

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

CWP No.2177 of 2009 (O&M)
Date of decision : 28.02.2017

Kartar Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vikas Singh, Advocate for the petitioner.

Mr. R.C. Setia, Sr. Advocate with
Mr. A.K. Jain, Advocate for respondent Nos.4, 9 and 10.

Ms. Lavanya Paul, AAG, Punjab.

AMIT RAWAL, J.

The petitioner has approached this Court for issuance of a writ of certiorari, or any other appropriate writ, order or direction that the order dated 22.08.1960 (Annexure P-1) vide which the Collector Agrarian, Patiala had determined the surplus area in the hands of Gujjar Singh deceased under the Pepsu Tenancy and Agricultural Lands Act, 1955 ceased to be operative after the commencement of Punjab Lands Reforms Act, 1972 and as well as for quashing of the impugned order of the Financial Commissioner, Punjab dated 11.09.2008 (Annexure P-5), whereby appeal of the Garib Dass and others have been allowed and order of the Commissioner, Patiala dated 14.05.2001 and of the Collector, Patiala dated 04.04.2001 (Annexure P-2),

whereby application for restoration of the land to the petitioner was rejected.

Mr. Vikas Singh, learned counsel appearing on behalf of petitioner submits that Gujjar Singh grandfather of the petitioner owned land within the revenue estate of Village Ucha Gaon, Tehsil Patiala. The land in excess of the permissible limit was declared as surplus vide order dated 22.08.1960, in essence, despite having issued notice to Gujjar Singh, he did not appear and order was an ex parte but the possession of the land declared surplus, was not taken prior to the commencement of Punjab Land Reforms Act, 1972 (hereinafter to be referred as the Punjab Act) which came to be enforced on 02.04.1973, thus for all intents and purposes, land did not vest in the State of Punjab prior to the commencement of the Act.

On 20.02.1975, surplus area was allotted to the respondent Nos.4 and 5 under the provisions of Punjab Utilization of Surplus Area Scheme 1973. On account of default in the payment of the compensation, allotment was cancelled on 08.10.1980. On 01.02.1982, land was allotted to Puran Singh and etc. but during all this period, the possession was not taken, in essence, proceedings for allotment of the land remain pending and it was only on 19.09.1996, the land was again allotted to respondent Nos.4 and 10. Not only this, respondent also got the possession of land and transferred the same to Bela Singh and the proceedings for cancellation of the allotment were initiated owing to the violation of the conditions of the allotment i.e. Section 4-E of the Punjab Utilization Act but application of the petitioner was rejected by the Collector Agrarian vide order dated 24.04.2000.

Vide aforementioned order, Collector also held that allottee had not transferred the land to any other person, therefore, allotment was not entitled to be cancelled and declined as the petitioner to be member of the family of Gujjar Singh as per the provision of Section 3(4) of the Punjab Land Reforms Act. The matter was taken in appeal before the Commissioner in which she was allowed to be impleaded as a party and appeal was allowed vide order dated 30.04.2001 (Annexure P-3), in essence, allotment in favour of respondent Nos.4 to 10 was also set aside. Two revision petitions were filed one by Bant Singh and one by Garib Dass and others i.e. ROR Nos.285 and 578 of 2001. Grievance of the private respondents particularly in the matter of Garib Dass was that the applicant/petitioner Kartar Kaur was not the family member/legal heirs of Gujjar Singh and in Bant Singh's matter i.e. ROR No.578 of 2001 was that even if the petitioner had to be treated as legal heirs of Gujjar Singh on the basis of the Will, she would not be construed as a member of the family. Financial Commissioner allowed the revision petitions vide order dated 11.09.2008 (Annexures P-4 and P-5) respectively. The said orders are not sustainable in the eyes of law inasmuch as that from the reply filed on behalf of State, it is evident that possession of the land was taken as way back as in the year 1974 i.e. after commencement of the Act, thus, in view of ratio decidendi culled out by Hon'ble Supreme Court i.e. Larger Bench in *Ujjagar Singh (dead) by LRs Vs. The Collector, Bhatinda, 1996(3) RCR (Civil), 446*, wherein it has been held that in case possession of the land has not been taken, in essence, it would be construed that the land has not been utilized and cut off date as noticed as entered into Pepsu Act, there has to be

