course of his employment. The petitioner having been absolved of such allegations and charges he would be vested with the right to full pay and salary for the period he remained out of service by applying the ratio of afore noticed judgments and in the light of the relevant statutory provisions i.e. Rules 7.3 and 7.5 of the Punjab Civil Service Rules, Volume I, as applicable to the State of Haryana

(20) For the reasons recorded above, writ petition is allowed. Order dated 16.9.2011, Annexure P2, is modified to the extent that the petitioner is held entitled to full pay and allowances for the period that he had remained out of service on account of his conviction. Let such benefit be calculated and released to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

(21) Petition is allowed in the aforesaid terms.

J.S. Mehndiratta

Before Paramjeet Singh, J.

INDER SINGH AND OTHERS — *Petitioners*

versus

THE FINANCIAL COMMISSIONER, HARYANA AND OTHERS — *Respondents*

CWP No. 2536 of 1992

November 19, 2014

Constitution of India 1950 — Writ jurisdiction — Art. 226/227 — Haryana Ceiling on Land Holdings Act, 1972 — Surplus area proceedings — Punjab Security of Land Tenures Act, 1953 — Possession of surplus area not taken but land so declared allotted to allottees — Allotment set aside by High Court in earlier round of litigation — Further proceedings pending under 1953 Act would have to be determined under the Act of 1972 after the latter came into force — Whether land stood vested in Government and possession of the same was taken by the Government — Held, no —Whether surplus area has to be re-assessed in the hands of the legal heirs on the death of a land-owner — Held, yes — Writ petition allowed.

*Held***,** that it is to be determined whether the land stood vested in the Government and possession of the same was taken by the State Government.

(Para 13)

Further held, that in view of the settled position of law as discussed above, if possession of surplus area is not taken before the Haryana Ceiling Act, 1972 came into force, the authorities are bound to re-consider and re-determine the surplus area case. It is also well settled that where consolidation takes place or the land owner dies before finalization of surplus area case, the matter is to be re-determined. This is so because in consolidation the area may decrease or increase and in case of death of big landlord, inheritance opens whereupon land gets devolved upon various heirs of the deceased as a result of which there may be even no surplus area in the hands of individual heirs. In such situations, the area declared surplus does not vest in the Govt. Therefore, no question of utilization of the surplus area by the Govt. arises. As already noticed in the earlier portion of the judgment, from the perusal of record of the instant case, it is crystal clear that possession was never taken by the Government from the petitioners or their predecessor-in-interest particularly when there was in operation an order dated 05.11.1964 (Annexure P-2) passed by this Court staying taking of possession from the land-owner. Even prior to that, the Financial Commissioner in order dated 05.11.1964 (Annexure P-2) had specifically directed that possession of the area declared surplus was not to be taken. Since the area has not vested in the Government under the 1953 Act, the same was required to be re-determined under the Haryana Ceiling Act, 1972 in view of law laid down in Ranjit Ram's (supra) and Ujjagar Singh's case (supra).

(Para 22)

Further held that admittedly, Chandgi expired on 29.07.1991, before taking the possession and revision was preferred by his legal heirs before the Financial Commissioner specifically stating that big landlord had died, but the said revision was dismissed. Since I have come to the conclusion that the property has not vested in the State as possession was not delivered and big landlord has died during the pendency of surplus proceedings, therefore, succession reopened. In such a situation, the case in hand would be squarely covered by the law laid down by the Hon'ble Full Bench of this court in Sardara Singh's case (supra).

(Para 23)

Ramesh Hooda, Advocate *for the petitioners.*

Sandeep S. Mann, Sr. DAG, Haryana.

PARAMJEET SINGH, J.

(1) Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 12.07.1989 (Annexure P-4) passed by respondent no.3-Collector Agrarian, Gohana, order dated 20.07.1991 (Annexure P-5) passed by respondent no.2-Commissioner, Rohtak Division, Rohtak and order dated 27.08.1991 (Annexure P-6) passed by respondent no.1-Financial Commissioner, Haryana.

