

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

1. RSA No.336 of 1991
Date of decision : 03.02.2016

Inder Singh (Deceased) through LRs and ors.

...Appellants

Versus

State of Haryana and ors.

...Respondents

2. RSA No.337 of 1991
Date of decision : 03.02.2016

Chandgi deceased through LRs

...Appellant

Versus

State of Haryana and ors.

...Respondents

3. RSA No.338 of 1991
Date of decision : 03.02.2016

Jita

...Appellant

Versus

State of Haryana and ors.

...Respondents

4. RSA No.339 of 1991
Date of decision : 03.02.2016

Pirithi and ors.

...Appellants

Versus

State of Haryana and ors.

...Respondents

5.

RSA No.340 of 1991
Date of decision : 03.02.2016

Jagga deceased through LRs

...Appellant

Versus

State of Haryana and ors.

...Respondents

6.

RSA No.603 of 1991
Date of decision : 03.02.2016

Prem Singh (deceased) and ors.

...Appellants

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. S.K. Jain, Advocate with
Mr. Akshay Jain, Advocate for appellants.

Mr. Vishal Garg, Addl. A.G. Haryana.

Mr. Aashish Gupta, Advocate for respondent No.3.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of six Regular Second Appeals bearing RSA No.336 of 1991, titled as Inder Singh (Deceased) through LRs and ors. State of Haryana and ors., RSA No.337 of 1991, titled as Chandgi (deceased through LRs) Vs. State of Haryana and ors., RSA No.338 of 1991, titled as Jita Versus State of Haryana and ors., RSA No.339 of 1991 titled as Pirthi and ors. Versus State of Haryana and ors., RSA No.340 of 1991 titled as Jagga (deceased through LRs) Versus State of Haryana and ors., RSA No.603 of 1991 titled as Prem Singh (deceased through LRs) and ors. Versus State of Haryana and ors..

The appellants-plaintiffs are aggrieved of the findings arrived at vis-a-vis issue No.2 by the trial Court upheld by the lower Appellate Court, whereas rest of the issues have been decided in favour of the plaintiff.

The facts are being taken from RSA No.336 of 1991. The brief facts of the matter is that the plaintiff sought declaration by invoking jurisdiction of the Court on the premise that they are sons and daughters of Bhopla and the defendant No.3 being big land owner owned the land which was declare surplus vis-a-vis under Pepsu Tenancy and Agricultural Land Act 1955, the possession of the land delivered to the Bhopla vide allotment letter dated 25.04.1963. As per the terms and conditions of the allotment, amount was to be paid in installments, only 3 installments amounting to

Rs.283.42 were deposited, however, thereafter, consolidation had taken place in the Village and the allotted land merged with chak of the landlord and the new Killa numbers were carved out and an application was submitted to the Director of Consolidation and the same was corrected and after consideration, the separate chak of land was carved out and the possession of the same was delivered to the plaintiff on 27.06.1984. Another grievance of the plaintiff before the Courts below was that without issuing any show cause notice, Naib Tehsildar, Agrarian, Jind, cancelled the allotment vide letter dated 12.02.1976. The ground of cancellation was non-payment of the installments. It is in these circumstances, the declaration and the injunction was sought. The said suit was contested by the State by taking various grounds particularly vis-a-vis non-payment of the installments. It was stated that due procedure had been followed before passing of the cancellation order. The plaintiff had no concern with the suit land, much less, possession of the plaintiff was also dismissed. Since parties are at variance, the learned trial Court frames following issues including issue of relief. Same reads thus:-

- “1. Whether the order dated 12.2.76 passed by the Naib Tehsildar Agrarian Jind is wrong, null and void and is liable to be set aside as alleged? OP*
- 2. Whether the plaintiffs are the owner in possession of the suit land as alleged?OPP*
- 3. Whether the Civil Court has no jurisdiction to try the present suit? OPD*
- 4. Whether the plaintiffs are estopped from filing the present suit by their act and conduct? OPD*

5. *Whether the suit is not maintainable in the present form? OPD*
6. *Whether the suit is time barred? OPD*
7. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
8. *Whether the suit is a malafide as alleged? OPD*
9. *Whether the suit does not lie in the present form? OPD*
10. *Relief.”*

The findings of all issues except issue no.2 have been rendered in favour of the appellant-plaintiff vis-a-vis the findings of issue No.2, the trial Court observed as under:-

“Issue No.2

18. *Sh. R.K. Jain, Adv. Ld. Counsel for the plaintiffs contended that from the copy of rapat roznamcha Ex.P8 dated 27.6.84 and the copy of khasra-girdwari Ex.P9, it is established that the plaintiffs are in possession of the suit land. He further contended that as the order regarding the cancellation of the allotment were null and void, so the plaintiffs have become the owner in possession of the suit property. He contended that as per the provisions of Sec.15 (5) of the new Act, the allottee become the owner of the land on depositing the first installment, hence the plaintiffs have become the owner of the suit land.*

19. *On the other hand, ld. Counsel for the defendants contended that the allotment of the plaintiffs was validly cancelled by the competent authority under the old utilization scheme, the plaintiffs/allottees have caused the default in the payment of the installments, so the plaintiffs does not acquire the right of ownership. The ld. Counsel for the defendants further contended that the possession of the plaintiffs over the suit land is also not established. DW-2 Azad Singh has specifically stated that Mangal has*

continued in possession of the suit property and after him, he is in possession of the suit land. He further contended that the Director of Consolidation had no authority to deliver the possession of the suit property to the plaintiffs. Only the surplus authorities could give the possession to the plaintiffs. Moreover after the cancellation of the allotment the possession cannot be delivered to the plaintiffs at all and from the conduct of the plaintiffs in none payment of the installments, it is apparent that they were not in possession and they have relinquished the possession of the land.

