

RA-CWP-315 of 2012 in
CWP No.8492 of 2009

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

RA-CWP-315 of 2012 in
CWP No.8492 of 2009
Date of decision: 16.01.2015

Harbir Singh and another

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Alok Jain, Addl. A.G, Punjab.
Mr. K.S. Sidhu, Sr. Advocate, with
Mr. A.S. Sandhu, Advocate, for the non-applicant/petitioners.
Mr. Vinod Khunger, Advocate, for respondents No.3 and 5.

PARAMJEET SINGH, J.

Instant application under Article 226 of the Constitution of India read with Order 47 Rules 1 and 2 of the Code of Civil Procedure has been filed for review of order dated 04.04.2012, on the basis of rapat roznamcha dated 07.08.2002 on the ground that possession had been taken in 2002 and land stood utilized after it was declared surplus. It is also one of the grounds that this Court did not allow time to produce record and passed the order.

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

RA-CWP-315 of 2012 in
CWP No.8492 of 2009

Admitted facts are to the effect that Iqbal Singh big landlord died on 20.3.1980. The order declaring surplus area was passed by the Collector on 28.05.1987 (Annexure P/6). Admittedly, during the lifetime of Iqbal Singh land was never declared surplus. Once the big landlord dies the succession reopens and surplus area is required to be determined afresh in the hands of the legal heirs of the big landlord. In the present case, now only a rapat roznamcha has been placed on record which indicates that alleged possession was taken on 07.08.2002. There is no document to indicate that Government is in continuous possession and had utilized the land. In order under review dated 04.04.2012, this Court has already recorded a finding with regard to settled position of law that if the land was not utilized then the land in the hands of present owners i.e. LR's of big landlord has necessarily to be assessed for computing the surplus area, if any. Even the decision in the case of ***Ranjit Ram v. Financial Commissioner, Punjab and others, 1981 PLJ 259*** by Full Bench of this Court has been approved by Larger Bench of Hon'ble Supreme Court in the case of ***Ujagar Singh (dead) by L.Rs. v. The Collector, Bhatinda, 1996(3) R.C.R.(Civil) 446*** and Full Bench of this Court in ***Sardara Singh and others v. The Financial Commissioner and others, 2008(2) R.C.R.(Civil) 744*** has specifically held that death of big landowner during the pendency of surplus proceedings causes affectation of surplus area which is required to be redetermined in the hands of the heirs of the deceased landowner.

In this case, State has failed to show as to how the possession

RA-CWP-315 of 2012 in
CWP No.8492 of 2009

was taken and how the matter was proceeded with when the big landlord had already died.

Besides this, respondents No.3 to 6 had no locus standi to challenge the order dated 24.03.2003 (Annexure P-3) passed by the Collector Agrarian and the order dated 06.10.2004 (Annexure P-2) passed by the Commissioner, Faridkot Division, Faridkot as they are third party and the State Government, which was the interested party did not assail the said orders. In view of the death of big landlord, his legal heirs were entitled to fresh computation of the land which had been declared surplus and possession had not been taken by the State Government during the lifetime of big landlord.

Otherwise also review petition has been filed by change of counsel, which is not permissible.

Hon'ble Supreme Court in ***T.N. Electricity Board and another v. N. Raju Reddiar and another, AIR 1997 SC 1005*** has held as under: -

“It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sugar has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in

RA-CWP-315 of 2012 in
CWP No.8492 of 2009

rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to note that Court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. xxxxxxxx

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2. Once the petition for review is dismissed, no application for clarification should be filed, much less with the change of the advocate-on-record. This practice of changing the advocates and filing repeated petitions should be deprecated with heavy hand for purity of administration of law and salutary and healthy practice.”

This Court in ***Shanti Devi v. Ran Singh, 1998(2) R.C.R. (Civil) 505*** also had the occasion to consider whether review can be filed by change of counsel wherein this Court held as under: -

“4. On a consideration of the matter and having regard to the facts and circumstances of this case, I am of the opinion that the review application deserves to be dismissed. A simple suit filed by the plaintiff-applicant was that she is the owner in possession of the land in dispute and that she perfected her title to the property by way of adverse possession. As already noticed, the Courts below did not accept the plaintiff's plea that she has become owner of the property by way of adverse

RA-CWP-315 of 2012 in
CWP No.8492 of 2009

possession. Trial Court had, however, found the plaintiff to be in possession but that finding was reversed by the first appellate Court on appreciation of evidence and it came to the conclusion that the plaintiff failed to prove her possession over the suit land. Second appeal against the judgment and decree of the first appellate Court was dismissed after hearing learned counsel for the parties and after recording that a finding regarding possession of the plaintiff has been arrived at by the first appellate Court on correct appreciation of evidence produced on record. The pleas now sought to be raised do not find mention either in the plaint or in the grounds of appeal before the first appellate Court or the grounds of appeal taken in the second appeal. There is thus no basis for the contention raised now to show that the suit land was left by Muslims and that it vested in the Custodian being evacuee property and therefore, the jurisdiction of the civil Court is excluded. In the absence of any material, the contention which is not based on facts cannot be permitted to be raised in the review application. Besides this, the contention of learned counsel that the Courts should not show any indulgence in the matter of reviewing an order when the review application has been moved by a counsel other than the one who argued the appeal on merits, has force in view of the observations of the apex Court as noticed above in this order. The review application is, therefore, dismissed. Civil Misc. 3567-C and 3302-C of 1997 also stand disposed of accordingly.”

Subsequently, while relying upon the judgment of Hon'ble Supreme Court in ***T.N. Electricity Board*** (supra) and judgment of this Court in ***Shanti Devi*** (supra), Division Bench of this Court in ***R.A. No.40 of 2014***

RA-CWP-315 of 2012 in
CWP No.8492 of 2009

titled *Mukhtiar Singh v. State of Punjab and another* decided on 11.07.2014 has held that the practice of changing the Advocates and filing petitions deserves to be deprecated with heavy hand for purity of administration of law, salutary and healthy practice.

So far as the averment that this Court did not allow time to produce the record is concerned, same is not sustainable in the eyes of law.

On 21.07.2011 a Co-ordinate Bench (Surya Kant, J.) passed the following order: -

“Let the official respondents produce record in order to show that the private respondents were prospective allottee at the relevant time.

List on 14.10.2011.”

Thereafter, on 14.10.2011 a Co-ordinate Bench (Mahesh Grover, J.) passed the following order: -

“Learned counsel appearing for the State of Punjab prays for some more time to produce the relevant record as directed vide order dated 21.7.2011.

Adjourned to 30.1.2012.”

Again when the case came up for hearing the record was not produced by the State and ultimately the case was decided by this Court on 04.04.2012. For this reason, Court cannot be blamed by the State Government. It is the duty of the State Government to produce the record at the relevant time when the case is taken up for arguments. The averment in the review application and argument has been made without inspecting the case file. This Court had provided sufficient opportunity to the State to

RA-CWP-315 of 2012 in
CWP No.8492 of 2009

produce the record as is clear from zimni orders reproduced above. Despite having sufficient time, approximately two years, State did not produce the record. Such an argument and averment made by the learned State counsel that Court did not grant the time, is without merit rather such conduct of the State requires to be deprecated.

In view of above, I do not find any ground to review the impugned order.

Dismissed.

(Paramjeet Singh)
Judge

January 16, 2015
R.S.