

CWP Nos.10489 of 1998 and other connected petitions

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

Judgment reserved on:09.09.2015

Date of Decision: 09.12.2015

1. CWP No.10489 of 1998

Col. Shavinder Singh and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

2. CWP No.11413 of 1998

Gurdeep Singh and another

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

3. CWP No.11455 of 1998

Gurbachan Singh (since deceased) and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

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4. CWP No.11927 of 1998

Sardara Singh and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

AND

5. CWP No.14929 of 1998

Parampal and others

... Petitioner(s)

Versus

State 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 ?

Argued by: Mr. Gurminder Singh, Sr. Advocate with
Ms. Harpriya Khaneka, Advocate for
the petitioner Nos.3, 20, 21 and 23 in CWP-10489 of
1998.

Mr. Baljinder Singh, Advocate,
for the petitioner Nos.6 to 9 in CWP-10489-1998.

Mr. Surinder Garg, Advocate,
for the remaining petitioners in CWP-10489-1998 and
in CWP-11413-1998.

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Mr. I.S.Brar, Advocate,
for the petitioners in CWP-11927-1998.

Mr. Gurpreet Singh Dhillion, Advocate,
for the petitioners in CWP-11455-1998.

Mr. S.S.Chandumajra, Addl. A. G.Punjab.

Mr. R.K.Verma, Advocate for
respondent Nos.7 to 19, 21 and 22 in CWP-10489-1998
and for the petitioners in CWP No.14929-1998,

Mr. J.S.Brar, Advocate,
for LR's of respondent No.20 in CWP-10489-1998.

Paramjeet Singh, J.

This order shall dispose of CWP No.10489 of 1998, titled as 'Col. Shavinder Singh and others vs. State of Punjab and others', CWP No.11413 of 1998, titled as 'Gurdeep Singh and another vs. State of Punjab and others', CWP No.11455 of 1998, titled as 'Gurbachan Singh (since deceased) through his LR's and others vs. State of Punjab and others', CWP No.11927 of 1998, titled as 'Sardar Singh and others vs. State of Punjab and others' and CWP No.14929 of 1998, titled as 'Parampal and others vs. State of Punjab and others', as common questions of fact and law are involved in all these petitions.

All these writ petitions have been filed under Articles 226/227 of the Constitution of India for setting aside the order/letter dated 28.04.1998 passed by respondent No.2-Financial Commissioner (Revenue) and the order/letter dated 04.05.1998 passed by respondent No.4-Deputy Commissioner, Faridkot along with subsequent

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proceedings arising therefrom.

For the purpose of brevity, facts are being taken from CWP No.10489-1998.

Brief facts of the case as averred in the petition are to the effect that Raja of Faridkot Harinder Singh was the owner of the land in dispute. As per jamabandi for 2001-02 Bikrami Samvat, Narinder Singh was shown in possession as *Mazara Tabi Marzi*. Thereafter, notification dated 28.04.1951 was issued whereby five kinds of tenants of erstwhile State of Faridkot were made occupancy tenants. Vide notification dated 18.11.1952, proprietary rights were conferred as such and Narinder Singh was recorded as owner in place of Raja of Faridkot and mutation was sanctioned in his favour on 25.04.1953. Another mutation was also sanctioned on 03.04.1954 where name of *Ala Malik* i.e. first owner was removed and in his place name of Narinder Singh was entered as owner. The said Narinder Singh sold some of the land to the petitioners and others and kept some of the land in his possession as owner. The total area in dispute in the present petition is measuring 4162 kanals and 9 marlas. After the death of Narinder Singh, one Sukhchain Singh became owner of the land and mutation No.38 was sanctioned in his name. After the death of Sukhchain Singh, mutation of his inheritance was sanctioned in favour of Kashmira Singh son of Lachhman Singh and after the death of Kashmira Singh, the property devolved upon various persons i.e. Gursewak Singh, Rashpal Singh sons, Rachhpal Kaur and Mohinder Kaur daughters of Kashmira Singh. Most of the petitioners

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had purchased the land from sons and daughters of Kashmira Singh. Even Gursewak Singh, Rashpal Singh sons, Rachhpal Kaur and Mohinder Kaur daughters of Kashmira Singh are also some of the petitioners in the present petition. The Govt. issued order/letter dated 28.04.1998 (Annexure P-1) directing the Deputy Commissioner, Faridkot to enter mutation on the basis of letter No.R.O.6(21) B/5/51-861 dated 02.08.1956 of the Pepsu Govt. The Sub Divisional Magistrate, Faridkot vide impugned order/letter dated 04.05.1998 (Annexure P-2) informed the Assistant Consolidation Officer, Faridkot that mutation of ownership be sanctioned in favour of Govt. of Punjab in view of letter No.R.O.6(21) B/5/51-861 dated 02.08.1956.