(2) Brief facts of the present case are to the effect that surplus area proceedings were initiated against Chandgi, predecessor-in-interest of the petitioners and vide order dated 14.11.1959 (Annexure P-1), Collector, Rohtak declared 54-11¼ S.A. as surplus. The said order was challenged before the Financial Commissioner, Revenue, Punjab, who accepted the revision of the predecessor-in-interest of the petitioners, set aside the order dated 14.11.1959 (Annexure P-1) and remanded the matter to the Collector for fresh decision, vide order dated 05.11.1964 (Annexure P-2). Petitioners no.1 to 4 in the present petition, Chandgi and others filed 13 writ petitions including CWP-5288-1982 with the averments that their surplus area was allotted to respondent no.4-Ishwar Singh in the year 1976 on the assumption that the same stood vested in the State in terms of Section 12 (3) of the Haryana Ceiling on Land Holdings Act, 1972 (in short 'Haryana Ceiling Act, 1972') in spite of the fact that order dated 14.11.1959 (Annexure P-1) passed by the Collector, Rohtak has been set aside by the Financial Commissioner vide order dated 05.11.1964 (Annexure P-2). CWP-5288-1982 and other connected writ petitions were allowed by learned Single Judge of this Court vide order dated 09.07.1984 holding that all orders of the authorities under the Haryana Ceiling Act, 1972 directing the petitioners to deliver possession of the land to private respondents are not sustainable, meaning thereby possession was never transferred. In the light of order dated 05.11.1964 (Annexure P-2) passed by the Financial Commissioner and order dated 09.07.1984 passed in CWP-5288-1982 and other connected writ petitions, the Collector (Agrarian), Gohana again considered the surplus area case under the provisions of the Punjab Security of Land Tenures Act, 1953 (in short, 'the 1953 Act') and declared 43 standard acres 1/8 unit as surplus, vide impugned order dated 12.07.1989 (Annexure P-4). It is also pleaded that the

petitioners were never offered an opportunity to reserve the owners permissible area afresh after the remand order dated 05.11.1964 (Annexure P-2) passed by the Financial Commissioner, Punjab. It is also pleaded that prior to passing of order dated 12.07.1989 (Annexure P-4) and order dated 09.07.1984, Haryana Ceiling Act, 1972 came into being w.e.f.22.12.1972 and surplus case was required to be determined under the provisions of Haryana Ceiling Act, 1972. Feeling aggrieved by the order dated 12.07.1989 (Annexure P-4), the petitioners preferred appeal before the Commissioner, Rohtak Division, Rohtak who vide order dated 20.07.1991 (Annexure P-5) recorded the finding that proceedings under the old Act i.e. the 1953 Act had not ceased to be in existence simply because the authorities below had been sleeping over the case for over 25 years. It is further averred that provisions of Section 33(2) (ii) of the Haryana Ceiling Act, 1972 provides that all such proceedings which were pending before its enactment, had to be disposed of under the provisions of the old Act. It is further averred that no proceedings were pending, when Collector, Agrarian and Commissioner, Rohtak Division, Rohtak passed the orders dated 12.07.1989 and 20.07.1991, respectively. Feeling aggrieved by the orders dated 12.07.1989 and 20.07.1991, revision was filed before the Financial Commissioner, Haryana by raising a ground that Chandgi, original land owner, died on 29.07.1991 and the petitioners being his legal heirs, were entitled to inherit the property in view of Section 8 of the Haryana Ceiling Act, 1972 as the proceedings had not become final and the surplus area case is required to be determined afresh. However, vide impugned order dated 27.08.1991(Annexure P-6), Financial Commissioner, Haryana dismissed the revision. Hence, this writ petition.

(3) In pursuance of notice, the respondents put in appearance and filed written statement admitting that initially, the Collector had declared 54 S.A.11 ¼ Unit as surplus vide order dated 14.11.1959undertheprovisions of the 1953 Act. The consolidation in the village had taken place in the year 1963-64. It is also averred that vide order dated 05.11.1964, the Financial Commissioner, Punjab had not remanded the case for fresh decision, rather directed the Collector to re-examine the case on the points mentioned in para no.3 of the writ petition. ParaNos.3 and 4 of the writ petition read as under:

> "That feeling aggrieved against the above mentioned order, Shri Chandgi filed one R.O.R. No.81 of 1964-65, before the learned Financial Commissioner, the Erstwhile State of Punjab. The

Financial Commissioner, accepted the above mentioned petition and remanded the case back to the Collector vide his order dated 5.11.64. A copy of the above mentioned order dated 5.11.64 is attached as Annexure P2 with the petition. While remanding the above mentioned case, the learned Financial Commissioner, directed the Collector to re-examine the case particularly with reference to the following points:-

(1) Were the lands of the petitioners, either in whole or in part, under flood water when the orders in question were passed?

