

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

**CWP No. 24556 OF 2013
DATE OF DECISION : 28.11.2018**

Charan Singh and another

...Petitioners

versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Surmukh Singh, Advocate, for the petitioners.
Mr. Abhay Pal Singh, AAG, Punjab.

ARUN MONGA, J.

शहीदों की चिताओं पर जुड़ेंगे हर बरस मेले

Fairs will be held every year at the funeral pyres of martyrs

वतन पर मरने वालों का यही बाकी निशां होगा

This will be the mark of those sacrificing their life for the
motherland !

Written by Jagdamba Prasad Misra in 1916, these lines were recited by people of India during India's freedom struggle. This couplet was more popularly recited when "Second Lahore Conspiracy" trial of three great revolutionaries – Bhagat Singh, Sukhdev and Rajguru was going on during the British Government rule in India. They were later executed/ hanged by the British Government for their role in freedom struggle.

2. Similar was the supreme sacrifice of Martyrs Kartar Singh Sarabha and Bakshish Singh (predecessor in interest of petitioner herein). They were hanged in 1916, in Lahore Central Jail, for their participation in freedom struggle of India, what is popularly known in history as "First Lahore Conspiracy" case. Property of Martyr Bakshish was also confiscated by British Government.

3. India got independence, but the legal heirs of the Martyr (Bakshish Singh) are hither and thither, as their claim for return of their own property, has been given a short shrift, by the Government of Independent India.

4. Is this how we honour and salute a Martyr who gave his life, at the prime of his youth at 26 years of age, for the independence struggle of our Nation?

5. While on one hand, the Government of India is erecting National War Memorial, at the cost of rupee ₹150 crores to honour the martyrs of Indian Armed Forces, on the other the real plight of the family of a martyr, who only out of love for the motherland proudly gave his life for freedom of country, is reflected in the present case.

6. The petitioners claim for return of their land has been declined by offering them a meager compensation of ₹13,000/- in year 1988, for 33 acres of land confiscated by British regime in the year 1916. What a homage! One must wonder, what a reverence shown by State, in appreciation and acknowledgment

of the sacrifice of the Martyr!

7. There is and should be no room for legal hair splitting while compensating a Martyr for his martyrdom, not in a nation, whose independence is founded on such like sacrifices, and a nation, pledged to salute such freedom fighters, who sacrificed themselves so that we live in free India. And here compensation is not even for martyrdom, it is for the confiscation of property which, concededly, was owned by the Martyr.

8. For the education of those who do not know the supreme sacrifice of Bakshish Singh and Kartar Singh Sarabha and others, it would be educative to give a short historical narrative of the same before proceeding with the matter in hand.

9. The Lahore Conspiracy case (King-Emperor v/s Anand Kishore and others) started on 26th April, 1915, listing eighty-two individuals as criminals, including Rash Behari Bose, and continued up to 13th September 1915. The principal charge against them was that they waged war against 'the King' and wanted to overthrow the British Government in India for the achievement of which they resorted to the enticement of Indian soldiers, collection of arms and ammunition, obtaining money by robbing government treasuries, committing murder of police officials, production of inflammatory literature and its circulation to spread rebellion.

10. A Special Court was held in the Central Jail Lahore and the proceedings were held in camera. Even the relatives of the

accused in the Lahore Conspiracy Case were not allowed to watch the proceedings.

11. Judgment of the Lahore Conspiracy Case was announced on 13th September 1915. Seven of the accused, including Kartar Singh Sarabha and Bakshish Singh were condemned to death. They accepted the judgment courageously. On consideration of the evidence, the Special Court convicted Bakshish Singh under Sections 121 (abetment of waging war), 121A, 122, 296 and 302/109 of the Indian Penal Code. He was sentenced to be hanged by the neck till he be dead; and it was also ordered that such of his property as was liable for confiscation be forfeited to Government.

12. The death sentence did not overtake the love of the country in the heart of the condemned. While coming out of the Court, after hearing the death sentence, they are known to have sung songs from "Ghadar di Gunj" (a compilation of nationalist and socialist literature that was produced in the early stages of the Ghadar movement, published in the 'Ghadar' weekly) in sporting spirit.

13. The formalities for hanging of seven convicts, including Bakshish Singh, were completed. When the seven patriots whose death sentence was maintained, namely Kartar Singh Sarabha, Vishnu Ganesh Pingle, Jagat Singh, Sursingh, Harnam Singh Sialkoti, Bakshish Singh Gilwali, Surain Singh s/o Gur Singh and Surain Singh s/o Isher Singh, both of village Gilwali were being

taken to the gallows, their companions sang in unison hailing their sacrifices and expressed their resolve to continue the struggle. They kissed the gallows in the Central Jail Lahore on 17th November 1915 and attained martyrdom.

14. This Court rightly observed on treatment meted out to freedom fighters by the Government, in case titled "**Paramprit Singh Gill v. State of Punjab and another**" bearing CWP No. 9653 of 1994, in following terms :-

" Yet another freedom fighter is before the Court to get what is his due. This freedom fighter has approached the Court not to seek any favour or honour or pension but seeks return of his own property which he lost due to the action of foreign ruler through confiscation because he fought for freedom of the country. He died fighting to get back what was his own. His son is now seeking justice through present writ petition. Seeing the attitude of the State and its functionaries, this freedom fighter must be tossing in discomfort, wherever he is. Would not he be thinking that this nation has forgotten the sacrifice made so easily to deny him or his wards what is his own.

