

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.22773 of 2017

Date of Decision: November 07, 2017

Surain Singh and another

. . . . Petitioners

Vs.

State of Haryana and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Rakesh Gupta, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners have challenged the order dated 28.9.2017 passed by respondent No.2, declining the application for review/modification of the order dated 12.9.2017 and also declining the application for stay of the order dated 31.1.2017 to the extent that the land measuring 39 kanal 11 marla situated in Village Bharpur, Tehsil Ratia, District Fatehabad may be exempted from allotment and alternative land from ownership and possession of respondents No.8 to 12 be given to respondents No.4 to 7.

Although this case has a long history but in brief, Kanshi Ram, Harchand and Baggu were the big landowners. They sold 1348 bigha 3 biswa of land to Maha Singh and others. Two pre-emption suits were filed. One by Mani Ram, Godhu etc. (1st pre-emptor) and second by Mulla Ram s/o Rupa, Ranjit s/o Pat Ram etc. (2nd pre-emptor). Both the suits were

decreed by the Senior Sub Judge, Hisar on 30.6.1958 by giving conditional decrees directing 1st pre-emptor to deposit a sum of ₹1,35,000/- upto 30.7.1958 i.e. within one month. It was specifically mentioned in that order that in case of default by the 1st pre-emptor in depositing the amount upto 30.7.1958, the 2nd pre-emptor will get the right. The 1st pre-emptor allegedly did not deposit the amount and filed the appeal before this Court by which they were directed to deposit the amount. The 2nd pre-emptor deposited the amount after the expiry of the period given by the trial Court and obtained the possession. The appeal filed by the 1st pre-emptor was allowed on 06.1.1967 and execution was filed for taking possession from the 2nd pre-emptor. The execution of the 1st pre-emptor was dismissed on 07.02.1972 on the objection raised by the 2nd pre-emptor being barred under Section 19(b) of the Punjab Security of Land Tenures Act, 1953 [for short 'the Act'] but the appeal filed by the 1st pre-emptor against the dismissal of the execution was accepted by this Court on 20.8.1989 and the case was remanded back for the execution of the decree in accordance with law. The 2nd pre-emptor challenged the order passed by this Court before the Supreme Court by way of Special Leave Petition in which the Supreme Court passed the order on 9.2.1990 directing the Collector concerned to treat the land in decree as the property belonging to 1st pre-emptor and to determine whether it exceeds their permissive limits or not and in case it is found that the respondents therein are entitled to additional land to make good their deficiency upto the ceiling limit then he would make an order accordingly. The Collector vide his order dated 13.2.1991 passed the order determining the permissive limit of the 1st pre-emptor but that order was set aside by the Supreme Court on 7.12.1992 with a direction to the Collector to

Collector on 12.5.1993/26.05.1993 passed the order regarding ceiling limit of the respondents. The other order was set aside by the Collector on 27.3.1995. Thereafter, the orders were passed by the Collector and Commissioner on 6.9.2002 and 30.03.2010 which were set aside by the Financial Commissioner on 6.10.2010 and the case was remanded back to the Collector to re-determine the holdings of the respondents therein as it existed on 1967. The legal heirs of the 1st pre-emptor filed writ *CWP No.9641 of 2012* titled as “*Mankouri and others Vs. State of Haryana and others*” against the order of the Financial Commissioner dated 6.10.2010. The said writ petition was disposed of with a direction to the Collector (surplus area) to decide the matter pending before it as early as possible preferably within a period of four months on submission of form ‘D’ by the petitioners in term of the order dated 6.10.2010 and to comply with the other directions. Since it was not decided in time, therefore, COCP No.2694 of 2016 was filed by respondents No.4 to 7, which was disposed of by this Court, with further direction to decide the matter within two months, vide order dated 25.7.2017. Thereafter, the SDO-cum-Collector, Fatehabad directed respondents No.8 to 12 to deliver the possession including the land of the petitioners measuring 39 kanal 11 marla to respondents No.4 to 7 (1st pre-emptor). The petitioners when came to know about the said order, filed application seeking modification of the said order but it was dismissed on 7.9.2017. The petitioners then filed appeal against the order dated 7.9.2017 in which the Commissioner passed the order on 12.9.2017 observing that two appeals have been presented and two other appeals relating to same order of the Collector (Surplus Area)-cum-Sub Divisional Officer (Civil), Ratia are also pending, therefore, those appeals were clubbed and also

