2025:PHHC:073003

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. **RSA-2254-1993 (O&M)**

Smt. Sarbati **. . . . Appellant**

Vs.

State of Haryana and Others . . . . Respondents

II. **COCP-1596-2013**

Ram Kumar **. . . . Petitioner**

Vs.

Ram Kumar (since deceased)
through LRs and Others . . . . Respondents

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Reserved on: 21.05.2025
Pronounced on: 27.05.2025

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By: Mr. Ashok Verma, Advocate and
Mr. Satnam Singh Sishodia, Advocate for
the appellant in RSA-2254-1993 and
for the petitioner in COCP-1596-2013.

Mr. R.K.S. Brar, Addl. AG, Haryana.

Mr. Jagjit Singh Gill, Advocate
for respondent No.8.

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DEEPAK GUPTA, J.

This Regular Second Appeal is by the plaintiff against the concurrent findings of the Courts below, in as much as, the suit for declaration with consequential relief of permanent injunction regarding property in dispute filed by plaintiff Thakar *(now appellant through his LRs)* was dismissed by the trial Court of learned Senior Sub-Judge Sirsa on 25.01.1990. The appeal filed by the plaintiff through his LRs was dismissed by the Appellate Court of learned Additional District Judge, Sirsa on 06.09.1993.

2. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3. From the pleadings and unrebutted evidence on record, following facts emerge.

i. Sagar Mal, the predecessor-in-interest of defendant Nos.3 to 7 was big land owner, who died on 25.07.1964. His surplus area case was decided by Special Collector, Chandigarh on 31.08.1971, whereby 60 acres each of permissible area was allotted to defendant Nos.3 to 7; whereas 48.2 acres of the land was declared as surplus area.

ii. Land in dispute is 6 Bigha 6 Biswa comprised in Khasra No. 490 Min, on which one Kheta Ram was tenant in possession prior to 1953. However, ever since kharif 1956, Thakar - the predecessor in interest of the plaintiff was recorded to be in possession of the said land as tenant. In leu of this land, suit land measuring 30 Kanal 16 Marla described in headnote of the plaint was allotted during consolidation proceedings.

iii. Order dated 31.08.1971 deciding the surplus area case of big landowner Sagar Mal was passed without issuing any notice to the plaintiff i.e. tenant in possession in the suit land. Subsequently, the prescribed Authority, Sirsa also passed an order dated 30.07.1980 declaring the suit land as surplus area under the Haryana Ceiling on Land Holdings Act, 1972. Later on, Prescribed Authority- defendant No.2 passed order dated 28.08.1986, whereby part of the suit land measuring 17 Kanal 9 Marla was allotted to defendant No.8 - Ram Kumar. The plaintiff was allotted 13 Kanal 7 Marla of land. Possessions were delivered accordingly to the allottees.

4. The plaintiff has challenged the order dated 31.08.1971 passed by the Special Collector, Chandigarh; the order dated 30.07.1980; and the order dated 28.08.1986 issued by the prescribed authority concerning the allotment of the land. The plaintiff contends that he has been in possession of the suit

land as a tenant since before 1953, although the revenue records reflect his possession only from Kharif 1956. He further asserts that the suit land ought not to have been included in the permissible area of the landlord, and instead, it should have been declared as forming part of the tenant's permissible area. The plaintiff contends further that the order dated 31.08.1971 (Ex.P1) was passed by the Special Collector without any notice being served upon him, despite his possession of the land as a tenant. As such, he claims that the said order is illegal and void. On similar grounds—specifically, the absence of notice—the plaintiff also seeks to have the order dated 30.07.1980 declared null and void. Additionally, the plaintiff alleges that, based on the allotment of 17 Kanals and 9 Marlas of land in favour of defendant No. 8, the said defendant is attempting to dispossess him. In light of this, the plaintiff seeks not only a declaration that all the impugned orders are null and void, but also a decree of permanent injunction to restrain any such dispossession.

