

203

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of decision : 06.03.2017

1.

CWP-11523-2011

Manohar and another

... Petitioners

Versus

State of Haryana and others

... Respondents

2.

CWP-14843-2011

Mangat Ram

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sudhanshu Makkar, Advocate  
for the petitioner(s).

Mr. Shailender Jain, Senior Advocate with  
Mr. Satyendra Chauhan, Advocate  
for respondent Nos.7 to 13 in CWP-11523-2011 and  
for respondent Nos.7 to 14 in CWP-14843-2011.

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

Mr. Vikrant Rana, Advocate  
for respondent Nos.14 to 17 in CWP-11523-2011 and  
for respondent Nos.15 to 18 in CWP-14843-2011.

\*\*\*\*

**AMIT RAWAL, J. (ORAL)**

This order of mine shall dispose of two writ petitions bearing

**CWP No.11523 of 2011** titled as **“Manohar and another V/s State of**

**Haryana and others**” and **CWP No.14843 of 2011** titled as **“Mangat Ram V/s State of Haryana and others”**, filed against the impugned order dated 17.06.2008 (Annexure P-8) passed by the Collector, order dated 12.01.2010 (Annexure P-9) passed by the Commissioner, in both the petitions and order dated 18.08.2010 (Annexure P-16) in CWP-11523-2011 & order dated 18.08.2010 (Annexure P-15) in CWP-14843-2011 passed by the Financial Commissioner.

The grievance of the petitioner(s) in the writ petitions is that the Sub-Divisional Officer, as per the provisions of Haryana Utilization of Surplus and other Areas Scheme, 1976 (hereinafter called 'the Scheme of 1976') framed under Section 15 of the Haryana Ceiling of Land Holdings, Act, 1972 (hereinafter called 'the 1972 Act'), did not prepare the list of surplus area as concededly the petitioner(s) are the successor-in-interest of the tenant(s), thus, in the absence of determination of tenants' permissible area, the petitioner(s) are entitled to Category BB i.e. two hectares of 'C' category land or land equivalent to value and the findings of the authorities below, holding the claim of the petitioner(s) to be barred by law of limitation, are, thus, wholly erroneous and perverse.

Mr. Sudhanshu Makkar, learned counsel appearing on behalf of the petitioner(s) in both the cases submits that while not undertaking the exercise enjoined under the 1972 Act, the Haryana Government/Department, on the basis of the provisions of sub-Section 3 of Section 12 of the 1972, in order to utilize the surplus area, allotted the land to the private respondent(s) vide allotment dated 07.10.1976 and as well as 23.08.1978. The allottees did not deposit the installment, resulting into, the

alleged cancellation and the deposit of the amount by the successors-in-interest, after 30 years, was not tenable in the eyes of law. By realizing the aforementioned fact, the petitioner(s) also staked the claim, but the same has been rejected owing to effect of time. The alleged proclamation having been done is totally inconsequential as the possession is of the petitioner(s) being tenant, as reflected from the khasra girdawari (Annexure P-18) in CWP-11523-2011 and had not been dispossessed, thus, the authorities were liable to determine the area in the absence of the TPA i.e. Tenants' Permissible Area. Though the authority i.e. Financial Commissioner has given a passing reference that the petitioner(s) should have approached the prescribed authorities for entitlement, but the fact remains that the petitioner(s) are in possession and the allottees though have passed on the title and creating third party rights, cannot be permitted to take the possession under the garb of restoring the allotment after a lapse of 30 years. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in the following judgments:

***"Richpal V/s State of Haryana" 2015 (3) RCR (Civil) 751;***  
***"Lehri V/s State of Haryana" 1996 (3) RCR (Civil) 204;***  
***"Angrej Singh & others V/s State of Haryana & others" 1992***  
***PLJ 627;***  
***"Beli Singh V/s Financial Commissioner, Haryana and***  
***others" 2012 (2) PLR 501; and***  
***"Arjan Rai V/s State of Haryana and others" 2012 (1) PLR***  
***347.***

*Per contra*, Mr. Shailendra Jain, learned Senior Counsel assisted by Mr. Satyendra Chauhan, learned counsel appearing on behalf of respondent Nos.7 to 13 in CWP-11523-2011 and respondent Nos.7 to 14 in

CWP-14843-2011, submits that nothing prevented the petitioner(s) to move an application for entitlement of the category in view of the promulgated Scheme. The proclamation/*munadi* in the village was done. The petitioner(s) cannot be permitted to stake the claim belatedly. The allotment cannot be set aside at the drop of the hat, particularly when the tenant has waken up almost after 30 years i.e. in the year 2008. No explanation has come forth in staking the claim in the aforementioned period. The concurrent findings of fact are of all three authorities i.e. Collector, Commissioner and the Financial Commissioner, thus, the impugned orders, under challenge, are perfectly legal and justified and urges this Court for dismissal of the writ petitions.

