IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 31.08.2016

1. CWP No.15943 of 1993

Thana Singh and another

... Petitioners

Vs.

Financial Commissioner (Appeals), Punjab and others

... Respondents

2. CWP No.15938 of 1993

Balbir Singh and another

... Petitioners

Vs.

Financial Commissioner (Appeals), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. N.S. Thind, Advocate
for the petitioners.

Ms. Monica Chhiber Sharma, DAG, Punjab.

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<u>RAMESHWAR SINGH MALIK, J.</u>

These two identical writ petitions directed against the similar orders passed by the respondent revenue authorities, are being decided together vide this common order, as both these petitions are based on similar facts and same questions of law are involved. However, for the facility of reference, facts are being culled out from CWP No.15943 of 1993 (Thana Singh and another Vs. Financial Commissioner (Appeals), Punjab and others).

Feeling aggrieved against exactly similar order dated 19.08.1993 passed by the Financial Commissioner (Appeals), Punjab, thereby upholding the orders passed by the Commissioner as well as Collector, declaring the land purchased by the petitioners, as surplus, without issuing notice to them, they have approached this Court by way of these two writ petitions, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Notice of motion was issued and operation of the impugned order (Annexure P-6) was stayed by a Division Bench of this Court, vide order dated 22.12.1993. Written statement was filed on behalf of respondents No.1 to 3. A separate written statement was filed on behalf of LRs of Pritam Singh-respondent No.4. Thereafter, writ petitions were admitted for regular hearing vide order dated 07.11.1994 passed by a Division Bench of this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

Learned counsel for the petitioners refers to the impugned orders passed by the Commissioner (Annexure P-4) as well as by the Financial Commissioner (Annexure P-6), to contend that it was undisputed on record that the petitioners did not purchase the land from original big land owner Pritam Singh. As stated by learned counsel for the petitioners, petitioners in CWP No.15943 of 1993 (Thana Singh and another Vs. Financial Commissioner (Appeals), Punjab and others) purchased the land from Ranjit Singh. Similarly Balbir Singh and Surjit Singh-petitioners in CWP No.15938 of 1993 purchased the land from Parminderpal Singh.

In fact, Balbir Singh and Surjit Singh-petitioners purchased the land from Parminderpal Singh son of Pritam Singh vide sale deed dated 15.07.1981 (Annexure P-15). Similarly, petitioners-Thana Singh and Major Singh purchased the land from Ranjit Singh son of Pritam Singh vide sale deed dated 24.05.1982 (Annexure P-16). It is pointed out that Major Singh-petitioner died and his LRs have been brought on record vide order dated 07.07.2014 passed by this Court in CM No.5350 of 2014. He submits that the land in the hands of Pritam Singh, original big land owner, was declared surplus vide order dated 17.01.1977 (Annexure P-1). However, when the land in the hands of Pritam Singh, original big land owner, was again sought to be declared surplus vide impugned order dated 15.07.1985 (Annexure P-3), land purchased by the petitioners was also illegally included in the holding of Pritam Singh.

Learned counsel for the petitioners would next contend that resultantly, land purchased by the petitioners, as bonafide purchasers, from Ranjit Singh and Parminderpal Singh, was illegally declared surplus vide order dated 15.07.1985 (Annexure P-3), passed by Special Collector Agrarian and that too without issuing any notice to the petitioners. Further, on coming to know about the abovesaid order dated 15.07.1985 (Annexure P-3), when the petitioners challenged the same by way of appeal before the Commissioner, he failed to appreciate the abovesaid material aspect of the matter and dismissed the appeal of the petitioners, vide impugned order dated 24.08.1987 (Annexure P-4).

Similarly, Financial Commissioner also fell in serious error of law, while passing the impugned order dated 19.08.1993 (Annexure P-6), dismissing the revision petition of the petitioners. Learned counsel for the petitioners concluded by submitting that firstly, land purchased by the petitioners could not have been included in the holding of Pritam Singh, because the petitioners were not the vendors of Pritam Singh and secondly, their land could not have been declared surplus behind their back. In support of his contentions, he places reliance on the following judgments of this Court: -

1. ***Harnek Singh and another Vs. The State of Punjab and others, 1971 PLJ 727.***
2. ***S. Balwant Singh Chopra and others Vs. Union of India and others, 1971 PLJ 315.***
3. ***Hardev Singh and others Vs. The State of Punjab and others, 1971 PLJ 283.***
4. ***Chanan Mal Newar and others Vs. State of Haryana and others, 1984 RRR 160.***
5. ***Hardit Singh and others Vs. State of Punjab through Secretary to the Government of Punjab, Revenue Department, Chandigarh and others, 1984 (II) All India Land Laws Reporter 309.***
6. ***Bikkar Singh and others Vs. The Punjab State and others, 1986 (1) All India Land Laws Reporter 159.***
7. ***Rehmat Masih Vs. The Financial Commissioner, Taxation, Punjab and others, 1993 (1) All India Land Laws Reporter 407.***
8. ***Vijay Kumar and others Vs. State of Punjab and others, 2011 (2) Law Herald (P&H) 1622.***

He prays for setting aside the impugned orders, by allowing both these writ petitions.