5. In their written statement, Defendant Nos. 1 and 2 denied the plaintiff to be tenant under Sagar Mal prior to 15.04.1953, although they admitted that the plaintiff was in possession of the suit land as a tenant prior to 24.01.1971. They asserted that the landlord had included the suit land in his permissible area as per his selection, and therefore, it could not be considered part of the tenant's permissible area. Based on the plaintiff's possession as a tenant prior to 24.01.1971, he was classified as a 'CC Category' tenant under the Haryana Surplus and Other Area Utilization Scheme, 1976. Accordingly, he was allotted 13 Kanals and 7 Marlas of land from the suit property. Since this land was canal-irrigated, it was considered equivalent to 40 Kanals of land in the 'C Category'. The remaining land was allotted to Defendant No. 8 as per the rules and the applicable utilization scheme. Defendant Nos. 1 and 2 defended the impugned orders dated 31.08.1971 and 30.07.1980, arguing that the plaintiff was not entitled to be heard prior to the passing of these orders, as he was not a tenant before 1953. They further contended that the plaintiff had participated in the allotment proceedings, which ultimately led to the passing of

the order dated 22.08.1986. The possession was duly delivered to the allottees, including the plaintiff, as evidenced by the Rapat Roznamchas (Ex.D3 and D4). On this basis, they prayed for the dismissal of the suit.

6. In their written statement, Defendant Nos. 3 to 7 also asserted that the suit land was included in the landlord's selected/permissible area, and since the plaintiff was not a tenant prior to 1953, he had no right to object to such inclusion. They stated that the suit land was never declared as part of the tenant's permissible area or as surplus area under the Punjab Security of Land Tenure Act. Therefore, the order dated 31.08.1971 was claimed to be legal and valid. It was also submitted that the order dated 30.07.1980 was passed by the prescribed authority after a Munadi *(public proclamation)* was made in the village, following which the land was declared surplus and the plaintiff was classified as a 'CC Category' tenant eligible for allotment under the scheme. These defendants likewise prayed for dismissal of the suit.

7. Necessary issues were framed. Evidence produced by the parties was taken on record.

8. Trial Court found that plaintiff was in possession of the suit land since kharif 1956 and not prior to 1953, as claimed by him. All the impugned orders as assailed by the plaintiff were found to be legal and valid. Trial Court also noticed that suit suffered from delay and latches, inasmuch as one of the impugned order was passed on 31.08.1971 and another on 30.07.1980 and therefore, the same could not be challenged in the year 1986, particularly when plaintiff had taken part in the allotment proceedings. It was also noticed that after the allotment, plaintiff had filed an appeal, which was dismissed by the Competent Authority. With all these findings and observations, trial Court dismissed the suit on 25.01.1990.

9. The appeal filed by the plaintiff through his LRs was dismissed by the first Appellate Court on 06.09.1993, affirming the findings of the trial Court.

10. Assailing the aforesaid concurrent findings, one of the main contention raised by learned counsel for the appellant- plaintiff is that since suit land was under tenancy ever since prior to April, 1953, so it will not make any difference that it was under tenancy of Kheta Ram prior to 1953 and came in the possession of the plaintiff as tenant since Kharif, 1956. It is urged that irrespective of change of tenants, the land will fall within the ambit of tenant's permissible area and as such, the landowner could not have included the said land in his permissible area. It is also the contention of learned counsel that prior to passing of the impugned order dated 31.08.1971 (Ex.P1), the Special Collector should have given notice to the plaintiff being tenant in possession. Prayer is accordingly made for setting aside the concurrent findings of the courts below by accepting this appeal.

11. Ld. Counsel for the respondents pleaded that there was no scope for interference in the concurrent findings of the courts below and prayed for dismissal of the appeal.

12. This Court has considered the submissions of both the sides and have appraised the record carefully.

13. It is not in dispute that suit land was included by the landowner in his selected/reserved area. It is also not in dispute that it was part of his permissible area. The question is that simply because the suit land was under tenancy since prior to April, 1953, may be under one Kheta Ram as it came into possession of the plaintiff since Kharif 1956, whether the landowner could have included it in his permissible area or not.

