

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.16262 of 1997

Date of Decision.16.03.2017

Mohan Lal s/o Lal Chand (since deceased) through LRsPetitioner

Vs

The State of Haryana and others

.....Respondents

2. CWP No.21426 of 2008

3. CWP No.4013 of 2009

Thakur s/o Mam Raj

.....Petitioner

Vs

The State of Haryana and others

.....Respondents

Present: Mr. K.L. Suneja, Advocate and
Mr. Jagdish Chand Malik, Advocate
for the petitioner(s) in CWP No.4013 of 2009 and 21426 of
2008.

Mr. L.N. Verma, Advocate
for the petitioner(s) in CWP No.16262 of 1997.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. Mani Ram Verma, Advocate
for respondent Nos.4 and 5 in CWP Nos.4013 of 2009 & 21426
of 2008.

Mr. Jitendra Sharma, Advocate
for respondent No.6 in CWP No.4013 of 2009.

Mr. B.R. Gupta, Advocate
for respondent Nos.18 to 20 & 36 to 38 in CWP No.16262 of
1997.

Mr. Som Nath Saini, Advocate
for respondent Nos.5 to 11, 25 & 32 to 34 in CWP No.16262 of
1997.

Mr. Divay Sarup, Advocate
for respondent Nos.26 and 35 in CWP No.16262 of 1997.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J.

This order of mine shall dispose of three writ petitions. CWP No.16262 of 1997 (hereinafter called as 1st writ petition) has been filed at the instance of Mohan Lal (since deceased through LRs), represented by Mr. L.N. Verma, Advocate and CWP Nos.21426 of 2008 and 4013 of 2009 (hereinafter called as 2nd and 3rd writ petition respectively) are at the instance of one Thakur (since deceased through LRs) represented by Mr. K.L. Suneja, Advocate.

In the 1st writ petition, the petitioners had knocked the doors of this Court seeking the following relief:-

“Civil writ petition under Article 226/227 of the Constitution of India for the issuance of a writ of certiorari or any other appropriate writ, order or direction which this Hon'ble Court may deem fit in the facts and circumstances of the case, quashing the orders dated 21.6.1990 Annexure P-1, 3.1.94 Annexure P-2 and 27.6.1997 Annexure P-3 passed by the Collector Surplus Area, Hisar, Commissioner, Hisar Division, Hisar and Financial Commissioner Haryana, respondents No.2, 3 and 4 respectively.”

In the 2nd writ petition i.e. CWP No.21426 of 2008, following relief had been sought:-

“Civil Writ petition under Articles 226/227 of the Constitution of India praying for issuance of an appropriate writ, order or directions as deemed fit and appropriate in the peculiar facts and circumstances of the instant case for redressal of the grievances of the petitioner and granting him the relief as prayed for hereinafter or as is found due to him by this Hon'ble Court especially a writ in the nature of:

(1) *Prohibition prohibiting the respondents to allow to alienate/alienate in any manner, what-so-ever, including sale, mortgage, lease, exchange, gift, donation, registering any deed or creating any kind of bar on the land comprised in 6 fields Nos.47//11(7-12), 16(8-0), 22//1(4-6); 70//21(8-0), 25 min (4-0); and 81//5 min (6-0) total measuring 37 kanals-18 marlas (Annexure P-3) situated in village Gangwa, Tehsil and District Hisar which is Tenant's Permissible Area (TPA) of the petitioner as per Form-F (Annexure P-2) prepared under Rule 6(7) of the Punjab Security of Land Tenures Rules, 1956 based on the list containing the details of aforesaid land issued vide No.342 dated (not legible) in pursuance of the order of the Collector Surplus Area, Hisar in surplus area case State versus Mohan Lal s/o Lal Chand, Village Gangwa, Tehsil and District Hisar decided on 21.06.1990 (Annexure P-1) under the Punjab Security of Land Tenures Act, 1953;*

(2) (a) *mandamus commanding respondent No.2 to allot the aforesaid tenant's permissible area to the petitioner as "A" category eligible person under the Haryana Utilization of Surplus and Other Areas Scheme, 1976;*

(b) *Commanding respondent No.3 to mutate the aforesaid area in the State Government as having vested in it under Section 13(3) of the Haryana Ceiling on Land Holdings Act, 1972;*

(3) *Commanding respondent No.3 to mutate the aforesaid land in the name of the petitioner after it has been allotted to*

him;

(4) Any other writ, order or directions as deemed fit by this Hon'ble Court for granting relief to the petitioner."

