

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.12456 of 2016
Date of decision: 22.08.2016

Saruchi Bala and others

... Petitioners

Vs.

Financial Commissioner, Revenue, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. C.B. Goel, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 30.01.2015 (Annexure P-2) passed by the Financial Commissioner, Revenue, Punjab-respondent No.1, whereby orders passed by the subordinate revenue authorities were upheld and the revision petition filed by the petitioners was dismissed, declining the prayer of the petitioners to re-determine surplus area case in their hands.

Heard learned counsel for the petitioners.

It is a matter of record and not in dispute that late Sh. Ram Kishan was the grandfather of the petitioners. He inherited the land on the basis of Will after the death of Smt. Basanti Devi on 04.01.1963. Late Sh. Ram Kishan started the litigation primarily on the ground that after the death of Smt. Basanti Devi,

he was entitled for re-determination of surplus area case in his hands. However, said plea raised by late Sh. Ram Kishan, grandfather of the petitioners, was not accepted either by the revenue authorities or this Court as well as by the Hon'ble Supreme Court. Once exactly the same plea raised on behalf of the land owner late Sh. Ram Kishan, grandfather of the petitioners, was not accepted even by the Hon'ble Supreme Court, it does not appeal to reason as to how the petitioners were entitled to raise the same very issue again, who are representing 3rd generation after the death of late Sh. Ram Kishan. Having said that, this Court feels no hesitation to conclude that the Financial Commissioner, Revenue, Punjab, committed no error of law, while passing the impugned order dated 30.01.2015 (Annexure P-2) and the same deserves to be upheld.

A bare reading of the impugned order would show that the Financial Commissioner has examined, considered and appreciated each and every relevant aspect of the matter, before passing the impugned order. The relevant observations made by the Financial Commissioner, in operative part of the impugned order, contained in paras 7 to 10, deserves to be noticed here and the same read as under: -

“I have heard the counsel for the petitioner and counsel for the respondents. The counsel for petitioner has reiterated the grounds taken in petition and explained that surplus area case be reopened since Ram Kishan land owner has died sons of Ram Kishan may allowed one unit separately. The Supreme Court and High Court judgments referred above have been made the basis to reopen the surplus area case. Sh. R.S. Chauhan counsel for private respondents has given detailed history of the surplus case of

Basanti Devi big land owner that order dated 09-09-2002 was passed by Financial Commissioner which has been reproduced as under: -

“The farce has gone on long enough. The parties are directed to appear before the Collector Agrarian on 09-10-2002. The petitioner's holding is 65 SA 19.5/32U as assessed vide order dated: 09.05.1960. The Collector Agrarian shall make selection of 30 SA on behalf of the petitioner taking care to include 13 SA sold upto 12-04-1982 and not to include 140K-5M and any other already utilized in accordance with law. Before including any area sold consequent to 12.04.1982 by the petitioner in the surplus area of 35 SA 19.5/32U due opportunity shall be given to the vendees or their successors in interest. The balance of surplus area, after excluding 140K-5M and any other area already utilized in accordance with law, shall be taken over on behalf of the state government and utilized at any early date and in any case not later than 6 months from the date of this order. A copy of this order be sent to the Chief Secretary to Government of Punjab for taking necessary action against Sh. Sameer Kumar, then Collector Agrarian, Dasuya for violating the order dated 29-10-1987 of the Financial Commissioner Appeals by his order dated 23.02.1989 as detailed in para 6 above.”

This order have been implemented vide order dated 24-03-2003 passed by Collector Agrarian. An appeal against the order

was dismissed by Commissioner Jalandhar Division. Revision before Financial Commissioner was also dismissed vide order dated 09-08-2005 holding that Collector had rightly decided the matter vide order dated 02-03-2003.

CWP No.13885/2008 was filed in Hon'ble High Court which was also dismissed on ground of delay. An SLP before Apex Court challenging the order of High Court was also dismissed in limine vide order dated 13-05-2009. An review petition was also filed in the Hon'ble High Court for recalling of order dated 19-08-2008 which was dismissed vide order dated 16-07-2010 by the Division bench of High Court observing that there is no ground to file review petition.

The State counsel has argued that Harpal Singh present petitioner is not entitled to re-determination of the surplus matter on account of death of Ram Kishan because Ram Kishan was not allowed the re-determination of surplus case after the death of Basanti Devi original land owner because he had succeeded to her land on the basis of Will. The counsel for state has argued that Ram Kishan father of petitioner had succeeded to the land in dispute belonging to Basanti Devi on the basis of Will. After her death on 04-01-1963 even Ram Kishan was not allowed upto Supreme Court to reopen the case for re-determination of surplus area.

After hearing counsel for the parties, I am of the view that the petition is not maintainable before this Court. The application of re-determination of area should have been made before Collector at

the initial stage and not before the revisioning authority directly. Otherwise also as submitted by counsel for respondents that plea of re-determination of surplus case has been settled upto the Hon'ble Supreme Court therefore there is no rhyme or reason to reopen the matter in the present petition filed by the successors of Ram Kishan who lost upto Supreme Court. The law quoted by the petitioner is not applicable to facts and circumstances of the present case. The provision u/s 11(5) applies to legal heir who succeeded the property by inheritance and where the land has not been utilized. In the present case property was succeeded by way of 'Will' by Ram Kishan father of petitioner and also that land has been utilized by allotment to eligible persons as stated by the counsel for private respondents who are allottees of land. It may also be observed that when Ram Kishan was not entitled to benefit u/s 11(5) of Punjab Land Reforms Act 1972 then how his son can claim that benefit. I am of the view that the matter has already been dragged to in the court for decades by the father of petitioner on the ground of re-determination of surplus area qua the land of Basanti Devi who died on 04-01-1963. This plea was rejected by Collector, Commissioner, Financial Commissioner, High Court and Hon'ble Supreme Court. Now there is no ground to take up the same plea before this court by the present petitioner. The petitioner has stepped into the shoes of his father and is not entitled to claim more benefit than his predecessor. Thus the petition is dismissed being devoid of any force."

The judgments relied upon by learned counsel for the petitioner, including the one placed on record as Annexure P-4, has not been fund of any help to the petitioners, being distinguishable on facts. Ratio of the Full Bench judgment of this Court in **Ranjit Singh Vs. Financial Commissioner, 1981 PLJ 259**, judgment of the Hon'ble Supreme Court in **Ujjagar Singh Vs. Collector, Bathinda, 1996 (3) RCR (Civil) 446** and another Full Bench judgment of this Court in **Sardara Singh Vs. Financial Commissioner, Punjab, 2008 (2) RCR (Civil) 744**, have been referred in para 7 of the judgment in **Gurmit Singh Vs. State of Punjab and others, 2015 (4) RCR (Civil) 1053** (Annexure P-4).

However, the ratio of none of these judgments applies in favour of the petitioners, because of the clear distinguishing feature. It has gone undisputed that at the time of death of predecessors-in-interest of the petitioners, no litigation was pending qua the proceedings for declaring the surplus area. Further, it is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Each case is to be decided as per its own facts and circumstances. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra 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 30.01.2015 (Annexure P-2) passed by the Financial Commissioner, Revenue, Punjab has not been found suffering from

any patent illegality or perversity nor any prejudice has been shown to have been caused to the petitioners, the same deserves to be upheld. The writ petition having been found without any substance, is liable to be dismissed. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

22.08.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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