14. In this regard Section 5 (1) of the Punjab Security of Land Tenure Act, 1953 is relevant, which reads as under:

> ***"5. Reservation of land***.- (1) Any reservation before the commencement of this Act, shall cease to have effect and subject to the provisions of Sections 3 and 4, any landowner who owns land in excess of the permissible area may reserve

out of the entire land held by him in the State of Punjab as landowner, any parcel or parcels not exceeding the permissible area intimating his selection in the prescribed form and manner to the patwari of the estate in which the land reserved is situate or to such other authority as may be prescribed.

Providing that in making this reservation, he shall include his area owned in the following order -

(a) area held in a Co-operative Garden Colony,

(b) area under self-cultivation at the commencement of this Act other than the reserved area,

(c) reserved area excluding the area under a jhundimar tenant or a tenant who has been in continuous occupation for 20 years or more immediately before such reservation.

(d) area or share in a Co-operative Farming Society,

(e) any other area owned by him,

(f) area under a jhundimar tenant."

15. As the aforesaid provision would reveal that landowner is required to exclude only that land out of his permissible area, which is either under the *Jhundimar* tenant, or a tenant who had been in continuous occupation for 20 years or more immediately before such reservation.

16. In the present case, there is no evidence on record to indicate that suit land was under tenancy at least 20 years since prior to the reservation of the land by the landowner. In these circumstances, the contention of learned counsel that suit land could not have been included by the landowner in his permissible area, has absolutely no merit.

17. As far as the contention of learned counsel for the appellant to the effect that before passing the impugned order dated 31.08.1971 (Ex.P1), Special Collector should have given notice to the plaintiff, who was in possession of the

suit land as tenant, it also has no merit. In this regard, it will be apt to reproduce the observations as made by the first Appellate Court in para No.12 of its judgment, which reads as under:

> "12- Suit land was included in the selected/permissible area of the land-owner vide order dated 31.8.1971 of the Special collector, Haryana, Chandigarh, if the suit land had been declared surplus area of the land-owner, then, of course, notice to the plaintiff as tenant would have been necessary. However, the suit land had not been declared as surplus area of the land-owner, and rather the suit land was included in the permissible area of the land-owner under the Tenures Act and, therefore, notice to the plaintiff was not necessary as he was tenant since after 15-4-53. Under Section 5 of the Tenures Act, the land-owner may reserve land out of the entire land owned by him any parcel or parcel not exceeding the permissible area. If no such reservation was made within the prescribed period, then under Section 5-B(1) of the Tenures Act, the land-owner would be entitled to such selection as his permissible area. If no such selection was made within the prescribed period, then the Collector was to select the permissible area of the land-owner under Section 5-B(2) of the Tenures Act. Thus, for reservation or selection of the permissible area of the land-owner, the plaintiff, who became tenant since after 15.4.53, was not entitled to any notice or opportunity of hearing, although he was entitled to such notice or opportunity of being heard if the suit land was to be declared the surplus area of the land-owner. In the present case, however, the suit land was declared as permissible area of the land-owner under the Tenures Act, vide order dated 31.8.71, and for this purpose the land-owner had unfettered powers and the plaintiff as tenant had no right to interfere in such selection or reservation of permissible area of the landlord, and so, there was no question of issuing any notice to him for this purpose. In this view, I am supported by *1977 P.L.J.118 Thakar Jatinder Singh Vs. The State of Haryana and others*. According to this ruling, Section 5-B (1) of the Tenures Act guarantees a right to the land-owner that he can at least select permissible area which he wished to reserve for himself and intimate this selection to the authority in the manner prescribed, and this much is at least ensured in favour of the land-owner by the law before he is called upon to sur-

render his surplus land, and this right of selection of the permissible area is unfettered, if exercised, within the prescribed period, and the quality and the identity of the land selected is entirely subjective to the land-owner. Thus, it is evident from the bare provisions of the Tenures Act, as well as from this ruling, that the landlord has unfettered powers to select and reserve his permissible area and only thereafter, the surplus area has to be surrendered by him. Thus, there are two stages of declaring the surplus area. First stage is the reservation/selection of permissible area by the landlord. However, for that stage, the tenant is not entitled to any notice or opportunity of being heard. Second stage is to declare the surplus area of the land-owner, after making provision for his permissible area, on the basis of the selection/reservation or otherwise. At this stage, the tenant is entitled to notice and opportunity of hearing. In our case, however, the suit land under the tenancy of the plaintiff was included in the permissible area of the land-owner and consequently, the plaintiff was not entitled to any notice or any opportunity of being heard, as suit land was not declared surplus area under Tenures Act.

