

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 19896 of 2006
Date of Decision: 16.8.2016

State of Haryana

.....Petitioner

Vs.

Rajinder Dev Bakshi and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.K. Doon, AAG, Haryana
for the petitioner.

Mr. Dinesh Ghai, Advocate
for respondent No.1.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant writ petition, at the hands of State of Haryana, is directed against the order dated 7.10.2005 (Annexure P-5) passed by Financial Commissioner & Principal Secretary to Government of Haryana, Department of Rehabilitation, Haryana, whereby orders dated 6.7.2005 and 28.12.2004 passed by the Chief Settlement Commissioner and Assistant Registrar-cum-Managing Officer, respectively, were set aside, directing to allot land of value of 0 standard acres 4½ units in favour of respondent No.1, who was claiming himself to be legal heir of late Sh. Sewa Singh-an alleged displaced person.

Notice of motion was issued and operation of the impugned order

Amit Kumar
20/08/2016
I attest to the accuracy and
authenticity of this document

Annexure P-5 was stayed. Later on, writ petition was admitted and was ordered to be heard with CWP No. 4526 of 2006 (Harjinder Kaur Vs. State of Haryana) vide order dated 24.5.2007 passed by a Division Bench of this Court.

Since the abovesaid CWP No. 4526 of 2006 was disposed of by this Court vide order dated 13.1.2009 by an agreed order and in terms of the decision dated 10.11.2008 rendered in CWP No. 9517 of 2008 (R.K. Suneja and another Vs. State of Haryana and others), instant writ petition was ordered to be listed in motion hearing, for final disposal.

When the case came up for hearing on 1.4.2014, it was pointed out that respondent No.1 had expired. While adjourning the case for 1.8.2014, it was ordered that let an appropriate application for bringing on record legal representative of respondent No.1 be filed before the next date of hearing. However, the order dated 1.4.2014 was never complied with by either of the parties. When confronted with the abovesaid order dated 1.4.2014 passed by this Court, learned counsel for respondent No.1 clarified that it was incorrectly pointed out before this Court on 1.4.2014 about the death of respondent No.1. Learned counsel for respondent No.1 submits that since respondent No.1 is still alive, there was no occasion for moving any application for bringing on record his legal representatives.

Before proceeding further to consider the merits of the case, it is also necessary to clarify, as to whether impugned order dated 7.10.2005 was an order without jurisdiction, having been decided by the Financial Commissioner under the provisions of a repealed Act, i.e. The Displaced Persons (Compensation and Rehabilitation) Act, 1954 ('Act of 1954' for short), which came to be repealed vide Displaced Persons Claims and Other

Laws Repeal Act, 2005 ('the Act of 2005' for short).

As per plain reading of the Act of 2005, impugned order dated 7.10.2005 would have been an order without jurisdiction but it was not so, in view of the judgment dated 10.11.2008 rendered by a Division Bench of this Court in **R.K. Suneja's case (supra)**, wherein it was held that as per instructions dated 22.9.2008 and particularly para 3.4 thereof, appeals and revisions/revenue petitions filed against the orders passed by the authorities prescribed under the repealed Acts, which were yet to be disposed of, would be considered and decided under the provisions of the old Act, i.e. the Act of 1954.

In fact, on this issue, learned counsel for both the parties are *ad idem* that impugned order dated 7.10.2005 passed by the Financial Commissioner, would not be an order without jurisdiction, having been decided under the provisions of the Act of 1954. However, learned counsel for the State has been found well justified in contending that the impugned order passed by the Financial Commissioner was not sustainable on merits, keeping in view the peculiar facts and circumstances of the case.

Admittedly, neither Late Sh. Sewa Singh-father of respondent No.1 ever applied for any allotment before his death in the year 1960, nor any of his legal representatives, including respondent No.1 applied for allotment. However, respondent No. 1 applied for the first time in the year 1999, i.e. after about 39 long years from death of his father. It is a matter of record that there was no verified claim, because father of respondent No.1 never put up his claim in this regard. No explanation of any kind, whatsoever, is forthcoming for this inordinate long delay of about 50 years.