(2) How much of the petitioners land continue to be under water?

(3) What are the chances of the water being drained off in the near future?

(4) When was consolidation effected?

(5) Do the petitioners want, because of flooding and consolidation, to select their permissible areas afresh? If so, should they not on human consideration be permitted to select afresh their permissible area. It may be noted that wherever surplus areas were declared before consolidation and possession of surplus area has not been taken, the land owners affected have the right to select afresh their permissible area.

Keeping in view the above mentioned order of the learned financial Commissioner, Revenue dated 5.11.64, it was obligatory on the Collector to decide the case afresh after taking into consideration the above mentioned directions issued by the learned Financial Commissioner particularly giving the chances to the land owners to select their area afresh.

4. That as mentioned above, the order passed by the learned Collector dated 14.11.59 vide which the land of Chandgi, father of the petitioners was declared surplus and which was set aside by the learned Financial Commissioner vide his order dated 5.11.64 and remanded the same for deciding afresh. Without deciding the case afresh, the learned respondents in the year 1976 allotted the surplus land to the allottees treating the same as surplus as declared by the learned Collector vide his order dated 14.11.59 which was subsequently set aside by the learned Financial Commissioner on 5.11.64. The petitioners feeling aggrieved

against the above mentioned allotment filed one Civil Writ Petition No.5288 of 1982(Chandgi and others Versus The Financial Commissioner, Haryana and others) in this Hon'ble High Court which was allowed on July, 9, 1984. A copy of the above mentioned judgment dated July 9, 1984 is attached as Annexure P3 with the petition.

Keeping in view the above mentioned judgment, it is apparent that after remand by the learned Financial Commissioner, the land of the petitioners or their father was not even determined what to talk of declaring surplus."

(4) The aforesaid paras have been replied by the respondents as under:

"3. In reply to para No.3 of the writ petition it is submitted that the Ld. Financial Commissioner, Punjab referred the matter back to the Collector to re-examine the five points mentioned in this para. It is pertinent to mention here that the consolidation of the land of village Mahmoodpur was done in the year 1963-64. The benefit of consolidation proceeding was also given to Sh. Chandgi Ram.

4. Para No.4 of the writ petition is wrong and hence denied. It is wrong to allege that Ld. Financial Commissioner Punjab vide his order dated 5.11.64 remanded the case for deciding the same afresh. On the other hand it is submitted that the Ld. Financial Commissioner, Punjab had directed the Collector to re-examine the case on the points mentioned in para No.3 of the writ petition. Ld. Financial Commissioner, Punjab never declared the surplous area as wrong, nor it was held by the Ld. Financial Commissioner, Punjab that the proceeding of declaring the area surplus as null and void. The Ld. Financial Commissioner had sought the clarification on certain point which were clarified by the Collector vide his order dated 12.7.89 (Annexure P-4). It is however correct that Hon'ble High Court vide its judgment in CWP No.5288 of 1982 had set aside the allotment order made by the Collector in the year 1976. It is further submitted that the proceeding remained pending before the Ld. Collector who had to re-examine the case only on those five points on which the Ld. Financial Commissioner, Revenue had sought the clarification and the Collector had validly passed the order dated 12.7.89, though passed the order at a belated

> stage but the delay was certainly not fatal. It is worthwhile to mention here that Chandgi was given every reasonable opportunity by the Collector, before deciding the five issues raised by Ld. Financial Commissioner, Revenue by way of re-examination of this case by the Collector."

It is further pleaded that the Financial Commissioner never declared the surplus area as wrong. The said points were clarified by the Collector, Agrarian vide order dated 12.07.1989 (Annexure P-4). Since the case has commenced under the provisions of the 1953 Act, therefore, provisions of Haryana Ceiling Act, 1972 are not applicable.

(5) I have heard learned counsel for the parties and perused the record.

