

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

1. CWP No.24749 of 2015 (O&M)
Date of decision : 21.02.2017

Darshna Kumari and others

...Petitioners

Versus

Financial Commissioner, Revenue and others

...Respondents

2. CWP No.25643 of 2015 (O&M)
Date of decision : 21.02.2017

Suraj Parkash

...Petitioner

Versus

Financial Commissioner, Revenue and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. G.S. Nagra, Advocate for the petitioner
(In CWP No.25643 of 2015) and
for respondent No.5 (In CWP No.24749 of 2015)

Mr. Som Nath Saini, Advocate for the petitioners
(In CWP No.24749 of 2015)

Mr. Dinesh Ghai, Advocate for applicant
(In CWP No.24749 of 2015)

AMIT RAWAL, J. (Oral)

CM No.5333-CWP of 2016

For the reasons stated in the application, which is duly

supported by an affidavit, application is allowed.

Amarjit Singh and Kulwant Kaur as mentioned in the application are ordered to be impleaded as party in the writ petition.

Main cases

This order of mine shall dispose of aforementioned two writ petitions as questions of law and facts are identical. The case, as set up according to the Counsels representing the petitioner(s) in the present case is that Rajpal Singh had filed an appeal No.596 of 1979 against the order, dated 05.02.1979, of the Managing Officer, Jullundur, whereby excess allotment to the extent of 16 ³/₄ standard acre from the name of Gokal Chand, his father in Village Siyastpur, Tehsil and District Ropar, had been cancelled. Appeal preferred by invoking the provision of Section 22 of Displaced Persons (Compensation and Rehabilitation) Act, 1954. The aforementioned order on consideration of the matter, vide order dated 16.11.1979 (Annexure P-1 in CWP No.24749 of 2015) was set aside by the Settlement Commissioner, Punjab, Rehabilitation Department, Jalandhar .

The grievance of the petitioners is that in pursuance to the application moved by brother Suraj Parkash in the year 2009 i.e. case No.153/Ropar/2009-CC (Annexure P-3) for allotment of 22.1 standard acres of land without disclosing the factum of another order dated 30.07.1982 (Annexure P-2) reflected in the order dated 17.06.2011 wherein Raj Pal Singh as he was then alive, filed the petition under Section 33 of 1954 Act regarding the allotment of more area than the one allotted to him. In view of the aforementioned order dated 16.11.1979, Chief Settlement Commissioner purportedly passed an order dated 02.11.1989, which was assailed by Rajpal

Singh. The Financial Commissioner Revenue, vide order dated 30.07.1982, dismissed the aforementioned petition with the observations that the petitioners be allowed to agitate any point they may like to take before the Managing Officers in addition to the observation of Management Settlement Commissioner, in essence, order of Settlement Commissioner was only a remand order for determining the entitlement. It is against the remand, petitioner Rajpal Singh had assailed the aforementioned order.

Contention of the counsel is that in the year 1988, Rajpal Singh had moved an application for reconsideration of the matter but it remained pending and nothing happened. The authorities were incumbent to decide the matter on remand from the Chief Settlement Commissioner as per the order dated 02.11.1981. It has been pointed out that Suraj Prakash son of Sh. Rajpal Singh son of Gokal Chand had also moved an application bearing No.153/Ropar/2009-CC before the Special Secretary Revenue, Punjab, Chandigarh exercising the powers of Claim Commissioner under the Punjab Package Deal Properties (Disposal) Amendment Act, 2009 i.e. under Section 4-B of the Act for purchasing the said area. In fact, Suraj Parkash had moved an application for taking any action in respect of the application purportedly submitted in the year 1988 but the Special Secretary Punjab-cum-Claim Commissioner rejected the same on the premise that the application in the year 1988 was moved after six years whereas remand order is dated 30.07.1982. Even after 26 years, petitioner could not advance prospect of the case to prove that the land held by the grandfather was *nehri* and not *banjar qadim*. Even copy of the khasra girdawri was not found to be authenticated document. The aforementioned order was assailed by Suraj

Parkash (Annexure P-4) by filing appeal under Section 4-E of the Punjab Package Deal Properties (Disposal) Amendment Act, 2009 before the Financial Commissioner which also resulted into dismissal of the same vide order dated 12.08.2014 (Annexure P-8). Even provision of Section 4-B of the Package Deals property Disposal Rules Act, 1976 being urged by Mr. Nagra, for purchase of the property in case the land allotted to the displaced person was in respect of their entitlement. In the aforementioned proceedings, even other LR's had also moved an application being grandsons of Gokal Chand for being impleaded. The application was dismissed.

