

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-8791-1993 (O&M)
Decided on: 10.10.2017

Khushminder Singh(deceased) through LR's

....Petitioners

VS

The State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Amit Jain, Advocate
for the petitioners.

Mr. Amit Chaudhary, Advocate
for petitioner No. 3 (iii).

Mr. H.S.Sitta, AAG, Punjab.

Mr. Harminder Singh, Advocate
for respondents No. 5 to 7.

Mr. Harsh Bangar, Advocate
for respondents No. 8 to 10

AJAY TEWARI, J.(Oral)

Mr. Amit Chaudhary, Advocate has entered appearance and brought to my notice that apart from Narinder Singh and Parminder Singh, Khushwinder Singh has another son called Amrinder Singh r/o H. No. 49, Street No.-3, Air Avenue, Near Officer Colony, Patiala and has prayed for impleading him as petitioner No. 3 (iii). Allowed as prayed for subject to all just exceptions. Registry is directed to make the necessary corrections in the Memo of Parties.

By this petition the petitioners have challenged the order of Financial Commissioner dated 16.2.1993 (Annexure P-7) whereby he has set aside the order of the Collector dated 4.1.1990 (Annexure P-5) holding that there is no surplus land in the hands of the petitioners and order dated 6.3.1990 (Annexure P-6) of the Commissioner dismissing the appeal of the private respondents.

Brief facts are that the case relates to surplus area of Surinder Singh son of Hira Singh. Originally, order dated 16.6.1976 was passed whereby an area equivalent to 4.59 hectares of first quality land was declared surplus in the hands of Surinder Singh. By order dated 1.7.1976 the land was allotted to the private respondents. Surinder Singh filed an appeal before Commissioner who accepted the same by order dated 15.11.1978 and remanded the case to the Collector, Agrarian, Patiala for a fresh decision. That order was challenged by the private respondents and by order dated 18.5.1982 the Financial Commissioner Revenue, Punjab upheld the remand but directed that the private respondents be also heard. Before the matter could be finalized on remand the original land owner Surinder Singh died on 22.7.1988. The case turns on the issue whether on the death of Surinder Singh the surplus area had to be redetermined in the hands of his heirs or whether the surplus area determined in the hands of Surinder Singh would not be liable to be disturbed because of his death. The Collector held that on the death of Surinder Singh the surplus area would have to be redetermined in the hands of his legal representatives. The appeal filed by the private respondents before the Commissioner was dismissed but, as mentioned above, the Financial Commissioner upset the two orders holding that the surplus area as determined

in the hands of Surinder Singh was not subject to any redetermination on his death.

Learned counsel for the petitioners has argued that the finding of the Financial Commissioner flies in the face of the exposition of law as held in a catena of decisions, the last one of them, decision of this Court in **Sardara Singh and others vs. The Financial Commissioner and others** reported as **2008 (3) PLR 297**. In that judgment after referring to the entire body of law on the subject the Full Bench held as follows:

“41. We are, therefore, of the considered opinion that in order to harmoniously read the two views in Ajit Kaur's case and to give correct interpretation of the provision of Section 11(5) and 11(7) of this Act, we ought to take the aid of Supreme Court's judgement in Ajmer Kaur's case. We hold that until the surplus area has been finally determined by the Collector and appeals/revisions have been dismissed, the death of the landowner would certainly cause affectation to the surplus area which would be required to be redetermined in the hands of his heirs.”

Counsel for the respondents argued that what would be the distinguishable factors in the case was that before Surinder Singh filed the original appeal against order dated 16.6.1976 the land which had been declared surplus had been allotted to the private respondent on 1.7.1976 but that allotment order was never challenged by Surinder Singh and without challenging that order his appeal against the determination of the surplus area could not have been decided. Counsel for the petitioner has argued that the order of determination of surplus area was the order which actually prejudiced Surinder Singh and if the determination of surplus area was correct Surinder

Singh would have no locus standi to challenge the allotment of land which was surplus either to the private respondents or in fact to anybody else because the order of allotment was consequential to the order of determination in surplus area. He further pointed out that the order of remand was challenged by the private respondents before the Financial Commissioner who upheld the order of remand and had only given the limited relief of hearing to the private respondents and by allowing that order become final the respondents would be deemed to have accepted that the order of determination was rightly set aside and would be deemed to have waived their objections that the appeal of Surender Singh was not maintainable without challenging the order of allotment.

I find weight in the argument of learned counsel for the petitioners. If indeed the land had been rightly declared surplus Surinder Singh would have no right to challenge the allotment order either to the private respondents or anybody else. Moreover, against the order of remand the private respondents had moved to the Finance Commissioner but the Financial Commissioner had maintained the order of remand while giving them relief of being heard that and the private respondents could well have challenged that order before this Court to assert that the appeal against the determination of surplus area could not be heard without challenge to the allotment being made but they did not do so.

In these circumstances, the impugned order Annexure P-7 of the Financial Commissioner has to be set aside while that of the Collector and the Commissioner Annexure P-5 and Annexure P-6 are maintained. Counsel for the private respondents then points out the private respondents were put into

possession of land more than 40 years ago. They lost their status as eligible person for allotment and in case they have now to be divested of the land the official respondents should consider them for allotment of any other suitable land as per their original entitlement of 40 years ago and should not force them to now get in the queue from today. I find merit in this argument also and consequently direct the official respondents to consider the private respondents for allotment of land on the basis of their entitlement in the year 1976 and not on the basis that they have today been ordered to be divested from the land.

The petition stands allowed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

10.10.2017
anuradha

(AJAY TEWARI)
JUDGE

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