

CWP-14620-1993

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-14620-1993

Date of Decision: 09.09.2015

Ram Piara and another

... Petitioner(s)

Versus

The Financial Commissioner, Revenue, Govt. of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Munish Jolly, Advocate,
for the petitioners.

Mr. Suresh Singla, Addl. A. G. Punjab.

Mr. G.S.Nagra, Advocate,
for respondent Nos.5(i), (iii) and 7.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the orders dated 04.07.1983 (Annexure P-8) passed by Tehsildar Sales-cum-M.O, Hoshiarpur, dated 27.02.1984 (Annexure P-9) passed by the Settlement Commissioner, Punjab, Rehabilitation Department, Mohali, dated 21.02.1986 (Annexure P-10) passed by the Deputy Commissioner exercising the powers of Chief Settlement Officer and dated 09.09.1992 (Annexure P-11) passed

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by the Financial Commissioner (Appeals), Punjab.

In brief, facts of the present case are to the effect that Amir Chand, who migrated to India in 1947, was allotted land in village Garhi, Tehsil and District Ropar. Subsequently, it came to light that he did not own any land in Pakistan in 1947 and allotment made in his name was set aside. The permanent rights to the said land were also set aside by the Chief Settlement Commissioner vide order dated 12.10.1962 (Annexure P-1). In the meantime, the petitioners had purchased the suit land from Amir Chand in 1961. The Naib Tehsildar (S)-cum-Managing Officer, Hoshiarpur, after due consideration, rejected the case of the petitioners on the ground that they did not file any application within 30 days of the date of the cancellation order. The petitioners claimed to have purchased the suit land in good faith from the allottee, Amir Chand, in 1961. Vide impugned order dated 04.07.1983 (Annexure P-8), the Tehsildar Sales-cum-M.O, Hoshiarpur confirmed the allotment of land in favour of private respondents on the ground that the petitioners had not filed any application for purchase of land within one month from the date of cancellation of order dated 12.10.1962 (Annexure P-1). This order was subsequently upheld by the Settlement Commissioner, Punjab, Rehabilitation Department, Mohali, vide impugned order dated 27.02.1984 (Annexure P-9). The petitioner preferred revision petition before the Deputy Commissioner exercising the powers of Chief Settlement Commissioner, Rupnagar which has also been dismissed vide

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impugned order dated 21.02.1986 (Annexure P-10). The petitioners also preferred petition before the Financial Commissioner (Appeals), Punjab which has also been dismissed vide impugned order dated 09.09.1982 (Annexure P-11). Hence, this writ petition.

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

Perusal of the record shows that Amir Chad was allotted land measuring 4-3½ st. acre in village Garhi in lieu of land allegedly left in Pakistan. In fact, Amir Chand was not owner of any land in Pakistan. The allotment was contrary to the provisions of law and the same was cancelled in 1962 being bogus. From this cancelled area, Ram Piara purchased 18K-18M land and remaining land was allotted to Arjan Singh son of Isher Singh through Raghbir Singh under the orders dated 26.02.1979 passed by the Tehsildar Sales-cum-M.O. and possession was handed over on 02.03.1979 and 06.08.1979. Admittedly, issue in dispute is cancellation of land which was allotted in lieu of land left in Pakistan and the sale of the land in dispute before cancellation of its allotment. Petitioners are claiming property in dispute as *bona fide* purchasers and seeking protection under the provisions of the Transfer of Property Act, 1882 being subsequent vendees. The Full Bench of this Court has considered similar issue in the case of ***Smt. Niranjana Kaur and others versus The Financial Commissioner, Revenue and Secretary to Govt., Punjab and others, 2011(1) PLR 110*** and held that protection under

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Section 41 of the Transfer of Property Act is sub servient to Section 24 of the Displaced Persons (Compensation & Rehabilitation) Act. Section 41 of the Transfer of Property Act, 1882 does not over-ride the provisions of Section 24 of the Displaced Persons (Compensation & Rehabilitation) Act. So far as the remedy to the subsequent vendee who claims to be *bona fide* purchaser is concerned, the Hon'ble Full Bench in ***Smt. Niranjan Kaur (supra)*** held as under:

“49. *The answer to the question, as to what right the subsequent vendee would have in view of the cancellation of the allotment which is finally upheld, is to be found in Sections 13 and 19 of the Specific Relief Act. The property of the real owner would be protected, and bona fide purchaser will be entitled to get back his money along with interest and costs etc. from his vendor.*

50. *For the reasons stated, we are of the view that Section 41 of the Property Act, will have no application where transfer is held invalid under Sections 19 and 24 of the Act, as no estoppel can be pleaded against the provisions of the statute.*

51. *It would be within the right of the subsequent purchasers to challenge the order of cancellation on merits, but sale in their favour cannot be protected under Section 41 of the Property Act. The subsequent vendee can only claim refund or damages from his vendor.”*

In view of above discussion, the present writ petition fails and is hereby dismissed with no order as to costs. However, the

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petitioners will be at liberty to avail their remedy against the vendor in
accordance with law.

09.09.2015
parveen kumar

(Paramjeet Singh)
Judge