

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

CWP No.4651 of 1994 (O&M)
Date of decision: March 26, 2015

Ram Chand ...Petitioner

Versus

State of Haryana & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. V.K. Jain, Senior Advocate with
Mr. Ravi Kadian, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Rajan Gupta, J.

Petitioner is aggrieved by orders Annexures P-6, P-10, P-12 and P-19, passed by Collector, Kurukshera, Commissioner, Ambala Division, Ambala and Financial Commissioner, Haryana respectively, whereby plea of the petitioner that his son namely, Sudarshan Kumar had attained majority on the appointed day, has been rejected.

Learned counsel for the petitioner has vehemently contended that petitioner produced sufficient evidence before the authorities to show that date of birth of his son was 13.5.1950. Thus, he was major on the appointed day. In view of same, he was entitled to a separate unit under the provisions of the Act. He has relied upon the judgments rendered in *Mohammad Hassan vs. Safdar Mirza and others, A.I.R. 1933 Lahore 601*, *Nanhak Lal vs. Baijnath Agarwala, A.I.R. 1935 Patna 474*, *Bishwanath Gosain vs. Dulhin Lalmuni and others, AIR 1968 Patna*

481, Sham Lal and another vs. Muni Lal and others, AIR 1972 Punjab and Haryana 199, Rajindra Kumar Vs. Shri Chandra Narain Singh and others, 1970 (2) Supreme Court Cases 277, Harpal Singh and another vs. State of Himachal Pradesh, (1981) Supreme Court Cases 560, Umesh Chandra vs. State of Rajasthan, (1982) 2 Supreme Court Cases 202, Santenu Mitra vs. State of W.B., AIR 1999 Supreme Court 1587, CIDCO vs. Vasudha Gorakhnath Mandevlekar, (2009) 7 Supreme Court Cases 283, Salig Ram and another vs. Shiv Shankar and others, AIR 1971 Punjab and Haryana 437, Smt. Gunwant Kaur and others vs. Municipal Committee, Bhatinda and others, 1969 (3) Supreme Court Cases 769 and ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and others, (2004) 3 Supreme Court Cases 553.

Plea was opposed by the State counsel. He produced a certificate from Punjab University, Chandigarh showing that son of petitioner had completed his Higher Secondary Examination Part-I in the year 1967. According to him, the matriculation certificate produced by the petitioner becomes doubtful as same pertains to year 1968. This would imply that son of petitioner had cleared a higher exam prior to matriculation. Learned State counsel also produced original record. He referred to same and submitted that petitioner in fact, attached no proof of age of Sudarshan Kumar alongwith the declaration form. Certificates were produced only during the proceedings.

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

In order to understand the controversy in brief, relevant facts need be noticed. On 14.8.1976, Ram Chander (petitioner herein), his wife and four members of his family filed separate declarations under section 9 of the Haryana Ceiling of Land Holdings Act, 1972, claiming that they were living separately and thus, entitled to be considered separate land owners with respect to their holdings. On 26.3.1980, Prescribed Authority treated separate declarations as single declaration of one family and declared 781 Kanals 16 Marlas as surplus. On appeal being preferred, the Collector remanded the case to the prescribed authority to consider the declaration forms afresh after affording opportunity of hearing to the parties. Vide his order dated 30.3.1981, the Prescribed Authority reconsidered the entire issue and declared 319 Kanals 09 Marlas of area as surplus. Plea of Sudarshan Kumar for grant of separate unit being adult son on the appointed day was accepted. Petitioner being dissatisfied, preferred appeal before Collector, Kurukshetra but remained unsuccessful. He further impugned the order before Commissioner, Ambala Division. While disposing of the case, the Commissioner observed as under:-

“8. In brief my order is as under:-

- a- There is no force in the arguments raised by the applicant before me in this revision and whatever area was declared surplus vide impugned orders, that is minimum area to be declared so which be taken in the ownership of Government and used accordingly;
- 2- There being three tubewells in 1971, more area would be surplus for which proceedings be taken.
- 3- There is no justification in giving separate unit to Sudarshan Kumar while treating him major and that be

returned. If more land is to be given to him after treating him additional member of the family, the remaining area of this unit after leaving such area, be declared surplus;

4- After consolidating the matter of Asa Ram son of Ram Chander with this case, it be seen if more area comes under surplus pool and can be vested in the Government.

All the parties be informed of this order.”

Thereafter, Prescribed Authority reconsidered the matter and passed order dated 3.5.1984. He, however, did not comply with all the directions given by the Commissioner in his order dated 2.7.1983 (Annexure P-6). Aggrieved, State Government preferred appeal before the Collector, who accepted the same and set-aside the order passed by the Prescribed Authority. Operative part of the said order reads thus:-

“9. For the reasons recorded above, the order under appeal is set-aside and area mentioned in para 5 measuring 413 Kanals 2 Marlas and 333 Kanals 7 Marlas total 747 Kanals 2 Marlas is declared as surplus. The decision given by my predecessor regarding bonafide sale is against the Haryana Ceiling Act or ruling of the Supreme Court. As per the definition given by the Supreme Court wherever two provisions are available, it has to be used towards benefit of surplus area and not to the benefit of owner. Prescribed authority is directed to take appropriate immediate steps to allot this land to eligible persons.”