No.21459 of 2017 contending that they had filed an application for stay along with the appeal but the Commissioner, Hisar Division did not take any decision rather observed that no other issue has been pressed upon whereas application was pressed. The said writ petition was disposed of on 20.9.2017 giving liberty to the petitioners to file a review application before the Commissioner to press the application for stay. The petitioners, thereafter, filed review application and pressed the application for grant of stay which has been dismissed vide impugned order dated 28.9.2017.

Learned counsel for the petitioners has submitted that Moman Ram son of Mulla Ram was one of the parties of the 2nd pre-emptor. He became the owner of the said property and executed a Will and bequeathed his estate to his son Chhabila which was recorded in his name vide mutation No.297 dated 25.1.1980. Chhabila transferred part of his land vide decree dated 3.3.1981 in favour of Hari Singh s/o Peeru etc. which was mutated on 15.9.1981 vide mutation No.306. Similarly a part of the land of Moman Ram was transferred through natural succession in favour of his sons and widow, namely, Prem Kumar, Gopi Ram, Satbir Singh, Jasbir Singh and Vidhya Devi, respectively vide mutation No.415 dated 14.6.1987. Thereafter Lakhi Ram got exchanged the land with legal representatives of Moman Ram and a mutation of exchange was sanctioned on 24.10.1989 vide mutation No.446. Lakhi Ram sold that land to Sucha Singh, Gurbachan Singh etc. vide sale deed No.962 dated 3.7.1989 and mutation No.443 dated 20.8.1989 was sanctioned. Gurbachan Singh etc. sold the land to Avtar Singh etc. vide sale deed No.1796 dated 3.10.2007 and mutation No.666 was sanctioned on 2.12.2007. Avtar Singh etc. sold the land to Sanjeev Singh etc. and mutation No.712 was sanctioned. Sanjeev Singh etc. sold the land to

sanctioned in her favour on 3.6.2011 and Kamaljeet Kaur thereafter sold the land to Surain Singh and Mohinder Kaur through two different sale deeds No.199 and 200 dated 30.4.2014 and mutations No.826 & 827 were sanctioned in their favour. It is alleged that though the petitioners have purchased the land measuring 48 kanal 9 marla by two different sale deeds No.199 & 200 but were delivered the possession of specific khasra numbers and at present they are in possession. It is further argued that the petitioners are thus liable to be exempted from allotment of land in their possession to respondents No.8 to 12 and in view thereof, alternate land in possession of respondent No.1 to 7 may be allotted. It is also submitted that when the order dated 31.1.2017 was passed no opportunity of hearing was given.

I have heard learned counsel for the petitioners and after perusal of the record, am of the considered opinion that there is no merit in this petition. Learned Commissioner has passed a detailed order which rejecting the application of stay and has observed in para No.13 to the effect that *“even when subsequent purchasers, who have purchased the part of the suit land even before 1993, passed for ad-interim injunction, the Sub Judge 1st Class already concluded that there is no prima-facie case for ad-interim injunction and said decision was also upheld by ADJ Court on 02.12.1993 and said decision has become finalized, as no further appeal or revision was filed by those subsequent purchasers. So in the case of petitioners, who are transferee pendente lite after 2011, even their prima facie case regarding right of getting notice or opportunity of hearing is not established.”* The petitioners are definitely the subsequent vendees and would step into the shoes of their vendors, who have failed to seek injunction either from the Civil Court or the Appellate Court, therefore, the decisions have become

Thus, in view of the above, there is hardly any reason with this Court to interfere in this petition and as such the same is hereby dismissed.

November 07, 2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>