

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 8321 of 1996

Date of Decision : February 19, 2015

Birbal Petitioner

Vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : None for the petitioner.

Mr. Sudeep Mahajan, Addl. A. G., Haryana.

Mr. Ashok Vema, Advocate
for respondents no. 5 to 8.

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DEEPAK SIBAL, J. :

The present judgment decides four connected writ petitions bearing **C. W. P. No. 8321 of 1996, C. W. P. No. 8322 of 1996, C. W. P. No. 8323 of 1996** and **C. W. P. No. 8368 of 1996**. For the sake of convenience, the facts have been extracted from **C. W. P. No. 8321 of 1996 - Birbal vs. State of Haryana and others.**

The facts that have emerged from the record are that Smt. Sona

and Smt. Sugni – widows of Tiku were big land owners (hereinafter referred to as – the landowners) in Tehsil Dabwali, District Sirsa. Vide order dated 24.03.1961, the Collector, Surplus Area, Dabwali, while deciding their surplus area case, treated the landowners as displaced persons and thus allowed them to retain 100 acres of land, but later on, when it was discovered that the landowners were not displaced persons, order dated 24.03.1961 was reviewed through order dated 31.07.1962, through which now the landowners were allowed to retain only 60 acres and resultantly, the remaining 61.16 acres of land were declared surplus. Thereafter, on 16.03.1963, the area of 61.16 acres, which was declared surplus, was gifted by the landowners in favour of Gramothan, Vidyapeeth, Sangaria. On 03.08.1963, 465 kanals out of the above surplus land was acquired by the State of Haryana for construction of the Lasara Drain. As a result of such acquisition, possession of the 465 kanals of land was taken by the State, but the whole of the acquired land was not utilized, and therefore, vide order dated 13.07.1978, 375 kanals 07 marlas of land out of the total of 465 kanals was released, which, after release under Section 90 of the Punjab Security of Land Tenures Act read with Section 7 of the Haryana Ceiling on Land Holdings Act, 1972, now again fell in the pool of surplus land. The above 375 kanals 07 marlas of land was then allotted under the Haryana Utilisation of Surplus and other Areas Scheme, 1976 (hereinafter referred to as – the Scheme) to persons considered eligible under the aforementioned Scheme. Out of the total land of 375 kanals 07 marlas, 265 kanals was

allotted to respondents no. 5 to 8. The petitioner challenged the above allotment through appeals filed before the Collector, Sirsa. These appeals were allowed and the matter was remanded back to the Prescribed/Allotment Authority, Dabwali for fresh decision. On remand, the matter was re-considered by the Prescribed Authority, Dabwali and after such re-consideration, vide decision dated 21.04.1989 (Annexure P-3), the allotment made earlier in favour of respondents no. 5 to 8 as also other allottees, was reiterated. Aggrieved by such order, the petitioner again challenged the same through appeals filed before the Collector, Sirsa. These appeals were considered and rejected vide order dated 13.02.1990 (Annexure P-4). The petitioner then approached the Commissioner, Hisar Division, Hisar through revision petitions, which were also considered and dismissed, vide order dated 07.12.1990 (Annexure P-5). The above dismissal of the revision petitions by the Commissioner gave a cause to the petitioners to file revision petitions before the Financial Commissioner, but after consideration of these revision petitions, through order dated 13.09.1995 (Annexure P-6), they also met the same fate. The order of allotment dated 27.01.1988 (Annexure P-1) and orders dated 21.04.1989 (Annexure P-3), 13.02.1990 (Annexure P-4), 07.12.1990 (Annexure P-5) and 13.09.1995 (Annexure P-6) are assailed by the petitioner before this Court through the present writ petition.

There is no representation on behalf of the petitioner. Same

was the position even on an earlier date i.e. 07.10.2014 and I had adjourned

the matter, directing the Registry of this Court to inform the learned counsel regarding the adjourned date. As per the compliance report duly submitted by the Registry, as per my direction, a letter was duly served upon the learned counsel for the petitioner. In spite of the same, even today, there is no representation on behalf of the petitioner. The present matter is pending for the last about two decades. I find no justification to adjourn the same on account of non-appearance of the counsel, particularly in view of the facts mentioned above. Proceeding to decide the matter, I have heard learned counsel for the private respondents, as also learned counsel appearing on behalf of the State of Haryana and with their able assistance, I have also gone through the record of the case.