Per contra, learned counsel for the State submits that the impugned orders passed by the respondent revenue authorities were in accordance with law and the same deserve to be upheld. She prays for dismissal of both these writ petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, both these writ petitions deserve to be allowed. The impugned orders passed by the respondent revenue authorities are patently illegal and the same are liable to be set aside, for the following more than one reasons.

It has gone undisputed before this Court that Ranjit Singh and Parminderpal Singh did not inherit the land from their father Pritam Singh, which they sold to the petitioners. In fact, Ranjit Singh and Parminderpal Singh purchased this land from Hari Singh son of Kahan Singh, vide sale deed dated 13.03.1963. Since Ranjit Singh and Parminderpal Singh were absolute owners of the land, they were entitled and competent to suffer the sale deeds dated 15.07.1981 (Annexures P-15) and dated 24.05.1982 (Annexure P-16) in favour of the petitioners.

It is also a matter of record that initially, land in the hands of original big landowner Pritam Singh, was declared surplus vide order dated 17.01.1977 (Annexure P-1). In such a situation, which has gone uncontroverted on record, it does not appeal to reason as to how the Special Collector Agrarian, Ferozepur, included the land purchased by the petitioners in the holding of Pritam Singh, while passing the impugned order dated 15.07.1985 (Annexure

P-3), again declaring some land as surplus, in the hands of original big land owner Pritam Singh. In fact, it seems to have been done erroneously, while including the area purchased by Diwan Chand, Satnam Chand, Mehla Ram, Wasawa Ram and Munshi Ram etc. from big land owner Pritam Singh, wrongly presuming that present petitioners also might have purchased their land from Pritam Singh.

During the course of hearing, when confronted with the abovesaid glaring illegality committed by the Special Collector Agrarian, while passing the impugned order dated 15.07.1985 (Annexure P-3), as to how the land purchased by the petitioners from Ranjit Singh and Parminderpal Singh could have been included in the holding of Pritam Singh, learned counsel for the State had no answer and rightly so, it being a matter of record. Similarly, when asked as to how the impugned order (Annexure P-3) could have been passed behind the back of the petitioners, learned counsel for the State had again no answer.

On this second issue of impugned order (Annexure P-3) being an ex-parte order, learned counsel for the petitioners has been found well justified, in placing reliance on the abovesaid judgments of this Court, which squarely apply in favour of the petitioners, rendering all the three impugned orders contained in Annexures P-3, P-4 and P-6, to be patently illegal orders and the same cannot be sustained. It is neither pleaded nor argued case on behalf of the respondents that Ranjit Singh and Parminderpal Singh, vendees of the petitioners, were ever declared big land owners.

It has been specifically recorded by the Commissioner in his order dated 24.08.1987 (Annexure P-4), at page 35 of the paper book, as well as by the Financial Commissioner in his impugned order dated 19.08.1993 (Annexure

P-6), at page 49 of the paper book, that the petitioners did not purchase the land from Pritam Singh. Once the petitioners did not purchase the land out of the surplus area declared in the hands of original big land owner Pritam Singh, there was not even remotest scope for including the area purchased by the petitioners, in the holding of Pritam Singh, for the purpose of declaring the same as surplus, at the time of passing of the impugned order dated 15.07.1985 (Annexure P-3).

As noticed hereinabove, land in the hands of Pritam Singh-original big land owner was declared surplus initially vide order dated 17.01.1977. Petitioners purchased the land in question from Ranjit Singh and Parminderpal Singh in the years 1981 and 1982 vide abovesaid two sale deeds. However, the Special Collector Agrarian committed a serious illegality, while including the land purchased by the petitioners in the holding of Pritam Singh, at the time of passing the impugned order dated 15.07.1985 (Annexure P-3). Since this glaring illegality was not properly appreciated by the Commissioner as well as Financial Commissioner, the impugned orders passed by them have also been found suffering from patent illegality, because of which all the three impugned orders are liable to be set aside.

Further, the impugned orders run counter to the law laid down in the abovesaid judgments of this Court. Since the impugned order (Annexure P-3) was passed behind the back of the petitioners, the proceedings declaring the land of the petitioners as surplus, would stand vitiated. This illegality is in addition to the abovesaid serious illegality committed by the respondent revenue authorities, which goes to the root of the cause. Once the area purchased by the petitioners from Ranjit Singh and Parminderpal Singh could not have been included in the holding of Pritam Singh, under any circumstances, the impugned orders would be liable to be set aside at that score alone. As the respondent authorities have proceeded on a wholly misconceived and perverse approach, while passing their respective impugned orders, same are liable to be set aside, for this reasons also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders have been passed contrary to the true facts of the case as well as against the law laid down by this Court, the same cannot be sustained. Accordingly, all the three impugned orders (Annexures P-3, P-4 and P-6), in both these writ petitions, are hereby set aside. The writ petitions deserve to be accepted.

Resultantly, with the abovesaid observations made, both these writ petitions stand allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
31.08.2016 **JUDGE**
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No