

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

Date of Decision:-02.07.2015

CWP No.3230 of 2011

Gurmit Singh

.....Petitioner.

Versus

Financial Commissioner Revenue, Punjab & Ors.

.....Respondents.

2

CWP No.9625 of 2011

Lakhvir Singh.

.....Petitioner.

Versus

Financial Commissioner (Revenue), Punjab & Ors.

.....Respondents.

3

CWP No.22705 of 2011

Mohan Singh & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. S.N. Saini, Advocate for Petitioner
(in **CWP No.3230 of 2011**) and
for respondent no.4 (in **CWP No.9625 of 2011**).

Mr. A.S. Gill, Advocate for Petitioner
(in **CWP No.9625 of 2011**) and
for respondent nos.4 to 8 (in **CWP No.3230 of 2011**)

Mr. Manuj Nagrath, Advocate for Petitioner
(in **CWP No.22705 of 2011**).

Mr. Rupam Aggarwal, DAG Punjab.

Mr. G.K. Saini, Advocate for respondent no.8.

JASWANT SINGH, J.(ORAL)

Vide this common order I shall dispose of all the above mentioned three writ petitions as common questions of law and facts are involved in the same.

Lrs of Bhagat Singh have preferred the above mentioned two writ petitions nos.**3230 of 2011 and 22705 of 2011** challenging the order dated 24.12.2010 passed by the Financial Commissioner, Punjab (**P-8** in CWP No.3230 of 2011) whereby the allotment in favour of the petitioners has been ordered to be termed as null and void.

In **CWP No.9625 of 2011** Collateral of Ram Singh has challenged the order dated 24.12.2010 passed by the Financial Commissioner, Punjab (**P-6** in this petition) whereby it has been held that Ram Singh was not entitled to allotment because he has not been able to show that Ram Singh had become a displaced person from Pakistan at the time of partition.

In brief facts are that land measuring 97 Kanals 14 Marlas situated at village Mokhe Lohian, Tehsil and District Jalandhar was allotted by the Rehabilitation Department to one Ram Singh son of Wazir Singh to the extent of 12 standard acres in lieu of land left by him in Tehsil

Jaranwala, District Layalpur. A complaint against this allotment was made by one Ujjagar Singh which was adjudicated by the Managing Officer who, vide his order dated 28.02.1959 cancelled the entire allotment made in name of Ram Singh and allotted the said land to the extent of 5-11 ¼ standard acres to Ujjagar Singh, being the vendee of Ram Singh. This order dated 28.02.1959 was challenged in appeal before the Settlement Commissioner, who vide its order dated 11.4.1969 accepted the same and remanded the matter back for fresh decision. Aggrieved against the said order, a revision petition was filed before the Chief Settlement Commissioner which was accepted vide order dated 21.7.1960 who, modified the order of Settlement Commissioner to the extent that Collateral of Ram Singh be allowed to continue in possession of land allotted to him till the time it was proved that Ram Singh had sold away his land in Pakistan. Consequently, the Managing Officer vide his order dated 11.10.1961 allowed the allotment of Ujjagar Singh to the extent of 5-11 ¼ standard acres in village Lohain or in nearby village. This was again challenged by Collateral of Ram Singh before the Settlement Commissioner, who again remanded the matter back to the Managing Officer.

The Managing Officer after the remand of the case passed order dated 25.3.1963 and rejected the claim of Ujjagar Singh by holding that Ujjagar Singh had failed to produce documents to the effect that land was sold to him by Ram Singh. However, the Managing Officer allowed the collaterals of Ram Singh to get the decree from Civil Court about their claim of inheritance within a period of six months. This order was challenged by Sunder Singh son of Ujjagar Singh in an appeal filed before the Settlement Commissioner who, rejected the same. In the meantime

Collateral of Ram Singh filed a civil suit at Nakodar and obtained an ex-parte decree dated 18.12.1963. This decree was relied upon by the Collateral of Ram Singh before the Managing Officer, who passed the order dated 4.9.1964 whereby the allotment was made quasi permanent.