The orders impugned by the petitioner pertain to allotment of 375 kanals 07 marlas of land, whereas the private respondents i.e. respondents no. 5 to 8, who are the private respondents impleaded by the petitioner, have been allotted only 265 kanals of land, out of total of 375 kanals 07 marlas. The remaining land had been allotted to other allottees. The allotment of land to them and respondents no. 5 to 8 is through a common order dated 27.01.1988 (Annexure P-1), the quashing of which has been sought for by the petitioner, but the allottees other than respondents no. 5 to 8 have not been impleaded by the petitioner. Once those allottees have not been impleaded, quashing of the order impugned by the petitioner, which also pertains to the land allotted to them, cannot be ordered in their absence. The objection with regard to non-joinder of necessary parties was

taken by respondents no. 5 to 8 in the counter filed by them way back on 16.11.1996. In spite of the same, the petitioner has not bothered to take any steps to implead them.

The petitioner has challenged the order impugned by him by averring that he was in possession of the land in question and had then purchased a part of it after being granted the permission to do the same through order dated 29.08.1968 (Annexure P-7) passed by the Assistant Collector First Grade, Sirsa. Learned counsel appearing on behalf of respondents no. 5 to 8 brings to my notice that the above order dated 29.08.1968 was modified through order dated 13.11.1975 (Annexure R-1/T), through which the land acquired by the Government, which after release was allotted to the allottees like respondents no. 5 to 8, was not allowed to be purchased by the petitioner. The order dated 13.11.1975 had attained finality between the parties as the same was not challenged by the petitioner. Thus, the land in question was never purchased by the petitioner nor any permission to purchase the same was granted. I find that the above facts have been withheld by the petitioner from this Court and rather, an attempt has been made by the petitioner to mislead the Court by projecting incomplete information. I thus hold that the petitioner has not come to the Court with clean hands.

Irrespective of the above, even on merits, the petitioner has no case. A perusal of the record shows that all the Revenue Authorities have concurrently returned findings against the petitioner. It has been found that

the petitioner had failed to establish the Class under which he was seeking allotment of land. No evidence was produced by him, according to which, the land in question had been declared to be tenant permissible area. The revenue record, which was produced by the petitioner, only depicted that he was in possession only at the time of acquisition of the land. The *Khasra Girdawari* for the year 1964-65 also did not show the petitioner to be in possession of the land in question and no *Khasra Girdawari* was produced for any subsequent period showing possession of the petitioner over the land in question. The application filed by the petitioner for amendment of *Khasra Girdawari* before the Assistant Collector Second Grade, Dabwali with regard to the year 1980 was also rejected by the Assistant Collector Second Grade, Dabwali vide order dated 09.03.1983. The above factual position has been concurrently accepted by all the Revenue Authorities.

Had the petitioner been in possession of the land in question in the year 1953, which is the relevant year for the petitioner to state his claim as a tenant, then the Revenue Authorities, while considering the surplus area case, would have given the benefit of tenant permissible area to the petitioner. The record does not show any such benefit given. Even the order or the proceedings, declaring the area to be surplus and not granting the petitioner the benefit of tenant permissible area, were never challenged by the petitioner or even by the landowners. The challenge by the petitioner, as borne out from the record, is only to the orders allotting the land in favour of respondents no. 5 to 8. Unrebutted pleadings on the

record further show that the petitioner has already purchased 20 kanals 16 marlas of land out of the land declared surplus and that being so, he already was owner and possessor of an area of land which was much more than what could have been allotted to him in law. The petitioner could claim the allotment of two hectares of land out of surplus area in view of provisions of paragraphs 2 and 7 of the Scheme, but as he had already purchased 20 kanals 16 marlas of land, out of the land declared surplus, which was more than his entitlement, he cannot be allowed to stake a claim for more land as made by him in the present petition. Even if the petitioner was entitled to allotment of some more land out of the surplus area, then he could have made an application to the appropriate Authorities showing his entitlement, instead of challenging the allotment made in favour of the private respondents. The record reveals that no such application was ever made by him.

In view of the above, I find no merit in all these four petitions bearing C. W. P. No. 8321 of 1996, C. W. P. No. 8322 of 1996, C. W. P. No. 8323 of 1996 and C. W. P. No. 8368 of 1996. Resultantly, all these four petitions are dismissed, with no order as to costs.

(DEEPAK SIBAL)
JUDGE

February 19, 2015
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