

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.24228 of 2013
Date of decision:18.10.2016**

Dharam Chand and others

...Petitioners

Versus

Financial Commissioner, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Ramesh Hooda, Advocate for the petitioners.
Mr.R.K.Doon, AAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 9.4.2013 (Annexure P-6) passed by the Financial Commissioner, Haryana, whereby a petition, moved by the petitioners under Section 18 (6) of the Haryana Ceiling on Land Holdings Act, 1972, was dismissed.

Notice of motion was issued and in compliance thereof written statement was filed on behalf of the respondents.

Heard learned counsel for the parties.

The short issue that falls for consideration of this Court is whether the land owned by Late Shri Singh Ram, predecessor-in-interest of the petitioners, was, as a matter of fact, declared surplus vide order dated 21.12.1959. It is the specifically pleaded and argued case on behalf of the petitioners right from day one that no such order was ever passed by any competent authority, declaring the land surplus in the hands of Late Sh.Singh Ram. The only mistake committed by and on behalf of the petitioners was that they moved application for exemption under a bonafide

wrong impression that the land in the hands of Late Sh.Singh Ram was declared surplus. However, no such order was available with the respondent-department.

When the case came up for hearing on 11.8.2016, following order was passed by this Court:-

“Learned counsel for the State seeks short adjournment to get instructions from Collector Agrarian-cum-Prescribed Authority, Rohtak, and to get the relevant record to show that as a matter of fact, land in the hands of predecessors-in-interest of the petitioners was declared surplus vide order dated 21.12.1959.

Let learned counsel for the State get the complete record from the authorities concerned for perusal of this Court.

On his request, adjourned to 2.9.2016.”

On 2.9.2016, another but last and final opportunity was granted to the learned counsel for the State to ensure strict compliance of the above-said order dated 11.8.2016. When the order was not complied with and the learned counsel for the State expressed his inability to assist the Court in the absence of any appropriate instructions having been passed on to him by the competent authority, this Court passed the following order on 30.9.2016:-

“Learned counsel for the State submits that he duly communicated the orders passed by this Court on 11.8.2016 as well as on 2.9.2016 to Collector Agrarian-cum-Prescribed Authority, Rohtak-respondent No.3.

However, neither anybody has come present along with relevant record nor any instructions have been passed on to him, because of which, he is unable to provide any assistance to this Court.

In view of the above, this Court is left with no other option except to direct Collector Agrarian-cum-Prescribed Authority, Rohtak-respondent No.3 to come present before this

Court on the next date of hearing and explain as to why the repeated letters written by the office of Advocate General, Haryana, were not attended.

List on 18.10.2016.

A copy of this order, under the signatures of Special Secretary attached to this Bench, be given dasti to the learned counsel for the State for onward transmission to the authority concerned for compliance thereof.

In compliance of the above-said order dated 30.9.2016 passed by this Court, learned counsel for the State, on instructions from Mr.Manish Nagpal, Collector Agrarian-cum-Prescribed Authority, Rohtak/respondent No.3, who is present in the Court, sought to explain that the above-said order dated 11.8.2016 passed by this Court could not be complied with in time, because of some communication gap and also because of some laxity on the part of Naib Tehsildar (Agrarian), Rohtak. He further submits that vide letter No.464/R dated 17.10.2016 explanation from Naib Tehsildar (Agrarian), Rohtak, has been sought and appropriate action shall be taken.

So far as the merits of the case are concerned, learned counsel for the State, after having clear instructions from Mr.Manish Nagpal, Collector Agrarian-cum-Prescribed Authority, Rohtak/respondent No.3 as well as Mr.Bhagwan, Naib Tehsildar (Agrarian), Rohtak, both being present in the Court, submits that so far as the order dated 21.12.1959 is concerned, same is not available in the relevant record. No such order could be traced despite best efforts having been made by the concerned revenue official in this regard. He also refers to a communication dated 23.12.2013 issued by one Sh. Omparkash Rathi, VRK (vernacular record keeper), addressed to the District Revenue Officer, Rohtak, pointing out that no order dated 21.11.1959 was found in the relevant file. He further pointed out that the

date mentioned in the case set up by the State as 21.12.1959 was not recorded as such in the concerned file.

The cutting in the noting of surplus branch in this regard was not carried out by him nor it was in his hand writing. Learned counsel for the State has also placed before this Court a copy of communication dated 10.2.2015, issued by Naib Tehsildar (Agrarian), Rohtak to In charge, Record Room, office of Deputy Commissioner, Rohtak for supply of copy of the order dated 21.12.1959 so as to place the same before this Court in the present writ petition. Copy of both these communications dated 23.12.2013 and 10.2.2015 are taken on record as Mark 'A' and Mark 'B'.

From a bare reading of the above-said communications, it has come out that the respondent authorities were not certain as to whether the land in the hands of Late Sh. Singh Ram was allegedly declared surplus either by the order dated 21.12.1959 or by the order dated 21.11.1959. However, the respondents could not trace out the copy of either of these orders, i.e., either dated 21.12.1959 or dated 21.11.1959. In fact, in their written statement as well as during the course of hearing, respondents have made it crystal clear that copy of no such order either dated 21.12.1959 or 21.11.1959 is available in the relevant revenue record.