Petitioner impugned the order passed by the Collector, before Commissioner, Ambala Division. The Commissioner dealt with all the pleas raised before him and gave findings regarding separate units to which each member of family was entitled. He directed that surplus area be taken into possession by the Assistant Collector immediately and

put to use. He also directed that show cause notice be issued to the Prescribed Authority why proceedings be not initiated against him for violating the order dated 02.7.1983, passed by the Commissioner. Petitioner impugned the aforesaid order before Financial Commissioner, Haryana. The Financial Commissioner came to the conclusion that there was no ground to interfere with the well reasoned order passed by the Commissioner on two occasions. He also gave finding regarding entitlement of Sudarshan Kumar for a separate unit.

In the instant petition, counsel for the petitioner has limited his prayer to grant of separate unit to Sudarshan Kumar on the assertion that he had attained majority on the appointed day. A perusal of the impugned order shows that Financial Commissioner observed that matriculation certificate did not specifically show that Sudarshan Kumar originally hailed from village Siwan, Tehsil Kaithal. Thus, Sudarshan Kumar referred to in the certificate, may be some other person. The birth certificate produced before the authority did not refer to name of Sudarshan Kumar, thus, same could not be relied upon. Being not convinced, he rejected the plea. During the course of proceedings, State sought time to produce record to verify whether date of birth of Sudarshan Kumar was 13.5.1950. Affidavit of Sub Divisional Officer, Kaithal was filed. Relevant portion thereof read as under:-

“1. That deponent humbly submits that the copy of Annexure P-21 and P-22 were not for verification vide this office letter No.2-3 dated 01.01.2014 to the Principal, Government Senior Secondary School, Siwan. The Principal vide its office letter no.SPL/4/2014 dated 21.04.2014 intimated that document

Annexure P-21 and P-22 do not tally with the record of the school. Annexure P-21 is a transfer certificate of Sudarshan son of Ram Chand showing issuance from Book No.184, Serial No.26.

2. That Annexure P-22 is a middle standard certificate of Sudarshan Kumar son of Ram Chand, Date of birth 13.05.1950 issued vide Roll No.197503 (as per translation) whereas according to the record of school this certificate was issued to Roll No.197504. The certified copies of the record received from the Principal, Government Senior Secondary School, Siwan, District Kaithal in this regard are enclosed therewith. The copy of report of Principal of the school is Annexure R-1 and the copy of certificates given by school is Annexure R-2 and R-3, enclosed herein, for the kind purpose of this Hon'ble Court.

3. That the documents produced by the petitioner do not establish beyond doubt that these documents are related to son of the petitioner.”

Apart from above, learned State counsel also produced a certified copy of verification letter received from Punjab University, Chandigarh, according to which Sudarshan Kumar son of Ram Chand had cleared his Higher Secondary Part-I examination in March, 1967. Same is taken on record as Mark 'A'. It is evident that while petitioner claims that his son became major on the appointed day and has relied on various certificates, State has stoutly denied his claim. According to it, certificates Annexures P-21 and P-22 do not tally with the record maintained by the school. In order to rebut claim of the petitioner, certificates Annexures R-2 and R-3 have been annexed with the affidavit dated 5.5.2014, filed by Sub Divisional Officer (Civil)-cum-Prescribed Authority, Kaithal. The Principal of Government Senior Secondary School addressed a letter to Sub Divisional Officer (Civil) stating, that

transfer certificate of Sudarshan Kumar son of Ram Chand, bearing date of birth 13.5.1950 was issued vide Book No.1184 Serial No.26. However, book number and serial number given in certificate Annexure P-21 were different. Similarly, Roll Number mentioned in middle standard certificate Annexure P-22 differed from the school record. State also relied upon verification certificate received from Punjab University, Chandigarh, Mark 'A' to state that Sudarshan Kumar son of Ram Chand cleared his Higher Secondary Part-I examination in 1967. Higher Secondary Part-I is a higher qualification than matriculation. Petitioner submits that his son cleared matriculation examination in the year 1968. It is, therefore, not possible to reconcile the two certificates as Sudarshan Kumar could not have cleared a higher examination before matriculation. Needless to say that this disputed question of fact cannot be adjudicated upon in writ jurisdiction. In view of conflicting stands taken before this court regarding authenticity of certificates, it is not possible to interfere with findings of the Commissioner and the Financial Commissioner that the convincing proof was not available regarding petitioner's son having attained majority on the appointed day. A perusal of record produced by the State shows that petitioner simply submitted a declaration form mentioning therein that date of birth of his son was 13.5.1950. Certificates were produced later, during the proceedings to prove this assertion. However, authorities below did not find the same reliable, thus, rejected the plea. This court does not find any ground to interfere with the orders passed by said authorities. Instant case is not of the nature where evidence has been led and question is regarding correct

appraisal thereof. Judgments, on which reliance has been placed, cannot help the petitioner as most of them relate to appreciation of evidence in civil case or criminal trial. This court, therefore, does not find the necessity to delve deep into the ratio of said judgments. The proposition of law laid down in these judgments may not be subject matter of any debate. However, factual matrix of instant case is such that disputed questions of fact have arisen and conflicting stands have been taken by both the parties. Thus, no interference in writ jurisdiction is called for. The writ petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

March 26, 2015
'Rajpal'

Whether to be referred to reporter? Yes / No