(6) Admitted facts are to the effect that the Collector, Rohtak, vide order dated 14.11.1959 (Annexure P-1), declared khasra nos.606 to 608, 1372 to 1375, 1405, 1421 to 1429, 1431 to 1434, 1559 to 1561, 1620,1621, 1618, 1622 to 1627, 1629 to 1634, 1987 to 1994, 2005 to 2001,2067,2068, 2328, 2330, 2321 to 2322, 2327, 2336, 2363 to 2369, 2377,2388, 2386, 2387, 2389, 3565 to 3567, 6227, 6228, 6343, 6345, 7146,2274, 2275, 7289, 7290, 1544, 1545, 1609, 1607, 1608, 1555, 1556,1628, 2085, 2086, 1693 measuring 54-11¼ S.A. as surplus in the hands of Chandgi, predecessor-in-interest of the petitioners. That matter had gone up to Financial Commissioner, who decided four revisions including the revision petition preferred by Chandgi and some of the petitioners, vide order dated 05.11.1964. A relevant extract of the order dated 5.11.1964 (Annexure P-2) reads as under:

> "2. I have personal knowledge of such areas in Rohtak District. The plight of landowners, with practically no land to cultivate, defies description as there is no point in declaring surplus area when lands are under water and when neither the permissible area nor the surplus area is available for cultivation. The other complication is that consolidation has taken place after the lands had been declared surplus and the owner have the right to select their permissible areas afresh. I want the Collector to have these cases re-examined with reference to the following points:-
>
> (i) Were the lands of the petitioners, either in whole or in part, under flood water when the orders in question were passed?
>
> (ii) How much of the petitioners' land continue to be under water?

(iii) What are the chances of the water being drained off in the near future?

(iv) When was consolidation effected?

(v) Do the petitioners want, because of flooding and consolidation, to select their permissible areas afresh? If so, should they not on human considerations be permitted to select afresh their permissible area. It may be noted that wherever surplus areas were declared before consolidation and possession of surplus area has not been taken, the land owners affected have the right to select afresh their permissible area?

(7) In the order dated 05.11.1964 (Annexure P-2), it is specifically mentioned that possession of the area declared surplus is not to be taken, but despite that the land which was declared surplus by the Collector was allotted to the allottees. The said allotments were challenged in this Court by filing CWP-5288-1982 and other connected writ petitions which were decided vide order dated 09.07.1984 (Annexure P-3) whereby allotments and orders of the authorities were set aside. In pursuance of the remand order dated 05.11.1964 (Annexure P-2), the Collector, Agrarian, Gohana considered the matter afresh and came to the following conclusion, vide order dated 12.07.1989, which reads as under:

> "Thus, the land owners in the year 1963-64 after consolidation, had 841 kanals 9 marlas land out of which 447 kanals 10 marlas was Nehri, 174 kanals 3 marlas Barani, 14 Kanals 4 marlas Banjar Kadim, 5 kanals 12 marlas Gair Mumkin land, which comes to 80 acres 1 kanal 9 marlas and 73std. Acres 1/8 unit land. The land owner has the right to retain 30 std. Acres 1/8 unit as his permissible area. After the drained off in the year 1965, this area goes to him as his balance area. Thus while giving him 30 acres land, the area of 43 std. Acres 1/8 unit area is ordered to be declared as surplus."

(8) The order dated 12.07.1989 (Annexure P-4) was challenged before the Commissioner, Rohtak Division, Rohtak, who dismissed the appeal vide order dated 20.07.1991 (Annexure P-5). The revision petition preferred before the Financial Commissioner, Haryana was also dismissed vide order dated 27.08.1991 (Annexure P-6).

(9) I am constrained to mention that learned counsel for the petitioners did not prepare the case and did not adequately canvass

before me. He has not rendered any meaningful assistance to this Court. I have gone through the record and law on the point.

(10) Learned State counsel vehemently contended that proceedings were initiated under the 1953 Act. Although, the Collector, Agrarian re-determined the area vide order dated 12.07.1989 (Annexure P-5) after coming into force of Haryana Ceiling Act, 1972. Since the proceedings were pending under the 1953 Act, therefore, area was rightly determined under the said Act. The impugned orders are legal and valid and no interference is called for.