Once it is the undisputed fact situation obtaining on the record of the present case, all the subsequent orders, including the orders of allotment, would be *void ab initio*, being nonest and the same would be of no consequence. It is so said because every subsequent proceeding would emanate only from the order declaring the land surplus, if any, in the hands of Late Sh. Singh Ram. Once there was no such order available in the relevant record, which would be in the official custody of the respondent-

department throughout, petitioners cannot made to suffer for none of their fault in this regard.

Another argument, which was sought to be raised by the learned counsel for the State, was that it seems to be the result of some connivance between the petitioners and the concerned revenue official(s), because of which the copy of the order dated 21.12.1959 is not available in the relevant revenue record. There would have been some force in this argument raised by the learned counsel for the State, had the competent authority of the respondent-department initiated an appropriate action against the responsible revenue official(s) of the department and would have taken the proceedings to its logical end, taking suitable action against the erring official(s). However, admittedly no such action was ever initiated for the reasons best known to the authorities concerned.

No such action was taken despite it was made crystal clear by the above-said communication dated 23.12.2013 'Mark B', pointing out some cutting in the noting of surplus branch. In such a situation, authorities of the respondent-department cannot be permitted to draw any benefit out of their own wrong. Similarly, the civil proceedings, which remained pending between the parties and were finally decided against the petitioners, would also not be of any consequence in the absence of the initial order dated 21.12.1959.

In fact, learned counsel for the State wanted this Court to draw inferences in favour of the State authorities and against the petitioners. However, he failed to substantiate any of his arguments, in the absence of any supporting material. Again, when confronted with another relevant document available on record of the case in the form of Annexure R-22, at

page 147 of the paper book, which is a copy of Form No.2 Goshwara Civil Basta, recording the date of decision as 21.11.1959, learned counsel for the State had no answer and rightly so, it being a matter of record.

Surprisingly, this date in Annexure R-22 has been completely ignored by the respondents, while filing their written statement dated 07.03.2014, wherein the date of 21.12.1959 has been sought to be made the basis for their entire case, almost in every paragraph of the written statement. No effort, whatsoever, has been made to clarify this material aspect of the matter about the dispute of actual date whether it was 21.12.1959 or 21.11.1959, for the reasons best known to the respondents.

Coming to the impugned order dated 09.04.2013 (Annexure P-6) passed by the Financial Commissioner, Haryana, the Financial Commissioner miserably failed to exercise the jurisdiction provided under Section 18 (6) of the Haryana Ceiling on Land Holdings Act, 1972. Had the respondent department been directed to place its relevant record, including the copy of order dated 21.12.1959 before the Financial Commissioner, the picture would have become clear. However, no such attempt was made.

Neither the relevant record was summoned by the Financial Commissioner nor it was produced by the respondent department. In the absence of relevant revenue record, this was bound to be the result, whereby impugned order (Annexure P-6) came to be passed. The respondent department had been trying to put the entire blame on the petitioners, without making their own stand clear, whether, as a matter of fact, land in the hands of Late Shri Singh Ram was ever declared surplus either by the order dated 21.11.1959 or by the order dated 21.12.1959 or by any other order passed by the competent authority.

It goes without saying that the land in the hands of Late Shri Singh Ram could not have been declared surplus just in the air or by an oral order. The competent authority was bound to pass an appropriate order in black and white and that too after following the due procedure. In such a situation, even if the petitioners have erroneously moved application(s), seeking exemption, no principle of estoppel would operate against the petitioners, because no such order, as a matter of fact, was ever passed, declaring the land surplus in the hands of Late Shri Singh Ram.

No connivance can be alleged against the petitioners, because the relevant record remained in the custody of respondent department throughout. Even if the respondent department was having any genuine grievance against the petitioners at any relevant point of time, the competent authority of the respondent department was not estopped from initiating appropriate action against the petitioners as well, including lodging a criminal case against them as well as against the concerned revenue officials. However, no such action was ever taken for the reasons best known to the concerned authorities of the respondent department.

In view of what has been discussed hereinabove, this Court feels no hesitation to conclude that the authorities of the respondent department had been proceeding without any authority, including while passing the orders of allotment etc. They would have no such jurisdiction to pass such kind of orders, unless there was an order passed by the competent authority, declaring the land surplus in the hands of Late Shri Singh Ram, which was never declared as surplus, therefore, there would be no estoppel against the law. Since the Financial Commissioner has failed to appreciate the above-said material aspect of the matter, while passing the impugned

orders, the same cannot be sustained. It is so said because manifest injustice has been done to the petitioners, without there being any fault on their part.

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 passed by the Financial Commissioner, Haryana, has been found suffering from patent illegality and perversity, the same cannot be upheld. Accordingly, the impugned order dated 9.4.2013 (Annexure P-6) is hereby set aside.

Resultantly, with the above-said observations made, the present writ petition stands allowed, however, with no order as to costs.

18.10.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No