

RAM SWARUP AND OTHERS

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v.

S.N. MAIRA AND OTHERS

DECEMBER 17, 1998

[S. SAGHIR AHMED AND G.B. PATTANAIK, J.]

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Haryana Ceiling on Land Holdings Act 1972 (as amended in 1976)—Section 12(3)—Retrospectively—Effect of—Punjab Security of Land Tenures Act 1953—Determination and declaration of surplus by Collector in 1961 under Punjab Act—Vesting of land in State with retrospective effect in 1976 by amendment to 1972 Act—Original surplus holder dying before notification giving effect to amendment—Whether surplus will, therefore, have to be decided afresh—Held, legislature having given the provision retrospective effect, viz., from 23rd December, 1972 it is to be treated as having been on the statute book on that date—in the eye of law, the lands in question, vested with the State on 23rd December, 1972.

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Administrative Law :

Principles of Natural Justice—Land declared surplus allotted to landless persons—Writ petition in High Court by heirs of original land holder decided without making such allottees parties—Held, allotment and delivery of possession in favour of allottees conferred rights—An order which has the effect of taking away these rights could not be passed without impleading them as parties and without hearing them—Haryana Ceiling on Land Holdings Act 1972.

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In 1960, the Collector passed an order under the Punjab Security of Land Tenures Act 1953 declaring as surplus land held by a land holder. An appeal to the Commissioner was dismissed in the same year. The Haryana Ceiling of Land Holdings Act 1972 came into effect on 23rd December 1972. By amendment in 1976, Section 12(3) was, inter alia, inserted in the 1972 Act providing for vesting surplus lands in the State with retrospective effect. The heirs of the original land holder contended in a revision before the Financial Commissioner that the original land holder having died on January 5, 1976 before Section 12(3) was notified, they had inherited the land, and the question of surplus would have to be determined under the Haryana Act; and that there was no surplus. The revision was dismissed on the ground that

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A the determination of surplus could not be upset after 21 years, and that Section 12(3) being retrospective, the land vested in the State prior to the death of the surplus holder.

B The High Court, on a writ petition filed by the heirs, however, held that notwithstanding the retrospective effect of the provision, the original holder having died before the notification, there was no vesting of the land in the State. It held that the heirs would be entitled to individual ceiling limits, and directed re-determination of the surplus under the Haryana Act.

C The appellants-allottees, who had not been made parties in the writ petition, appealed to the Supreme Court contending that the surplus land having been allotted and delivered to them, it conferred an indefeasible right which could not be taken away in their absence. It was also contended that Section 12(3) being retrospective, it must be held to have been on the statute book with effect from 23rd December 1972.

Allowing the appeal, this Court

D HELD. 1. The legislature having given Section 12(3) of the Haryana ceiling on land Holdings Act, 1972 retrospective effect from 23rd December, 1972, the rights of the parties will have to be governed treating the provisions to be on the statute book on 23rd December 1972. The land holder having died much thereafter, in the eye of the law the lands in question vested with the State on 23rd December 1972. [621-A-B]

2. The land declared surplus in 1960 was allotted to different landless persons and possession thereof was given to them and they have been continuously in possession since 1976. By such allotment and delivery of possession in their favour, rights have been conferred on such allottees and any order without impleading them as parties and without hearing them could not have been passed which has effect of taking away their rights.

[620-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2845 of 1989.

G From the Judgment and Order dated 3.1.89 of the Punjab and Haryana High Court in C.W.P. No. 4164 of 1982.

Mahabir Singh for the Appellants.

K.P. Bhandari, Ms. Varuna B. Gungnani and Himindee Lal for the

H Respondents.