13- Learned counsel for the plaintiff cited certain rulings, but the same are distinguishable. In 1989 P.L.J.117 Sube Singh Vs. State of Haryana, the tenancy land was declared as surplus area without notice to the tenant. In 1979 PLJ 294 Abhey Ram Vs. Financial Commissioner Haryana also, tenancy land was declared surplus area without notice to the tenant. In both the cases, the order of declaring the land as surplus were held to be illegal. However, these rulings are distinguishable, because in those cases, the tenancy land was declared surplus and not included in the permissible area of the land-owner. However, before declaring the tenancy hand as surplus area, an opportunity of being heard should be given to the tenant. In our case, however, the tenancy land was included in the permissible area of the land-owner and for this purpose, no opportunity of being heard was required to be given to the plaintiff as tenant.

14- Learned counsel for the plaintiff-appellant also cited 1980 P.L.J.93 Dharam Singh Vs. Financial commissioner Haryana and others. In that case, it was observed that the authorities have to give opportunity of hearing to the interested persons while determining the permissible area of surplus area of a

land-owner. In that case, the tenant was, however, tenant since prior to 15.4.53, and so, he could include the tenancy land in the tenant's permissible area and so, notice to him was necessary before determining the permissible area and surplus area of the land-owner. In our case, however, the plaintiff became tenant on the suit land since kharif, 1950 1.8. after 15.4.53 and, therefore, the land-owner was at liberty to include this land in his permissible area, and this land could not form part of tenant's permissible area and for this reason, no notice was required to be given to the plaintiff. This ruling is distinguishable, because in the reported case, the tenancy was since prior to 15.4.53. In our case, the plaintiff's tenancy came into existence on the suit land since after 15.4.53.

15- Sections 5 and 5-B of the Tenures act lay down that the land-owner could legally include the suit land in the permissible area and, therefore, the plaintiff was not entitled to any hearing before including the suit land in the permissible area of the land owner and even if any hearing was given to the plaintiff, it would have been futile because he could not object to the inclusion of the suit land in the permissible area of the land-owner who had unfettered powers in this behalf. It may be added that every land of the tenant, even on relevant date i.e. 15.4.53, is not automatically comprised in tenant's permissible area, as held in 1974 P.L.J.74 (SC) State of Punjab (now Haryana) and others. So, the suit land which was not tenant's permissible area, could certainly be included in the permissible area by the land-owner as he had unfettered powers in this behalf. So, the plaintiff was not entitled to hearing before inclusion of the suit land in the permissible area of the land-owner. The position would have been different if the suit land had been declared as surplus area of the land-owner under the Tenures Act, and in that event, the plaintiff would have been entitled to hearing. However, the suit land was included in the permissible area of the land-owner and, therefore, the plaintiff was not entitled to any hearing.

16- Learned counsel for the plaintiff also cited 1981 P.L.J.88 99 Nanak Chand Vs. The Financial Commissioner Haryana wherein it was held that the change of tenant will not affect the permissible area of the tenant. However,

this ruling is of no help to the plaintiff, because the suit land was included in the permissible area of the land-owner.

17- For the reasons recorded above, I find that the impugned order dated 31.8.1971 is legal and valid and does not suffer from any infirmity or illegality.

18- Learned counsel for the plaintiff also submitted that the order dated 30.7.80 of the Prescribed authority, Sirsa was also passed without notice to the plaintiff and, therefore, the said order is illegal and void. Reliance was placed upon 1992 P.L.J.87 Mange Ram and others Vs. Dhan Singh and others, wherein it was held that Section 11(3) of the Ceiling Act, casts duty on the Prescribed Authority to issue notice to the persons likely to be prejudicially affected by the order determining the surplus area of the land-owner. Thus, the absence of notice allegedly vitiated the order of the Prescribed Authority.