(11) I have considered the contentions of learned counsel for the parties.

(12) It is an admitted fact that initially, the Collector, Rohtak declared 54-11¼ S.A. as surplus, vide order dated 14.11.1959 (Annexure P-1). The order dated 14.11.1959 was ultimately challenged before Financial Commissioner, Revenue, Punjab, who in fact set aside the order of the Collector and remanded the case to re-examine various points mentioned in the order of the Financial Commissioner and re-produced in earlier part of this order. Thereafter, the Collector, Agrarian, Gohana, vide order dated 12.07.1989 (Annexure P-4) redetermined the area. Prior to the passing of remand order, consolidation had commenced in the year 1963-64. Vide impugned order dated 12.07.1989 (Annexure P-4), the Collector, Agrarian after considering all the points raised by the Financial Commissioner in the remand order, had redetermined the area and declared 43 Std. Acres 1/8 unit area as surplus. It needs to be mentioned that in pursuance of the 1953 Act, allotments to the allottees were made by the revenue authorities which were ultimately set aside by learned Single Judge of this Court vide order dated 09.07.1984 (Annexure P-3) passed in CWP-5288-1982 and other connected writ petitions. Thereafter, the Collector, Agrarian declared 43 Std. acres 1/8 unit as surplus. Meaning thereby, till re-determination of area, land had not vested in the State. Even after passing of order dated 12.07.1989 (Annexure P-4), possession was not taken and that order was also challenged before the Commissioner and Financial Commissioner. When proceedings were pending before Financial Commissioner, by that time, i.e. 29.07.1991, Chandgi died and succession opened.

(13) It is to be determined whether the land stood vested in the Government and possession of the same was taken by the State Government.

(14) Before I answer the above said point, I deem it appropriate to refer to the settled position of law.

(15) A Division Bench of this Court in ***Sudarshan Kumar and others*** versus ***State of Punjab and others***, [1] has held as under: -

> "During the course of arguments, it remained undisputed that if the land, declared surplus, till the year 1973 when the Act of 1972 came into being, may not have been utilized either before the provisions of Act came into being or till such time Devki died, the authorities constituted under the Act had no option but for to re-assess the surplus area in the hands of legal heirs of Devki. Reference in this connection be made to Full Bench judgment of this Court in Ranjit Ram v. Financial Commissioner, Punjab, 1981 P.L.J. 259, which has since been confirmed by the Hon'ble Supreme Court in Ujjagar Singh (dead) by L.Rs. vs. The Collector, Bathinda and another, 1996 PLJ 505 : 1996(3) RCR (Civil) 446. Thus, the judgments of the Full Bench and Hon'ble Supreme Court cover the situation when the Act of 1972 came into force and the land was not utilized. The order proposition as settled, as mentioned above, is that when death of a land owner occurs and the land has not been utilized, it has to be reassessed in the hands of legal heirs. It has been so held by the Full Bench of this Court in Ajit Kumar v. State of Punjab and others, 1980 PLJ 354."

(16) In ***Ranjit Ram*** versus ***The Financial Commissioner, Revenue,Punjab and others***[2], the Full Bench of this Court framed three questions of law, however, question no.1 is relevant for disposal of this writ petition which reads as under:

> "(1) Whether a landowner, whose land has been declared surplus under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Punjab Law) or under the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Pepsu Law) and who has not yet been divested of the ownership of the surplus area before the enforcement of the Punjab Land Reforms Act, 1972 (hereinafter referred to as the Reforms Act) is entitled to select the permissible area for his family and for each of his adult sons in view of the provisions of section 4 read with section 5(1) of the Reforms Act ?"

