

*Before Ajay Tewari, J.*

**RAM KALA AND OTHERS—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 8310 of 1990**

July 25, 2013

*Constitution of India, 1950 - Art. 226/227 - Writ Jurisdiction - Haryana Ceiling of Land Holdings Act 1972 - S. 12(3) - Retrospective effect - Punjab Security of Land Tenures Act, 1953 - Ss. 10A & 10B - Land declared surplus on 27.05.1961 the big land owner having died on 15.04.1953 - Land allotted to eligible persons and possession handed over - Held, the legal heirs of the big land owner not entitled to the benefit of sections 10A and 10B of the Punjab Act since Section 12(3) of the Haryana Act has been given retrospective effect with effect from 23.12.1972*

*Held*, that today learned Senior counsel appearing on behalf of petitioners has very fairly and candidly brought to my notice judgment of Hon'ble Supreme Court titled as Ram Swarup vs. S.N. Maria reported as 1999(1) P.L.J. 11 wherein it was observed as under: -

3. "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 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 8.6.1960: 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 implicating them as parties in 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 the High Court has committed an error. The provision 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. 23.12.1972 and as such the rights of the parties will have to be governed, treating the provisions on the statute book on 23.12.1972. The land holder having died much thereafter, in the eye of law the lands in question vested with the State on 23.12.1972. Death having occurred much later in 1976, the legal heirs cannot claim any right on the basis that they are entitled to any individual ceiling unit as the land has not been utilised. The High Court obviously has not considered the effect of giving retrospectively to the provisions of Section 12(3). In this view of the matter, the conclusion 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."

(Para 3)

*Further held*, that to be fair the learned Assistant Advocate General, Haryana, has also referred the same judgment and also subsequent judgments of this Court in Amar Singh vs. State of Haryana reported as 2002(1) R.C.R. (Civil) 489; Shiv Narain & Ors. vs. State of Haryana reported as 1984 R.R.R. 432; State of Haryana vs. Birsala reported as 2003(4) R.C.R. (Civil) 812 where the same was followed. In view of this binding precedent this petition is dismissed.

(Para 4)

I.K. Mehta, Senior Advocate, with Ranjit Mehta, Advocate, *for the petitioners*.

Shruti Goel, A.A.G. Haryana.

**AJAY TEWARI, J. (ORAL)**

(1) By this petition, petitioners have prayed for issuance of writ of certiorari, Mandamus and for that order of dispossession against the petitioners may be quashed.

(2) The father of the petitioner was big landowner and his land was declared surplus on 27.05.1961, the Haryana Ceiling of Land Holdings Act 1972 (hereinafter to be referred as Haryana Act) came into force till that time admittedly the land had not been utilized under the Punjab Security of Land Tenures Act (hereinafter to be referred as Punjab Act). On 15th April, 1953, the big land-owner had died. The petitioners moved an application to get benefit of Section 10-A & Section 10-B, but that application was declined and the land was allotted to eligible persons. The petitioners moved another application subsequently again praying for the benefit of Section 10-A & Section 10-B of the Punjab Act which was also declined. It is this issue which has reached before this Court. On 23th July, 2013 I had with the assistance of learned counsel framed the following questions: -

(i) *What would be the effect of the inclusion of Section 12(3) (vide Act 40 of 1976) to a case where a big landowner has died in the year 1974?*

(ii) *Whether in such a case his heirs would be entitled to the benefit of Section 10-A & 10-B of the Punjab Security of Land Tenure Act, 1953?*

(iii) *Whether such a benefit if permissible could be taken away by a retrospective amendment?*

(3) Today learned Senior counsel appearing on behalf of petitioners has very fairly and candidly brought to my notice judgment of Hon'ble Supreme Court titled as *Ram Swarup* versus *S.N. Maria (1)*, wherein it was observed as under: -

3. *"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 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 8.6.1960. 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 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 the High Court has committed an error. The provision 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. 23.12.1972 and as such the rights of the parties will have to be governed, treating the provisions on the statute book on 23.12.1972. The land holder having died much thereafter, in the eye of law the lands in question vested with the State on 23.12.1972. Death having occurred much later in 1976, the legal heirs cannot claim any right on the basis that they are entitled to any individual ceiling unit as the land has not been utilised. The High Court obviously has not considered the effect of giving retrospectively to the provisions of Section 12(3). In this view of the matter, the conclusion 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."*

(4) To be fair the learned Assistant Advocate General, Haryana, has also referred the same judgment and also subsequent judgments of this Court in *Amar Singh* versus *State of Haryana (2)*, *Shiv Narain & Ors.* versus *State of Haryana (3)*, *State of Haryana* versus *Birsala (4)*, where the same was followed.

(5) In view of this binding precedent this petition is dismissed.

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*S. Gupta*