Bhagta @ Bhagat Singh son of Jora Singh was in actual physical possession of the 50 Kanals 6 Marlas of land out of the property allotted to Ram Singh. However, he was not made a party in the civil suit filed by Collateral of Ram Singh which had culminated into ex-parte judgment and decree dated 28.12.1963 and consequently led to allotment being made quasi permanent by Managing Officer. Collateral of Ram Singh tried to disturb the possession of Bhagat Singh @ Bhagta after allotment was made quasi-permanent in his favor and therefore, Bhagta filed two appeals before the Appellate Authority against the order of Managing Officer dated 4.9.1964. These appeals were decided by the Appellate Authority vide order dated 5.12.1979 and recorded a finding that Ram Singh had died in the year 1940 in Pakistan. It was also observed in the said order that a decree obtained by a Collateral of Ram Singh is of no value because only some of the affected parties were impleaded and not the entire family/Collaterals of Ram Singh. Consequently, the Appellate Authority allowed the appeals and set aside the order dated 4.9.1964 passed by the Managing Officer.

This order was challenged by the alleged collateral of Ram Singh by filing two petitions before the Chief Settlement Commissioner, under Section 24 of The Displaced Persons (Compensation & Rehabilitation) Act, 1954 who, vide his order dated 9.3.1981 accepted the revision petition by relying upon the Civil Court decree and held that the

Collateral of Ram Singh(deceased) were entitled to get possession of the land allotted to Ram Singh. It was further observed in the said order that Ujjagar Singh could not be allotted any land because he has not been able to prove his assertion that he had bought the property prior to partition from Ram Singh.

Aggrieved against the said order of Chief Settlement Commissioner, the predecessor in interest of petitioner (i.e descendants of Bhagta) filed two petitions under Section 33 of The Displaced Persons Act, 1954 challenging the order dated 9.3.1981. The learned Financial Commissioner vide his order dated 21.12.1982 accepted the revision and set aside the order of learned Chief Settlement Commissioner dated 9.3.1982 and the relevant portion of the said order is reproduced hereunder:-

“ I have heard the learned Counsel for the parties and the State representative and have also gone through the record before me. The learned counsel for respondent nos.3 to 5 who had due notice turned up after arguments had been completed. The respondents who appeared in person did not advance any arguments in support of their claim. It is conceded by both the parties that Ram Singh allottee was died. The date of his death is, however, not known. The allotment of 12 standard acres was made to Ram Singh in village Lohian on the basis of entries in the Jamabandi of Chak No.31 continued to be shown in his name till partition of the country. It was neither mutated in the name of his heirs/collaterals nor in the name of so called vendee. The allotment made to Ram Singh was cancelled on the application made by Ujjagar Singh, who claimed that Ram Singh had sold his entire land to him and an area measuring 5.11 ¼ units was allotted to Ujjagar Singh on the condition that he will produce sale deed duly certified by the High Commissioner for Indian in Pakistan to substantiate his claim. He did not produce certified copy of the sale deed duly attested

by the High Commissioner of India in Pakistan, as a result of which his allotment was also cancelled. It is not clear why it was restored in the name of respondent nos.3 to 5 on the condition that they should produce a civil court decree showing them as legal representative of the deceased allottee, within a period of six months. In any case, the petitioner in the meantime obtains possession of the land and is now seeking its transfer on the basis of possession. I find that the civil court decree produced by the respondent nos.3 to 5 is without notice to all the necessary parties and should be ignored. Thus, in the absence of any valid claim by heirs/collaterals, and in the absence of any authentic document regarding sale to Ujjagar Singh, the department has to consider the claim of the petitioner who has been admittedly in occupation since long and entitled to transfer in terms of the press note. It was, therefore, rightly transferred to him. In the light of this discussion, I accept both the petitions and set aside the impugned order of the Chief Settlement Commissioner. ”

