

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

CWP No.6936 of 2017

Date of Decision.03.04.2017

Jogender Singh and others

.....Petitioners

Vs

State of Haryana and others

.....Respondents

Present: Mr. Robin Dutt, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The petitioners have sought the indulgence of this Court by issuing writ in the nature of certiorari for quashing the order dated 07.11.1983 (Annexure P-6) to the extent that the order should not be implemented till he is allotted with land measuring 26 kanals 5 marlas out of surplus pool and as well as setting aside the order dated 23.12.2016 (Annexure P-10) passed by respondent No.1 i.e. Financial Commissioner whereby the ROR bearing No.479 of 2010-11 seeking clarification in the aforementioned order has been dismissed being barred by delay and latches.

Mr. Robin Dutt, learned counsel appearing on behalf of the petitioners submits that one Teg Singh son of Abhay Singh was owner in possession of the land situated in Khasra Nos.46//5, 6, 7, 8 and 9 along with some other land. Smt. Baso Devi, Reshma Devi, Sadho Devi, Kanwarwati and Leela Devi purchased the land comprising in Khasra No.46//6, 7, 8, 9 total 26 kanals 4 marlas from Teg Singh prior to 30.07.1958. However, mutation in favour of the aforementioned persons was sanctioned on 26.04.1973, as some litigation was pending and they continued as owner in possession of the land in question.

On 09.08.1976, one order was passed and mutation No.194 was sanctioned in the name of respondent No.1. The aforementioned order was challenged by the petitioners vide order dated 18.12.1978 whereby the aforementioned mutation was cancelled and mutation No.220 was sanctioned in the names of the aforementioned ladies, which is evident from Annexure P-2 (colly). However, on 02.07.1979, one mutation No.241 was sanctioned with regard to the land measuring 26 kanals 4 marlas in favour of the State Government by wrongly showing it to be surplus land of the petitioners and on 11.07.1979 another mutation No.242 was sanctioned in favour of Bishna son of Mangal (predecessor-in-interest of respondent Nos.4 and 5) and the land was shown to have been transferred by the State Government in his favour.

Both the aforementioned mutations were sanctioned wrongly due to the mistake on the part of the revenue authorities. In fact, Bishna son of Mangal was allotted the land comprising Khasra No.56//6, 7, 8 9 measuring 26 kanals 5 marlas at village Gohlai due to the mistake of the revenue officials. In this regard, report of the Naib Tehsildar was sought and as per the report dated 14.09.1978 (Annexure P-3), it was found that Khasra Nos.46//6, 7, 8, 9 were not surplus. However, again on 19.04.1982, vide Annexure P-4, report was called and it was stated that the land was wrongly allotted to Bishna son of Mangal. The SDO (Civil)-cum-Allotment Authority, Jagadhri on perusal of the aforementioned report passed the order dated 29.04.1982 (Annexure P-5) for eviction of Bishna son of Mangal (predecessor-in-interest of respondent Nos.4 and 5). He filed an appeal before respondent No.2, who vide Annexure P-6 upheld the order of eviction but directed the order to be placed in abeyance till the land from the

surplus pool was not allotted to the evicted tenant. However, as per the jamabandi for the year 2007-08, respondent Nos.4 and 5 were shown to be owners of land, which was wrongly allotted to them. In this regard, a representation (Annexure P-8) had also been moved.

The petitioners had filed a writ petition bearing No.5971 of 2011, which was decided on 04.04.2011 (Annexure P-9) granting liberty to the petitioners to file review petition under Section 18(6) of the Haryana Ceiling on Land Holding Act, 1972. The same was also dismissed having been challenged before the Court after a lapse of 27 years vide Annexure P-10, thus, the orders under challenge are not sustainable in the eyes of law, as respondent No.1 did not appreciate the fact that there is no fault of the petitioners but of the revenue officials.

Once the land of the petitioners was not surplus, it cannot be allotted to any other person. The petitioners had been running pillar to post for vindication of their grievance but fell to deaf ears. The provisions of Section 12 of the Haryana Ceiling on Land Holding Act, 1972 could not be pressed into service. There is no limitation to file application under Section 18 of the aforementioned Act. No person can be deprived of his land as per Article 300A of the Constitution of India, thus, urges this Court for setting aside the orders under challenge.

I have heard learned counsel for the petitioners and appraised the paper book. The facts as narrated above, much less, from the perusal of the impugned orders, it is clear that the property in possession had been mutated in favour of the aforementioned ladies and Bishna son of Mangal was allotted the land comprised in Khasra No.56//6, 7, 8, 9 but the writ petition is bereft of the factum of any allotment letter issued and whether he

was put in possession or not. No explanation has come forth for seeking the clarification of the order dated 29.04.1982 in 2010-2011 i.e. after almost 27 years.

The predecessors-in-interest of petitioners purchased the land measuring 26 kanals 4 marlas comprised in khasra No.46//6, 7, 8, 9 of village Kanhari Kalan from Teg Bahadur and the above land was never part of the surplus pool whereas Bishna son of Mangal was allotted the land comprised in Khasra Nos.56//6, 7, 8, 9 in village Gohlai by Revenue Authorities but possession, according to the petitioners, was wrongly given at village Kanhari Kalan. The condition incorporated by the Prescribed Authority was that respondents be allotted equivalent land from the surplus pool and be ejected from the land in question. Such condition, in my view, has not affected the right of the petitioners, rightly so, the Financial Commissioner dismissed the ROR to be wholly belated and the clarification sought for implementation of the order. No explanation has come forth for seeking the clarification of the order as late as in the year 2010-11.

For the reasons aforementioned, the orders under challenge are perfectly legal and justified. No ground for interference is made out. Resultantly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

April 03, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No