

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.1122 of 1993

Date of Decision:-29.07.2015

Birbal through Lrs.

.....Petitioners.

Versus

The State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Ms. Abha Rathore, Advocate for the Petitioner.

Mr. Vikas Malik, DAG Haryana for respondent no.1.

Mr. Ashok Verma, Advocate for respondent nos.2 to 6.

JASWANT SINGH, J.(ORAL)

Big land owner-Birbal instituted the present writ petition seeking the quashing of order dated 09.12.1992 (P-2) passed by the Financial Commissioner, Haryana whereby while exercising suo motto powers of revision under Section 18(6) of the Haryana Ceiling on Land Holdings Act, 1972 (for short the '1972 Act'), the order dated 31.10.1985 (P-1) passed by the prescribed Authority, Dabwali, was set aside and the issue remanded back for fresh determination of the surplus area in the hands of Birbal by the prescribed Authority under the provisions of the '1972 Act'.

In short, the said Birbal son of Sada Sukh resident of village Rampura Bishnoian, Tehsil Dabwali District Sirsa filed a declaration form under Section 9 of the 1972 Act claiming his permissible area under the 1972

Act along with three additional units as permissible area for his three sons, who as per his assertion were adults on 24.01.1971 i.e. the appointed date for determination of the surplus area in the hands of big land owners under the 1972 Act. In support of his three sons namely Sahib Ram, Richhpal and Sehdev being adults, he had produced the age certificates duly issued by the Registrar Deaths and Births, Sirsa showing the date of birth as 14.10.1948, 7.1.1951 and 22.8.1952 respectively. Since the names in the certificates issued by the office of Registrar were entered as Kamal, Pardaman Kumar and Kesra respectively, the declarant produced the affidavit of the wife of Birbal, the another affidavit of Lal Chand son of Budh Ram stating that the elder son Saheb Ram was initially entered as Kamal, Richhpal as Pardaman Kumar and Sehdev as Kesra in the Chowkidara register and, therefore, their names have been so entered in the certificate produced from the office of the Registrar Deaths and Births, Sirsa. Although the Naib Tehsildar Agrarian appearing for the State had specifically pointed out that the names of the three sons as disclosed in the declaration form did not tally with the certificates of age produced and thus were of different persons, however, in the light of the affidavit, the prescribed authority held that the same though had different names related to the three sons of Birbal i.e. Saheb Ram (Kamal), Richhpal (Pardaman Kumar) and Sehdev (Kesra) and thereby proceeded vide order dated 31.10.1985 (P-1) to permit three additional units as permissible area apart from the permissible area of the big land owner in favour of the declarant. In this manner no surplus area was found at the hands of the big land owner-Birbal.

After about five years in the year 1990 the private respondents no.2 to 6 claiming themselves to be tenants of the area filed a revision

petition before the Financial Commissioner, Haryana, which was treated as a suo motto petition under section 18(6) of the 1972 Act. It was pointed out that the big land owner had committed a fraud on the state by falsely stating the age of his three sons. It was further pointed out that the date of birth of three sons, namely, Saheb Ram, Richhpal and Sehdev was 7.1.1951, 2.9.1953 and 18.3.1956/24.5.1956 as per the certificate issued by Headmaster of the Primary School of Rampura Bishnoian whereas certificates issued by the Health Department mentioned these dates as 7.1.1951, 2.9.1953 and 24.5.1956. The learned Financial Commissioner on the basis of such certificates brought on record held that only one son i.e. eldest Sh. Saheb Ram had attained adulthood on the appointed date i.e. 24.1.1971 and entitled to additional unit while holding that the age of three sons as 14.10.1948, 7.1.1951 and 22.8.1952 produced before the prescribed authority was fake and thus based on fraud. Accordingly the order dated 31.10.1985 (P-1) was set aside and matter was remanded back for redetermination of the surplus area of Birbal on the appointed date after redetermining the genuine age of the three sons.

The Big land owner-Birbal thus filed the present writ petition wherein while issuing notice of motion the operation of the impugned order 9.12.1992 (P-2) was stayed. Thereafter the petition was admitted vide order dated 20.07.1994 with interim protection to continue.

The official respondents and the private respondents have filed their separate replies. During the pendency of the present writ petition the petitioner-Birbal died and his Lrs including the three sons were brought on record vide order dated 18.02.2015.

The main argument raised is that the suo motto powers could

not be exercised at the instance of revision petition filed by the private respondents claiming themselves to be alleged tenants. Therefore, it is submitted that the impugned order dated 09.12.1992 (P-2) is liable to be set aside.

On the other hand, learned Counsel for the respondents have argued that in the light of the certificates issued by the office of Registrar, Deaths and Births (brought on record as Annexures R-1 to R-3 and the School Certificate Annexure R-4 with the reply of the private respondents) the learned Financial Commissioner has correctly arrived at the findings that a fraud has been committed by the declarant Birbal and, therefore, exercise of suo motto powers by the Financial Commissioner was totally justified and valid. In support he has cited two Division Bench judgments of this Court in **Ram Niwas & Ors. Vs. State of Haryana 2003(2) RCR (Civil) 403** and **Ram Partap Vs. State of Haryana 2002(4) RCR (Civil) 361**.

After hearing learned Counsel for the parties and giving anxious thought, this Court finds that the present writ petition is liable to be dismissed for the reason that the findings arrived at by the prescribed authority in the order dated 31.10.1985 regarding the age of majority of three sons based on mere affidavits of the wife and a relative by ignoring the objection of the Naib Tehsildar Agrarian regarding the objection of certificates in relating to the said three sons, was totally illegal and unwarranted. The certificates produced before the prescribed authority related to persons with the names of Kamal, Pardaman Kumar and Kesra and not to the conceded names of the three sons of Birbal i.e. Saheb Ram, Richhpal and Sehdev and, therefore, presumption attached to the said certificates relating to other persons was not rebutted by the mere assertions

in the affidavits. The argument that the suo motto revisional jurisdiction could not be exercised in the facts of the case is untenable since the very purpose of the vesting of such powers is to deal with such situations as in the present case. It has to be acknowledged that the said powers can be invoked even by filing of complaint and at the instance of anybody, more so when a clear cut fraud is shown to have been committed by the beneficiary party. Even the time limit in the present case for invoking such powers cannot be said to be unreasonable. The approach adopted by the Financial Commissioner by directing the redetermination of examination of the birth certificates on record, cannot be faulted with.

Accordingly the present writ petition is dismissed with the observation that the case of big land owner Birbal shall be redetermined and his Lrs and the contesting parties would have full opportunity to lead their respective evidence in support of their respective case. The parties are directed to appear before the competent prescribed authority on 28.09.2015. Till the passing of afresh order by the prescribed authority status quo regarding possession shall be maintained.

(JASWANT SINGH)
JUDGE

July 29, 2015
Vinay