I need not elaborate further details of the case as in the present case, the petitioners have impugned the letters (Annexures P-1 and P-2) vide which entries in the revenue record have been ordered to be effected.

It is averred in the petition that earlier, the Govt. of Punjab filed suit for possession against Narinder Singh and others which was dismissed vide judgment and decree dated 30.11.1962. Against that, the State of Punjab preferred RFA before this Court which was also dismissed as abated vide judgment dated 11.04.1975 (Annexure P-5). On the basis of aforesaid mutations, surplus proceedings in respect of the disputed land have been initiated.

In pursuance of notice of motion, respondent Nos.1 to 5 filed reply with the averments that originally Raja Harinder Singh of

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erstwhile State of Faridkot was owner of the land in dispute. Mutation No.123 dated 05.06.1998 (Annexure R-1) was sanctioned in favour of the State of Punjab as per the orders of the Financial Commissioner, Revenue, Punjab vide letter No25/51/98-LR-2/2930 dated 28.05.1998 and Pepsu Govt. letter No.RD-6(21)-B-51/861 dated 02.08.1956. In the aforesaid letter dated 02.08.1956, it is mentioned that area which should have been mutated in the name of Govt. Pepsu State consequent upon the personal property of Raja Sahib of Faridkot having been declared wrongly mutated in favour of Narinder Singh. Sales of land belonging to Pepsu Govt. made by Narinder Singh and his successors are ineffective because mutation sanctioned in favour of Narinder Singh was wrong and same has been rectified by sanctioning mutation No.123 dated 05.06.1998 in favour of the State of Punjab. Similarly, Will made by Suchchain Singh is also ineffective. The fact in respect of filing of suit for possession by the State of Punjab in the Court of Sh. Mewa Singh, Sub Judge, Ist Class, Bathinda which was dismissed vide judgment and decree dated 30.11.1962, is admitted. There was no mutation No.3454 allegedly sanctioned in favour of Narinder Singh. No letter was issued in this regard by the State Govt. in 1959. It is also admitted that RFA was filed by the State of Punjab against the judgment and decree dated 30.11.1962 which stood abated because Narinder Singh died on 30.04.1973 and his legal representatives were not brought on record as he died issueless and unmarried. Mutation No.52 which was wrongly entered and sanctioned in favour of Narinder Singh on

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31.01.1982 despite the fact that he died on 30.04.1973. The aforesaid mutation does not confer any right and title. In pursuance of impugned letters, surplus proceedings have been initiated against the successors of Narinder Singh etc. Other averments made in the petition have been denied and dismissal of petition is prayed for.

Respondent Nos.7 to 21 also filed their separate reply to the effect that learned Collector vide order dated 13.02.1995 held that Avtar Singh was the sole legal heir of Narinder Singh as per Section 8 of the Hindu Succession Act and, therefore, land of Narinder Singh could not be inherited by Sukhchain Singh. Therefore, alienation made by Sukhchain Singh by suffering collusive decree in favour of Kashmira Singh is illegal and ultimately transactions made by Sukhchain Singh, Kashmira Singh and his legal representatives are illegal as they were not the legal heirs of Narinder Singh. The alienation was made by them for the purpose of saving the land from being declared surplus.

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

Learned senior counsel for the petitioners have vehemently contended that rights of parties have been determined in the civil suit vide judgment and decree dated 30.11.1962 and findings recorded therein are binding upon the State, as the State failed to prove its possession over the disputed land. Even the proprietary rights have been conferred upon Narinder Singh and others by way of notification issued

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in 1952 and in view of provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (for short, 'Punjab Occupancy Tenants Act'. Once the rights have been determined in civil proceedings and appeal preferred by the State Government against the judgment and decree dated 30.11.1962 also stands dismissed, the impugned letters are not sustainable in the eyes of law and rights of respondents cannot be affected by virtue of the same and correction cannot be effected in the revenue record in this manner. Otherwise also, property never vested in the Pepsu Government or subsequently in the State of Punjab. It was further contended that mutation No.123 has been sanctioned without affording opportunity of hearing to the parties on the basis of impugned letters (Annexures P-1 and P-2) and, therefore, it is against the principles of natural justice. The State Government cannot act in an arbitrary manner.

