

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

CWP No.6781 of 1997

Date of Decision: November 22, 2017

Gurlal Singh and others

. . . . Petitioners

Vs.

The State of Punjab and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.G.S. Jaswal, Advocate,
for the petitioners.

Ms.Sunint Kaur, AAG, Punjab.

Mr.Kanwaljit Singh, Sr. Advocate, with
Mr.Abhishek Bajaj, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J.

The petitioners have prayed for a writ in the nature of certiorari for quashing the orders dated 24.01.1992 passed by the Settlement Commissioner, Rehabilitation Department, Punjab (Annexure P-9), dated 17.8.1994 passed by the Deputy Commissioner-cum-Chief Settlement Commissioner, Rupnagar (Annexure P-12) and dated 9.1.1996 passed by the Financial Commissioner, Revenue, Punjab (Annexure P-14).

The predecessor-in-interest of respondent No.5, namely, Bihari Lal Batra (since deceased) was allotted land falling in Khasra Nos.880, 881 and 882 [hereinafter referred to as 'the land in dispute'] situated within the Municipal Limit of Kharar [urban area] in lieu of his rural claim on 20.12.1955. The said allotment was challenged by the persons in possession and the allotment was cancelled when the matter reached upto the Apex Court (judgment is reported as AIR 1965-SC-134) in which it was held that

lieu of his claim of rural area was illegal. The District Rent and Managing Officer, Jalandhar while dealing with an application filed by one S.P. Jain for transfer of the land in dispute being an old lessee of the said evacuee land held that *“as regards the claim of Shri Bihari Lal Batra, under these Khasra number is urban agricultural land as finally held by the High Court in their order dated the 30th November, 1965 and it has been transferred to the Punjab Government in package deal and the Punjab Govt. is, therefore, not competent to dispose of this land and its disposal will be arranged by the Central Government according to the rules”*. It was also observed in the said order that *“before the case could be concluded Sh. Bihari Lal Batra also came into picture and asserted that the property in dispute had already been purchased by him from the Punjab Government. He claimed his right for the purchase of superstructure of all the building existing on these khasra number as well as one well according to the registered sale deed dated the 10th May, 1957 executed by Sh. Naurata Ram, who was the original lessee of land at the time of evacuee and had put up the superstructure at his own cost. According to Shri Batra neither Sh. S.P. Jain nor Sh. Ralla Ram had any right to purchase this land as Shri Ralla Ram is the tenant of Sh. S.P. Jain and Shri Ralla Ram had taken one shop and one Kharkhana from Shri Sohan Lal on lease only”*. Thus, it was found by the District Rent and Managing Officer, Jalandhar vide his order dated 8.12.1966 that the predecessors-in-interest of the petitioners were in possession of the land in dispute.

It is alleged that Bihari Lal Batra (since deceased) moved an application on 10.3.1964 for transfer of the land in dispute on the basis of instructions/earlier decision dated 27.9.1960 alleging that he be allowed to purchase the land allotted to him in excess (urban) of his right. The said

transfer was made by the Managing Officer. The predecessors-in-interest of the petitioners moved to the Chief Settlement Commissioner, Punjab, who vide his order dated 24.12.1970 held that the property being urban could not have been disposed of by the Tehsildar(sales)-cum-Managing Officer, Ropar. Against the said order, Bihari Lal Batra (Since deceased) moved to the Court of Financial Commissioner, who vide his order dated 25.11.1971, held that the order of the Chief Settlement Commissioners is based on technicality and the same was set aside by him and remanded the matter back to the Deputy Secretary-cum-Chief Settlement Commissioner with the direction that the transfer already made in favour of Bihari Lal Batra be regularized. Against the said order dated 25.11.1971, two writ petitions were filed before this court bearing CWP No.179 of 1973 by the petitioners and CWP 1063 of 1973 by Bihari Lal Batra. CWP No.179 of 1973 was allowed and the order dated 25.11.1971 was set aside whereas CWP No.1063 of 1973 was dismissed and the matter was remanded back to the Tehsildar Sales (Headquarters)-cum-Managing Officer, Jalandhar to decide afresh.

