and thereafter the appellants along with proforma defendants succeeded the deceased. It was further pleaded that Baljora was declared as big land owner vide order dated 11.12.1990 passed by the Prescribed Authority whereby 113 kanals 12 marlas of land in his hand was declared as surplus followed by aforementioned orders dated 30.05.1991 and 06.09.1991. The stand taken by the appellants was that opportunity of hearing was not afforded to all the legal heirs of deceased Baljora before declaring the suit land as surplus in his hands; whereas upon his death, the appellants along with proforma defendants having succeeded the deceased, the declaration of surplus area was required to be assessed after considering their independent right in the holdings.

4. Upon notice, respondents No.1 and 2 appeared and contested the suit while submitting that deceased Baljora submitted



his declaration form on 12.08.1976 and showed that he owned 479 kanals and 10 marlas of land which was beyond his permissible limits. It was also pleaded that after the death of Baljora, notices were served upon his legal heirs on 22.08.1990 and in pursuance thereto, one of his sons-Jagbir Singh appeared and participated in the proceedings before the Prescribed Authority at the time of passing of the order dated 11.02.1990 and thus, the declaration of surplus land in the hands of Baljora was made in the presence of his legal heirs and thus the same was valid and legal in all respects.

5. Replication was also filed on behalf of the appellants while reiterating that all the legal heirs of deceased Baljora were not granted opportunity to defend themselves before the Prescribed Authority as notice of proceeding was never served upon them.

6. Upon pleadings of the parties, following issues were framed by the trial Court:-

“1) *Whether the orders dated 11.12.1990 and 30.05.1991 passed by the Prescribed Authority (S.D.O(C), Jind declaring the suit land surplus in the hands of deceased Baljora and declaring the same in the surplus pool and the order dated 06.09.1991 passed by the Collector, Jind maintaining the correctness or orders dated 11.12.1990 and 30.05.1991 of the Prescribed Authority are illegal, null and void, not binding on the rights of the plaintiffs and are liable to be set aside, as alleged in the plaintiff? OPP*



- 2) *Whether the plaintiffs and proforma defendants are in possession of the suit land as alleged in the plaint? OPR*
- 3) *Whether the suit is bad for want of notice under Section 80 CPC? OPD.*
- 4) *Whether the suit has not been filed through a duly authorized person? OPD.*
- 5) *Whether the plaintiffs have no cause of action? OPD*
- 6) *Whether the Civil Court has no jurisdiction? OPD*
- 7) *Whether the suit is barred by limitation? OPD*
- 8) *Whether the suit is bad for misjoinder and non-joinder of parties? OPD.*
- 9) *Relief.”*

7. The trial Court vide judgment and decree dated 10.09.1996 dismissed the suit filed at the instance of appellants while recording that notices were served upon the legal heirs of deceased Baljora and in pursuance thereof his son Jagbir Singh appeared before the Prescribed Authority and it was so recorded in the order dated 11.12.1990. Further, reliance was even placed upon decision rendered by the Hon'ble Apex Court in case of **State of Maharashtra Vs. Annapurnabai and others, AIR 1985 SC 1403**, to record that the legal representatives of Baljora were having no independent right. It was also recorded that the suit filed at the instance of appellants was not maintainable before the Civil Court, in terms of statutory bar prescribed under Section 26 of the 1972 Act.

8. Aggrieved thereof, the appellants filed first appeal which was also dismissed while recording that the surplus land was liable to



be determined with reference to the holdings of the original owner who died after submission of his statement of declaration qua his land and it was thus not open for his legal heirs to contend that the surplus area should have been determined while considering that each of them was an independent tenure holders in his/ her right. It was also recorded that though service of notice upon two married daughters of Baljora was not effected, however, as the said issue was not contested before the authorities below, the same was not to be treated as fatal and even no opportunity of hearing was required to be granted to the legal representatives. Hence the present appeal.