Per contra, learned State counsel and learned counsel for respondent Nos.7 to 19, 21 and 22 and learned counsel for LR of respondent No.20 vehemently opposed the contentions of learned counsel for the petitioners. It was contended that impugned letters have been rightly issued in pursuance of the letter No.R.O.6 (21) B/5/51-861 dated 02.08.1956 of the Pepsu Govt. by virtue of which property of Raja of Faridkot i.e. Harinder Singh stood vested in the Pepsu Govt. However, record was not rectified due to merger of Patiala and East Punjab State Union (Pepsu) into the State of Punjab. With the merger of Pepsu into the State of Punjab, the property vested in the State

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of Punjab. As such, it is only a rectification/correction of the revenue record vide impugned letters and the petition deserves to be dismissed.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties and perused the material on record.

At the outset, I would show my displeasure to the manner pleadings have been drafted by learned counsel for the parties and about lack of material documents on record. I would also record my displeasure to the manner in which the State has filed reply with a casual approach wherein facts have been jumbled and dates and events are not properly explained. I need not comment further in respect of pleadings.

It needs to be mentioned that originally vide notification dated 28.04.1951, five kinds of tenants of erstwhile State of Faridkot were made occupancy tenants. Admittedly, Narinder Singh has been shown to be in possession of land in question as *Mazara Tabi Marzi* in jamabandi for 2001-02 *Bikrami Samvat* and occupancy rights were conferred in favour of Narinder Singh in view of provisions of the Punjab Occupancy Tenants Act and mutation in this regard was sanctioned on 25.04.1953 in his favour under notification dated 18.11.1952 and he was entered as owner in place of Raja of Faridkot. Vide notification dated 07.06.1951, rights of Ala Malik i.e. Raja

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Faridkot State were extinguished and Adna Maliks were made full owner/proprietor and vide notification dated 05.11.1952, the proprietary rights were conferred on the tenants and as such, Narinder Singh became the proprietor/owner. It is admitted fact that the State Government filed civil suit for possession in respect of the land measuring 5090 kanals 8 marlas including the disputed land wherein Narinder Singh and others were parties. While deciding issue No.1 in that civil suit vide judgment and decree dated 30.11.1962 (Annexure P-4), the Civil Court determined that Narinder Singh was not the owner of the property in dispute, rather he was *Mazara Tabi Marzi* with the permission of the competent authority i.e. Raja of Faridkot State. It has been categorically recorded that Narinder Singh is in possession since 2001-02 BK. While deciding issue No.3, the Civil Court held that Narinder Singh was ejected from the land measuring 1916 kanals out of total land and *rapat roznamcha* was also entered in this regard and the Raja of Faridkot had taken the possession of the land measuring 1916 kanals on or about 11th *Magher*, 2004 *Bikrami Samvat*. While deciding issue No.5, the Civil Court recorded that possession of Raja of Faridkot on the land mentioned in para no.3 of plaint is proved, however, possession over the remaning land is not proved at the time of merger of the Faridkot State in Pepsu in 1946. Perusal of judgment and decree (Annexure P-4) reveals that after the merger of the State of Faridkot into Pepsu, rights were conferred on the person in possession i.e. Narinder Singh and rights of Raja were extinguished as stated above. The question regarding land measuring

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1916 kanals which was possessed by the Raja of Faridkot on or about 11th Magher, 2004 BK by way of ejectment order, would not affect the rights of the parties and finding in this regard has been recorded by the civil court while deciding issue Nos.6, 7 and 8.

In this manner, there is no doubt about conferment of occupancy rights on Narinder Singh, but issue with regard to identification of land for which occupancy rights were conferred is yet to be determined from the revenue records. In such circumstances, this Court is of the definite view that merely on the basis of impugned letters/orders (Annexures P-1 and P-2), entries changing the ownership of various persons cannot be effected in the revenue records. It is pertinent to mention here that since rights of the petitioners who are either successors-in-interest of Narinder Singh or purchasers from him are involved, the purchasers having the plea of *bonafide* purchasers for valuable consideration are required to be given opportunity of hearing in view of the revenue records which apparently appear to be in favour of Narinder Singh since 2001-02 *Bikrami Samvat*. The affect of subsequent notification conferring rights on different types of tenants is also required to be examined in the light of provisions of Punjab Occupancy Tenants, Act.

In view of above, the impugned orders/letters (Annexures P-1 and P-2) are set aside. However, liberty is granted to the State to pass order afresh after affording opportunity of hearing to all the affected

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parties including the purchasers from Narinder Singh or his successors-in-interest.

Disposed of in the aforementioned terms.

09.12.2015

parveen kumar

(Paramjeet Singh)
Judge