In the 3rd writ petition i.e. CWP No.4013 of 2009, the relief sought is reproduced as under:-

"Civil Writ petition under Articles 226/227 of the Constitution of India praying for issuance of an appropriate writ, order or directions as deemed fit and appropriate in the peculiar facts and circumstances of the instant case for redressal of the grievances of the petitioner and granting him the relief as prayed for hereinafter or as is found due to him by this Hon'ble Court especially a writ in the nature of:

(1) Certiorari calling for the complete relevant record of the case and after perusal of the record to quash/cancel the registered sale deed No.14111 dated 26.03.08 (Annexure P-18) executed by respondents no.4 and 5 in favour of respondent No.6 and registered by respondent No.3 in respect of the land measuring 16 kanals-0 marla comprised in Khewat No.1384 min Khata No.2262 min Khasra No.47//14(8-0), 23(8-0) situated in the Revenue Estate of Gangwa, Tehsil and District Hisar as per jamabandi for the year 2004-05 (Annexure P-19); wherein the petitioner has 1/6th share being legal heir of Ferozi wd/o Chokha s/o Rawat, out of Tenant's permissible Area (TPA) of Choka s/o Rawat (Annexure P-3) as per Form-F (Annexure P2 colly) prepared under Rule 6(7) of the Punjab Security of Land Tenures Rules, 1956 in pursuance of the order

of the Collector Agrarian, Hisar in surplus area case State versus Mohan Lal s/o Lal Chand decided on 21.06.1990 (Annexure P-1) under the Punjab Security of Land Tenures Act, 1953 and also quash the mutation No.12859 Annexure P-15 sanctioned in favour of the vendee, respondent No.6 on 02.04.2008.

(2) (a) mandamus commanding respondent No.2 to allot the aforesaid tenant's permissible area to the petitioner and proforma respondents No.7 to 20, as per their shares as "A" category eligible person under the Haryana Utilization of Surplus and Other Areas Scheme, 1976;

(b) Commanding respondent No.3 to mutate the aforesaid area in the State Government as having vested in it under Section 13(3) of the Haryana Ceiling on Land Holdings Act, 1972;

(3) mandamus Commanding respondent No.3 to mutate the aforesaid land in the name of the petitioner and respondents No.7 to 20 as per their respective shares after it has been allotted to them as submitted hereinbefore;

(4) Any other writ, order or directions as deemed fit by this Hon'ble Court for granting relief to the petitioner.

(5) (a) stay dispossession of the petitioner and respondents (proforma) No.7 to 20 from the land in question; and

(b) restrain respondents No.4 to 6 from changing the nature/user/further alienation in any manner, what-so-ever, the land in question till final decision of the writ petition.

(6) allow the writ petition with costs in favour of the petitioner and against the respondents.”

On going through the aforementioned prayers sought, what surfaces is that the petitioners in the 1st writ petition are seeking for quashing of the three orders including the order dated 21.06.1990 whereas in 2nd and 3rd writ petition, registered sale deeds are sought to be challenged by the tenants *viz-a-viz* successors-in-interest of the tenants whereby the land under Form-F prepared under Rule 6(7) of the Punjab Security of Land Tenures Rules, 1956 has been drawn in pursuance of the order 21.06.1990, in essence, sustenance of 2nd and 3rd writ petition is dependent upon the decision of 1st writ petition.

All the three writ petitions involve similar question of fact and law, hence the facts are being enumerated from 1st writ petition i.e. CWP No.16262 of 1997.

Mr. L.N. Vema, learned counsel appearing on behalf of the petitioner submitted that the case of the petitioner *viz-a-viz* the land having been declared surplus was decided by the Collector Surplus Area, Hisar initially vide order dated 16.6.1961 and an area of 134.11 ordinary acres was declared as surplus.

The aforementioned order was assailed by the petitioner in appeal before the Commissioner, which was allowed vide order dated 31.10.1961 and the petitioner was held to be entitled to permissible area of 50 std. Acres. Resultantly, the matter was remanded back to the Collector for rendering the decision afresh after hearing the parties. On remand vide order dated 07.01.1963, the Special Collector, Punjab consigned the case to records due to alleged non-appearance of the petitioner.

The petitioner preferred an appeal against the aforementioned order, which was accepted by the Commissioner vide order dated 16.7.1963 and the matter was again remanded back to the Special Collector. The Special Collector vide order dated 29.7.1963 declared 50.49 std acres of land as surplus. The petitioner again preferred an appeal against the aforementioned order i.e. 29.7.1963 before the Commissioner, which was allowed vide order dated 1.6.1965 and the matter was remanded back to the Collector for fresh decision, in essence, the matter was shuttling between the office of Special Collector and Commissioner.