Similar arguments of Mr. Sandeep Singh Mann, Sr. DAG, Haryana and Mr. Vikrant Rana, learned counsel appearing on behalf of respondent Nos.14 to 17 in CWP-11523-2011 and respondent Nos.15 to 18 in CWP-14843-2011.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the sitting/old tenant has the preferential right for allotment, than to a third person for the purpose of utilizing the surplus land. This view of mine is reiterated from the findings rendered by this Court in **Richhpal's case** (supra). The aforementioned finding has been given by relying upon the judgment passed by this Court in **Angrej Singh's case** (supra) and **Lehri's case** (supra).

The State has not placed on record any evidence to establish that at any point of time, the sitting tenants were issued notice. Proclamation/*munadi* was basically a farcical exercise. In my view the

petitioner(s) should not have assailed the allotment of the private respondent(s) and focus should have been on their own entitlement i.e. in category 'BB'. The whole idea by declaring the land surplus is to utilize, but giving the preference to the sitting tenant cannot be ignored. In my view the petitioner(s) and the allottees have to be protected for such act of the State as no person can be deprived of his legitimate claim/right. The authorities should not have thrown out the case of the petitioner(s) on the ground of delay and laches as the authorities below did not prepare the list in terms of sub-Section 3 of Section 12 of the 1972 Act. Even the order of the Financial Commissioner dismissing the revision petition reveals that the petitioner(s) should have approached the prescribed authorities. The petitioner(s) did not come to know about the factum of land being declared surplus, much less, determination of their share in the absence of any independent notice. Had it been so, perhaps they would have staked claim for the allotment. Equally so, the allottees cannot be also deprived of the fact as the whole purpose is to utilize the surplus land and cannot remain un-utilized. There was no specific order of cancellation of the allotment. Regularization of the same on deposit, thus, cannot be said to be a deemed cancellation.

The question which is to be seen is that the allotment letter is in respect of the land which is in possession of the petitioner(s). I do not deem it appropriate to delve upon the allotment, which the petitioner(s) would be entitled to as it would have a far-reaching/consequential effect on entitlement being within the domain of the authorities. In the absence of the same, the orders under challenge are hereby modified to the extent that the allotment made in favour of the respondent(s) are upheld subject to the

possession which the petitioner(s), according to the khasra girdawari (Annexure P-18) in CWP-11523-2011, found to be in possession.

The reflection of the *rapat roznamcha* in handing over the possession to the allottees is not a specific piece of evidence to establish the claim viz-a-viz khasra girdawari from 1976 till date. No explanation has come forth why steps have not been taken either by the allottee or by the State in not correcting the khasra girdawaris showing the possession or otherwise, thus, the arguments of Mr. Shailendra Jain, learned Senior Counsel and Mr. Sandeep Singh, Sr. DAG, Haryana qua handing over the possession, are wholly misplaced.

Keeping in view the facts, aforementioned, I deem it appropriate to dispose of the writ petitions by issuing the following direction:-

(i) The prescribed authorities under the aforementioned Act/Scheme shall consider the case of the petitioner(s) being a old/sitting tenant, as per the category culled out in Section 7 of the Scheme.

(ii) In case the petitioner(s) are entitled to allotment, it shall consider whether the same piece of land has to be given as the import of the Section also envisages or other land, in essence, the petitioner(s) would not be entitled to stake a claim on the land which is in their possession as by aforementioned order of mine is upholding the allotment in favour of the private respondent(s).

Let this exercise be done within a period of 10 months from the date of the receipt of the certified copy of this order.

Till this exercise be done, the petitioner(s) shall not be

dispossessed. In case, the petitioner(s)/tenant(s) and the private respondent(s)/allottees and subsequent transferees/vendees arrive at a consensus with regard to the exchange of land, they shall be at liberty to do so.

In view of the order dated 04.07.2016 passed by this Court, the writ petition bearing CWP No.11523 of 2011 has already been dismissed as withdrawn qua petitioner No.1, namely, Manohar.

With the aforesaid observations, the writ petitions are disposed of.

06.03.2017  
Yogesh Sharma

( AMIT RAWAL)  
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No