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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-5218-1998
Date of decision : 11.05.2017**

Tej Singh and another

... Petitioner(s)

Versus

District Judge, Ludhiana-cum-Appellate Officer and
others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: None for the petitioners.

Mr. Monica Chhibber Sharma, DAG, Punjab.

AMIT RAWAL, J. (ORAL)

The present petition has been filed in the year 1998.

Respondent Nos. 4 to 6 has not filed the reply so far, despite service, though, they are being represented, at one point of time, by Mr. S.M Verma, Advocate and even on 19.01.1999, he prays for time to file reply. The matter was adjourned for 23.03.1999. Thereafter, nobody had appeared and ultimately, on 12.08.1999, the petition was admitted.

This Court had issued actual date notice to the petitioner(s) on 14.12.2016. As per office report, notice sent to the petitioner(s) has been received back with the report that the petitioner(s) has died.

Accordingly, I proceed to decide the present writ petition on merits.

The petitioners are claiming to be *bona fide* purchasers for a valuable consideration of land measuring 7 kanals 13 marals comprising in Rectangle and Killa No.29, 8/3, 9/2 & 9/3, situated in Village Bhattain, Tehsil and District Ludhiana, from the allottee of the land, namely, Sh. Lekhu Ram/respondent No.7, who vide two registered sale deeds dated 12.04.1979, handed over the physical possession. The preface of the matter is that Jagir Singh, Sarwan Singh along with their sister represented through their legal representatives were the original owners of the land measuring 11 kanals 3 marlas comprising in khasra No.29, 8/3, 9/2 & 9/3, out of which 7 kanals 13 marals was allotted to Lekhu Ram/respondent No.7 by the Custodian Rehabilitation Department/respondent No.2, and had mortgaged the property to one Mst. Jinat Bibi in the year 1943, who on partition migrated to Pakistan and then, she was declared evacuee. Her interest in the property, in dispute, vested in the Custodian under the Administration of Evacuee Property Act, 1950 (for short 'the 1950 Act'). In the year 1953, the process was initiated for separating the evacuee interest from the non-evacuee interest and on this, notice under Section 6 in the form of 'B' & 'C' were issued to the respondent Nos.4 to 6 by the Competent Officer on 29.11.1953, but no claim was filed within a period of 60 days and on account of their failure, the property, in dispute, was allowed to vest in the Custodian Rehabilitation Department vide order dated 14.01.1955. After expiry of 32 years of the date of mortgage i.e. in the year 1975, an application was moved by respondent Nos.4 to 6 for setting aside the *ex parte* order dated 14.01.1955, vide which, the property was declared evacuee. The Competent Officer vide order dated 05.12.1975 rejected the application being belated one. After rejection of the application, respondent

Nos.4 to 6 did not challenge the aforementioned order, but gap of more than 4 years thereafter, moved an application before the Appellate Authority in the year 1979. Vide order dated 21.01.1982 the Appellate Authority remanded back the matter to the Competent Officer to decide the controversy afresh. The Competent Officer vide order dated 11.09.1984 rejected the application of respondent Nos.4 to 6 for redemption on the ground that the application for redemption was filed after a gap of 30 years i.e. against the violation of the Article 61 of the Limitation Act. Against the aforementioned order, respondent Nos.4 to 6, on 13.10.1984, preferred an appeal to the District Judge, Ludhiana with delegated powers of the Appellate Authority under the Evacuee Interest (Separation) Act, 1957 and the Appellate Authority, who vide order dated 29.07.1985 set aside the order dated 11.09.1984 and the case was remanded back for fresh decision on merits. On remand, the Competent Officer again dismissed the application on 26.05.1986. Against the order dated 26.05.1986, respondent Nos.4 to 6 preferred an appeal before the District Judge, Ludhiana, who vide order dated 13.08.1987 accepted the appeal and rejected the plea of *res judicate*, much less, limitation. Hence, the present writ petition.

It has also been submitted that respondent No.4 filed a suit for permanent injunction on 18.05.1979 and the trial Court, vide judgment and decree dated 04.10.1980, decreed the suit, however, an appeal preferred by the private respondent(s) was allowed by the District Judge, Ludhiana vide judgment and decree dated 30.11.1982 (Annexure P-1 & P-2).

The case of the petitioners is that during the pendency of the first appeal by the private respondent(s) in the year 1979, the property, in dispute, was allotted to the Lekhu Ram against the claim by the

Rehabilitation Authorities under the 1954 Act, who on 27.12.1978 got the possession and vide sale deeds dated 12.04.1979, the petitioners purchased the property and delivered the possession.

It is also the stand of the petitioners that the respondent(s) did not appear before the authorities for submitting the Form within a period of 60 days and therefore, land vested to the pool of evacuee. Much water had flown. At that time, the limitation for redemption was 30 years, therefore, the valuable right accrued before the promulgation of the judgment rendered by the Hon'ble Supreme Court in "Singh Ram (dead) through Legal Representatives vs. Sheo Ram and others (2014) 9 Supreme Court Cases 185, cannot be taken away at the behest of the private respondent(s) at the beck and call or at their own wishes. A direction issued in the remand order dated 13.08.1987 to the Competent Officer was to make a probe in the matter and give the fresh decision. The factum of third party rights created have not been looked into. This Court while issuing notice of motion on 17.04.1998 had also stayed the dispossession.

Ms. Monica Chhibber Sharma, DAG, Punjab submits that the impugned orders, under challenge, are perfectly legal and justified, much less, do not call for interference and the same have been passed by exercising the *quasi* judicial powers.

I have gone through the paper book and of the view that there is a merit and force in the matter, for, the property, in dispute, was mortgaged on 31.05.1943, but application was filed in the year 1975 i.e. after a gap of 32 years. A valuable right, in the meantime, had accrued in favour of Lekhu Ram, who had been allotted the land by the Rehabilitation Department and further sold by the sale deeds, indicated above. Respondent No.4 had also

filed a Civil Suit for injunction, in the Court of Ludhiana, where it has been held that the limitation for redemption had expired and this was confirmed by the Additional District Judge vide judgment and decree dated 30.11.1982 (Annexure P-1 and P-2). The aforementioned point could not have been re-agitated before the competent authority. The petitioners are the *bona fide* purchasers under Section 41 of the Transfer of Property Act. The authorities below ought to have examined the factum of the possession being handed over by Lekhu Ram and passed to the petitioner(s). The basic point noticed by the authorities below is that at that time, the property was declared evacuee and thereafter, the respondent(s) slept over the matter and moved the application for redemption only in the year 1975. The order dated 14.01.1955 passed by the authority had attained finality. In the absence of the challenge to the aforementioned order, all the other consequential effects of redemption, pale into insignificance. All these factors were required to be looked into by the Appellate Authority.

Keeping in view the aforementioned facts, the impugned order 24.01.1998 (Annexure P-6) is not sustainable in the eyes of law being opaque, much less, arbitrary and the same is hereby set aside.

Accordingly, the present writ petition stands allowed.

11.05.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**