9. Learned counsel for the appellants while impugning the judgments and decrees passed by the Courts below submitted that the possession of land in question was still with the appellants and until the same was taken over by respondents, the land never vested with them and as such the appellants were having independent right therein. It was further submitted that the judgment passed in the case of **State of Maharashtra (supra)** was not applicable to the facts and circumstances of the present case as the same related to the provisions of Maharashtra Agricultural Land (Ceiling of Holdings) Act, 1961; whereas the declaration of surplus area in the case in hand related to the provisions of 1972 Act. In this regard, reliance was also placed upon decision made by Full Bench of this Court in the case of **Sardara Singh and others Vs. Financial Commissioner and others, 2008 (2) RCR (Civil) 744**. Learned counsel further argued



that once the declaration of surplus area by the Prescribed Authority was without effecting service upon two of the married daughters of deceased Baljora, the same being in violation of principles of natural justice, bar envisaged under Section 26 of the 1972 Act was not to be made applicable to non-suit the appellants, in view of the laid down by the Full Bench of this Court in the case of ***State of Haryana Vs. Vinod Kumar, 1986 PLJ 161*** and the suit could not have been dismissed for want of jurisdiction of Civil Court. It was thus pleaded that the appeal was required to be allowed.

10. On the other hand, learned counsel for the respondents submitted that there was no violation of principles of natural justice in the present case as one of the legal heirs of Baljora i.e. his son, namely, Jagbir Singh appeared before the Prescribed Authority and was even represented by a counsel and thus participated in the proceedings. It was also submitted that Jagbir Singh even filed an appeal before the Court of Collector, thus there was no violation of principles of natural justice and the suit was rightly held to be not maintainable for want of jurisdiction in terms of Section 26 of the 1972 Act which reads as under:-

“26. BAR OF JURISDICTION.--(1) No Civil Court shall have jurisdiction to –
(a) entertain or proceed with a suit for specific performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act; or



(b) Settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector, or the Prescribed Authority made under or in pursuance of this Act shall be called in question in any court.”

Further reliance was also placed upon the decisions rendered by the Hon'ble Apex Court in ***State of Maharashtra Vs. Annapurnabai and others***, AIR 1984 SC 1403 and ***Bhikoba Shankar Dhumal (dead) by Lrs. and others Vs. Mohan Lal Punchand Tathed and others***, (1982) 1 SCC 680, to contend that the determination of surplus area was required to be made with reference to the holdings in the hands of landowner-Baljora on the appointed date and it was not open to the legal heirs to contend that they having inherited the land after the death of original holder, thus the surplus area was required to be determined on the footing that each of them being an independent tenure holder was having his/ her separate right therein. It was thus submitted that in view of the concurrent findings of fact recorded by both the Courts below, the appeal was required to be dismissed.

11. I have heard learned counsel for the parties and gone through the paper-book as well as records of the Courts below.

12. Before going into the merits of the controversy, it may be essential to have a close look at the relevant provisions of 1972 Act.



For convenience, Sections 9 (1), 10, 11 (1) and 12(1) of the 1972 Act are extracted hereunder:-

“9(1). Selection of permissible area and persons required to furnish declaration— (1) Every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area, shall [within a period of three months from such date as the State Government may, by notification, specify in this behalf] or subsequent acquisition of land, furnish to the prescribed authority a declaration supported by an affidavit giving the particulars of all his land and that of the separate unit in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate:

Provided that in case of a member of the Armed Forces of the Union, the last date for furnishing the declaration shall be the 31st October, 1976.

Section 10: Selection of permissible area by prescribed authority. - If a person fails to select the permissible area in accordance with the provisions of section 9, the prescribed authority may, after collecting the information in such manner as it may deem fit, by order select the permissible area of such person :

Provided that no such order shall be made without giving all persons interested an opportunity of being heard.(Emphasis supplied)

Section 11: Statement of permissible and surplus areas.— (1) On the basis of information given in the declaration or such information, as may be obtained, the prescribed authority shall prepare a statement in the manner prescribed showing, among other particulars, the total area of land owned or held by a



person and the separate unit, their permissible area and the surplus area.