19- There is no quarrel with the legal proposition laid down in this ruling. However, in our case, notice was issued to the plaintiff before passing the said order. Sohan Lal Patwari DW-1 has stated about the munadi proclamation issued in this behalf. Moreover, plaintiff has not even produced copy of order dated 30.7.80 for perusal and to see if no notice was issued to plaintiff before passing that order. So plaintiff's bald statement in this behalf is not sufficient. As regards the allotment of the suit land partly to the plaintiff and partly to defendant No.8, allotment order dated 28.8.86 in this behalf was passed in the presence of the parties and after hearing the plaintiff. He even moved an application Ex.D-5 for the allotment. Plaintiff's appeal against the order dated 28.8.86 stands dismissed admittedly. So the said order is legal."

18. It is clear from the aforesaid observations based upon the evidence and the legal provisions that notice to the plaintiff was required only in case the suit land was included in the tenant's permissible area or as the surplus land of the landowner. However, in the present case, suit land was reserved by the landowner as his permissible area. Since suit land formed part of the landowner's permissible area, so no notice was required to be issued to the plaintiff. In these circumstances, ***"Nanak Chand versus Financial Commissioner***

Haryana", 1981 PLJ 99; and ***"Sube Singh versus State of Haryana" 1989 PLJ 117*** holding that notice to the tenant in actual possession is required to be given, or that tenant's permissible area cannot be changed with the change of tenants, have no applicability to the facts of the present case. Once the landowner had included the suit land in his permissible area, plaintiff was nobody to raise any objection in this regard, particularly when selection was not contrary to the provisions of Section 5 of the 1953 Act. As such, order dated 31.08.1971 has been rightly held by the Courts below to be legal and valid.

19. As far as the order dated 30.07.1980 is concerned, plaintiff did not even place it on record. Apart from this, it was observed by the Courts below that as per the evidence of Sohal Lal, Patwari (DW-1), *Munadi* proclamation was issued prior to passing the order dated 30.07.1980. In these circumstances, when plaintiff did not produce the order, his bald statement to the effect that order was passed without issuing notice to him could not be considered as sufficient so as to believe him. The allotment dated 28.08.1986 (Ex.D1) is based upon the order dated 30.07.1980 and plaintiff duly participated in the said allotment. He had even moved an application (Ex.D5) for allotment. After allotment of the land to the plaintiff and defendant No.8, possession were duly delivered to them as is evident from the Rapat Roznamchas Ex.D3 and Ex.D4 dated 01.10.1986 and 24.10.1986 respectively. Even plaintiff in his testimony admitted that possession was delivered of the allotted land to the defendant No.8 Ram Kumar to the extent of 17 Kanal 09 Marla.

20. In the aforesaid facts and circumstances, this Court does not find any illegality or perversity in the concurrent findings of facts as recorded by the Courts below, which are based upon proper appreciation of evidence as well as the legal position. Consequently, holding the present appeal to be devoid of any merit, same is hereby dismissed.

21. As far as **COCP No.1596 of 2013** is concerned, it was alleged by Ram Kumar son of original plaintiff Thakar that respondents had willfully dis-

obeyed the order dated 13.10.1993 passed by this Court, which was made absolute on 09.02.1996.

22. By way of the order dated 13.10.1993, a co-ordinate Bench of this Court had directed the status quo *qua* possession of the suit land to be maintained. Subsequently, on 09.02.1996 the appeal was admitted and interim order was directed to be continued.

23. Counsel for the appellant- plaintiff has not pressed the said petition during arguments before this Court. Even otherwise, there is nothing on record to suggest that status quo order has been violated by the respondents-defendants in any manner, particularly in the light of evidence recorded by the Courts below, as per which the possession of the allotted land had been delivered to defendant No.8 to the extent of 17 Kanal 9 Marla; and 13 Kanal 7 Marla to the plaintiff. In these circumstances, there is no merit even in the COCP and so, same is also hereby dismissed.

Pending application(s), if any also stands disposed of.

A photocopy of this order be placed on the connected case file.