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[1] 2004(4) RCR (Civil) 283
[2] 1981 (83) PLR 492

(17) A relevant extract of the answer to aforesaid question no.1 given by the Full Bench of this Court in ***Ranjit Ram's*** *(supra)* reads as under:

> "10. In my considered opinion, the language used by the Legislature in enacting the provisions of sections 5(2), 8 9(1), 11(2) and 11(5) of the Reforms Act, is not of any help one way or the other to answer question No. 1. I have already come to the conclusion that the provisions of sub-section (2) of section 5 are only procedural and cannot be taken to have amended the definition of permissible area and surplus area as defined under section 4 read with section 5(1) of the Reforms Act. Section 8 of the Reforms Act deals with the vesting of unutilized surplus area in the State Government. As already observed, this section will have full play even if question No. 1 is answered in the affirmative. It cannot be successfully contended that section 8 will become redundant if question No. 1 is answered in affirmative. Section 9(1) deals with the power of the Collector to take possession of surplus area and does not give any guidance for interpreting the definition of permissible area and surplus area as contained in sections 4 and 5 of the Reforms Act. Under section 11(2) the State Government, by notification in the official Gazette, has been empowered to frame a scheme for utilizing the surplus area under the Punjab Law, the Pepsu Law or the Reforms Act. Sub-section (5) of section 11 provides that save in the case of land acquired by the State Government under any law for the time being in force or by an inheritance, no transfer or other disposition of land which is comprised in the surplus area under the Punjab Law, the Pepsu Law or Reforms Act, shall affect the vesting thereof in the State Government or its utilisation under the Reforms Act. Even if question No. 1 is answered in the affirmative, the provisions of sub-section (2) or sub-section (5) of section 11 will have full play. As regards the provisions of section 28 of the Reforms Act, I have already observed in the earlier part of the judgment that the said provision does give an indication that where a person owns or holds land in excess of the permissible area, as defined in section 4 and section 5(1) of the Punjab Law, their cases have to be reprocessed in accordance with the provisions of the Reforms Act.

11. For the reasons recorded above, I answer question No. 1 in the affirmative and hold that a landowner, whose land has been declared surplus under the Punjab Law or under the Pepsu Law and who has not yet been divested of the ownership of the surplus area before the enforcement of the Reforms Act, is entitled to select the permissible area for his family and for each of his adult sons in view of the provisions of section 4 read with section 5(1) of the Reforms Act"

(18) The Hon'ble Supreme Court in ***Ujjagar Singh (dead) by LRs*** versus ***The Collector, Bathinda***[3] has considered the decision rendered by the Full Bench of this Court in ***Ranjit Ram's*** *(supra)* and held as under:

"7. The learned counsel, who appeared for the State, did not take a stand that under the Punjab Act, the appellant is holding any surplus area. He, however, placed reliance on the judgment of this Court in the case of **Amar Singh** versus **Ajmer Singh, 1994(3) R.R.R. 90 :1994 Supp.(3) SCC 213**, where it has been said that merely because the land had not been utilised and remained in possession of the heirs of the landowner was inconsequential. The aforesaid decision of this Court relates to the Haryana Ceiling on Land Holdings Act, 1972 which came into force w.e.f. 23.12.1972. From a bare reference to the aforesaid judgment, it shall appear that the vesting under that takes place on the appointed date. There is no provision under that Act like 32-E(a) of the Pepsu Act under which the surplus area had been declared so far the appellant is concerned. As such the aforesaid judgment in the case of **Amar Singh** versus **Ajmer Singh** (supra) is of no help to the respondent-State. In normal course, we would have directed the respondent-State to examine the question of surplus land held by the appellant along with his four adult sons in accordance with the provisions of the Punjab Act, but in view of an admitted position that if a fresh proceeding is to be initiated under the Punjab Act, there is no question of declaration of any land as surplus area, no useful purpose will be served by issuing any such direction. Accordingly, the appeal is allowed. The order of the dismissal passed by the High Court on the writ petition filed on behalf of the appellant is set aside. All proceedings initiated against the appellant either under the provisions of the

[3] 1996(3) RCR (Civil) 446

PEPSU Act or the Punjab Act are quashed. In the facts and circumstances of the case there shall be no order as to costs."

(19) In the present case, consolidation has taken place during pendency of surplus area case under the 1953 Act and measurements of land has stood been changed from Bigha-Biswas to Kanal-Marlas.

