

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

**C.W.P. No.563 of 2015
Date of Decision:28.07.2017**

Mahla Ram Petitioner

Vs.

**Financial Commissioner Revenue Punjab
and others Respondents**

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

Present:- Mr. Binderjit Singh, Advocate for the petitioner.

Ms. Deepali Puri, Addl. AG, Punjab.

Mr. R.S. Chauhan, Advocate for respondent No.5.

Ms. Gurdeep Kaur, Advocate for Mr. Sandeep K. Sharma,
Advocate for respondents No.6 to 13, 15 to 17.

Rakesh Kumar Jain, J. (Oral)

This petition is filed for the issuance of a writ in the nature of certiorari for quashing the order passed by the Financial Commissioner dated 15.07.2014.

This case has a chequered history but in brief, one Sahi Ram, predecessor-in-interest of respondents No.6 to 11 and 17 was a big land-owner, whose land was declared surplus under the Punjab Security of Land Tenures Act, 1953 (for short, 'the 1953 Act'), total measuring 2.3625 hectares. The said order of declaration of surplus attained finality as it was not challenged. Thereafter, the Punjab Land Reforms Act, 1972 (for short, "the 1972 Act") came into force and in terms thereof, the big landowner was allowed to have one more unit for his adult son. In this process, the land measuring 18.7496 hectares was declared surplus. It is also matter of record

that the land of Khiyali Ram, brother of Sahi Ram, was also declared surplus, to the tune of 2.46.50 hectares and the order of declaration of surplus passed on 08.12.1976 attained finality. Sahi Ram filed the appeal before the Commissioner against the declaration of surplus area which was accepted on 28.11.1978 and the matter was remanded back to the Collector Agrarian to determine the rights of the tenants. After the remand, the Collector Agrarian, Abohar granted the benefit of tenant permissible area to one Net Ram vide his order dated 30.04.1979 and the remaining area, i.e. 77 Kanal 6 Marlas i.e. 1.96.38 hectares which was in the hands of Sahi Ram was declared surplus. The land owner Sahi Ram filed the appeal before the Commissioner. The said appeal was allowed and the matter was again remanded back on 05.10.1981 on the issue of tenant's rights. The Collector, after remand, determined the issue of tenancy and held that Net Ram who had already been granted TPA was the only tenant as on 24.01.1971 and thus maintained the earlier order of surplus vide his order dated 17.06.1983. It is also a matter of record that the area after having been declared surplus, vested with the State Government and was mutated on 19.05.1984 and utilised and allotted to respondent No.5 on 29.06.1984 to the extent of 81 Kanal 5 Marlas i.e. 47 Kanal 18 Marlas in respect of the area of Khyali Ram and 33 Kanal 7 Marlas surplus area of Sahi Ram. It was also stated that vide Rapat Rojnamcha No.411 dated 17.07.1984, the possession was delivered to the allottee/ respondent No.5. The appeal of the land-owner was dismissed by the Commissioner on 31.07.1986 and his revision was also dismissed by the Financial Commissioner, i.e. ROR No.1061 of 1985-86 on 24.11.1987. The land-owner alone challenged the order by way

of CWP No.9512 of 1987. The said writ petition was dismissed on 24.11.1987. The land-owner challenged the order by way of CWP No.9512 of 1987. The said writ petition was allowed only to the extent to find out if there is any other tenant. After the remand, the Collector vide his order dated 04.08.1993 granted the benefits to the persons who were not even tenants on 24.01.1971 and reduced the TPA and included in the permissible area of the land-owner and declared only 0.41.53 hectares as surplus area. This order was challenged by respondent No.5 by way of an appeal before the Commissioner which was dismissed on 09.11.2010. Respondent No.5 then filed revision petition before the Financial Commissioner bearing ROR No.164 of 2011 which was accepted on 15.07.2014 and the order of the Collector as well as the Commissioner were maintained by which the Collector granted the benefit of TPA to Net Ram and declared the area as surplus i.e. 1.96.38 hectares. The order dated 15.07.2014 is in challenge before this Court by Mahla Ram son of Mukh Ram who could not establish himself as a tenant on the appointed day, i.e. 24.01.1971 rather his case is that he is in possession over the land which has been allotted to respondent No.5.

Learned Counsel for the petitioner has submitted that the Financial Commissioner has committed an error in quashing the orders which were already set aside by this Court in the writ petition and has also submitted that the issue with regard to tenancy has not been decided and no opportunity of hearing was afforded to him.

On the other hand, counsel for respondent No.5 has submitted that this petition, at the instance of the present petitioner, challenging the

order of the revenue authorities, much less, the Financial Commissioner is uncalled for and is not maintainable because the petitioner has failed to establish that he was a tenant on the appointed day, in order to claim the tenant's permissible area.

Learned counsel for the petitioner has been asked to show any entry in the revenue record to indicate his status as tenant over the land which has been allotted to the allottee i.e. respondent No.5. No such evidence has been brought on record or pointed out from the existing record and the only submission made is that the petitioner has been recorded in possession in khasra girdawari.

After hearing learned counsel for the parties and examining the available record, am of the considered opinion that the petitioner has no right to challenge the orders passed by the revenue authorities by which the land in the hands of the big land-owner has been declared surplus and has been ear-marked for the tenant permissible area and that the land has been allotted after it was declared surplus because the petitioner could not establish his right over the property in dispute as a tenant. The case of the petitioner is that he is being continuously recorded in the khasra girdawari w.e.f. 1997 and is in possession of the land in question. To my mind, instead of challenging the orders of the revenue authorities passed under the 1953 Act or the 1972 Act, the petitioner could protect his possession by filing a civil suit of permanent injunction in which he has to establish not only his possession but also right to the property. Thus, in my considered opinion, the petitioner has no locus standi to maintain this petition and thus, this petition is dismissed not only on the ground of lack of locus standi but

also on the ground that the petitioner has failed to prove that he is a tenant on the property in question as on 24.01.1971 and is entitled to the tenant's permissible area from the land of the big land-owner which has been declared as surplus. The writ petition is dismissed.

July 28, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No