After remand, the Collector vide order dated 6.9.1966 again declared an area of 19.66 ordinary acres as surplus and the petitioner was held entitled to retain an area of 38 acres, 4 kanals 7 marlas as permissible area, as in the meantime, an area of 21 acres, 3 kanals and 13 marals of land was sold. Against the aforementioned order dated 6.9.1966, the petitioner went in appeal before the Commissioner, who vide order dated 09.10.1969 allowed the same and remitted the matter back to Collector for fresh decision by holding that the entire area shown under self-cultivation of the petitioner was *banjar, gair mumkin or tibba* and could not be included in his permissible area. The aforementioned order was assailed by Beg Raj and other persons before the Financial Commissioner in revision petition, which was allowed vide order dated 25.11.1971 and it was held that Mohan Lal was entitled to permissible area as a non-displaced person but directed the Collector to re-examine the question of *banjar* etc.

The petitioner challenged the order of the Financial Commissioner before this Court in writ petition bearing No.2762 of 1972 which was disposed of by this Court vide order dated 8.12.1981. The

operative part of the order rendered by this Court reads as under:-

“The learned counsel for the parties are agreed that in view of this order of the Financial Commissioner as well as in view of the legal provisions, the petitioner is entitled to 30 std acres or 60 ordy acres whichever is less, as his permissible area but this would be open to the Collector to determine as to which area or khasra numbers would constitute that permissible area. This be, obviously would have to determine in accordance with law.”

in essence, it was held that in view of the legal provisions, the petitioner was held entitled to 30 std acres or 60 ordinary acres.

On disposal of the aforementioned writ petition, the Collector decided the matter afresh vide order dated 29.03.1985 and declared 6 acres, 5 kanals and 19 marlas of land as surplus and 65 acres 2 kanals and 14 marals as Tenant's Permissible Area (hereinafter called as TPA).

Against the order dated 29.03.1985, an appeal referred before the Commissioner was allowed vide order dated 05.08.1986 and the case was remanded back to the Collector for deciding the matter afresh. After remand, the Collector decided the case vide impugned order dated 21.06.1990 and declared 6 acres, 5 kanals and 19 marlas as surplus and only an area of 3 acres, 7 kanals and 17 marals was allowed to the petitioner as his permissible area including 56 acres and 3 marlas of area sold by him in his permissible area, thus, the aforementioned order was in blatant disregard to the directions given by the Commissioner in his order dated 09.10.1969 (Annexure P-1).

The aforementioned order was assailed before the

Commissioner, much less, the Financial Commission but the appeal and the revision petition had been dismissed and therefore, the present writ petition.

Mr.Verma, learned counsel appearing on behalf of the petitioner submits that the vide order dated 09.10.1969 whereby the matter was remanded back, the following directions were issued:-

“The area shown to be under self-cultivation is indicated in detail in Ex.P1 which is on page 237 of the file. Almost all the area has been shown to be banjar, gair mumkin or tibba. It does not appeal to reason to include this area in the selected area of the land owner....

My attention has been drawn by the ld counsel for the appellant to the judgment of the Hon'ble High Court reported in 1968 PLJ 360 wherein it has been clarified that the area which has already been sold cannot be included in the permissible area of the landlord. Similarly, my attention is also drawn to the judgment of Hon'ble High Court reported in 1968 PLJ 338 wherein it has been settled that the area which has been sold can be utilized for resettlement of tenants. There it is amply proved that such an area cannot be counted towards reservation of the landlord.”

but the authorities below have abdicated in not referring to the aforementioned fact. In fact, the area which has already been sold and had been held to be gair mumkin and bajnar cannot be included in view of the various judgments rendered by the Hon'ble Supreme Court and as well as by this Court and the directions ibid were in conformity with the settled law, thus, the order passed by the Collector vide Annexure P-1 is not only utter

disregard to the observations but also in contravention to statutory provisions and judicial pronouncements.

