

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Regular Second Appeal No.124 of 1996

Date of Decision: 21.1.2015

Avtar Singh and others ..Appellants

versus

Punjab State through the Secretary, Revenue, Punjab and
others

..Respondents

and

Regular Second Appeal No.128 of 1996

Avtar Singh and others ..Appellants

versus

Punjab State through the Secretary, Revenue, Punjab and
others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Sharad Mehra, Advocate, for the appellants.

Mr. Jagmohan Bansal, Addl.A.G.,Punjab

RAJIVE BHALLA, J. (ORAL)

Regular Second Appeal Nos 124 and 128 of 1996
shall be decided by a common order as they pertain to the same
parties and the same dispute.

The land in dispute was owned by Fauja Singh,
father of the appellants, but was declared surplus in 1966.

Fauja Singh filed a suit for declaration that as the land, in

dispute, is in his possession, it has not been utilised and, therefore, has not vested in the State. Fauja Singh also pleaded that mutation no. 1594 dated 18.5.1974, recording the ownership and possession of the State, is null and void as possession has not been taken by the State and as the land has been acquired, compensation for compulsory acquisition of the land in suit, be paid to Fauja Singh. The suit was dismissed, by the then Sub Judge 1st Class, Amritsar, on 30.10.1986 by holding that as the State of Punjab had taken possession, the land had vested in the State. An appeal filed before the Additional District Judge, Amritsar, was dismissed on 16.11.1988. A second appeal, RSA No.514 of 1989, "Avtar Singh and others versus Union of India and others", filed by the successors of Fauja Singh (the appellants in the present appeal), has been dismissed by an order of even date, thereby affirming findings that the land had been utilised and has vested in the State of Punjab.

During pendency, RSA No.514 of 1989, the appellants, who, as already noticed, are the legal heirs of Fauja Singh, filed two separate suits which are subject matter of the present appeals. It would be appropriate to briefly refer to the facts in these suits.

RSA No.124 of 1996

Avtar Singh and others (the appellants) who are the

legal heirs of Fauja Singh, though aware that the suit filed by Fauja Singh, had been dismissed, filed a separate suit for declaration praying that mutation no.1594 dated 18.5.1974, is null and void as they continue in possession, the land has not vested in the State of Punjab. The suit was dismissed by relying upon the judgment recorded in the suit filed by Fauja Singh. The appellants filed an appeal and raised another plea that as Fauja Singh had passed away before utilisation, the surplus area should be re-determined in their hands. The plea was rejected for want of requisite pleadings.

RSA No.128 of 1996

The appellants who are legal heirs of Fauja Singh, filed a suit for declaration, this time challenging, allotment order dated 13.8.1984, passed by the Tehsildar Agrarian, Amritsar, allotting land measuring 94 Kanals-02 Marlas to Bachan Singh. The appellants asserted that as the State of Punjab has not taken possession, the land has not been utilised and has not vested in the State and, therefore, cannot be allotted as surplus land. The appellants also pleaded that as no compensation has been paid for acquisition of their land, by the Ministry of Defence, pursuant to notification issued under Sections 4 and 6 of the 1894 Act, the award is null and void.

The respondents filed a written statement pleading that the suit is barred under Section 25 of the Punjab Security of

Land and Tenures Act, 1953 (hereinafter referred to as “the 1953 Act”), and section 21 of the Punjab Land Reforms Act, 1972 (hereinafter referred to as “the 1972 Act”). The respondents also pleaded that as the land has been acquired for the Union of India, the Special Land Acquisition Collector is a necessary party. The respondents also pleaded that the validity of mutation no.1594 and the question of taking possession having already been decided against Fauja Singh by judgment and decree dated 30.10.1986, the suit may be dismissed.

The trial Court dismissed the suit by holding that validity of the allotment order dated 13.8.1984, passed by the Tehsildar Agrarian, cannot be challenged before a civil court and as the land had been acquired for defence purposes, failure to implead the Special Collector Land Acquisition, Military (Cell), is fatal to the suit. An appeal filed by the appellants was dismissed by Additional District Judge, Amritsar on 16.9.1995.

Counsel for the appellants, in both appeals, submits that as the State did not take possession of the land declared surplus, the land never came to vest in the State. The mutation recording the ownership and possession of the State is, therefore, null and void. The allotment order founded upon the premise, that the land had been utilised and had come to vest in the State, is without jurisdiction and therefore, could be challenged by a civil suit.

Counsel for the State of Punjab, on the other hand, submits that as the question of taking possession, of utilisation and vesting of the land, in the State of Punjab has attained finality with dismissal of RSA No.514 of 1989. The present appeals may, therefore, also be dismissed. The “1953 Act” read along with provisions of the “1971 Act” are complete codes by themselves and provide for separate fora of appeals and revisions. Section 158 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as “the 1887 Act”), prohibits a civil court from entertaining a dispute relating to any matter that falls to the exclusive jurisdiction of revenue courts/officers. The allotment order being legal and valid, the appellants should have approached revenue officers, instead of filing a suit.

I have heard counsel for the parties and perused the impugned judgments. The substantial questions framed by counsel for the appellants read as follows:-

1. Whether the land has vested in the State?
2. Whether the jurisdiction of civil court is barred?

The first question arises in RSA No.514 of 1989, whereas question nos. 1 and 2 arise in both appeals.

Fauja Singh, the predecessor of the appellants, filed a suit challenging mutation no.1594 dated 18.5.1974 and asserting that as he continues in possession, the land has not been utilised and has not vested in the State. The suit was

dismissed by holding that mutation no.1594 dated 18.5.1974 is legal and valid as the State of Punjab had taken possession, and, therefore, the land in dispute has been utilised and vests in the State. A first appeal filed by Fauja Singh was dismissed. Regular Second Appeal No.514 of 1989 challenging these judgments and decrees, has been dismissed by a separate order of even date. The findings on the question of the State taking possession of the land in dispute, its utilisation, its vesting and the validity of mutation no.1594 dated 18.5.1974 having been affirmed in Regular Second Appeal No.514 of 1989, the first question is answered against the appellants in terms of order of even date, passed in RSA No.514 of 1989.

As regards RSA No.128 of 1996, challenge in this appeal is to an allotment order passed by the Tehsildar, Aggrarian. The appellants once again assert that as possession was never taken by the State, the land was not utilised, did not vest in the State and, therefore, could not be allotted as surplus land. The question of possession having been answered against the appellants in Regular Second Appeal No.514 of 1989, findings recorded by courts below that possession had been taken by the State are affirmed.

The question that remains is whether civil courts were prohibited from entertaining challenge to the order of allotment.

The 1953 Act, under which the land was declared surplus and

the 1971 Act under which allotment was made, provide for multiple fora of appeals and revisions. Section 158 of the Punjab Land Revenue Act, 1887, prohibits a civil court from exercising jurisdiction regarding matters that fall to the exclusive jurisdiction of revenue authorities. An exception to this rule is where the order passed is without jurisdiction or is violative of the principles of natural justice as held in State of Haryana and others versus Vinod Kumar and others, 1986 PLJ 161. The land, in dispute, having vested in the State of Punjab, the Collector was empowered to order allotment of surplus land. The courts below have, therefore, rightly held that their jurisdiction to entertain the suit, is barred. The second question of law is answered accordingly.

As a consequence, both appeals are dismissed.

21.1.2015
VK

(RAJIVE BHALLA)
JUDGE