

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 21.11.2017****RSA No.5227 of 2012 (O&M)**

Habib & another

...Appellants

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Gupta, Advocate, for the appellants.

Mr. Indresh Goel, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J. (ORAL)

1. It cannot be said by any stretch of imagination that the allotment of land made by the Rehabilitation Department to the predecessor-in-interest of the plaintiffs i.e. Ramesh Kumar was not entitled to allotment under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The allotment was made and the suit property was mutated in the name of Ramesh Kumar, who enjoyed the usufruct of the land till he sold the property in dispute to the present plaintiffs vide sale deed dated 08.01.1996. Mutation was sanctioned in this regard on 24.02.1996 vide mutation No.1050 in favour of the plaintiffs, the present appellants.

2. Years after the allotment and sale, the State of Haryana in the Department of Rehabilitation all of a sudden without any prior notice cancelled the allotment to Ramesh Kumar on the ground that he was not entitled to allotment of land in Ambala District, but in Fatehabad District. The allotment was cancelled without notice or opportunity of hearing

offered to the original allottee or the plaintiffs, who had stepped into the shoes of Ramesh Kumar and are his successors-in-interest. Against the cancellation of the allotment, the suit was filed, which was decreed by the trial Court vide judgment and decree dated 22.05.2010.

3. The State of Haryana went in appeal to the Court of the learned District Judge, Panchkula, who has reversed the trial Court's judgment and decree vide judgment dated 30.08.2012 against which the present appeal has been filed.

4. The District Judge has dismissed the suit relying on the Full Bench decision of this Court in Niranjan Kaur & others Vs. The Financial Commissioner, Revenue & Secretary to Government, Punjab & others, AIR 2011Punjab & Haryana 1, holding that when allotment itself stood cancelled, then the plaintiff would not have the defence available under Section 41 of the Transfer of Property Act, 1882 qualifying vendees as bona fide purchasers without notice or valuable consideration. In making the order, the District Judge failed to notice the true ratio of the decision of the Full Bench in *Niranjan Kaur*, which is that when the allotment is a product of fraud or misrepresentation, then no rights would flow to the allottee or his successors-in-interest since fraud vitiates everything.

5. In the present case, Ramesh Kumar did not practice fraud or deceit and on the other hand, he was an allottee of the suit property from the custodian department managed by the State of Haryana with allotment made by the orders of the Tehsildar (Sales) –cum- Managing Officer, Ambala. There was no illegality in the allotment except what may be termed as an irregularity, inasmuch as, if the stand of the State is to be accepted, then the allotment would have been in Fatehabad and not in Ambala district. In case

Ramesh Kumar and his successors-in-interest are disturbed from the suit property at Ambala, it would follow *a priori* that they have to be allotted similar land in Fatehabad.

6. Mr. Sanjiv Gupta, learned counsel appearing for the appellants, has drawn attention of this Court to the history of allotment in the case of original allottee Ramesh Kumar and its interesting features as culled from the order of the Chief Settlement Commissioner, Haryana, Chandigarh in Case No.3/Ref/CSC/99 in case titled 'State Vs. Shri Lal Chand son of Shri Pokhar Dass through Shri Ramesh Kumar' (Ex.DW-1/A). It may be noticed that initially land from the common pool was allotted to Harnam Dass son of Dyal Chand claiming to be *mukhtiar e khas* of Lal Chand, a displaced person from Pakistan. He made an application to the Assistant Registrar, Haryana requesting therein that Lal Chand son of Pokhar Dass resident of Mauja Marh, Tehsil Fatehabad, District Hissar was allotted land measuring 2 Standard Acre comprising 5/1/4 units which was later on cancelled by the Chief Settlement Commissioner on 07.09.1967. This led to alternative allotment in lieu of cancelled allotment.

7. Thereafter, Ramesh Kumar filed an application in the Rehabilitation Department for allotment of land in Hissar. That application was processed and it was found that no land is available from common pool for allotment against verified claims. In the meantime, Ramesh Kumar came to know that some land from common pool was available in Ambala and to protect his interest in land made a request in writing to the Rehabilitation Department and that is how the allotment was made in District Ambala after verifying the claim by the Tehsildar (Sales) -cum- Managing Officer, Ambala.

8. To strengthen his case, Mr. Gupta relies on a decision of this Court in Pandit Chuni Lal Vs. The Financial Commissioner Revenue and Secretary to Government Punjab & others, 2006 (1) RCR (Civil) 666, a case falling for consideration under Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954; Section 4 of the Transfer of Property Act, 1882 and Section 19 of the Specific Relief Act, 1963 regarding allotment of land in lieu of land left in Pakistan. In this case, the authority had cancelled the allotment after 30 years on the ground that land had been allotted to the allottee in excess of land left by him in Pakistan. This Court set aside the cancellation order on the ground that allottees remained in possession of the land for about 11 years and they were shown as owners in the revenue record. In these circumstances, if the petitioners have purchased that land, after verifying their title from the revenue record and against payment of price, they cannot be thrown out at this stage, out of the land in dispute being bona fide purchasers protected by Section 41 of the TPA. The Bench said nothing new while relying for convenience on previous case law developed in this Court in Gram Panchayat Kakran Vs. Additional Director of Consolidation, 1997 (4) RCR (Civil) 498; Rattan Singh Vs. Chief Settlement Commissioner, Haryana, 1978 PLJ 47 and Achhar Singh Vs. State of Punjab, 1979 PLJ 278. Lastly, Mr. Gupta relies on the decision in Kali Ram etc. Vs. Union of India & others, 1976 PLR 475 all of which judgments promote his case representing bona fide purchasers from the original allottee.

9. Having regard to the huge passage of time, it would neither be in the interest of the State as a rehabilitation dispenser of justice to heal the wounds of partition of India and not definitely in the interest of the

successors-in-interest of Ramesh Kumar or Ramesh Kumar himself that the plaintiffs should be relocated by reallocation of land in some other place in Haryana, when land from common pool may have dried up. On the other hand the State could always adjust someone else in Fatehabad from amongst the verified claims and from the pool of allottable land. In the facts and circumstances it is held that the trial court rightly set aside the cancellation order and restored the property taken away without the authority of law.

10. As a result of the above discussion, the judgment of the lower Appellate Court is erroneous and is thus set aside being not legally sustainable and delivered as a result of gross misreading of the judgment in *Niranjan Kaur* case. Accordingly, the judgment and decree of the trial Court is restored and the suit stands decreed.

11. File be consigned to the record room after preparation of decree sheet.

21.11.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>