Even the Financial Commissioner has also committed fallacy in not noticing the aforementioned provisions of law. The question of permissible area and surplus shall arise only after the land owner has ensured his full permissible area. More than 65 acres of land has been declared as permissible area of the tenants and the petitioner has been allowed the permissible area of only 3 acres, 7 kanals and 7 marlas as against his statutory right to the permissible area of 60 ordinary acres, as per the provisions of Sections 2 (3) of the Punjab Security of Land Tenures Act, 1953, which reads as under:-

*“2 (3) “**Permissible area**” in relation to a landowner or a tenant means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceeds sixty acres, such sixty acres:*

Provided that –

(i) no area under an orchard at the commencement of this Act, shall be taken into account in computing the permissible area ;

(ii) for a displaced person –

(a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case maybe,

(b) Who has been allotted land in excess of thirty standard acres, but less than fifty standard acres, the permissible area shall be equal to his allotted area;

(c) Who has been allotted land less than thirty standard acres the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition.

¹[Explanation – For the purpose of determining the permissible are of a displaced person, the provisions of proviso (ii) shall not apply to the heirs and successors of the displaced persons to whom land is allotted.

Even in the judgment rendered by this Court on 08.12.1981 as

ordinary acres, thus, the respondents have no right to challenge the sale deeds executed by the petitioner and claim the relief in terms of order (Annexure P-1) challenged herein, though erroneously affirmed by the Commissioner and Financial Commissioner. In support of his contention, relied upon the following judgments:-

- (i) *Lajpat Rai and others Vs. the State of Punjab and others 1981 PLJ 316.*
- (ii) *Mota Singh Vs. Financial Commissioner Punjab and others 1968 PLJ 338*
- (iii) *Harbans Singh and Gurbaksh Singh Vs. Ajit Singh and others 1975 PLJ 85*
- (iv) *Smt. Tulsan and others Vs. Gurbaksh Singh (deceased) and others 1976 PLJ 538*
- (v) *Balbir Singh and others Vs. Financial Commissioner (Appeals) Punjab and others 1996 PLJ 514.*
- (vi) *Shree Guru Granth Sahib Nanaksar, Patti Bir Singh Bhadaur Vs. The State of Punjab and others 1997(2) PLJ 323*
- (vii) *Prithvi Raj Vs. The State of Punjab and others 1993 PLJ 124*
- (viii) *Munshi Ram etc. Vs. The Financial Commissioner Haryana etc 1979 PLJ 182*
- (ix) *Ajmer Singh and others Vs. State of Haryana and others 1990 PLJ 116*
- (x) *Gopal Ram and others Vs. State of Haryana and others 1999(1) PLJ 5.*
- (xi) *Sardara Singh and others Vs. The Financial Commissioner and others 2008(2) RCR (Civil) 744.*

On the contrary, Mr. K.L. Suneja, learned counsel appearing on behalf of the private respondents submitted that the concurrent finding of fact rendered by the Commissioner and the Financial Commissioner cannot be interfered with and this Court also cannot scrutinize the orders under

challenge by exercising the power of judicial review. In the order dated 09.10.1969, the TPA had been determined by the petitioners have not been able to get fruits of the same in view of the perpetual challenge of the order since 1961 onwards. There has to be a end to litigation. The petitioners cannot be permitted to linger on the matter for infinite period, thus, urges this Court for dismissal of the 1st writ petition.

As regards his own writ petitions i.e. 2nd and 3rd writ petition, the assertions are that in pursuance of the order dated 21.06.1990, Form-F along with list of 6 acres 5 kanals 19 marlas area declaring as surplus and a copy of list of 65 acres 2 kanals 14 marlas declaring as TPA, much less, a copy of list of 60 acres (480 kanals) left as landowner's permissible area issued, had been issued by respondent No.2 vide Annexure P-2 (colly), in essence, out of 65 acres 2 kanals 14 marlas ordinary acres under the old tenants mentioned in the aforementioned order, 18 acres 6 kanals 16 marlas ordinary i.e. 150 kanals 16 marlas is TPA of Chokha son of Rawat, which fact is evident from the list of TPA vide Annexure P-3.

This Court while issuing notice of motion in the writ petitions filed preferred by the land owners had granted the interim that allotment in pursuance of the impugned order shall subject to the outcome of the writ petition, in essence, there was no stay or prohibition on the allotment of land to the TPA as 'A' category in view of the provisions of Haryana Utilization of Surplus and Other Areas Scheme, 1976 nor there was any prohibition on sanctioning of mutation of the land of TPA in Haryana Government as having vested the same in the Haryana Government under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972.

