

CWP No.25373 of 2014, CWP No.10440 of 2015 &
CWP No.2680 of 2016 (O&M)

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

1. CWP No.25373 of 2014 (O&M)
Date of decision : 09.03.2017

Charanjit Singh and others

...Petitioners

Versus

Union of India and others

...Respondents

2. CWP No.10440 of 2015 (O&M)
Date of decision : 09.03.2017

Labh Singh and others

...Petitioners

Versus

Union of India and others

...Respondents

3. CWP No.2680 of 2016 (O&M)
Date of decision : 09.03.2017

Gulzar Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vivek Salathia, Advocate
for the petitioner(s) in CWP-25373-2014.

Mr. Dhirinder Chopra, Advocate

for the petitioner(s) in CWP-2680-2016.

Mr. S.D.Sharma, Senior Advocate with
Mr. Ved Priya Malik, Advocate
for respondent Nos. 8, 9, 11 & 13 in CWP No.25373 of 2014
for respondent Nos.9 to 12 in CWP No.2680 of 2016.

Ms. Lavanya Paul, AAG, Punjab.

Mr. Gurcharan Singh, Advocate
for the petitioner(s) in CWP-10440-2015.

Mr. K.S. Khehar, Advocate
for respondent Nos.8, 9, 11 and 13 in CWP-10440-2015.

AMIT RAWAL, J. (Oral)

CM-3405-CWP-2017 IN CWP-25373-2014

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

Counter affidavit on behalf of respondent No.8 to the reply dated 02.08.2016 filed by Dr. Anupreet Kaur, Sub Divisional Magistrate, Ajnala District Amritsar, is taken on record, subject to all just exceptions.

Main cases

This order of mine shall dispose of aforementioned three writ petitions.

It is a classic case where a decree of 1984 is being sought to be set aside by seeking direction which the counsel for the petitioner, while issuing notice of motion confined only for holding an enquiry, in essence, which could not have been done by filing an appeal, as has been sought to be done by invoking the jurisdiction of Article 226 of the Constitution of India.

The case set out by the petitioner(s) in the aforementioned writ petitions is that by virtue of two judgment and decrees (Annexures P-3 and P-4) in Civil Suit Nos.928 of 1982 and 412 of 1984, the land measuring area approximately 795 kanals and 660 kanals has been held to be in ownership of the private respondents i.e. Respondent Nos.8, 9, 11 and 13 in CWP No.25373 of 2014 and other private respondents in various other writ petitions.

Reference has been made to para No.3 of the judgment to point out that defendants Nos.3 to 5 did not appear and thus proceeded ex parte and the State of Punjab did not contest the matter. In the last order of this Court, attention was drawn to the specific averments in the affidavit dated 02.08.2016 that the officials of the State had not been diligent in pursuing the matter. It has been pointed out that Government was required to take an action against the aforementioned decrees in accordance with law and reference has been made to Annexure R-1 attached with the affidavit dated 02.08.2016 to contend that the SDM had written a letter dated 25.07.2016 to Deputy Commissioner for taking an action in accordance with law.

Per Contra, Mr. S.D. Sharma, learned Senior Counsel with Mr. Ved Priya Malik, Advocate for respondent Nos. 8, 9, 11 & 13 and other counsel representing the respondents in other writ petitions submit that petitioners have not come to the Court with clean hands. The decrees, aforementioned, could have been challenged by any third party who have been effected as to implementation thereof. Even private respondents have also filed a Civil Suit No.731 of 1998 (Annexure R-8/7) titled as Ramesh

Kumar and others Vs. Thakur Singh and others and Civil Suit No.775 of 2007 (Annexure R-8/8) titled as Ramesh Kumar Vs. Tara Chand and others seeking possession of the land. The aforementioned suits have been decreed. Execution petition filed therein stated to be pending Even the contempt petition has also been filed. On the contrary, all other persons i.e. petitioner herein and few similarly situated persons have lost their right of title in the property and one of the example reflected in Annexure R-8/9 i.e. decision dated 04.04.2011 rendered in RSA No.1634 of 2009 and Annexure R-8/10 i.e. decision dated 01.09.2014 rendered in RSA No.1729 of 2012. There is no replication to the aforementioned facts, in essence, there is no rebuttal.

I am of the view that the confinement of the relief with regard to the holding of enquiry tantamounts to giving a clothe to the State in assailing the judgment and decree. However, even if in the absence of directions, State/any private party who is effected, has a right to file independent appeal in view of ratio decidendi culled out by Hon'ble Supreme Court in *Amit Kumar Shaw and another Vs. Farida Khatoon and another*, 2005(2) RCR (Civil), 651, Para No.9, which reads as under:-

“The object of Order 1 Rule 10 is to discourage contests on technical pleas and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this rule, a person may be added as a party to the suit in the following two cases:-

- 1) When he ought to have been joined as plaintiff or defendant and is not joined so, or*

2) *When without his presence, the question in the suit cannot be completely decided.”*

It is settled law that any third party who is effected by decree can assail the same. No steps have yet been taken which has been apprised to this Court on specific query raised by this Court, in essence, thing which cannot be advert have been sought by one mode or different.

No ground for interference is made out.

Accordingly, all the aforementioned writ petitions are dismissed.

09.03.2017
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**