(20) This Court in ***Maghar Singh*** versus ***State of Punjab and another***[4]**,** has held as under: -

"Perusal of the different provisions of the Act goes to show that the occasion for the declaration of the surplus area would arise only if a landowner holds land in excess of the permissible limit. Further, it is plain that it is only the area which is in excess of the permissible limit that can be declared surplus. In case the proceedings under the Act are still pending and in the meanwhile as a result of consolidation proceedings the total area to which a landowner becomes entitled, is less than the area previously held by him, it is, in my opinion, that new area which should be taken into consideration and not the area which was held by him before the consolidation. There is nothing in the Act which prohibits the Collector from taking into account the reduction brought about in the area held by a landowner by consolidation. The Act in question is a piece of legislation which results in expropriation and as such its provision should be construed strictly, and unless a case falls within the express provisions of the Act the benefit must go in favour of the landowner."

(21) A Full Bench of this Court in ***Harchand Singh*** versus ***The Collector, Agrarian,Bhatinda and another***[5]**,** has held as under: -

"5. Now it deserves highlighting that within this Court there is a long time of unbroken precedent that in case of the diminution of an area of a landowner due to consolidation before the surplus area proceedings are completed and finalized, he would he entitled to claim that his new area be taken into consideration for determining his permissible area and not that held by him prior to the consideration. This was apparently so held by Harbam Singh, J. (as he then was) in **Bachan Singh and another** versus **The Financial Commissioner, Punjab, C.W.P.No.1366 of 1962**, decided on the 14th of February, 1963. This view found favour

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[4] 1964 PLJ 155
[5] 1979 PLJ 70

with H.R. Khanna, J. (as his lordship then was) in **Maghar Singh** versus **State of Punjab and another, 1964 PLJ 155,** and it was observed as follows:

"Perusal of the different provisions of the Act goes to show that the occasion for the declaration of the surplus area would arise only if a landowner holds land in excess of the permissible limit. Further, it is plain that it is only the area which is in excess of the permissible limit that can be declared to he surplus. In case the proceedings under the Act are still pending and in the meanwhile as a result of consolidation proceedings the total area to which a landowner becomes entitled, is less than the area previously held by him, it is, in my opinion, that new area which should be taken into consideration and not the area which was held by him before the consolidation. There is nothing in the Act which prohibits the Collector from taking into account the reduction brought about in the area held by a landowner by consolidation. The Act in question is a piece of legislation which results in expropriation and as such its provision should be construed strictly, and unless a case falls within the express provisions of the Act the benefit must go in favour of the landowner."

The judgment aforesaid was subjected to appeal and the Letters Patent Bench in **State of Punjab and another** versus **Maghar Singh, 1969 PLJ 323**, reaffirmed the ratio thereof with even greater vigour.

6. Equally it deserves notice that an identical view has been taken by A.N. Grover, J., in Amar Singh v. The State of Punjab, 1966 PLJ 81, and Narula, J. (as he then was) in **Bhag Singh** versus **The State of Punjab and another 1966 PLJ 238**. In **Jang Singh v. State of Punjab, 1970 PLJ 93**, to which I was a party, the writ petition was directly admitted to a hearing by the Division Bench which categorically expressed its agreement with the enunciation of the law by the Court earlier and allowed the petition in accordance therewith.

7. I must confess that we have not had the benefit of any serious debate on the point. Leaned counsel for the petitioner inevitably relied on the catena of judgments noticed above and canvassed for their affirmance. What deserves notice, however, is that Mr. Syal appearing for the respondent-State frankly conceded his inability to challenge the correctness of the view enunciated therein and fairly stated that there was not a single judgment to the contrary.

> Indeed he ultimately himself took the stand that no flaw in the impeccable reasoning of the Single Bench and Division Bench judgments was discernible which could possibly merit any reconsideration. Nor can one to recall that the land reforms agrarian legislation after Independence was initiated by the Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955 in the two States of Punjab and Haryana. The settled view of this Court with regard to surplus area under both these provisions in the context of consolidation proceedings has held the field without a discordant note. In the aforesaid context, we are unable to discern any reason whatsoever to deviate from the string of authorities on the point. Apart from a passing observation, the learned Judges of the Division Bench making the reference have not adequately indicated their reasons for the vacilating doubt raised therein. It appears that the matter was not adequately canvassed before their lordships nor have they adverted in detail to the authorities noticed by them or sought to repel the reasoning thereof. With respect we are unable to hold that the settled view of this Court on the point calls for any reconsideration or deviation there from. We would, therefore, reaffirm the reasoning and the ratio of the judgments notice above."