It is relevant to mention here that after the order dated 5.12.1979 passed by the Settlement Commissioner, whereby the appeals of the predecessor in interest of the petitioner was allowed, the Tehsildar (Sales), after being satisfied about the continuous cultivating possession of the predecessor in interest of the petitioner (descendant of Bhagta) ordered the transfer of land in question in his favour, while exercising the powers under the Punjab Package Deal Property(Disposal) Act, 1976. This transfer was approved by the Settlement Officer (Sales) and after deposit of the entire price, sale deed dated 25.5.1980 was issued in favour of predecessor in interest of the petitioner. This sale has never been subject matter of challenge before any Authority.

Aggrieved against the order dated 21.10.1982 (P-6) two writ petitions bearing CWP Nos.4092 and 4093 of 1983 were filed before this

Court, which were ultimately decided by this Court by a common order dated 19.10.2005, whereby the matter was remanded back to the Financial Commissioner on a technical ground that the revision petition was heard by the Financial Commissioner in the absence of both the parties. Consequently, the matter was taken up by the Financial Commissioner who has passed the impugned order dated 24.12.2010 (P-8) wherein he has held as under:-

“ With due regard I differ with the findings of the then FCR given in favour of petitioner for transfer of disputed land to him on the basis of possession. The petitioner could not be allottee disputed land under the Package Deal Properties (Disposal) Act, 1976 and the rules framed thereunder. From the facts and circumstances stated above the land undoubtedly remained under dispute after the allotment order in favour of Ram Singh. It is not clear as to how Bhagat Singh petitioner came into possession of the land in dispute in the year 1978. As argued by the counsel for the State, Bhagat Singh could become entitled to transfer of land on the basis of possession under the policy of the Govt. if he had remained in continuous and undisputed cultivating possession of the land as provided in proviso (iii) of Rule 3(1) of The Punjab Package Deal Properties (Disposal) Rules, 1976. Since Bhagat Singh did not fulfill the conditions under the said rules, therefore, the allotment could not be made to him on the basis of possession. Thus, any allotment made to him is cancelled being null and void, since it was done in violation of rules. The land be retrieved from Ram Singh petitioner by the concerned authority. ”

Learned Counsel appearing on behalf of the Lrs of Bhagat Singh @ Bhagta has argued that the learned Financial Commissioner in his previous order dated 21.10.1982 had categorically held that in view of the

long continuous possession of the predecessor in interest of the petitioner, the land has to be allotted to him and not only this, after passing of the order by the Settlement Commissioner dated 5.12.1979 (**P-3**), sale deeds after verifying the actual position were executed in favour of their predecessor in interest on 25.5.1980. It was argued that this sale deed has never been subject matter of challenge before any Court of law and, therefore, the findings and observations of the learned Financial Commissioner, while observing that the predecessor in interest of the petitioner was never in continuous and undisputed cultivating possession is factually incorrect and thus liable to be set aside.

On the other hand learned State Counsel on instructions from Ms. Sukhbir Kaur, Naib Tehsildar, Kartarpur, Jalandhar points out from the record that Bhagat Singh is shown to be in unauthorised possession since the year 1957 in the revenue records and his possession since then from the record is not disputed.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the **CWP Nos.3230 and 22705 of 2011** deserves to be allowed.

The sole ground given by the learned Financial Commissioner while rejecting the claim of the petitioners was that the predecessor in interest of the petitioner never remained in continuous and undisputed cultivating possession. However, the learned State Counsel on instructions from Ms. Sukhbir Kaur has submitted that Bhagat Singh was in possession of the property since the year 1957. Thus, the observation of the learned Financial Commissioner to the contrary are unwarranted and factually incorrect. In view of these orders of the Financial Commissioner to the

effect that Bhagat Singh was not entitled for allotment because he did not fulfill the conditions in the Rules of 1976 is perverse and thus is set aside. Consequently, it is held that Bhagat Singh was entitled for allotment and order dated 5.12.1979 is upheld.

