

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 01.09.2016

1. CWP No.5294 of 1994

Waryam Ram and others

... Petitioners

Vs.

Financial Commissioner (Revenue), Punjab and another

... Respondents

2. CWP No.5329 of 1994

Jeet Ram and another

... Petitioners

Vs.

Financial Commissioner (Appeals), Punjab and another

... Respondents

3. CWP No.7525 of 1994

Bhanwar Lal

... Petitioner

Vs.

Financial Commissioner (Appeals), Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. C.M. Munjal, Advocate
for the petitioner(s).

Ms. Monica Chhiber Sharma, DAG, Punjab.

Mr. G.S. Bhandal, Advocate
for respondent No.2 (in CWP No.5294 of 1994).

RAMESHWAR SINGH MALIK, J.

These three identical writ petitions are being decided vide this

common order, as these are arising out of similar facts and questions of law involved, are also the same. However, for the facility of reference, facts are being culled out from CWP No.5294 of 1994 (Waryam Ram and others Vs. Financial Commissioner (Appeals), Punjab and others).

All these three writ petitions are directed against identical orders passed by the Financial Commissioner, whereby revision petitions filed by the petitioners were dismissed, upholding the orders passed by Collector Agrarian as well as Commissioner, declaring the land as surplus.

Heard learned counsel for the parties.

Facts are hardly in dispute. Petitioners were the old tenants since 1952-53 under the original big land owner Hardwari Lal. Initially, the surplus area case was decided in the year 1962, declaring the land surplus in the hands of original big land owner Hardwari Lal. However, after the case was remanded by the higher revenue authorities, original big land owner died and thereafter surplus area case was sought to be decided in the hands of legal representatives of original big land owner.

In the meantime, petitioners who were coming as old and settled tenants, purchased the land under their tenancy, in the year 1983. While deciding the surplus area case in the hands of legal heirs of original big land owner, Special Collector Agrarian, Fazilka did not grant any opportunity of being heard to the petitioners, either as tenants or as vendees and passed the impugned order dated 26.05.1987 (Annexure P-1). This order was upheld by the appellate as well as revisional authorities. That is how, these writ petitions.

Learned counsel for the parties are ad idem that in view of the provisions of law contained in Section 4 (5) of the Punjab Land Reforms Act,

1972, sale, if any, which had taken place after 02.04.1973, having the effect of diminishing surplus area, was bound to be ignored. In such a situation, status of the petitioners would be restored as that of tenants on the appointed date i.e. 24.01.1971. Otherwise also, they were continuing for about 30 years as tenants under the original big land owner, before they purchased the area under their tenancy, in the year 1983. Once the sale deed was liable to be ignored being a void transaction, petitioners were entitled for getting their tenants permissible area determined.

Observations made by a Division Bench of this Court in **Balbir Singh and others Vs. Financial Commissioner (Appeals), Punjab and others, 1996 PLJ 514**, under somewhat similar circumstances, which can be gainfully followed in the present case, read as under: -

“When the law has treated all the transfers of land effected after 2.4.1973 as void, the Court cannot infuse any life into such dead transactions and cannot interpret the law which would enable the landowner to bypass the salutary provision of the 1972 Act.”

When neither the land owner nor the tenants were entitled to take any benefit of any such sale deed, which was void ab initio, the respondent authorities were duty bound to give notice to the petitioners as tenants and decide their tenants permissible area, at the time of determining the permissible area of the land owner. However, since the Special Collector Agrarian, Fazilka committed this serious error of law, while passing the impugned order dated 26.05.1987 (Annexure P-1), behind the back of the petitioners, and that patent illegality could not be appreciated by the Commissioner as well as Financial Commissioner in the correct perspective, all the three impugned orders have

resulted in serious miscarriage of justice and the same cannot be sustained.

Learned counsel for the petitioner was found well justified, while referring to an order dated 19.12.1986 (Annexure P-5) passed by the Financial Commissioner, Punjab, wherein it was observed that once the sale deed was to be ignored, the tenants were entitled to get their tenants permissible area determined. In fact, a combined reading of all the three impugned orders passed by the respondent revenue authorities would show that this basic issue which goes to the root of the cause was not properly appreciated, which has caused manifest injustice to the petitioners.

Neither their rights as tenants were considered and decided nor their rights, if any, as vendees were considered and decided. In fact, once as per the abovesaid relevant provisions of law, the sale deed was bound to be ignored, status quo ante would be restored in favour of the petitioners, as it was obtaining on the appointed date i.e. 24.01.1971 and they would be entitled for getting their tenants permissible area determined, at the hands of the respondent authorities. Having said that, this Court feels no hesitation to conclude that the impugned orders have since been found suffering from patent illegality and perversity, same cannot be sustained, for this reason 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 found suffering from patent illegality, these cannot be sustained. Consequently, all the impugned orders, in all these three writ petitions, are liable to be set aside and the same are accordingly set aside.

All these writ petitions deserve to be accepted. The matter is remanded to the Collector Agrarian, Fazilka with a direction to re-determine the surplus area case in the hands of petitioners or their legal representatives, wherever applicable, ignoring the sale deeds and determining their tenants permissible area, by passing appropriate orders, however, strictly in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, all these three writ petitions stand allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

01.09.2016
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No