After the order of remand dated 10.5.1982 passed by the High Court, the Tehsildar Sales (Headquarters)-cum-Managing Officer, Jalandhar made an inspection of the site in the presence of the parties and found that the predecessors-in-interest of the petitioners are in possession and Bihari Lal Batra failed to show his possession over the property in question. Accordingly the Tehsildar Sales (Headquarters)-cum-Managing Officer, Rehabilitation Department, Jalandhar passed the order on 23.9.1991 rejecting the plea of Bihari Lal Batra for purchasing the property in question. The order dated 23.9.1991 was challenged by Bihari Lal Batra by way of appeal filed under Section 22 of the Displaced Persons (Compensation And

accepted vide impugned order dated 24.1.1992 (Annexure P-9) wherein it was directed that after completing all the formalities, the property in dispute be transferred to Bihari Lal Batra as per situation of 10.3.1964 according to the departmental instructions. The said order dated 24.1.1992 was challenged before the Deputy Commissioner-cum-Chief Settlement Commissioner, Roopnagar but the appeal was rejected on 17.8.1994. The petitioners then filed revision under Section 33 of the Act before the Financial Commissioner but the revision was dismissed vide impugned order dated 9.1.1996.

Learned counsel for the petitioners has submitted that although the allotment of the property in dispute in favour of Bihari Lal Batra (since deceased) was cancelled by the Supreme Court but he allegedly purchased the land in question on the basis of the instructions dated 27.9.1960 whereas in terms of Clause 3(iii) of the said instructions, the predecessor-in-interest of respondent No.5 was not eligible for allotment.

On the other hand, learned counsel appearing on behalf of respondent No.5 has vehemently argued that there is a concurrent finding recorded by the authorities under the Act for the purpose of approval of allotment of the property in question purchased by respondent No.5 which has been done only after taking into consideration the instructions dated 27.9.1960, therefore, there is no merit in the present petition which deserves dismissal.

I have heard learned counsel for the parties and perused the record.

The only issue involved in this case is as to whether the case of Bihari Lal Batra is covered by the instructions dated 27.9.1960 or whether

he could have been allotted urban land against the rural area claim without being in possession of the said land?

In order to search answer to this question, it would be relevant to refer to Clause (c) & (d)(iii) of the instructions dated 27.9.1960 which read as under: -

“(c) where a rural land claimant had allotted land in urban area.”

“(d)(iii) in case falling under category (c) the claim for the rural land may be assessed @ ₹450/- per S.A. while the price of the urban land may be assessed at the rates adopted by the Regional Settlement Commissioner for such urban lands. The allottee may be allowed to retain the urban lands in their possession provided they are willing to pay the difference between the price of the urban land thus assessed and the commuted value of the rural land claim after applying necessary cut.”

As a matter of fact, the predecessor-in-interest of respondent No.5 is not found in possession over the land in question and the only thing which is required is the interpretation of Clause d(iii) of the instructions dated 27.9.1960 which has been made the basis for the purpose of allotment of land by purchase to Bihari Lal Batra. It is categorically mentioned in Clause d(iii) of the instructions that in case the land falls under category (c) where the claimant had been allotted land in urban area then the claim for

urban land may be assessed at the rates adopted by the Regional Settlement Commissioner for such urban lands. This part of the instruction talks about the rates fixed for the rural land and the urban land which would be adopted by the Regional Settlement Commissioner. The instructions further provides that the allottees may be allowed to retain the urban land in their possession provided they are willing to pay the difference between price of the urban land thus assessed and the commuted value of the rural land claim after applying necessary cuts. These parts of the instructions clearly stipulate that the allottee would be allowed to retain the urban land in their possession. Meaning thereby, if the allottee is not in possession of the urban land then he would not be allowed but if he is in possession then he would be allowed provided he pays the difference between the price of the urban land which shall be assessed and the commuted value of the rural land claim after applying necessary cut.

Thus in order to apply the instructions, the possession is the *sine qua non*. The Financial Commissioner, who has ultimately passed the impugned order dated 09.1.1996 has though referred to the instructions dated 27.9.1960 but failed to take into consideration the fact that Bihari Lal Batra (since deceased) was not in possession of the land in question and would not fall within the definition of allottee for the purpose of taking advantage of the instructions as earlier he failed upto the Supreme Court to purchase the land in question only on the ground that he had a rural claim in lieu of which he cannot take the urban land. Thus looking from all angles the impugned orders are patently illegal and erroneous as in none of the orders issue regarding the allotment has been discussed much less Clause d(iii) of the instructions, which categorically provides that the possession on the

the case of Bihari Lal Batra (since deceased), therefore, the present petition is found to be meritorious and the same is hereby allowed and the impugned orders are hereby set aside.

November 22, 2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>