

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

CWP No.27556 of 2015
Date of decision : 28.03.2017

Leela Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Rahul Sharma-I, Advocate for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

AMIT RAWAL, J. (Oral)

The grievance of the petitioner in the present writ petition is to the findings rendered by the Financial Commissioner, (DB-II) Haryana, Chandigarh in the order dated 21.04.2015 (Annexure P-9).

Mr. Rahul Sharma-I, learned counsel appearing on behalf of petitioner submits that land measuring 105 kanals 4 marlas belonging to the mother of the petitioner, was on 25.05.1978 erroneously declared surplus but the possession continued with her, in essence, it was never utilized for the purpose it was so declared. On account of her death, the daughter and the other legal heirs, petitioner herein, inherited the property and mutation bearing No.1346 in this regard was entered on 19.05.1990. On 15.11.1996, State has erroneously allotted the land in favour of following persons:-

1. Roop Chand.

2. Prakash Chand.

3. Karam Singh.

i.e. on the basis of some false affidavit and wrong facts.

Aggrieved of the impugned order, petitioner filed a petition under Section 18 of the Haryana Ceiling on Land Holding Act, 1972 (hereinafter to be referred as 1972 Act). The Collector, Ambala vide order dated 27.01.1999 (Annexure P-3) accepted the appeal and directed the Prescribed Authority to enquire into the facts of allotment by giving opportunity to the petitioner and also to look into the fact whether the declaration of surplus area was legally tenable or not. Revision petition filed against the aforementioned order was dismissed vide order dated 24.08.1999 (Annexure P-4). On 08.05.2008, Allotment Authority reconsidered the matter and cancelled the allotment and by the same order, exempted the land of the petitioner. However, on 14.05.2008 (Annexure P-6) releasing the nature of the land to be *gair mumkin chou* held that land could not be declared surplus, exempted the land under the provision of Section 4(3) of the 1972 Act. Though, allottee did not have any locus standi, but yet, assailed the order by filing appeal before the Collector which was dismissed vide order dated 30.07.2008 (Annexure P-7). Revision preferred before the Commissioner also met with same fate vide order dated 31.03.2009 (Annexure P-8). However in ROR preferred before the Financial Commissioner, Haryana, impugned findings came to be passed.

He submits that aforementioned findings of recalling of the order of exempting the land from surplus, could not have been recalled after expiry of almost seven years by exercising the suo motu powers in view of

ratio decidendi culled out by Hon'ble Supreme Court in *Loku Ram Vs. State of Haryana*, 2000(1) RCR (Civil) 141 and reiterated by Division Bench of this Court in *Latoor Singh and others Vs. State of Haryana and another*, 2016(4) RCR (Civil) 16.

He further submits that as per the definition of the land under 1972 Act, the land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, includes the sites of buildings and other structures on such land, and banjar land.

In support of his contention, he has relied upon judgment rendered by Hon'ble Supreme Court in *Munshi Ram etc. Vs. Financial Commissioner, Haryana etc.* 1979 PLJ 182, to contend that even for the purpose of determination of the area being permissible area, the nature of the land have to be excluded thus by applying such analogy rightly so, the authorities i.e. Prescribed Authority under the Act exempted the land, thus, order is not only perverse and erroneous and liable to be set aside.

On the Contrary, Mr. Rajbir Singh, AAG, Haryana submits that declaration form filled by the mother since deceased itself reflects the nature of the land to be falling within the surplus area and, therefore, the petitioner is estopped to seek the exemption from the character and nature of the land being surplus. The order of the authority under challenge thus, is perfectly legal and justified. Suo motu powers can always be exercised in order to prevent the miscarriage of justice.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of

Mr. Rahul Sharma-I, Advocate, for, order dated 14.05.2008 (Annexure P-6) was not challenged by the State but was challenged by the allottee whose allotment had already been cancelled on 08.05.2008 and attained finality. The ratio decidendi culled out in judgment in Munshi Ram's case (Supra) is no longer res integra. It is now settled law that land which has been sold prior to cut off date or area banjar qadim having other notions i.e. banjar qadim gair mumkin chao have to be excluded while computing the permissible area. It is on this analogy, the Authority under the Act had exempted the land. Even the definition of the land under Section 3(g) of 1972 Act, which reads as under:-

“3(g) land means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, includes

(a) the sites of buildings and other structures on such land, and

(b) banjar land”

leaves no manner of doubt that banjar land cannot be declared as surplus. Suo motu powers have already been pondered in the judgments cited (Supra), i.e. Loku and Latoor Singh's case, holding therein while exercising suo motu powers, the State has to be circumspect.

In my view, once State had not assailed the findings, the Financial Commissioner, (DB-II) Haryana, Chandigarh could not exercise suo motu powers and recalled/exempted the order dated 14.05.2008, in the manner and mode indicated above.

For the reasons aforementioned, I am of the view that findings

recorded in the order though while dismissing the revision petition of allottee by cancelling the exemption order, are not only arbitrary but also suffers from illegality and opaque. Resultantly, same are set aside.

Order dated 14.05.2008 (Annexure P-6) is restored.

Writ petition stands allowed, in aforementioned terms.

28.03.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No