

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: January 24, 2017

1. C.W.P.No.22725 of 2013

Satpal Singh & another

...Petitioners

Versus

The Financial Commissioner (Rehabilitation), Haryana & others

...Respondents

2. C.W.P.No.22872 of 2013

Lakhwinder Singh & others

...Petitioners

Versus

The Financial Commissioner (Rehabilitation), Haryana & others

...Respondents

3. C.W.P.No.23108 of 2013

Joginder Kaur & another

...Petitioners

Versus

The Financial Commissioner (Rehabilitation), Haryana & others

...Respondents

4. C.W.P.No.23152 of 2013

Satbir Singh

...Petitioner

Versus

The Financial Commissioner (Rehabilitation), Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Som Nath Saini, Advocate,
for the petitioners in CWP Nos.22725 & 22872 of 2013.

Mr.Vikram Singh, Advocate,
for the petitioners in CWP Nos.23108 & 23152 of 2013.

Mr.Sandeep Singh Mann, Senior Deputy Advocate General,
Haryana for the State.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of four Civil Writ Petitions bearing No.22725, 22872, 23108 and 23152 of 2013 as the common questions of law and fact are involved. The facts are being taken from CWP No.22725 of 2013.

The petitioners are aggrieved of the impugned order dated 6.8.2013 (Annexure P-9) passed by respondent No.1, whereby the Additional Chief Secretary-Cum-Financial Commissioner, Revenue, Haryana rejected their application for restoration of the allotment of the land on the premise that their cancellation of allotment has already been upheld by this Court.

Mr.Som Nath Saini, learned counsel for the petitioners in CWP Nos.22725 and 22872 of 2013 and Mr.Vikram Singh, learned counsel for the petitioners in CWP Nos.23108 and 23152 of 2013 submit that the vendors of the petitioners had migrated from Pakistan and the Rehabilitation Department assessed their claim and on verification thereof, allotted land vide Parchi allotment dated 30.11.1982 and the Sanad dated 4.1.1983 had been issued, copies of which are Annexures P-1 and P-2. The land, in fact, was allotted from the evacuee share in the shamlat land. The aforementioned allotment was made on the basis of the judgment rendered by this Court in **Gram Sabha and Gram Panchayat Daba Versus The Chief Settlement Commissioner and others, 1973 PLJ 398**, but, however

reached upto the Hon'ble Supreme Court and it was held that the evacuee share in the shamlat land would be of the Gram Panchayat. The State Government caused amendment in the Punjab Village Common Land Regulation Haryana Amendment Act 1996 vide Act No.13 of 1996, whereby sub-clause (ii-a) after clause (ii) of Section 2(g) was incorporated, which reads as under:-

“Section 2(g) “Shamlat Deh” includes:-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

but does not include land which:-

(i) xxx xxx xxx

(ii) xxx xxx xxx

[(ii-a) was shamlat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.”

However, during the interregnum, the aforementioned allotment was cancelled and the matter was assailed before this Court and this Court, vide order dated 21.12.1995 passed in Civil Writ Petition No.8750 of 1987, upheld the cancellation of the allotment . In view of the amendment caused in the aforementioned Act of 1996, i.e., Act. No.13 of 1996, the cut off date was fixed as 9.7.1985. Apparently, the allotment of the vendors of the petitioners is before 1985. It is in this backdrop of the matter, they moved an application before the Commissioner for restoration of the allotment as the controversy had already been settled by the Division Bench of this Court in

Gram Panchayat of village Kum-Kalan Versus The State of Punjab and

others, 2010 (3) R.C.R. (Civil) 729 and Sohan Singh and another Versus Additional Director, Rural Development & Panchayats, Punjab and others, 2015 (4) R.C.R. (Civil) 664, but the Secretary had dismissed the application by taking note of the order of this Court dated 21.12.1995 upholding the cancellation of the allotment. They have also drawn the attention of this Court to Annexure P-10, another order passed by the Government restoring the allotment by taking into consideration the allotment made before 9.7.1985, i.e., cut off date.

The written statement on behalf of the Gram Panchayat was filed through the Administrator as the elected body of the Gram Panchayat was under suspension. The stand taken in the written statement reads as under:-

“That the writ petition filed by the petitioners is not maintainable in its present form since the petitioners have already availed the remedies available to them under the law. The petitioners have failed to get any relief from the competent courts.

That the facts of the case are that the Gram Panchayat of village Janesaron had earlier filed the civil writ petition No.6915 of 1986 before this Hon'ble Court, which was disposed of in terms of the civil writ petition No.5661 of 1984. Briefly stated the facts of the case are that at the time of the partition of the country in the year 1947, the property lying in the villages, where the Mohamdans were residing was mutated in the names of the Rehabilitation Department and they started allotting the same to various persons. Few Gram Panchayat challenged this act of the Rehabilitation Department and the plea of the Panchayats were admitted to the effect that the shamlat land shall remain as shamlat-deh and cannot be allotted to anyone by the Rehabilitation Department. The

propositions was decided even upto the Hon'ble Supreme Court of India in the same terms and the writ petition No.6915 of 1986 on the same subject matter, has also been disposed of by the Hon'ble High Court along with the writ petition No.5661 of 1984. The Hon'ble Apex Court in the Gram Panchayat of village Jamalpur versus Malwinder Singh's case has held that the effect of the administration of the Evacuee Property Act was not to take away the character of shamlat-deh as shamlat-deh, but only to vests in the custodian such interest at the evacuee possessed in the shamlat-deh. The petitioners have absolutely no right, title or interest in the suit land, which has already vested in the Gram Panchayat. The piece of land involved in the present case was never allotted to the petitioners by any of the juristic person or the department and mere entry of cultivation without any right, or title does not create a right of title or interest in their favour.”

In view of the stand taken in the written statement, they do not dispute the allotment in favour of the vendors of the petitioners and the character of the property being shamlat deh, but relied upon the ratio decidendi culled out in **Gram Panchayat of Village Jamalpur Versus Malwinder Singh, 1985 (3) SCC 661.**

The reply of the State is also in tune with the findings rendered in the impugned order.

Learned State counsel has submitted that since the petitioners are not the original allottees and have been deprived of their rights, at the best they can claim damages, but cannot seek restoration.

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

Causing of the amendment in the Act, as noticed above, is not in dispute. The Gram Panchayat had claimed the ownership on the ground

that the land is the share of Muslims, who migrated and in view of the judgment rendered in **Gram Panchayat of Village Jamalpur's case (supra)**, the status of the land would remain as Shamlat, but I cannot remain oblivious of the fact that the allotment in the names of the vendors of the petitioners was much before the cut off date, i.e., 9.7.1985 and indicates that the land allotted on quasi-permanent basis to the displaced persons out of the share of the Shamlat Deh, has been included in the definition “Shamlat Deh”. Concededly, the allotment was made to the vendors of the petitioners by the Rehabilitation Department from the evacuee share of the Gram Panchayat considering the nature and character of the land being Shamlat Deh.

In view of the definition and the cut off date, order (Annexure P-9) under challenge, thus, in my view is not sustainable. The same is hereby set-aside. The petitioners are held entitled to restoration of the plot.

I do not find any force in the submission of the learned State Counsel that at the best the petitioners can claim damages as they have a valuable right as they have stepped into the shoes of the erstwhile allottees. They cannot be put to fault as at that time, they had a subsisting right. State Counsel has not been able to support the order (Annexure P-10), whereby the allotment has been ordered.

Writ petitions stand allowed.

January 24, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No