

In the High Court of Punjab and Haryana at Chandigarh.

**CWP No. 16786 of 1992
Decided on 09.9.2015**

Harjinder Singh

-- Petitioner

Vs.

State of Punjab and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. G.S.Bhatia, Advocate, for the petitioner

Mr. Yatender Sharma, Addl.A.G, Punjab

Rakesh Kumar Jain,J: (Oral)

The petitioner has prayed for a writ in the nature of Certiorari for quashing of the orders Annexures P2 to P-4, by which allotment of land made in his favour by order of the Tehsildar dated 25.4.1979, confirming the sale by the Sale Commissioner on 27.2.1981 and the Conveyance Deed issued to him on 18.3.1981, have been cancelled.

In short, the Punjab Government issued a Press Note in the year 1978 for transfer of surplus rural evacuee agricultural land on the basis of possession to the extent of 10 ordinary acres.

The petitioner applied for transfer of land on the basis of possession since prior to 1972 on the land measuring 31 Kanal 4 marlas comprised in Khasra No. 17M/2 (8-0), 3 (8-0), (87-4), 9 (8-0) situated in

village Lahoke Behram. Application of the petitioner was scrutinised by the Tehsildar (Sales) and finding his possession during the prescribed crop i.e. Rabi 1976, transferred the land in his favour vide his order dated 25.4.1979 for a consideration of ₹3900/- which was deposited in time. The sale was confirmed by the Sales Commissioner, Ferozepur vide his order dated 27.2.1981 and Conveyance Deed was also issued in favour of the petitioner on 18.3.1981 by the Tehsildar (Sales), Ferozepur.

After the expiry of 5 years, the Superintendent of Revenue and Rehabilitation Department, Punjab, moved a suo moto reference to the Chief Settlement Commissioner, Ferozepur, under Section 10 of the Punjab Package Deal Properties (Disposal) Act, 1976 for setting aside the order dated 25.4.1979 of the Tehsildar (Sales) and the Conveyance Deed dated 27.2.1981 on the ground that the petitioner was not in cultivating possession during the crop Kharif 1976 to 1978 and, thus, violated Rule 3 of the Punjab Package Deal Properties (Disposal) Rules, 1976 (for short, 'the Rules').

The reference was ultimately allowed on 25.9.1986 by the Chief Settlement Commissioner, Ferozepur, on the ground that the petitioner was not found in cultivating possession from the crop Kharif 1976 to Kharif 1977 and the appeal preferred by the petitioner against that order was also dismissed vide the Commissioner, Ferozepur Division, Ferozepur, vide his order dated 19.8.1987 and further revision was dismissed on 8.10.1991 by the the Financial Commissioner, though the petitioner was given liberty to apply again for the purchase of land in accordance with law/ Scheme.

Aggrieved against the aforesaid order, the petitioner filed the present writ petition in which his dispossession was stayed on 18.12.1992.

Learned counsel for the petitioner has submitted that the respondents have wrongly interpreted Rule 3 (iii) of the Rules as the word used is continuous and undisputed possession and the word “**cultivating possession**” is conspicuous by its absence. It is further argued by learned counsel for the petitioner that Rule 10 of the Act can only be invoked in case of fraud played by a person or false representation, whereas in the present case, the petitioner has neither played any fraud nor made any false representation.

Learned counsel for the respondents has vehemently argued that the petitioner is guilty of *suppressio veri and suggestio falsi* because he did not disclose that he was not in cultivating possession during the crop Kharif 1976 to Kharif 1977, and therefore, allotment made in his favour has rightly been cancelled in view of Rule 3 (iii) of the Rules

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

In order to appreciate the rival arguments, it would be relevant to reproduce Rule 3 (iii) of the Rules:-

“iii) is in continuous and undisputed possession of the land from the crop that may be prescribed by the State Government from time to time”

The crop which has been mentioned by the State is Kharif 1976 onwards. There is no finding recorded by any of the authority that the petitioner was not in possession of Kharif crop of 1976 onwards and the allotment has been cancelled simply on the ground that he was not found in “**cultivating possession**” of the crop from Kharif 1976 to Kharif 1977. To my mind, there is a misinterpretation of the aforesaid Rule by the respondents authority as the said Rule does not talk of cultivating

possession, rather it talks of continuous and undisputed possession. Had there been any intention of the Legislature to transfer rural property on the basis of cultivating possession, the Legislature could have easily provided the word '**cultivating possession**' as well in the said rule but in the absence of any such a provision, the respondents have erred in introducing "**cultivating possession**" in the said rule, as it is beyond their competence and jurisdiction.

While reading the Rule as it is, the only inference that can be drawn is that it talks of continuous and undisputed possession.

In the absence of any evidence having been brought on record that the petitioner was not found in continuous possession over the land in question from the period of crop Kharif 1976 onwards, the allotment made in his favour cannot be cancelled on the ground that he was not found in "**cultivating possession**".

In view of the above, this petition is allowed and the impugned order is set aside. No costs.

09.9.2015
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(Rakesh Kumar Jain)
Judge