20. *I have given due consideration to the contentions of both the parties. As per the law laid down in case Harteg Bahadur Singh Vs. State of Punjab and others, 1964 Cur.L.J. (Rev. Suppl. Punjab) 42, the mistake committed by the consolidation authorities can only be corrected by the consolidation authorities in the proceedings under the consolidation Act. Any other authority has no jurisdiction in such matters. The allottees approached the consolidation authorities and the Director Consolidation has passed the order dated 19.2.75 certified copy Ex.P7 whereby the separate chak of the plaintiffs comprising the suit land was carved out and on the basis of this order of the Director, the possession of the suit land was also delivered to the plaintiffs on 27.6.84 which is apparent from the copy of rapat Ex.P8. The change of possession is also mentioned in the khasra girdwari Ex.P9. The oral statement of Azad Singh DW-2 is not sufficient to rebut the documentary evidence standing in favour of the plaintiffs to show their possession over the suit land, so in such circumstances, it is established that the plaintiffs are in possession of the suit land from 27.6.84.*

21. *As the plaintiffs have not paid the installments of*

compensation regarding the allotment of the surplus area to as per the scheme, so they cannot be declared to be owner of the land. In view of my decision on issue No.1 as the order of cancellation of allotment is being set aside, so the competent authority will be at liberty to reconsider the effect of non-payment of the instalment by the allottee after affording the opportunity of being heard and the right of ownership will depend upon the fresh orders passed by the competent authority. So this issue is decided accordingly.”

On perusal of the aforementioned findings, the Court found that until and unless full price of the plot is paid, the declaration vis-a-vis ownership as sought as per provisions of Sub-Section 5 of Section 15 of the Haryana Ceiling On Land Holdings Act, 1972 cannot be granted and left it open to re-consider the effect to the competent authority vis-a-vis payment of the installments after affording opportunities of hearing.

Mr. S.K. Jain, learned counsel appearing on behalf of appellants submits that provision of Sub-Section 5 of Section 15 of the Act prescribes that on payment of full price or first installment, the allottees shall not only seek the possession but shall also become owner in this regard. He has drawn attention of this Court to the aforementioned provision. Accordingly, submits following substantial questions of law arises for determination:-

1. Whether in view of the provision of Sub-Section 5 of Section 15, the appellant shall be declared full owner or not?
2. Whether the findings rendered by the Courts below vis-a-vis issue No.2 declining the declaration of the ownership suffers from illegality and perversity?

Mr. Vishal Garg, learned Additional Advocate General Haryana submits that due procedure before the cancellation of the allotment was followed. The plaintiff miserably failed to honour the terms and conditions of the allotment in not depositing the balance installments. Accordingly, allotment was cancelled. He further submits that even if otherwise State has not challenged the findings vis-a-vis other issues, judgment can be assailed by invoking the provision of Order 41 Rule 33 of the Code of Civil Procedure and submits that findings rendered on issue No.2 should not be interfered.

Mr. Aashish Gupta, learned counsel appearing on behalf of respondent No.3 submits, that land at the hands of his client was not rendered or declared surplus. Plaintiff had no cause of action to knock the door of the Civil Court, thus, prays for dismissal of appeal.

I have heard learned counsel for the parties and appraised the paper book & records.

It would be apt to reproduce provision of Section 15 sub-Section 5 of the 1972 Act:-

“15. DISPOSAL OF SURPLUS AREA.

(5) On payment of full price or the first instalment thereof, as the case may be, the allottee shall be deemed to have become the owner of the land and the prescribed authority, where the allottee is not already in possession, shall put him in possession thereof.”

On perusal of the aforementioned provisions, it is evident that allottee on payment of the full price or first installment shall be put into possession and shall be entitle the full ownership on receipt of the balance

amount. During the course of hearing, Mr. S.K. Jain, Advocate has informed that appellants have repeatedly been visiting the concerned office, for payment of the balance installments but they have been put off under one pretext or other. After noticing the findings on issue No.2, I am of the view that plaintiff can be declared owner only when entire payment of the allotment is made, in essence, balance payment. Since possession of the appellant-plaintiff have been found to be intact, as same has not been assailed by the State or defendant No.3, the finding vis-a-vis other issues are affirmed. A direction is issued to the State that after calculating the balance due installments, if any, as per the terms and conditions of the allotment it shall communicate the same to the appellant. On deposit or receipt of the entire outstanding amount, the appellant shall automatically as per the provision ibid shall become owner and, therefore, findings rendered on issue No.2 would be rendered as otiose.

The substantial question of law No.1 as noticed above is thus answered in favour of the appellant vis-a-vis question of law no.2 as noticed above shall be only decided subject to complying with the direction containing hereinabove.

Appeals stands disposed of.

03.02.2016

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**(AMIT RAWAL)
JUDGE**