

CWP No.8717 of 2014

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

**CWP No.8717 of 2014
Date of decision:20.08.2015**

Gurmeet Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arvind Singh, Advocate,
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Mr. Virender Kumar, Advocate,
for respondent No.4.

Rakesh Kumar Jain, J.

The petitioner is a Ramdasia belonging to the Schedule Caste category. He was allotted nazool land measuring 24 kanal 01 marla of land comprised in Rect. No.20, Khasra No.1(8-0), 2(8-0), 9/1(2-14), 10min (5-7), situated in village Mandheri, Tehsil Shahabad, District Kurukshetra, on 17.05.2010 by the Deputy Commissioner, Kurukshetra, on annual lease basis. The petitioner entered into cultivating possession of the suit land and has been paying the lease money from the year 2010 onwards. He applied for allotment of the said land under the Nazool Lands (Transfer) Rules, 1956. Respondent No.4 was also staking claim over the said land because of an allotment which though was cancelled and the land was resumed, therefore, he filed a suit for declaration that the perpetual allotment made to

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him of the land in dispute is irrevocable and respondent Nos.2 and 3 had no right to resume the said land after having accepted the entire sale price. Respondent No.4 lost in Regular Second Appeal No.2052 of 2009, *inter alia*, on the ground that his earlier suit filed in the year 1987, decided in his favour, was reversed by the lower Appellate Court and this Court, in the Regular Second Appeal, holding that due to conduct of respondent No.4, he was not entitled to allotment of the land. The finding recorded in the said RSA No.1580 of 1999, which was decided on 07.12.1999, has also been reproduced in RSA No.2052 of 2009, which has been dismissed on 05.09.2011. The said findings are reproduced as under:-

“9. It is clear from the above rule that a person who owns some land, is entitled for allotment of such area of Nazool Land as would make up the unit of Nazool Land as defined in the rules, when added to his own land. In this regard, the lower Appellate Court noticed that land measuring 8 kanal 17 marlas was allotted to the appellant vide allotment letter Exhibit D-2 dated 9.12.1976 and in pursuance of this, he also took possession of the above land vide rapat roznamcha dated 14.05.1977, wherein the presence of appellant is also recorded and the above entry also bears his signatures. The lower appellate Court also noticed that even in his own affidavit Ex.D4 the appellant admitted allotment of surplus land, but he did not mention the date of allotment

either of the surplus land or of Nazool Land. The lower appellate Court also came to the conclusion that even if the allotment of surplus area had been cancelled subsequently on 15.03.1989, the default of the appellant of not disclosing the allotment of surplus area would not stand cured. It was found as a fact that the appellant intentionally and with a view to retain the best of two kinds of land concealed the fact of allotment of surplus land and thus got allotment of Nazool land in his favour. In the circumstances, the lower appellate Court rightly observed that the appellant was not entitled to the relief of mandatory injunction and permanent injunction as prayed in the suit.”

Ultimately, while dismissing the Suit/RSA on 05.09.2011, this Court recorded the following finding:-

“The crucial issue before the Court was whether the appellant-plaintiff was entitled to allotment or not. Once, in earlier proceedings, which had culminated, it has been decided that the appellant is not entitled to allotment, the consideration whether the resumption can be made is immaterial. Thus, the findings returned by both the courts below that the principles of *res-judicata* oust the appellant from institution of the suit cannot be set aside and hence, the present appeal is hereby

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dismissed.”

Further, the SLP filed by respondent No.4 against the decision in RSA No.2052 of 2009 was also dismissed on 21.02.2012 by the Apex Court. Respondent No.4 has again filed a suit for declaration with consequential relief of mandatory injunction, alleging that the land of some Punjab Singh was wrongly recorded in his holding, but the said suit has also been dismissed by the trial Court. However, respondent No.2 has withheld the permanent allotment to the petitioner only on the ground that some Civil Suit is pending.

Counsel for the petitioner has submitted that respondent No.4 has twice failed in his Civil Suits i.e. RSA No.1580 of 1999 which was decided on 07.12.1999 and RSA No.2052 of 2009 which was decided on 05.09.2011 and has been upheld by the Apex Court in SLP (C) No.2781 of 2012, which was dismissed on 21.02.2012, but still he has been filing the suit and the latest suit filed by him has also been dismissed by the Civil Court.

On the other hand, learned counsel for respondent No.4 has submitted that although his Civil Suit has been dismissed by the trial Court, but his appeal is still pending, though without any stay.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that respondent No.2 should not have withheld the permanent allotment to the petitioner of the land merely on the ground that some Civil Suit, filed by respondent No.4, is pending though he had already lost the battle twice even upto the Apex

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Court.

Thus, in view thereof, the present writ petition is hereby allowed, impugned order dated 05.02.2014 passed by respondent No.2 is set aside and the Deputy Commissioner, Kurukshetra is directed to make permanent allotment to the petitioner of the land in question, subject to the ultimate decision, if any, by the Civil Court in the pending appeal of respondent No.4.

This exercise of permanent allotment shall be carried out by the Deputy Commissioner, Kurukshetra, within a period of two months from the date of receipt of certified copy of this order.

August 20, 2015
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(Rakesh Kumar Jain)
Judge