Even after the death of his father, respondent No.1 kept on

sleeping over his rights, if any, for a period of 39 years. He has also not placed on record any relevant material to show that he was entitled for any claim in this regard. Having said that, this Court feels no hesitation to conclude that the Financial Commissioner-respondent No.2 fell in serious of law, while passing the impugned order dated 7.10.2005 (Annexure P-5), while ordering revival of a dead claim.

The view that has been taken by this Court also finds support from the direct judgment of the Hon'ble Supreme Court in **Union of India and others Vs. Har Dayal, 2010 (1) SCC 394**. The relevant observations made by the Hon'ble Supreme Court in para 7 to 9 in **Har Dayal's case** (supra), which can be gainfully followed in the present case, read as under:-

*“7. The learned Single Judge and the Division Bench have totally ignored the enormous delay of more than 30 years on the part of the respondent in approaching the Court. This Court has repeatedly held that merely giving representation will neither extend the limitation nor wipe out the delay and laches. [See : **S.S. Rathore vs. State of MP AIR 1990 SC 10**]. Further the respondent and his brothers were categorically informed in September, 1989 that due to non-availability of agricultural land, they were entitled only to cash equivalent of compensation as per the rules and therefore, Rs.383/50 each being their share of compensation was to their credit and they could draw the same. Respondent could have challenged that order on the ground that he was entitled to land and not cash. But he did not do so. The refusal to allot the balance land whether right*

or wrong, attained finality. Obviously, it could not be reopened by filing a writ petition in 1996, more than 45 years after the verification of the claim, and 7 years after categorical refusal to allot land. The writ petitions ought to have been rejected on the ground of delay and laches. There was no question of rewarding the delay on the part of respondent, by directing payment of current market value of 1996 for the undelivered land, contrary to the Rules.

8. The orders of the learned Single Judge and Division Bench are also bad for vagueness. The learned Single Judge held that as no land was available the respondent was not entitled to land but nevertheless held that the compensation of Rs.383.50 calculated in accordance with the Rules, amounted to a pittance after all these years and therefore he should be given the market value of the land as on the date of the writ petition. But different areas of Delhi have different market values. In fact, there is no rural agricultural land available and no standard market price for agricultural land. The value of land is always with reference to a particular land or a land in a specified area. We fail to understand how the appellants can be expected to calculate the value of the 'land' in 1996 and pay him the value as compensation.

9. On the facts and circumstances, the judgment of the High Court directing payment of the market value as in 1996 cannot be sustained. The writ petition ought to have

been dismissed on the ground of delay and laches.”

So far as judgment of this Court in **Guran Ditta Vs. Financial Commissioner (Revenue) and Secretary to Government of Punjab, 1992 PLJ 603**, relied upon by learned counsel for respondent No.1, is concerned, there is no dispute about the observations made therein. However, on a careful perusal of the cited judgment, the same has not been found of any help to respondent No.1, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**.

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 order dated 7.10.2005 passed by the Financial Commissioner & Principal Secretary to Government of Haryana, Department of Rehabilitation-respondent No.1, has been found suffering from patent illegality and also runs counter to the law laid down by the Hon'ble Supreme Court in **Har Dayal's case** (supra), the same cannot be sustained. Accordingly, impugned order 7.10.2005 (Annexure P-5) is hereby set aside.

Consequently, orders dated 28.12.2004 (Annexure P-2) passed by the Tehsildar (sales)-cum-Managing Officer, Haryana, as well as order dated 6.7.2005 (Annexure P-3) passed by the Chief Settlement

Commissioner, Haryana, are restored. The writ petition deserves to be accepted.

Resultantly, with the abovesaid observations made, instant writ petition stands allowed, however, with no orders as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

16.8.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No