Learned Counsel appearing for the petitioner in **CWP No.9625 of 2011** has argued that the learned Financial Commissioner has wrongly held that the Collaterals of Ram Singh have not been able to prove the date of death of Ram Singh, as the Settlement Commissioner had specifically mentioned that Ram Singh had died in the year 1940. It was further argued that vide order dated 25.03.1963, the Managing Officer had granted six months time to the Collaterals of Ram Singh to obtain a decree from Civil Court in order to substantiate their claim of being the Collaterals of Ram Singh. Since the Collaterals of Ram were able to obtain the decree within stipulated period of 6 months i.e. 28.12.1963, the Managing Officer had rightly allotted the land in favour of the predecessor in interest of the petitioner on 12.2.1964, which was challenged after a considerable delay of 15 years in an appeal filed before the Settlement Commissioner who, had wrongly allowed the said appeal. Therefore, the argument of the petitioner is that since the predecessors in interest of petitioner have a civil court decree in their favour declaring them as Collaterals of Ram Singh and also the fact that the property was allotted to them by the Managing Officer vide order dated 4.9.1964 thereby granting quasi permanent allotment, the basic order dated, 5.12.1979 whereby the allotment in favour of Collaterals of Ram Singh was cancelled after a delay of 15 years is bad and liable to be set aside. Ultimately, prayer has been made for setting aside the order passed by the learned Financial Commissioner and uphold the order dated 4.9.1964

whereby quasi permanent allotment was made in favour of Collaterals of Ram Singh.

On the other hand, respondent state has argued that the petitioner is not entitled to claim of any allotment as the Collateral of Ram Singh has not proved on record that Ram Singh had become a Displaced Person from Pakistan and further that the decree claimed by them in their favour was not a valid decree because all the Collaterals were not made parties, therefore, the prayer was made for dismissing the petition.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the CWP No.9625 of 2011 is devoid of any merit and the same deserves to be dismissed.

It is not in dispute that the judgment and decree dated 28.12.1963, which the petitioners are claiming in their favour was an ex-parte decree in which neither Bhagat Singh nor the other Collaterals of Ram Singh were made a party. In fact the said judgment and decree was a result of fraud and it is settled position of law that any judgment and decree obtained by a fraud is nullity in the eyes of law and does not confer any right upon any party. The learned Settlement Commissioner in his order dated 5.12.1979 (P-2) of this writ petition had considered this aspect of the matter as well as the other factual aspects, as discussed herein above and had rightly come to the conclusion that Collaterals of Ram Singh were not entitled for allotment of any land. Thus, the order dated 4.9.1964 which was passed by the Managing Officer in very casual manner, without looking into the factual as well as legal aspect of the case was rightly set aside especially in view of the fact that Managing Officer had passed the order dated 4.9.1964 on the basis of a fraudulent decree and consequently, the

order passed by the Managing Officer dated 4.9.1964 was also a nullity in the eyes of law. As far as the observation made by the learned Financial Commissioner to the effect that Collaterals of Ram Singh have not been able to prove that Ram Singh was Displaced Person is a finding of fact recorded by the Financial Commissioner, after going through the entire proceedings which, in the facts and circumstances is a correct finding and does not warrant any interference. It is settled position of law that this Court while exercising powers under the Writ jurisdiction cannot go into question of fact until and unless they are apparent on the face of it and even if two views are possible and the Authorities below have taken a view which appears to be based upon correct appreciation of evidence then, this Court cannot sit as a Court of appeal and re-appreciate the evidence and come to a different conclusion.

In view of the totality of the circumstances as well as the observations made herein above, the writ petitions bearing **CWP Nos.3230 and 22705 of 2011** are allowed whereas CWP No.9625 of 2011 preferred by alleged Collaterals of Ram Singh stands dismissed.

(JASWANT SINGH)
JUDGE

July 02, 2015
Vinay