(DEEPAK GUPTA)
JUDGE

27.05.2025
Neetika Tuteja

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No

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iii. Order dated 31.08.1971 deciding the surplus area case of big landowner Sagar Mal was passed without issuing any notice to the plaintiff i.e. tenant in possession in the suit land. Subsequently, the prescribed Authority, Sirsa also passed an order dated 30.07.1980 declaring the suit land as surplus area under the Haryana Ceiling on Land Holdings Act, 1972. Later on, Prescribed Authority- defendant No.2 passed order dated 28.08.1986, whereby part of the suit land measuring 17 Kanal 9 Marla was allotted to defendant No.8 - Ram Kumar. The plaintiff was allotted 13 Kanal 7 Marla of land. Possessions were delivered accordingly to the allottees.

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9. The appeal filed by the plaintiff through his LRs was dismissed by the first Appellate Court on 06.09.1993, affirming the findings of the trial Court.

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12. This Court has considered the submissions of both the sides and have appraised the record carefully.

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15. As the aforesaid provision would reveal that landowner is required to exclude only that land out of his permissible area, which is either under the *Jhundimar* tenant, or a tenant who had been in continuous occupation for 20 years or more immediately before such reservation.

16. In the present case, there is no evidence on record to indicate that suit land was under tenancy at least 20 years since prior to the reservation of the land by the landowner. In these circumstances, the contention of learned counsel that suit land could not have been included by the landowner in his permissible area, has absolutely no merit.

17. As far as the contention of learned counsel for the appellant to the effect that before passing the impugned order dated 31.08.1971 (Ex.P1), Special Collector should have given notice to the plaintiff, who was in possession of the

suit land as tenant, it also has no merit. In this regard, it will be apt to reproduce the observations as made by the first Appellate Court in para No.12 of its judgment, which reads as under:

> "12- Suit land was included in the selected/permissible area of the land-owner vide order dated 31.8.1971 of the Special collector, Haryana, Chandigarh, if the suit land had been declared surplus area of the land-owner, then, of course, notice to the plaintiff as tenant would have been necessary. However, the suit land had not been declared as surplus area of the land-owner, and rather the suit land was included in the permissible area of the land-owner under the Tenures Act and, therefore, notice to the plaintiff was not necessary as he was tenant since after 15-4-53. Under Section 5 of the Tenures Act, the land-owner may reserve land out of the entire land owned by him any parcel or parcel not exceeding the permissible area. If no such reservation was made within the prescribed period, then under Section 5-B(1) of the Tenures Act, the land-owner would be entitled to such selection as his permissible area. If no such selection was made within the prescribed period, then the Collector was to select the permissible area of the land-owner under Section 5-B(2) of the Tenures Act. Thus, for reservation or selection of the permissible area of the land-owner, the plaintiff, who became tenant since after 15.4.53, was not entitled to any notice or opportunity of hearing, although he was entitled to such notice or opportunity of being heard if the suit land was to be declared the surplus area of the land-owner. In the present case, however, the suit land was declared as permissible area of the land-owner under the Tenures Act, vide order dated 31.8.71, and for this purpose the land-owner had unfettered powers and the plaintiff as tenant had no right to interfere in such selection or reservation of permissible area of the landlord, and so, there was no question of issuing any notice to him for this purpose. In this view, I am supported by *1977 P.L.J.118 Thakar Jatinder Singh Vs. The State of Haryana and others*. According to this ruling, Section 5-B (1) of the Tenures Act guarantees a right to the land-owner that he can at least select permissible area which he wished to reserve for himself and intimate this selection to the authority in the manner prescribed, and this much is at least ensured in favour of the land-owner by the law before he is called upon to sur-

render his surplus land, and this right of selection of the permissible area is unfettered, if exercised, within the prescribed period, and the quality and the identity of the land selected is entirely subjective to the land-owner. Thus, it is evident from the bare provisions of the Tenures Act, as well as from this ruling, that the landlord has unfettered powers to select and reserve his permissible area and only thereafter, the surplus area has to be surrendered by him. Thus, there are two stages of declaring the surplus area. First stage is the reservation/selection of permissible area by the landlord. However, for that stage, the tenant is not entitled to any notice or opportunity of being heard. Second stage is to declare the surplus area of the land-owner, after making provision for his permissible area, on the basis of the selection/reservation or otherwise. At this stage, the tenant is entitled to notice and opportunity of hearing. In our case, however, the suit land under the tenancy of the plaintiff was included in the permissible area of the land-owner and consequently, the plaintiff was not entitled to any notice or any opportunity of being heard, as suit land was not declared surplus area under Tenures Act.

