

CWP Nos.3619 and 15015 of 2012 (O&M) &
CWP No.4592 of 2013 (O&M)

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

1. CWP No.3619 of 2012 (O&M)
Date of decision : 21.02.2017

Joginder Singh and others

...Petitioners

Versus

The Financial Commissioner, Revenue, Punjab and others

...Respondents

2. CWP No.15015 of 2012 (O&M)
Date of decision : 21.02.2017

Sudesh Kumari and others

...Petitioners

Versus

The Financial Commissioner, Revenue, Punjab and others

...Respondents

3. CWP No.4592 of 2013 (O&M)
Date of decision : 21.02.2017

Harinder Singh and another

...Petitioners

Versus

The Financial Commissioner, Revenue, Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. G.S. Nagra, Advocate for petitioners.
(In CWP No.3619 of 2012)
for respondent Nos.5 to 8
(In CWP No.15015 of 2012)

Mr. Naresh Chander, Advocate for
Mr. R.S. Chauhan, Advocate for petitioners.
(In CWP No.4592 of 2013)

Mr. Som Nath Saini, Advocate for petitioners
(In CWP No.15015 of 2012)

Mr. Yatinder Sharma, Addl. A.G. Punjab.

Mr. Dinesh Ghai, Advocate for private respondents
(In CWP No.3619 of 2012)

Mr. Sherry K. Singla, Advocate for respondent No.9.
(In CWP No.15015 of 2012 & CWP No.4592 of 2013)

Mr. G.P.S. Bal, Advocate for respondent No.6
(In CWP No.3619 of 2012) and
for respondent No.9 (In CWP No.15015 of 2012)

AMIT RAWAL, J. (Oral)

CM No.10522-CWP of 2012 in CWP No.3619 of 2012

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Sudesh Kumar, Kamlesh Kumari, Darshna Kumari, Sunita and Shanti Devi (as mentioned in the application) are ordered to be impleaded as party in the present writ petition as respondent Nos.7 to 11.

Main cases

This order of mine shall dispose of three aforementioned writ petitions, whereby the Financial Commissioner while entertaining the review petition at the instance of the private respondents has set aside the order dated 02.11.2010 vide impugned order dated 25.08.2011.

Mr. G.S. Nagra, Advocate representing the petitioners in CWP

No.3619 of 2012 and respondent Nos.5 to 8 in CWP No.15015 of 2012 and Mr. Som Nath Saini, Advocate representing the petitioners in CWP No.15015 of 2012 and Mr. Naresh Chander, Advocate for Mr. R.S. Chauhan, Advocate representing the petitioners in CWP No.4592 of 2013 submits that Sunder Dass was a displaced person and respondent Nos.5 and 6 alleged to have purchased his rights. The civil suit was filed seeking declaration in respect of the aforementioned property which was decreed. However, the lower Appellate Court reversed the findings and in this regard, RSA No.1580 of 1992 filed, was withdrawn on 14.08.2014. However, during the interregnum, an application under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was moved to the authorities for allotment of the land before the Claim Commissioner which was dismissed by the authorities and ultimately the matter reached before the Financial Commissioner who vide order dated 02.11.2010 (Annexure P-11) dismissed the appeal filed by respondent Nos.5 and 6. Thereafter, respondent Nos.5 and 6 filed CWP No.683 of 2011 in this Hon'ble Court challenging the impugned order dated 02.11.2010 in which notice of motion was issued. In the meantime, respondent Nos.5 and 6 also filed the review application under Section 25(2) of the 1954 Act, for recalling of the order dated 02.11.2010, before the Financial Commissioner. The Assistant Collector, IInd Grade-cum-Tehsildar vide order dated 17.06.2011 corrected the khasra girdawri in the name of petitioner Nos.1 to 3. Respondent Nos.5 and 6 filed the Civil Miscellaneous application bearing No.9882 of 2011 in CWP No.683 of 2011 for withdrawal of the writ

petition and the same was dismissed as withdrawn vide order dated 29.07.2011. Vide order dated 28.08.2011, the Financial Commissioner allowed the review application filed by respondent Nos.5 and 6 whereby their case for allotment, rejected by the Claim Commissioner, has been accepted. It has been submitted that the Financial Commissioner did not have any jurisdiction for review of the order. Being aggrieved of the same, respondents availed the remedy. Once they already withdrew the writ petition and as well as RSAs, their right did not crystalise into any ownership in view of the alleged purchase from Sunder Dass, therefore, they could not have any stake and claim in the property, much less, allotment and thus urges this Court that order is liable to be set aside.

Mr. G.P.S. Bal, learned counsel appearing on behalf of private respondents submits that order of review is perfectly legal and justified. There is no illegality and perversity. Even if the application for review is not being treated or entertained, FCR, under Section 25 of Displaced Persons (Compensation and Rehabilitation) Act, 1954 can suo motu take cognizance, therefore, order can be treated as under those provisions. All these points have been extensively dealt with vis-a-vis allotment in the case of the petitioners and, therefore, no prejudice would be caused to the petitioners who are successors-in-interest of Gopal Chand. Same is arguments of other learned counsels appearing on behalf of other respondents.

Mr. G.S. Nagra, Advocate relied upon the judgment of Hon'ble Supreme Court in *Kalabharati Advertising Vs. Hemant Vimalnath*

Narichania and others, 2011(1) RCR (Civil) 216, to submit with regard to the jurisdiction of the Financial Commissioner while entertaining the review application particularly para Nos.12, 13 and 14 of the judgment and the judgment rendered by this Court in *Sarabjeet Singh Purewal Vs. State of Haryana and others, 2012(4) RCR (Civil) 258*. Para Nos.12, 13 and 14 of the judgment aforementioned i.e. *Kalabharati Advertising's (Supra)* reads thus:-

“12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr. AIR 1965 SC 1457; and Harbhajan Singh v. Karam Singh & ors., AIR 1966 SC 641).

13. In Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji, AIR 1970 SC 1273; Maj. Chandra Bhan Singh v. Latafat Ullah Khan & Ors., AIR 1978 SC 1814; Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur (U.P.) & Ors., AIR 1987 SC 2186; State of Orissa & Ors. v. Commissioner of Land Records and Settlement, Cuttack & ors., (1998) 7 SCC 162; and Sunita Jain v. Pawan Kumar Jain & Ors, (2008) 2 SCC 705, this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of

statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible.”

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

In view of ratio decidendi culled out in the judgment cited (Supra), Financial Commissioner being quasi judicial authority does not have any power of review and recalling. The private respondents had been playing hide and seek, much less embroiled into the litigation. Firstly by filing RSA and then writ petition i.e. 683 of 2011 (Annexure P-12).

In my view, order of review is, thus, without jurisdiction and application for review could not have been entertained, once order of previous Financial Commissioner declining the claim had attained finality, even matter was subjudiced before the Court. Such type of practice was liable to be deprecated.

Resultantly, order under challenge dated 25.08.2011 is hereby set aside.

Accordingly, all the writ petitions stand allowed.

This Order of mine would not take away the right of the private respondents to seek their claim either by reviving the writ petition i.e. CWP

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No.683 of 2011 or by any other means in accordance with law.

Direction is also issued to the State to take effective steps for taking the excess area in possession of the petitioner, in accordance with law.

21.02.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No