

Sr. No.382

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-399-1995(O&M)

Prem Nath Deceased (through LRs)

.....Petitioner

VS.

The Financial Commissioner (Appeals), Punjab and others ...Respondents

CWP-402-1995(O&M)

Date of Decision: 10.11.2016

Satinder Kumar

.....Petitioner

vs.

The Financial Commissioner (Appeals), Punjab Chandigarh and others

.....Respondents

CORAM HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present:- Mr. R.C.Setia, Sr. Advocate
with Mr. Vishal Ranjan, Advocate for the petitioners.
Mr. Yatinder Sharma, Addl. A. G. Punjab.

-:-

RAMESHWAR SINGH MALIK, J

These are two identical Writ Petitions bearing no. 399 of 1995 titled Prem Nath (Deceased) through LRs. v. The Financial Commissioner (Appeals) Punjab Chandigarh and No.402 of 1995 titled Prem Nath v. Financial Commissioner (Appeals), Punjab Chandigarh and others, which are being decided together vide this common order.

Learned counsel for the parties are *ad idem* that so far as CWP-399 of 1995 originally filed by Prem Nath is concerned, Full Bench judgment of this Court in **Sardara Singh and another v. F. C and others 2008(2) RCR (Civil) 744** would apply because Prem Nath petitioner died during pendency of the present writ petition on 14.12.2002. Legal representatives of Late Sh.Prem Nath have already been brought on record vide order dated 26.07.2016 passed by this Court in CM No. 13078 of 2014.

Regarding the second case i.e CWP No. 402 of 1995 filed by Satinder Kumar, real brother of Prem Nath, learned senior counsel for the petitioner submits that since the land was in a joint khewat with both the brothers and it was not partitioned, the facts of these cases would be overlapping. He further submits that it would be in the fitness of things if both these cases are remanded with direction to the respondent authorities to decide the surplus area case afresh applying the Full Bench of this Court in **Sardara Singh's case (supra)** in favour of LRs of Prem Nath only. He further submits that so far as Satinder Kumar, he will not be entitled for the benefits of the Full Bench in **Sardara Singh's case (supra)**.

When confronted with the above said statement made by learned senior counsel for the petitioner in both these cases, learned counsel for the State also fairly states that let the appropriate order be passed in terms of the statement made by learned senior counsel for the petitioner.

The relevant observations made by the Hon'ble Full Bench of this Court in para 44 of its judgment in **Sardara Singh's case (supra)** reads as under:-

“ Resultantly, where the surplus area has not been finally determined, and the matter is pending in appeals or revisions before the Revenue Courts or before this Court under Article 226 of the Constitution, or before the Supreme Court of India, death of the landowner would cause affectation of surplus area which would be required to be redetermined in the hands of the heirs of the deceased landowner. Such an interpretation would harmoniously construct the provisions of Section 11(5) and 11(7) and also give a proper interpretation to both the views expressed in Ajit Kaur's case. However, we are unable to uphold the judgments of this Court in Jasbir Kaur's case because Ajit Kaur's case was not at all

considered by the Hon'ble Division Bench. As regards Manjit Kaur's case, even though Ajit Kaur's case was considered, the majority view had been entirely overlooked."

In view of the above said fact situation obtaining on record, both these writ petitions are disposed off. Matter is remitted back to the competent authority to decide the surplus area case afresh. Should there be any confusion, it is clarified that only the legal representatives of Late Sh.Prem Nath shall be entitled for the benefit of Full Bench Judgment of this Court in **Sardara Singh's case (supra)**. Satinder Kumar petitioner in CWP-402 of 1995 shall not be entitled to benefits of law laid down by Full Bench of this Court in **Sardara Singh's case (supra)** because the same does not apply to his case. This case is being remanded for the reason that the land owned by both these brothers namely Late Sh.Prem Nath and Satinder Kumar was joint and there was also a family partition. Thus, it would facilitate the competent authority as well, to arrive at a judicious conclusion in this regard.

Accordingly, the impugned orders are hereby set aside and both these cases are remanded with the above said observations made and directions issued.

Disposed off accordingly.

(RAMESHWAR SINGH MALIK)
JUDGE

November 10, 2016
mamta

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No