Contention with regard to the applicability of Section 4 had been rejected on the ground that allotment of the land had been made under Section 1954 Act and not under Package Deal Properties (Disposal) Act, 1976 and the application as per Rule 4(b) was submitted within a period of 90 days. No such effort was made.

Per Contra, Mr. Yatinder Sharma, Addl. A.G. Punjab has drawn the attention of this Court to the para No.2 of the written statement to contend that after the remand order dated 16.11.1979 (Annexure P-1) revision petition filed against the order was dismissed by the Settlement Commissioner vide order dated 02.11.1981. Rajpal Singh further filed petition before the Financial Commissioner which was also dismissed on 30.07.1982 and as per the provision of Section 4, Section 4-A, 4 E, inserted in the Principal Act, any allotment made under the Displaced person Act cannot be allotted under Punjab Package Deal Properties (Disposal) Amendment Act, 2009, which was incorporated for the limited purpose. All

the factum indicated hereinabove have been reiterated in the written statement and thus urges this Court for dismissal of the present writ petitions.

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

No doubt, Suraj Parkash had not been found entitled to a right as per the judgment and decree dated 26.11.2014 rendered in Civil Suits No.25 of 2009 and 141/2009 (Annexure P-7), thus, he could not have espoused the cause of his father or other LR's i.e. Sudesh Kumari wife of Sohan Lal daughter of Rajpal Singh, Kamlesh Kumari wife of Balbir daughter of Rajpal Singh, Sunita wife of Ashwani Kumar daughter of Rajpal Singh, Darshana Kumari wife of Inderjeet Sharma daughter of Rajpal Singh and Shanti Devi wife of Rajpal Singh.

The aforementioned persons i.e. successors-in-interest of Rajpal Singh who have been held to be entitled were succeed to his estate and remained silent after the order of 16.11.1979 and particularly after July, 1982 when the matter was remanded. On the other side, Suraj Parkash had woken up to invoke the provision of Punjab Package Deal Properties (Disposal) Amendment Act, 2009 for purchasing the property found to be in excess under the Displaced Persons Act i.e. also been negatived but the fact remains that Suraj Parkash did not have any claim as per findings of Civil Court. He has not been held to be successors-in-interest of Rajpal Singh, thus, rightly his application on merits though had been dismissed but in view of the judgment and decree had no stake in the same. As regards the claim of other legal heirs as found to be the successors-in-interest of Rajpal

Singh, no effort has been made by the respondents to seek the allotment of actual share for almost six years i.e. in the year 1988, they remained silent and went into slumber.

It is strange that Suraj Paraksh being son of Rajpal Singh in the year 2009 when the suit was already pending had raked up the claim of his father by filing application (Annexure P-3) but as indicated above had also resulted into dismissal of the same. However, the present petitioners remained silent and did not even invoke jurisdiction of any of the Court for vindication of the grievances. The aforementioned Act i.e. Displaced Persons (Compensation and Rehabilitation) Act, 1954 came to be repealed. Once aforementioned Act has been repealed, then the right, actually could have been said to be subsisting with regard to the cancellation of the excess allotment and could have been agitated within a reasonable period. No party can be of ignorant of the law as it is not a bliss.

In my view, the petitioners are estopped to come to this Court by challenging the order dated 17.06.2011 resulting into dismissal of case No.153/Ropar/2009-CC titled as Suraj Parkash vs. State of Punjab as well as order (Annexure P-8).

There appears to be some kind of an apparent collusion in obtaining a decree in essence was proxy litigation. There is no iota of averments or pleadings in the writ petition of having been submitted the application in the year 1988 in this regard. Writ petition is conspicuously absent except passing the reference to the order Annexures P-3 and Annexure P-8.

Orders under challenge are perfectly, legal and justified.

No ground for interference is made out.

Accordingly, both writ petitions are dismissed.

I cannot remain unmindful of the fact that the cancellation was done way back in March, 1979 and after remand dated 16.11.1979, Settlement Commissioner in the year 1981 again remanded the matter but there is no pleadings and nothing has been shown to this Court what happened after remand as remand order was assailed by Rajpal Singh, thus, withholding of the information from the Court itself is also one of the ground and reasons for declining the relief.

21.02.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No