

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

CWP No.9866 of 2009
Date of decision : 31.01.2017

Karam Singh and others

...Petitioners

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Sanjay Majithia, Sr. Advocate with
Mr. R.P. Daaria, Advocate for the petitioners.

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

Ms. Gurpreet Kaur, Advocate for
Mr. P.L. Singla, Advocate for respondent No.6.

AMIT RAWAL, J. (Oral)

The petitioners have invoked the extra ordinary writ jurisdiction of this Court for issuance of writ in the nature of certiorari for quashing of the orders dated 29.07.1999 (Annexure P-10), 07.09.2001 (Annexure P-11), 13.09.2005 (Annexure P-12) and 17.01.2007 (Annexure P-14), whereby the Gram Panchayat Burj Kotia had invoked the jurisdiction of the Assistant Collector, Grade-I, by challenging the mutation No.601 of Village Kotia on the premise that the land sought to be allotted vide order dated 20.12.1984 (Annexure P-1) is *sham lat deh*, in essence, vests in Gram Panchayat.

Mr. Sanjay Majithia, learned Senior Counsel assisted by Mr.

R.P. Daaria, learned counsel appearing on behalf of petitioners submits that on 22.10.1953, 8-3 standard acres of land against the verified claim of 16 standard acres of land left in Pakistan was allotted to the petitioner by imposing cut of 50%. The cut of 50% had already been set aside by the Division Bench of this Court in CWP No.841 of 1968, decided on 01.11.1979.

Matter was raked up before the authorities for the allotment of the balance land. Vide Annexure P-1, the Assistant Registrar, Rehabilitation Department, Haryana, Chandigarh held that Maghar Singh was entitled to the extent of 4-4¼ standard acres of land in Village Hijrawan Khurd or nearby village according to the availability of the area and grade. Resultantly, mutation dated 08.01.1986 of the following land was caused in favour of Maghar Singh. Details of which are given hereinbelow:-

“Number khasras as allotted to Shri Maghar Singh son of Ganda Singh in village Kotiyan 196, Tehsil Kalka, Distt. Ambala, 4-4-1/4 SAS

<i>Village/Tehsil</i>	<i>Number Khasra</i>	<i>Area</i>	<i>Nature of land</i>
<i>Kotiyan</i>	<i>174</i>	<i>64-8</i>	<i>Gair Marusi</i>
<i>196</i>			
<i>Kalka</i>	<i>325</i>	<i>25-0</i>	<i>Gair Mumkin</i>
<i>Kitta 2</i>		<i>89-8</i>	<i>Gair Marusi</i>

As per field book, khasra no.174/4, measuring 64 bighas 8 biswas and khasra no.325/2 measuring 25 bigha – 0 biswas has been allotted.

Sd/- Tehsildar (Sales)
Cum-Managing Officer, Ambala
8.1.86”

The aforementioned mutation was challenged by the Gram

Panchayat before the Revenue Court resulting into filing of the writ petition bearing No.1478 of 1986. The aforementioned writ petition was allowed on 13.01.1994. He submits that authorities have not allotted the alternative land in view of two factors, one decision rendered in aforementioned writ petition and as well as judgment rendered by Hon'ble Supreme Court in *Gram Panchayat of Village Jamalpur Vs. Malwinder Singh, 1985 PLJ 463*.

He further submits that State of Haryana had caused the amendment in the Punjab Village Common Lands (Regulation) Act 1961 i.e. in Section 2(g) (ii-a) of 1961 Act by referring that the land which has been allotted on quasi permanent basis to the displaced person would not be termed as *sham lat deh*. Cut off date was also fixed as 09.07.1985.

He submits that claim of the petitioner would not be taken away in view of the cut off date *ibid* as it would relate back to the original allotment made in the year 1986, much less, even order of Director says that Annexure P-1 is prior to the passing of the aforementioned date, in essence, it is dated 20.12.1984. In support of his contention, he has relied upon judgment rendered by the Division Bench of this Court in *Gram Panchayat of Village Kum Kalan Vs. The State of Punjab and others, 2010(3) RCR (Civil) 729*, & *Sohan Singh and another Vs. Additional Director, Rural Development and Panchayats, Punjab and others, 2015(4) RCR (Civil) 664* and thus urges this Court for setting aside the aforementioned impugned orders as all the aforementioned facts have not been taken care of, thus, there is illegality, much less, orders under challenge are liable to be set aside as it is not only suffers from fallacy, much less, preposterous.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana has during the

