

205

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

CWP-6959-2013

Date of decision : 02.03.2017

Shanta Kumari

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.N. Saini, Advocate
for the petitioner(s).

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 22.01.2013 (Annexure P-14) passed by the Financial Commissioner Revenue and Disaster Management Department, Haryana.

Mr. S.N. Saini, learned counsel appearing on behalf of the petitioner submits that by virtue of the order dated 27.09.1978 passed by the Hon'ble the Supreme Court, in a matter taken by Sadhu Ram, a subsequent vendee, permission was granted to the respondent(s) to make an application with regard to the claim in view of the land left in Pakistan. Accordingly, an application on 12.03.1982 was moved, which was decided on 19.06.1988, whereby the petitioner was held entitled 15 - 9 ¼ units in village Siana Saidan and a *parchi* allotment was issued on 05.09.1994 (Annexure P-1) after approval of the Government. Since there was a deficient area in respect of the other village, an application was moved and

vide allotment dated 21.07.1995, land measuring 4 standard acres was allotted. The petitioner was running from pillar to post for issuance of *parchi* allotment and approached this Court vide CWP No.15710 of 2001 and in the written statement, a reference before the Settlement Officer was placed on record. Liberty was granted to approach the Commissioner, however, the same was dropped. Again the petitioner impressed for issuance of the *parchi* allotment with regard to the deficient area and in this regard, was compelled to file another writ petition bearing No.4651 of 2011 and the State, in the written statement, came out with a reference dated 31.03.2011 before the Financial Commissioner and this Court granted the liberty to follow the aforementioned reference.

He further submits that the earlier reference before the Settlement Officer was under Section 24 of the 1954 Act, but the present reference has been taken into consideration under Section 9 read with Section 24 of the Haryana Evacuee Properties (Management and Disposal), Act, 2008 and the allotment dated 05.09.1994 already held to be justified after approval of the Government, has been reopened and the area of allotment has been reduced to 12-15 ½ and therefore, found that the petitioner was allotted excess land to the extent of 2-9 ¾ standard acres and ordered for retrieving of the same.

He further submits that the grievance of the petitioner was only with regard to the issuance of the *parchi* allotment in respect of the allotment of 4 standard acres dated 21.07.1995, nothing beyond. The order dated 05.09.1994 remained intact for all times to come and there has to be a limitation for taking the cognizance of the ejectment. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in

"Banwari Lal (deceased) through LRs V/s State of Haryana and others"
2011 (4) RCR (Civil) 529, "Latoor Singh and others V/s State of Haryana
and another" 2016 (4) RCR (Civil) 16, "Chandgi Ram V/s State of
Haryana and others" 2013 (4) RCR (Civil) 1050 and "Loku Ram V/s
State of Haryana" 2000 (1) RCR (Civil) 141.

Per contra, Mr. Sandeep Singh Mann, Sr. DAG, Haryana submits that the order impugned is perfectly legal and justified. The imposition of 20 % is perfectly alright. There is no illegality and perversity. The Government instruction dated 21.04.1961 permits the imposition of 20% cut, if the second grade allottee was given a land of first grade. As per the order dated 09.06.1988 of the Assistant Registrar, father of the petitioner was entitled to get the allotment of land to the extent of 15 – 9 ¼ standard acres in second grade. The second grade land is equivalent to 12-15 ½ standard acres in the first grade, in essence, the Tehsildar (Sales), Kaithal allotted the land more than what the petitioner/his predecessor-in-interest was entitled to, thus, urges this Court for upholding the order under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the *suo moto* reference with regard to the allotment made in 1994 could not have been taken away in the year 2012. The aforementioned view of mine is reiterated from the judgments cited *supra*, wherein, corroboratively, it has been held that *suo moto* reference has been taken within a reasonable period. The allotment made to the petitioner was never challenged.

The grievance of the petitioner was only with regard to the issuance of the *parchi* allotment with regard to the deficient area allotted

vide allotment dated 21.07.1995 regarding 4 standard acres, for which, the petitioner was pursuing for issuance of the *parchi* allotment. I am of the view that the Financial Commissioner should have focussed only on the deficient area and not on the earlier allotment made in favour of the petitioner that could not have been reopened in view of the *ratio decidendi* culled out in the judgments cited supra.

For the foregoing reasons, the impugned order under challenge is hereby set aside and the matter is remitted back to the Financial Commissioner with a specific direction to only consider the case of the petitioner as to whether he is entitled to deficient area of 4 standard acres in pursuance to the letter dated 21.07.1995 or not. As regard the matter with regard to the allotment dated 05.09.1994, the order is hereby set aside and the allotment of 15 - 9 ¼ standard acres, in village Siana Saidan is hereby upheld.

Learned counsel for the parties and as well as the parties are directed to appear before the Financial Commissioner (Revenue), Punjab on 28.03.2017.

With the aforesaid observations, the present writ petition stands disposed of.

02.03.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**