Section 12: Vesting of surplus area—(1) *The surplus area of a landowner shall, [from the date on which it is declared as such shall be deemed to have been acquired by the State Government for a public purpose] and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance :*

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.”

Perusal of the aforementioned provisions reflects that the area of a land owner shall become surplus from the date on which it is declared as such and the same then shall deemed to have been acquired by the State Government for public purpose. The same to happen under Section 9 (1) of the 1972 Act, either the land owner has to himself give particulars of all his land in a prescribed form supported by an affidavit stating therein his selection of parcel or parcels of land not exceeding in aggregate the permissible area or in case one fails to select the permissible area in accordance with the provisions of Section 9, the Prescribed Authority may after collecting information in such manner as it may deem fit, by order select the



permissible area of such person, however, for doing so all persons interested are required to be afforded an opportunity of being heard. It is thereafter on the basis of information given in the declaration from by the landowner himself or any such information collected by the Prescribed Authority on its own, a statement in the manner prescribed, mentioning the permissible area and surplus area is prepared. Cumulative analysis of Sections 9 & 10 of the 1972 Act further makes it clear that either before declaration of surplus area of a person one has to be given a chance to furnish the particulars of all land holdings and select the permissible area on his own or in case one fails to select the permissible area, the Prescribed Authority has to do it after granting opportunity of hearing to all persons interested.

13. Accordingly, in the present case, once Baljora after submission of his declaration form on 12.08.1976 died on 17.07.1986, the proceedings being admittedly pending consideration with the Prescribed Authority, the appellants being his legal representatives and successors having inherited the estate were required to be afforded opportunity of hearing before preparing the statement regarding the permissible area and surplus area.

14. As per case set up by the respondents, the Prescribed Authority in the pending proceedings upon coming to know about the death of Baljora issued notices to his legal representatives for 10.09.1990. Admittedly, as per the record produced as Ex.D3 in the shape of service report, notices were never served upon Santosh and



Mayawati i.e. the two married daughters of Baljore who were stated to be residing in their matrimonial house. This fact of notices been not served upon Santosh and Mayawati was even admitted by DW-Harneek Singh (Peshi Kanungo). Mere fact that one of the sons of Baljora, namely, Jagbir Singh appeared before the Prescribed Authority and the declaration of surplus area been made in his presence vide order dated 11.12.1990, was not sufficient and legal to bind his two major married sisters who were having their own independent and separate rights being legal heirs of deceased Baljora qua the declaration of surplus area which was pending adjudication before the Prescribed Authority.

15. Furthermore, the reliance placed upon by the Courts below on the law laid down by the Hon'ble Apex Court in case of ***Bhikoba Shankar Dhumal (dead) by LRs. and others Vs. Mohan Lal Punchand Tathed and others***, AIR 1982 SC 865, which was further followed in the case of ***State of Maharashtra Vs. Annapurnabai***, AIR 1982 SC 1403 was misplaced as those decisions were based on the interpretation of relevant provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, wherein any person having land more than the permissible area was not to remain its owner right on the appointed day under the said Act; whereas on the other hand, as already said, as per the provisions of 1972 Act, the area of any person beyond ceiling limits was to be treated as surplus only from the date it was so declared by the



Prescribed Authority and the same was thereafter deemed to be vested with the State Government. This issue was even dealt with by a Full Bench of this Court in **Sardara Singh's** case (supra). Though the said discussion related to provisions of The Punjab Security of Land Tenures Act, 1953, however, the same being almost *pari-materia* with those under the 1972 Act, cover the controversy involved in the present case, on all fours. Relevant para No.42 from **Sardara Singh's** case (supra) is reproduced hereunder:-