The petitioners have already sold 56 acres 0 kanal 3 marlas

land upto the date of passing of the order dated 21.06.1990 and was only left with only 3 acres 7 kanals 7 marlas out of the permissible area of 60 acres, thus, respondent No.2 was under obligation to allot TPA under 'A' category. Even after passing of the impugned order, the landlord has taken undue benefit of not removing his name from the column of ownership in the revenue record (jamabandies) as well as surplus area by mutating the same in the State Government and further sold 183 kanals 14 marlas land vide two registered sale deeds dated 15.03.2002 and 09.07.2003 for which mutations No.10176 and 10332 were sanctioned on 28.11.2002 and 29.09.2003 respectively.

The big land owner died on 12.11.2003 which is evident from mutation of inheritance bearing No.10568 sanctioned on 2.1.2004 in favour of his two sons namely Subhash Chander and Satya Pal, respondent Nos.4 and 5 in equal share in 2nd writ petition. Satya Pal, respondent No.5 further sold 60 kanals 4 marlas of half share out of the land illegally mutated in his favour by inheritance vide registered sale deed dated 29.06.2004 and the factum of selling the land continued unabated as late as upto 26.03.2008 (Annexure P-18 in the 2nd writ petition), thus, the petitioners (being legal representative of Mohan Lal) in the 1st writ petition and respondent Nos.4 and 5 in the 2nd writ petition due to fallacy of official respondent Nos.1 and 2 (in the 2nd writ petition), who while exercising the jurisdiction vested in them, allowed the revenue entries in the revenue record to continue, in essence, this act of the official respondents was in derogation of the provisions of the Punjab Security of Land Tenures Act, 1953 and the Rules framed thereunder, much less, the Haryana Utilization of Surplus and Other Areas Scheme, 1976. Since the unabated act of the private respondent

Nos.4 and 5 in the 2nd writ petition and petitioners in the 1st writ petition (being legal representatives of Mohan Lal) continued, the petitioners in the 2nd writ petition were constrained to file the writ petitions bearing No.21426 of 2008 and 4013 of 2009 (i.e. 2nd and 3rd writ petition respectively) wherein this Court while issuing notice of motion restrained respondents Nos.4 and 5 from alienating any further land. Since respondent Nos.4 and 5, being predecessor-in-interest of the petitioner in 1st writ petition, were left with no right, title and interest in the TPA qua various khasra number as referred to in the writ petition, the same deemed to have been vested in the Haryana Government as per the provisions of Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, thus, urges this Court for dismissal of the 1st writ petition while allowing the 2nd and 3rd writ petition.

I have heard learned counsel for the parties and appraised the paper book. There is no dispute to the ratio decidendi culled out in the judgments cited supra on behalf of Mr. Verma. As per the provisions of the amended provisions of the Punjab Security of Land Tenures Act, 1953 i.e. addition of clause (5-a) to Section 2, the land owner is required to inform his reservation to the Patwari of the concerned estate in pursuance of sub-section 1 of Section 5 of the Act in the Form designated as Annexure 'B' to the Punjab Security of Land Tenures Rules, 1956, which came to be promulgated on 27.04.1956, which prescribed that where a land owner has not reserved the area permitted for self-cultivation, he will, at the same time as he submits the declarations prescribed in Rule 3, intimate in writing to the Patwari/Patwaris of the Circle/Circles in which his lands are situated, the land/lands selected by him for self-cultivation. However, in 1957 w.e.f. 11.12.1957, Section 5-A and 5-B of the aforementioned Act were amended

to the effect that every land owner or tenant, who owns or holds land in excess of the permissible area and where land is situated in more than one Patwar Circle, shall furnish, within a period of six months from the commencement of the Punjab Security of Land Tenures Amendment) Act, 1957, a declaration supported by an affidavit in respect of the land owned or held by him in such form and manner and to such authority as may be prescribed and Section 5-B envisages that a land owner who has not exercised his right of reservation under this Act, may select his permissible area and intimate the selection to the prescribed authority within the period specified in Section 5-A. If a land owner fails to select his permissible area in accordance with the provisions of sub-section (1), the prescribed authority may, subject to the provisions of Section 5-C, select the parcel or parcels of lands which such person is entitled to retain under the provisions of this Act but provided the prescribed authority shall not make the selection without giving the land owner concerned an opportunity of hearing.

Now, the question emanates from the contentions/rival contentions of the parties is whether as per the provisions of the Act, the petitioner's entitlement to 30 standard acres or 60 ordinary acres being a landowner, has ever been assessed by the authorities or not. As per the order dated 21.06.1990, passed on remand from the Commissioner vide order dated 05.08.1986, the permissible area declared at the hands of petitioner was 3 acres 7 kanals and 17 marlas including 56 acres and 3 marlas sold by him in his permissible area, in essence, considering the area sold him in his permissible area and the total of the aforementioned area is done, even then it comes only to 60 ordinary acres.