(22) In view of the settled position of law as discussed above, if possession of surplus area is not taken before the Haryana Ceiling Act,1972 came into force, the authorities are bound to re-consider and re- determine the surplus area case. It is also well settled that where consolidation takes place or the land owner dies before finalization of surplus area case, the matter is to be re-determined. This is so because in consolidation the area may decrease or increase and in case of death of big landlord, inheritance opens whereupon land gets devolved upon various heirs of the deceased as a result of which there may be even no surplus area in the hands of individual heirs. In such situations, the area declared surplus does not vest in the Govt. Therefore, no question of utilization of the surplus area by the Govt. arises. As already noticed in the earlier portion of the judgment, from the perusal of record of the instant case, it is crystal clear that possession was never taken by the Government from the petitioners or their predecessor-in-interest particularly when there was in operation an order dated 05.11.1964 (Annexure P-2) passed by this Court staying taking of possession from the land-owner. Even prior to that, the Financial Commissioner in order dated 05.11.1964 (Annexure P-2) had specifically directed that

possession of the area declared surplus was not to be taken. Since the area has not vested in the Government under the 1953 Act, the same was required to be re-determined under the Haryana Ceiling Act, 1972 in view of law laid down in ***Ranjit Ram's*** *(supra)* and ***Ujjagar Singh 's case*** *(supra).*

(23) Admittedly, Chandgi expired on 29.07.1991, before taking the possession and revision was preferred by his legal heirs before the Financial Commissioner specifically stating that big landlord had died, but the said revision was dismissed. Since I have come to the conclusion that the property has not vested in the State as possession was not delivered and big landlord has died during the pendency of surplus proceedings, therefore, succession reopened. In such a situation, the case in hand would be squarely covered by the law laid down by the Hon'ble Full Bench of this court in ***Sardara Singh's case*** *(supra)*. The relevant observations made by the Hon'ble Full Bench in paras 41 and 42 of the judgment, which can be gainfully followed in the present case, read as follows:-

> "41. We are, therefore, of the considered opinion that in order to harmoniously read the two views in Ajir Kaur's case and to give correct interpretation of the provision of Section 11(50 and 11(7) of this Act, we ought to take the aid of Supreme Court's judgement in Ajmer Kaur's case. We hold that until the surplus area has been finally determined by the Collector and appeals/revisions have been dismissed, the death of the landowner would certainly cause affectation to the surplus area which would b e required to be redetermined in the hands of his heirs.
>
> 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.

(24) In view of above discussion and considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned and law laid down by this Court and Hon'ble Supreme Court, this court is of the considered view that in the given fact situation of the present case, instant writ petition is liable to be accepted. Ordered accordingly. Consequently, the impugned order dated 12.07.1989 (Annexure P-4), order dated 20.07.19 (Annexure P-5) and order dated 27.08.1991 (Annexure P-6) are set aside.

(25) No order as to costs.

(26) However, the authorities will be at liberty to proceed with the matter regarding determination of surplus area in the hands of legal heirs of deceased-Chandgi.

S. Gupta.

Before Satish Kumar Mittal, J

KARAM SINGH — *Appellant*

versus

BALBIR SINGH (DECEASED) THROUGH LRs— *Respondents*

RSA No.3252 of 1987

October 31, 2014

Code of Civil Procedure 1908 — S.100 — Second Appeal — Evidence Act 1872 —S.92— General Power of Attorney — Findings of Trial Court on General Power of Attorney (GPA) and Sale Deed executed by General Power of Attorney — No allegation that General Power of Attorney obtained by fraud or coercion nor any plea raised nor evidence led in that regard — First Appellate Court finding that GPA solely for purpose of management of land and not for its sale — Held, finding by First Appellate Court perverse and contrary to evidence on record — GPA validly executed and a registered document — Sale by GPA for consideration — First Appellate Court tried to vary contents of the GPA — Not permissible in view of Section 92 of Evidence Act — Contents of GPA cannot be varied or altered by giving oral evidence — Second Appeal allowed.

Held, that in my opinion, the observations made by the learned first appellate court that the power of attorney in favour of Rajinder Pal Singh shows that it was given to him by plaintiff Balbir Singh and