

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 16.09.2016

1. CWP No.5253 of 1995

Kailash Wati through LRs

... Petitioner

Vs.

The Financial Commissioner, Haryana and others

... Respondents

2. CWP No.5769 of 1995

Kailash Wati through LRs

... Petitioner

Vs.

The Financial Commissioner, Haryana and others

... Respondents

3. CWP No.8487 of 1995

Kailash Wati through LRs

... Petitioner

Vs.

The Financial Commissioner, Haryana and others

... Respondents

4. CWP No.8486 of 1995

Shiv Rattan and others

... Petitioners

Vs.

The Financial Commissioner, Haryana and others

... Respondents

5. CWP No.8485 of 1995

Shiv Rattan and others

... Petitioners

Vs.

The Financial Commissioner, Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. N.S. Panwar, Advocate
for the petitioner (s).

Mr. S.S. Mann, Sr. DAG, Haryana.

None for private respondent(s).

RAMESHWAR SINGH MALIK, J. (ORAL)

These five identical writ petitions bearing CWP Nos.5253, 5769, 8485, 8486 and 8487 of 1995, are being decided vide this common order, as all these writ petitions arise out of similar facts and raise common questions of law. However, for the facility of reference, facts are being culled out from CWP No.5253 of 1995 (Kailsh Wati through LR's Vs. The Financial Commissioner, Haryana and others).

Feeling aggrieved against a common impugned order dated 02.01.1995 (Annexure P-6), petitioners-landowners have approached this Court by way of these five similar writ petitions, seeking a writ in the nature of certiorari, for quashing the impugned orders.

The writ petitions were admitted for regular hearing and status quo with regard to possession was ordered to continue. An affidavit dated 10.02.2015 of Sub Divisional Officer (Civil), Hathin has been filed to say that State of Haryana has no interest in these matters, as the contest was between the private parties. However, no written statement has been filed on behalf of the private respondents-tenants.

Heard learned counsel for the petitioners as well as learned counsel for the State.

Learned counsel for the petitioners, at the very outset, submits that

during pendency of these writ petitions, a Full Bench decision of this Court has come in **Shiv Charan Vs. Financial Commissioner, Haryana and others, 2004 (4) RCR (Civil) 543** and the controversy has been set at rest, in favour of the petitioners. Learned counsel for the petitioners would next contend that all these writ petitions would be squarely covered by the Full Bench judgment of this Court in **Shiv Charan's** case (supra) in favour of the petitioners. On the basis of strength of the Full Bench judgment in **Shiv Charan's** case (supra), learned counsel for the petitioners prays for setting aside the impugned orders, by allowing all these writ petitions.

Learned counsel for the State has fairly stated that he has also gone through the Full Bench judgment of this Court in **Shiv Charan's** case (supra) and has found that the same covers the controversy involved in all these writ petitions, in favour of the petitioners.

The short issue that falls for consideration of this Court is whether the applications moved by the private respondents-tenants, seeking declaration of occupancy rights under the Punjab Tenancy Act, could have been decided by the revenue authorities or only the Civil Court would have the jurisdiction to decide such suit for declaration.

Having heard the learned counsel for the petitioner as well as learned counsel for the State and after going through the judgment of the Hon'ble Full Bench of this Court passed in **Shiv Charan's** case (supra), this Court is of the considered opinion that learned counsel for the petitioners is well justified in contending that all these matters are squarely covered by the Full Bench judgment in **Shiv Charan's** case (supra).

The relevant observations made by the Hon'ble Full Bench in para Nos.8 to 10 of its judgment in **Shiv Charan's** case (supra), which can be

gainfully followed in the present case, read as under: -

“We are, however, of the opinion that this very issue had been raised before and repelled by the Division Bench in Amin Lal's case. The Bench noticed that expression "Occupancy tenant" included two types of occupancy tenants, namely, (i) those who were recorded as such in the revenue record immediately before the commencement of the Act and (ii) those, whose rights as occupancy tenants could be established by other evidence. The Court observed that after the coming into force of the Vesting Act, what was required was in fact a declaration of title based on the fact as to whether a person claiming a right of occupancy had in fact become the owner, though for arriving at this conclusion, it would often be necessary for the Court to examine the conditions prescribed by the Vesting Act, and to determine as to whether they had been fulfilled. The Court further observed that after the coming into force of the Vesting Act, there was a simultaneous extinguishment of the rights of Occupancy and conversion of the same into ownership and as such a declaration of title could be given only by the Civil Court. It was accordingly concluded as under :-

"A Civil Court has jurisdiction to try all suits of a civil nature unless its jurisdiction with regard to a particular type of a suit is expressly or implied barred. A suit in which the right to property is to be decided is beyond doubt a suit within the cognizance of a Civil Court. A provision of law which takes away such a jurisdiction has to be strictly

construed. Section 77(3)(d) of the Tenancy Act takes out of the jurisdiction of a Civil Court only that suit which is instituted to establish a claim to a right of occupancy and not where title to property is to be decided on the determination of occupancy rights which determination was only to substantiate the plea of ownership. After the coming into force of the Vesting of Property Rights Act, occupancy rights had ceased to exist and all of them were automatically converted into statutory ownership."

*We are also of the opinion that the reliance of the learned counsel on Omkar Singh's and Jiwan's cases (supra) is misplaced. As already mentioned above, the learned Single Judge in Omkar's case merely noticed the judgment of this Court in Amin Lal's case and did not even remotely discuss the issues involved therein. In Jiwan's case, no reference was made to Amin Lal's case by the learned Single Judge though primary reliance was placed on **Raghubir Singh v. Beli Ram, 1967 PLR (Delhi Section) 396** to hold that a revenue Court alone could go into the dispute. We, however, find from a perusal of the judgment in Amin Lal's case that the Division Bench had differed with the ratio of the judgment in Raghubir Singh's case (supra) by observing that "We, with all respect, to the learned Judge did not find ourselves in agreement with him." We are, therefore, of the opinion that the judgment of the Single Bench in Puran Lal Aggarwal's case (supra) relying on the decision of Amin Lal's case (supra) lays down the correct law. It was accordingly to be held that after the coming into force of the*

Vesting Act, the Civil Court alone would have the jurisdiction to determine the dispute envisaged in Section 77(3)(d) of the Act and the jurisdiction of the revenue Court would be barred. The judgments of the Single Bench in Omkar Singh and Jiwan's case (supra) and any other case holding likewise are overruled.

To our mind, therefore, a civil suit would lie with respect to both the categories of occupancy tenants envisaged in Section 2(f) of the Vesting Act.”

In view of the abovesaid authoritative view taken by the Hon'ble Full Bench in **Shiv Charan's** case (supra), all these writ petitions deserve to be allowed. When the law laid down by the Hon'ble Full Bench is applied to the peculiar fact situation obtaining on record of this batch of writ petitions, the inevitable conclusion is that the impugned orders passed by the respondent revenue authorities are the orders without jurisdiction. It is so said because only the Civil Court would have the jurisdiction to decide the suit for declaration involving question of ownership and title. In the present set of cases, since the revenue authorities have exceeded their jurisdiction, while passing their respective impugned orders, the same cannot be sustained.

No contrary judgment was brought to the notice of this Court by learned counsel for the State nor any other argument was raised.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders are liable to be set aside, the same having been found running contrary to the law laid down by the Hon'ble Full Bench of this Court in **Shiv Charan's** case (supra). Accordingly, the impugned orders, in all

the five writ petitions, are hereby set aside. The writ petitions deserve to be accepted.

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

16.09.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No