“42. Resultantly, where the surplus area has not been finally determined, and the matter is pending in appeals or revisions before the Revenue Courts or before this Court under Article 226 of the Constitution, or before the Supreme Court of India, death of the landowner would cause affectation of surplus area which would be required to be redetermined in the hands of the heirs of the deceased landowner. Such an interpretation would harmoniously construct the provisions of Section 11(5) and 11(7) and also give a proper interpretation to both the views expressed in Ajit Kaur's case. However, we are unable to uphold the judgments of this Court in Jasbir Kaur's case because Ajit Kaur's case was not at all considered by the Hon'ble Division Bench. As regards Manjit Kaur's case, even though Ajit Kaur's case was considered, the majority view had been entirely overlooked.”

The abovesaid observations were followed by a Coordinate Bench of this Court even while dealing with the provisions of 1972 Act in the case of **Rajinder Singh (since deceased)**



through LRs Vs. State of Haryana, reported as 2018(2) RCR (Civil)184. Paragraph 28 thereof being relevant is reproduced hereunder for reference:-

“28. There is another aspect of the matter. The original landowner had also died and, therefore, in view of the ratio decidendi culled out by the Full Bench in Sardara Singh's case (supra), the matter qua determination of the permissible area at the hands of the legal heirs of a big landowner has to be determined afresh. In other words, in view of the pendency of the proceedings relating to determination of surplus area in the hands of the landowner, surplus area would have to be assessed afresh in the hands of the present petitioners, who are legal heirs of the big landowner.”

16. Additionally, no merit can be found in the submission made by learned State counsel that the suit filed by the appellants could not be entertained in view of specific bar laid down under Section 26 of the 1972 Act. In this regard, it may be pointed out here that once the orders dated 11.12.1990 and 30.05.1991 passed by the Prescribed Authorities were in violation of principles of natural justice embodied under the statutory scheme of 1972 Act, without affording opportunity of hearing to appellants No.2 and 3 in particular, who happened to be LRs of deceased Baljora, the proceedings whereby the land in the hands of their deceased predecessor was declared surplus were wholly vitiated particularly when the effect of such



orders caused substantial prejudice to their rights; infact depriving them of the subject property. Support in this regard can also be drawn from a Full Bench decision of this Court in **Vinod Kumar's case (supra)**, and for convenience, relevant portion therefrom is extracted hereunder:-

“...The jurisdiction of the Civil Court to tray the suits against the orders passed by the Tribunal of Special Jurisdiction in violation of the provisions of the statute or principles of natural justice was thus upheld even though the jurisdiction of Civil Court to question the legality or validity of the orders of the Tribunal was expressly barred by the statute....”

17. Thus, in view of the detailed discussion made hereinabove, findings, orders dated 11.12.1990 and 30.05.1991 passed by the prescribed authority being in violation of principles of natural justice and in deprivation of an opportunity of hearing to the two daughters of Baljora, namely, Santosh and Mayawati, the same been passed in derogation of the procedure and safeguards provided under 1972 Act, are hereby declared null, void and inoperative. Resultantly, the subsequently proceedings in the form of order dated 06.09.1991 passed by the Appellate Authority-cum-Collector are also held to be illegal.

18. Consequently, the present appeal is allowed. The impugned judgments and decrees dated 10.12.1996 and 23.11.1998 passed by the Courts below are hereby set aside. The Prescribed



Authority shall now proceed afresh to determine the surplus area in the hands of the appellants/ legal heirs of deceased Baljora, in accordance with law after affording them opportunity of hearing and in consonance with the principles of natural justice as envisaged under the provisions of 1972 Act and till then the appellants are granted consequential decree of permanent injunction thereby restraining respondents No.1 and 2 from dispossessing them over the land in question.

19. All pending application(s), if any, shall also stand disposed of.

13.02.2025
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether Reportable?	Yes/No