13- Learned counsel for the plaintiff cited certain rulings, but the same are distinguishable. In 1989 P.L.J.117 Sube Singh Vs. State of Haryana, the tenancy land was declared as surplus area without notice to the tenant. In 1979 PLJ 294 Abhey Ram Vs. Financial Commissioner Haryana also, tenancy land was declared surplus area without notice to the tenant. In both the cases, the order of declaring the land as surplus were held to be illegal. However, these rulings are distinguishable, because in those cases, the tenancy land was declared surplus and not included in the permissible area of the land-owner. However, before declaring the tenancy hand as surplus area, an opportunity of being heard should be given to the tenant. In our case, however, the tenancy land was included in the permissible area of the land-owner and for this purpose, no opportunity of being heard was required to be given to the plaintiff as tenant.

14- Learned counsel for the plaintiff-appellant also cited 1980 P.L.J.93 Dharam Singh Vs. Financial commissioner Haryana and others. In that case, it was observed that the authorities have to give opportunity of hearing to the interested persons while determining the permissible area of surplus area of a

land-owner. In that case, the tenant was, however, tenant since prior to 15.4.53, and so, he could include the tenancy land in the tenant's permissible area and so, notice to him was necessary before determining the permissible area and surplus area of the land-owner. In our case, however, the plaintiff became tenant on the suit land since kharif, 1950 1.8. after 15.4.53 and, therefore, the land-owner was at liberty to include this land in his permissible area, and this land could not form part of tenant's permissible area and for this reason, no notice was required to be given to the plaintiff. This ruling is distinguishable, because in the reported case, the tenancy was since prior to 15.4.53. In our case, the plaintiff's tenancy came into existence on the suit land since after 15.4.53.

15- Sections 5 and 5-B of the Tenures act lay down that the land-owner could legally include the suit land in the permissible area and, therefore, the plaintiff was not entitled to any hearing before including the suit land in the permissible area of the land owner and even if any hearing was given to the plaintiff, it would have been futile because he could not object to the inclusion of the suit land in the permissible area of the land-owner who had unfettered powers in this behalf. It may be added that every land of the tenant, even on relevant date i.e. 15.4.53, is not automatically comprised in tenant's permissible area, as held in 1974 P.L.J.74 (SC) State of Punjab (now Haryana) and others. So, the suit land which was not tenant's permissible area, could certainly be included in the permissible area by the land-owner as he had unfettered powers in this behalf. So, the plaintiff was not entitled to hearing before inclusion of the suit land in the permissible area of the land-owner. The position would have been different if the suit land had been declared as surplus area of the land-owner under the Tenures Act, and in that event, the plaintiff would have been entitled to hearing. However, the suit land was included in the permissible area of the land-owner and, therefore, the plaintiff was not entitled to any hearing.

16- Learned counsel for the plaintiff also cited 1981 P.L.J.88 99 Nanak Chand Vs. The Financial Commissioner Haryana wherein it was held that the change of tenant will not affect the permissible area of the tenant. However,

this ruling is of no help to the plaintiff, because the suit land was included in the permissible area of the land-owner.

17- For the reasons recorded above, I find that the impugned order dated 31.8.1971 is legal and valid and does not suffer from any infirmity or illegality.

18- Learned counsel for the plaintiff also submitted that the order dated 30.7.80 of the Prescribed authority, Sirsa was also passed without notice to the plaintiff and, therefore, the said order is illegal and void. Reliance was placed upon 1992 P.L.J.87 Mange Ram and others Vs. Dhan Singh and others, wherein it was held that Section 11(3) of the Ceiling Act, casts duty on the Prescribed Authority to issue notice to the persons likely to be prejudicially affected by the order determining the surplus area of the land-owner. Thus, the absence of notice allegedly vitiated the order of the Prescribed Authority.