The Judgment of the Court was delivered by

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PATTANAIK, J. The appellants are landless persons and they had been allotted different parcels of surplus land of the surplus holder Late Prem Nath Maira after determination of the surplus in his hand by the Collector by Order dated 8th of June, 1960 under the Punjab Security of Land Tenures Act, 1953. The order of the Collector dated 21.4.61, declaring surplus in the hands of the land holder was assailed in appeal but the same was dismissed by the Commissioner, Ambala Division by his order dated 14.7.61. Against the appellate order a revision was carried to the Financial Commissioner in the year 1981 and it was contended before the Financial Commissioner that the original land holder having died on 5.1.76 before the vesting of the land in the State of Haryana under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, the heirs of the original surplus land holder inherited the same and consequently the question of surplus will have to be determined under the provisions of Haryana Act and there is no surplus. The Revisional Authority dismissed the said revision at the admission stage itself basically on the ground that the determination of surplus made by the Collector on 21.4.61 under the provisions of Punjab Security of Land Tenures Act, 1953 cannot be upset after 21 years and also on the ground that Section 12(3) of the Haryana Act having come into force retrospectively with effect from 21.3.72, the land must have to be vested in the State prior to the death of the surplus holder and therefore, no question of inheritance would arise and the lands have been utilised by way of settlement in favour of different landless persons. The matter was then carried to the High Court in a writ petition. The High Court by the impugned Judgment being of the opinion that notwithstanding the retrospective effect given to the provisions of Haryana Ceiling on Land Holdings Act, 1972, the said notification being made only in the year 1976 and the original holder having died prior to that date there was no vesting of the land in the State and, therefore, on death of the surplus land holder the legal heirs would be entitled to individual ceiling units under the Haryana Act and the earlier declaration of surplus under the Punjab Security of Land Tenures Act cannot take away that right. Accordingly, the High Court directed for re-determination of the surplus in accordance with the provisions of the Haryana Act. It may be stated at this stage that the present appellants who had been allotted the lands and were given possession of the same since 1976, after declaration of surplus by the Collector were not parties to the Writ petition in the High Court and being aggrieved by the order of the High Court in the writ petition, they have approached this Court.

Mr. Mahabir Singh, the learned counsel appearing for the appellants H

A contends that admittedly after declaration of the surplus in the hand of the surplus land holder under the provisions of Punjab Security of Land Tenures Act, 1953 and allotment of the surplus land in favour of the appellant and delivery of the possession to them confers an indefeasible right which could not have been taken away in their absence and the High Court committed gross error in interfering with the order of the Revisional Authority. The learned counsel on merits also contends that Section 12(3) being retrospective in nature in the eye of law, the said provision must be held to be existing on the statute book with effect from 23.12.72. The original surplus holder having died in the year 1976, the legal heirs cannot claim independent ceiling units on the basis of inheritance under the provisions of Haryana Act and High

B Court, therefore, committed error in interpreting the provisions of Section 12(3) of the Act. The learned counsel appearing for the respondent on the other hand contended that death of the surplus holder having occurred earlier than the actual notification bringing Section 12(3) on the statute book, the legal heirs of the surplus holder are entitled to claim their right and the retrospectivity of Section 12(3) will not take away that right. The learned

C counsel further contended that the lands not having been vested in the state under the provisions of Punjab Security of Land Tenures Act notwithstanding the declaration of surplus by the Collector and Haryana Act having come into force, the rights and liabilities will have to be determined under the provisions of Haryana Act and the High Court was, therefore, justified in interfering with

D the Revisional Order.

E Having considered the rival submissions it appears to us that the High Court was not justified in interfering with the revisional order both on the ground that the persons affected were not parties as well as on the ground that the provision of Section 12(3) of the Haryana Act has not been correctly

F interpreted. From the available records and the orders passed by the authorities it is crystal clear that the Collector declared surplus land in the hands of the original surplus land holder by his order dated 8.6.60. Thereafter such surplus lands were allotted to different landless persons and possession thereof was given to them who have been continuously in possession of the same since 1976. By such allotment and delivery of possession in their favour, rights have been conferred on such allottees and, therefore, any order without impleading them as parties could not have been passed which has the effect of taking away their rights. These appellants allottees were not parties to the writ petition and, therefore, the High Court was in error in snatching away their rights without hearing them and without impleading them as parties in

G H the writ petition. That apart, even on the question of interpretation of Section

12(3) of the Haryana Ceiling on Land Holdings Act, 1972, we also find that A the High Court has committed an error. The provisions no doubt was brought on to the statute book in the year 1976 by which time the original surplus holder had died but the legislature having given the said provision the retrospective effect w.e.f. 23.12.72 and as such the rights of the parties will have to be governed, treating the provisions on the statute book on 23.12.72. B The land holder having died much thereafter, in the eye of law the lands in question, vested with the State on 23.12.72. Death having occurred much later in 1976, the legal heirs cannot claim any right on the basis that they are entitled to an individual ceiling unit as the land has not been utilised. The High Court obviously has not considered the effect of giving retrospectivity to the provisions of Section 12(3). In this view of the matter, the conclusion C of the High Court cannot be sustained and we quash the same. This appeal is allowed. The writ petition filed by the heirs of the original surplus land holder stands dismissed. There will, however, be no order as to costs.

U.R.

Appeal allowed.