specific notification with regard to the taking of the possession. Had the possession been taken obviously there would not have any grievance as land deemed to have been vested into the State Government but in view of reply, possession remained with owner and, therefore, rights of the landlord i.e. Gujjar Singh had to be redetermined. The fact remains that private respondent Nos.4 to 10 had not deposited compensation regarding the surplus area of the deceased Gujjar Singh, resultantly, allotment was cancelled, therefore, there was no surplus area and the proceedings for allotment of land had become infructuous. No notice was given to the petitioner when the allotment proceedings were started. The landlord had divested the title when the possession was taken. This is the law laid down in *Ajit Kaur vs. State of Punjab, 1980 PLJ 354*. Jamabandi attached alongwith reply of the State also reveals the factum of the possession and thus urges this Court for granting of relief as indicated above.

Per Contra, Mr. R.C. Setia, Sr. Advocate assisted by Mr. A.K. Jain, Advocate for respondent No.4, 9 to 10 submits that they had moved application bearing No.5957-CWP of 2012 under Section 340 of Code of Criminal Procedure for taking appropriate action against the petitioner on the premise that she had been growing hot and cold in one breath. In the proceedings before the Collector, she had stated that Gujjar Singh had died issueless and on one hand she claimed to be the grand daughter. Both the things cannot run side by side. Law with regard to the furnishing of incorrect information in affidavit is no longer *res integra*, in essence, petitioner has expunged and perjured, therefore, liable to be punished under Section 340 of the Act.

He further submits that pedigree table does not even remotely connect the petitioner to be member of the family. The provision of Section 3(4) of the Land Reforms Act extracted in the order are not sufficed, in essence, petitioner has not been able to establish to be the member of the family who can be only members prescribed therein.

He further submits that assuming for an arguments sake, petitioner is the legal heir of Gujjar Singh. Gujjar Singh was entitled to one unit which has already been taken care of and, therefore, Kartar Kaur could not have been entitled to more land, thus, her case for redetermination would not lie. Had actual legal heir of the family member of Gujjar Singh had come, perhaps there would have been force in the submission of Mr . Vikas Singh, Advocate and thus urges this Court for dismissal of the present writ petition.

In reply, Mr. Vikas Singh, Advocate has drawn the attention of this Court to the miscellaneous application bearing No.11159 of 2009 for amendment of the writ petition whereby fact of withdrawing the status of the petitioner being granddaughter of Gujjar Singh has been sought to be amended.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submission of Mr. Vikas Singh, Advocate, for, petitioner has not been able to establish to be the legal heirs, much less, member of the family of Gujjar Singh. For the sake of brevity, provisions of Sections 3 Sub Section 4 of the Land Reforms Act, as extracted in the impugned order, reads thus:-

“In the definition of family as given in Section 3(4) of the

Punjab Land Reforms Act, 1972 it is mentioned that “family in relation to a person means the person, the wife of husband, as the case may be, of such person and his or her minor children other than a married minor daughter”.”

Thus, for all intents and purposes, petitioner cannot take the benefit of ratio decidendi culled out by judgment rendered by Hon'ble Supreme Court in Ujjagar Singh's case. Had petitioner been actually legal heirs of the member of the family of Gujjar Singh in view of stand of the State regarding the factum of taking the possession in the year 1974 perhaps there would have been force and merit in the submission of Mr. Vikas Singh, Advocate. The present case is not of such kind. There is no dispute to the ratio decidendi culled out as the Punjab Land Reforms Act, came to be became effective w.e.f. 02.04.1973 and possession having been taken after 1974, and the land has been declared surplus, if he dies, legal heirs have a right for determination of his shares. Though, in view of this fact, I am of the view that petitioner cannot be permitted to challenge the allotment of private respondents. The allotment has already been held to be valid one in view of the findings rendered by the authorities, in essence, petitioner has no locus standi to challenge the allotment in view of the observations given hereinabove.

As regards contention of Mr. R.C. Setia, Sr. Advocate, for initiation of the proceedings under Section 340 of Cr.P.C., Once the application for amendment of the writ petition has been moved, I do not deem it appropriate to initiate the action against the petitioner.

For the reasons aforementioned, the present writ petition is devoid of merits and is wholly misconceived.

I do not intend to differ with the findings rendered by the Financial Commissioner, much less, arguments of Mr. Vikas Singh, Advocate, are not tenable in view of observations made hereinabove.

Resultantly, writ petition stands dismissed.

28.02.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No