course of hearing has drawn the attention of this Court to the averments made in para No.4 of the written statement to contend that once land vested in the Gram Panchayat and recorded as *sham lat deh*, same could not have been mutated in favour of Custodian Department. Rehabilitation Department was ordered to get the matter settled before the competent authority, in pursuance to the direction indicated in the order dated 13.01.1994 rendered in CWP No.1478 of 1986. However, no such action or process was initiated by the Successor-in-interest of Maghar Singh-petitioner and, therefore, rightly so claims have been rejected.

Ms. Gurpreet Kaur, learned counsel appearing on behalf of Mr. P.L. Singla, Advocate for respondent No.6 submits that petitioner had no locus standi to file the present writ petition as in view of the fact that order dated 13.01.1994 rendered in CWP No.1478 of 1986, has become full and final. They have lost the right in seeking the claim and thus urges this Court for dismissal of the writ petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book.

The facts indicated above are not in dispute. Once imposition of 50% cut was held to be bad in the eyes of law, the claim of the petitioners for the allotment of balance land was ordered to be passed way back on 20.12.1984 (Annexure P-1) i.e. before the cut of date of 09.07.1985. Though, mutation was effected on 08.01.1986, thus in my view, if the subsequent order of allotment do not relate back to the original allotment of 1953, it would be considered as of 1984, only a consequential effect was affected the correction and recorded in the revenue record and thus ratio

decidendi culled out in *Gram Panchayat of Village Jamalpur's case (Supra)* would not apply but the judgments cited by Mr. Majithia, Sr. Advocate would apply, wherein the Division Bench of this Court held as under:-

“38. On the contrary, in the present case, by amendment, the very fundamental basis to exclude land from the definition of shamilat deh land has been altered, based on which, some orders may have been passed in favour of the petitioner Gram Panchayat. The very definition of the shamilat deh has been altered. Otherwise also, the Gram Panchayat being a statutory body and a creature of the statute and having interest in the land only under the statute, is not competent to lay challenge to the amendment Act as has been done in the present case.

39. To the same effect is the judgment of the Hon'ble Supreme Court in The Govt. of A.P. and another v. Hindustan Machine Tools Ltd., AIR 1975 Supreme Court 2037. In that case, it was held as under:-

“8. We see no substance in the respondent's contention that by redefining the term 'house' with retrospective effect and by validating the levies imposed under the unamended Act as if, notwithstanding anything contained in any judgment decree or order of any court, that Act as amended was in force on the date when the tax was levied, the Legislature has encroached upon a judicial, function. The power of the Legislature to pass a law postulates the power to pass it prospectively as well as retrospectively, the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the Legislature to enact laws is plenary.

9. The State legislature, it is significant, has not overruled or set aside the judgment of the High Court. It

has amended the definition of 'house' by the substitution of a new section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances.

10. In Tirath Ram Rajindra Nath v. State of U. P. (2), the Legislature amended the law retrospectively and thereby removed the basis of the decision rendered by the High Court of Allahabad. It was held by this Court that this was within the permissible limits and validation of the old Act by amending it retrospectively did not constitute an encroachment on the functions of the judiciary.(emphasis supplied)”

In view of the aforementioned fact, challenge to the order dated 13.01.1994 rendered in CWP No.1478 of 1986 pales into insignificance. The factum of the order of allotment dated 20.12.1984 was in the notice of the Gram Panchayat and the aforementioned order has never been challenged. Even judgment, whereby action of the State imposing 50% cut has been rejected, has attained finality. There is no challenge to the same.

In view of the aforementioned fact, I am of the view that orders under challenge do not stand scrutiny of the touchstone of the reasonableness or legitimacy. Authorities below were enjoined upon obligation to examine all the aspects, aforementioned. Having failed to do so, orders cannot be allowed to be sustain, much less, being illegal and unsustainable. Resultantly, same are set aside. Order dated 20.12.1984 (Annexure P-1) is hereby upheld. Resultantly, writ petition stands allowed.

Since, I am allowing the present writ petition, natural corollary to the aforementioned observations of mine would automatically follow.

31.01.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No