A general question arises for consideration is whether the extent which has been sold and held to be *gair mumkin*, can be included in the permissible area of the land owner, as has been done by authorities, the answer is in “negative”. It cannot be done, in view of the ratio decidendi culled out in the judgment cited in **Harbans Singh and Gurbaksh Singh's case** (supra), as all the alienation made after 15.04.1953 has to be ignored for the purpose of determination of surplus area. But the fact remains that the land purchased after coming into force of the Punjab Land Reforms Act, 1972, law treats all the transfers of land effected after 02.04.1973 as void, which is the scope of ratio decidendi culled out in the judgment rendered in **Balbir Singh's case** referred to above, therefore, the Court cannot infuse life into such dead transactions. Similar is the position with regard to *banjar qadim*, *bajnar jadid* and *gair mumkin* land as the same would not fall within the purview of land under the Act and therefore, cannot be taken into consideration for the purpose of computing surplus area, much less, permissible area. It has to be excluded, in essence, it has to be excluded while computing the permissible area. That is what has been held in the ratio decidendi culled out by Hon'ble Supreme Court in **Munshi Ram Vs. the Financial Commissioner, Haryana etc.** (supra) which was also followed by Hon'ble Supreme Court in **Ajmer Singh and others Vs. State of Haryana and others** (supra).

Keeping in view all the lands as reflected in the writ petitions No.2 and 3 wherein this Court had an occasion to put a restriction on alienation has also not been denied by way of written statement by the petitioner in writ No.1. The effect of the sale deeds by the petitioner, being big land owner in writ No.1, as indicated in the other two writ petitions, had

been on the premise that mutation remains in favour of the big land owner, despite declaration of the land as permissible area. Therefore, whether the sale deeds are required to be set aside, for, the transferor i.e. the big land owner had derived undue benefits by virtue of the aforementioned sale deeds. Even if the calculation of the aforementioned sale deeds is done, as indicated in the written statement, in my view, it is a fit case for remand to the authorities, particularly, the Commissioner to reassess the permissible/surplus area. This Court would be refraining itself by undertaking the exercise of calculation as it is in the domain of the authorities below to determine the following questions:-

- (i) Whether the big land owner despite the fact that the land declared permissible/surplus, the mutation remained in his name, which resulted into sale of the land in acres as the total land was only 184 acres 7 kanals 15 marlas, thus, the land which has been sold after promulgation of the 1953 Act and Punjab Land Reforms Act, can be calculated for determination of permissible area?
- (ii) If yes, whether determination done by the authorities for assessing the permissible area is correct or otherwise?
- (iii) Whether any separate order was passed for determining the Tenant's Permissible Area (TPA), though while determining the area of land owner, there is reflection of an area in possession of tenants. Whether that area would be construed as determination of TPA or not?
- (iv) Whether the tenants at any point of time submitted an application and if so, whether such application was considered, much less, tenants had been called to deposit the price. If yes, then whether the tenants paid the amount or not?
- (v) Whether the authorities called upon the tenants or at any point

of time intimated the tenants for allotment for the purpose of TPA within a time frame so that the surplus area could be utilized?

(v) Whether the sales effected as indicated in the written statement would be out of surplus area or of the landlord's/tenant's permissible area. If so, whether the authorities can order for cancellation of the sale deed either on its own or relegating the parties to avail the remedy in civil suit, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in Satya Pal Anand Vs. State of M.P. And others 2016(4) RCR (Civil) 904.

wherein it has been held that the Registrar has no power to cancel the sale deed. The parties, whosoever is aggrieved, have an authority to approach the Civil Court and in such eventuality, if question of limitation would arise, that would not come in the way of either of the parties seeking cancellation of the sale deeds, if need so.

(vi) Whether the sales effected before the cut off date i.e. 30.07.1958 would be included or excluded?

For the reasons aforementioned, the impugned orders are set aside and the matter is remitted back to the Commissioner, who may on his own or may get the report from the Collector for undertaking the aforementioned task as indicated in the questions framed hereinabove.

Let this exercise be done within a period of six months from the date of receipt of certified copy of this order.

The writ petitions stand disposed of in the above terms.

(AMIT RAWAL)
JUDGE

March 16, 2017

Pankaj*

Whether speaking/reasoned

Yes

Whether reportable

No