19- There is no quarrel with the legal proposition laid down in this ruling. However, in our case, notice was issued to the plaintiff before passing the said order. Sohan Lal Patwari DW-1 has stated about the munadi proclamation issued in this behalf. Moreover, plaintiff has not even produced copy of order dated 30.7.80 for perusal and to see if no notice was issued to plaintiff before passing that order. So plaintiff's bald statement in this behalf is not sufficient. As regards the allotment of the suit land partly to the plaintiff and partly to defendant No.8, allotment order dated 28.8.86 in this behalf was passed in the presence of the parties and after hearing the plaintiff. He even moved an application Ex.D-5 for the allotment. Plaintiff's appeal against the order dated 28.8.86 stands dismissed admittedly. So the said order is legal."

18. It is clear from the aforesaid observations based upon the evidence and the legal provisions that notice to the plaintiff was required only in case the suit land was included in the tenant's permissible area or as the surplus land of the landowner. However, in the present case, suit land was reserved by the landowner as his permissible area. Since suit land formed part of the landowner's permissible area, so no notice was required to be issued to the plaintiff. In these circumstances, ***"Nanak Chand versus Financial Commissioner***

Haryana", 1981 PLJ 99; and ***"Sube Singh versus State of Haryana" 1989 PLJ 117*** holding that notice to the tenant in actual possession is required to be given, or that tenant's permissible area cannot be changed with the change of tenants, have no applicability to the facts of the present case. Once the landowner had included the suit land in his permissible area, plaintiff was nobody to raise any objection in this regard, particularly when selection was not contrary to the provisions of Section 5 of the 1953 Act. As such, order dated 31.08.1971 has been rightly held by the Courts below to be legal and valid.

19. As far as the order dated 30.07.1980 is concerned, plaintiff did not even place it on record. Apart from this, it was observed by the Courts below that as per the evidence of Sohal Lal, Patwari (DW-1), *Munadi* proclamation was issued prior to passing the order dated 30.07.1980. In these circumstances, when plaintiff did not produce the order, his bald statement to the effect that order was passed without issuing notice to him could not be considered as sufficient so as to believe him. The allotment dated 28.08.1986 (Ex.D1) is based upon the order dated 30.07.1980 and plaintiff duly participated in the said allotment. He had even moved an application (Ex.D5) for allotment. After allotment of the land to the plaintiff and defendant No.8, possession were duly delivered to them as is evident from the Rapat Roznamchas Ex.D3 and Ex.D4 dated 01.10.1986 and 24.10.1986 respectively. Even plaintiff in his testimony admitted that possession was delivered of the allotted land to the defendant No.8 Ram Kumar to the extent of 17 Kanal 09 Marla.

20. In the aforesaid facts and circumstances, this Court does not find any illegality or perversity in the concurrent findings of facts as recorded by the Courts below, which are based upon proper appreciation of evidence as well as the legal position. Consequently, holding the present appeal to be devoid of any merit, same is hereby dismissed.

21. As far as **COCP No.1596 of 2013** is concerned, it was alleged by Ram Kumar son of original plaintiff Thakar that respondents had willfully dis-

obeyed the order dated 13.10.1993 passed by this Court, which was made absolute on 09.02.1996.

22. By way of the order dated 13.10.1993, a co-ordinate Bench of this Court had directed the status quo *qua* possession of the suit land to be maintained. Subsequently, on 09.02.1996 the appeal was admitted and interim order was directed to be continued.

23. Counsel for the appellant- plaintiff has not pressed the said petition during arguments before this Court. Even otherwise, there is nothing on record to suggest that status quo order has been violated by the respondents-defendants in any manner, particularly in the light of evidence recorded by the Courts below, as per which the possession of the allotted land had been delivered to defendant No.8 to the extent of 17 Kanal 9 Marla; and 13 Kanal 7 Marla to the plaintiff. In these circumstances, there is no merit even in the COCP and so, same is also hereby dismissed.

Pending application(s), if any also stands disposed of.

A photocopy of this order be placed on the connected case file.

(DEEPAK GUPTA)
JUDGE

27.05.2025
Neetika Tuteja

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No