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

CWP-17573-2011

Date of decision : 27.04.2017

Ram Chander and another

... Petitioner(s)

Versus

Financial Commissioner, Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chanderhas Yadav, Advocate
for the petitioners.

Mr. Indresh Goel, Addl. A.G., Haryana.

Mr. Sanjiv Gupta, Advocate
for respondent No.5.

AMIT RAWAL, J. (ORAL)

The petitioners are the vendees of Gurcharan Singh, who is stated to have purchased the property from Parkash Chand and Parkash Chand from the big landowner, namely, Shyam Murari, by virtue of the sale deed dated 09.06.2006.

Mr. Chanderhas Yadav, learned counsel appearing on behalf of the petitioners submits that Gurcharan Singh had become the owner by virtue of the sale deed dated 12.12.1979. During the time of his ownership, filed a civil suit bearing No.966 of 1985, claiming the following claim:-

"Suit for permanent injunction restraining the defendants from dispossessing the plaintiffs and declaration allotting the land comprised in square No.120 Killa No.15(8-0) 16(8-0), 17(8-0), 18(8-0), 22/2 (1-16) 23, 24 25(24-0) in Village Risalia Khera,

Tehsil Dabwali, District Sirsa, without any prior notice to the plaintiffs and without hearing the plaintiffs under provisions of Haryana Ceiling Act, on the basis of evidence of every description oral and documentary."

The aforementioned suit was decreed in his favour and the appeal filed thereto has also been dismissed vide judgment and decree dated 15.03.1991, in essence, State of Haryana did not succeed. The contesting respondent Nos.5 to 8 are claiming to have allotted the land by the prescribed authorities i.e. surplus land, on 31.08.1982 and the khasra number are identical to one in the sale deed. In fact, the land at the hands of the big landowner was never declared as surplus and the petitioners made all reasonable enquiries before purchasing the property i.e. the jamabandis and mutations were also in favour of Gurcharan Singh and therefore, the petitioners being *bona fide* purchasers under the provisions of Section 41 of the Transfer of Property Act cannot be ousted from the possession as it has been found to be intact owing to the aforementioned judgment and decree. The authorities have failed to produce on record the order dated 09.09.1966 by virtue of which the land had allegedly been declared surplus. This Court had called the record at many times, even the cost was also imposed as the order dated 21.08.1961 declaring the land at the hands of Shyam Murari, khasra numbers of which do not correlate with that of Gurcharan Singh and therefore, the identity of the property is not in dispute, thus, the authorities cannot order for handing over the possession to the private respondent(s) of the land in ownership of the petitioners i.e. acquired the ownership by virtue of the registered document, thus, urges this Court for setting aside the impugned order, under challenge.

Mr. Indresh Goel, Addl. A.G., Haryana and Mr. Sanjiv Gupta,

learned counsel appearing on behalf of the State and private respondent(s), respectively, during the course of hearing, has pointed out the record brought, in this regard, and as per the record, the Collector, Surplus Area, District Sirsa, on the basis of the report of the Surplus Revenue Officer dated 18.08.1961 had declared the area as surplus at the hands of the big landowner.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the private respondent(s) has drawn the attention of this Court to the certificate of allotment of land in favour of the private respondent(s) i.e. Annexures R/5/1 and R/5/2 to contend that all the khasra numbers allotted in their favour are identical to one as mentioned in the Civil Suit. The suit was only for injunction and not for title and therefore, the petitioners cannot take the benefit of the same.

They further submit that in view of the promulgation of the Haryana Ceiling on Land Holdings Act, 1972 (for short 'the 1972 Act') particularly as per the provisions of sub-Section 3 of Section 12 of the 1972 Act, the appropriate date is/was 24.01.1971 and all the properties rendered surplus, vest in the State of Haryana, thus, the Surplus Department had rightly exercised the jurisdiction in allotting the land in respect of the land having been declared surplus and in support of his contentions, relies upon the *ratio decidendi* culled out by this Court in **“Megh Raj and others V/s Manphool and others” 2008 (3) RCR (Civil) 241**, **“Mohinder Singh V/s State of Haryana and others” 2008(1) PLR 96**, **“Jaswant Kaur V/s State of Haryana” 1977 PLJ 230** and **“Maro through LRs & others V/s Rati Ram and others” 2008(3) PLR 331**.

In rebuttal, Mr. Chanderhas Yadav, learned counsel appearing

on behalf of the petitioners relies upon the *ratio decidendi* culled out by this Court in “Chandgi V/s Financial Commissioner, Haryana” 1984 PLJ 437, to contend that surplus land does not automatically vest in the State, until and unless there is a separate order declaring the land surplus.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Chanderhas Yadav, for, on going through the facts and circumstances of the judgment rendered in “Chandgi's case (supra), it is a case where the land without there being an order declaring it surplus, the stand of the State of vesting of the right under sub-Section 3 of Section 12 of the 1972 Act was negated. The instant case is not of such kind as in view of the facts, particularly order dated 21.08.1961, seen from the record brought in Court today, whereby the land at the hands of Shyam Murari had allegedly been declared surplus. The petitioners are the vendees of Gurcharan Singh, who had purchased the property from Parkash Chand and Parkash Chand i.e. from the big landowner, namely, Shyam Murari. The suit, aforementioned, was only for injunction and not of title, even otherwise, the suit of 1985 after vesting of the land seeking declaration would not be maintainable. The aforementioned view of mine is derived from the *ratio decidendi* culled out in the judgments rendered by this Court in “Megh Raj's case (supra), “Mohinder Singh's case (supra) and “Jaswant Kaur's case (supra).

As regards the argument of Chanderhas Yadav that khasra numbers as per surplus order are not tallying with the sale deed, but the fact remains that the land had been declared as surplus in 1961 and thereafter, khasra numbers had changed, but the identity of the property is not in

dispute, for, it is Gurcharan Singh, who had derived the title from the erstwhile vendor, had instituted a suit in respect of the same property branding himself to have purchased from Parkash Chand vide sale deed dated 23.06.1975 i.e. purchased from the erstwhile owner. The injunction would not come in the way of the Department in handing over the possession of the land to the allottees by seeking with the land having been declared surplus, by seeking eviction i.e. by virtue of provisions of sub-Section 3 of Section 12 of the 1972 Act as the applicable date would be 24.01.1971, whereas the sale deed of the petitioners is dated 09.06.2006.

As regards the other arguments of Mr. Yadav, with regard to the reliance of an order dated 09.09.1966 by the authorities in declining the case of the petitioners, in my view, would be meaningless as it is not the case of the petitioners that they have derived the title from the other person. The title flowed from the big landowner, namely, Shyam Murari that order would not have relevance, though, passing reference of the same may have weighed in the mind of the Court. Be that as it may, but the fact remains that the land has been declared surplus on 21.08.1961, a big landowner had no right and title to deal with the property. Any sale, thus, would be affected by the provisions of Sub-Section 3 of Section 12 of the 1972 Act. At the best, the petitioners are in my view are entitled to claim damages against Gurcharan Singh, even if the property according to him had been reflected in the name of Gurcharan Singh, having not disclosed to the authorities qua declared as surplus. Otherwise, there was no occasion for filing the suit against the State of Haryana and prescribed authorities. The factum of allotment of the land in favour of the private respondents has never been challenged at any point of time.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the impugned order, much less, do not call for interference and cannot be said to be vitiated in law. Accordingly, the same are upheld.

Resultantly, the present writ petition is dismissed.

27.04.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No
✓
Whether Reportable Yes/ No