This new struggle for son of freedom fighter in 60th years of our independence, to get back what was owned by his father would not show us all in good light. It does not speak well of our system. Is this a manner in which a nation should pay gratitude to those who waged a selfless fight against the alien to get freedom for us ? Let us leave these sentiments behind and look into the grievance of the petitioner."

15. The above judgment was challenged by way of an appeal before a Division Bench of this Court in "**State of Punjab and another v. Paramprit Singh Gill**", LPA No. 212 of 2009. The Division Bench appeal was dismissed vide order dated 21.04.2009. The relevant extract thereof is reproduced herein below :

" Thus only a small amount of ₹72,050/- was the amount which was assessed by the Government for being paid to a Freedom Fighter. No doubt, the respondent herein, objected to the compensation being totally inadequate and almost humiliating. No favour is being done to the respondent. He is seeking the return of his property which was confiscated by the British as a penalty for taking part in the Satyagraha launched by Mahatma Gandhiji during the Second World War. The Freedom Fighter deserves better treatment. The payment of a meager amount of ₹ 17,300/- with interest is indeed a mockery and cannot be given in lieu of 50 acres of land. Nothing has been brought on record or pointed out as to how and why the respondent is not entitled to the restoration of land confiscated by the British Rulers in terms of the policy. The Letters Patent Appeal accordingly deserves to be dismissed."

16. Against the said LPA, an appeal is still pending before the Hon'ble Apex Court, but the implementation of the judgments under challenge has not been stayed.

17. In the present case, Preeto @ Gurbachan Kaur daughter of Martyr Bakshish Singh, died in the hope of getting

back what was her father's own property, that he lost due to its confiscation by British rulers due to his role in the freedom struggle. He laid his life for the country before it eventually got freedom. The "Freedom" which would not have been possible but for the supreme sacrifice of the likes of Martyr Bakshish Singh. "Freedom" which we so fondly cherish today by denial of any sense of gratitude and the obligation we owe to the "Martyrs" of our country. The thanklessness, ingratitude, heedlessness and the apathy of Government to a "Martyr" is writ large.

18. After their mother died fighting, the grand sons of Martyr Bakshish Singh have filed this petition, inter-alia, seeking issuance of a writ in the nature of certiorari to set-aside letter dated 11.10.2013 (Annexure P-13), rejecting the claim of their mother (predecessor-in- interest) Preeto @ Gurbachan Kaur and consequently praying for return of the property of their grandfather, Martyr Bakshish Singh.

19. Undisputed factual position emerging from a conjoint reading of the pleadings of the parties is that the petitioners are legal heirs of Martyr Bakshish Singh. Shri Bakhshish Singh along with S. Kartar Singh Sarabha and five others had been held guilty in the first Lahore conspiracy case. They were sentenced to death and the sentence was carried out on 16.11.1916 in Central Jail, Lahore by the British Government. His land measuring 262 kanal 12 marlas in village Gillwali District Amritsar was confiscated by the British Government for his participation in the said case. Labh

Kaur was the widow of Bakhshish Singh and Preeto @ Gurbachan Kaur was their daughter.

20. The petitioners state that their mother Gurbachan Kaur was the only child/legal heir of Bakshish Singh. After Independence in 1947, she submitted various representations to the Government of India, for restoration of the confiscated property of her father, but no action was taken. In 1962, a representation dated 27.09.1962 (Annexure P-1) was made to the then Chief Minister of Punjab, seeking restoration of confiscated property, but again no action was taken on the said representation. Yet another representation dated 15.10.1962 (Annexure P-2) was made to the Chief Secretary, Punjab seeking compensation in lieu of the confiscated property of Bakshish Singh. Finally, a letter dated 22.06.1965 (Annexure P-3) was issued by the office of Chief Secretary, Punjab to Sajjan Singh Marginpuri, Tehsil Patti, District Amritsar directing him and Gurbachan Kaur to appear before PWD Minister at Amritsar with regard to restoration of property of Bakshish Singh.

21. Eventually vide letter dated 25.04.1988 issued by Treasurer, Charitable Endowments, Punjab (Annexure P-4) an amount of ₹13,000/- was sanctioned as compensation in lieu of the confiscated land measuring 30 acres. A further amount of ₹40,814/- was sanctioned as interest accrued for the period from 01.04.1926 to 25.06.1988 vide Memo dated 08.12.2005 (Annexure P-5). Feeling aggrieved, representations were made by

the legal heirs of Gurbachan Kaur seeking restoration of land or enhanced compensation in lieu of the same.

22. The legal heirs of Preeto @ Gurbachan Kaur then continued to make representations to D.C, Amritsar (Annexures P-8 and P-9), pursuant to which letter dated 30.12.2012 (Annexure P-10) was sent to the SDM, Amritsar seeking report regarding their claims.

23. The petitioners have stated that similar claims in four other cases, compensation as per market value of land confiscated before Independence has been awarded. As no action was taken on the representations, a legal notice dated 15.08.2013 (Annexure P-11), was served upon State of Punjab, seeking proper action to be taken, keeping in view, the relief granted by this Court in similar other writ petitions.

24. Thereupon, letter dated 16.9.2013 (Annexure P-12) was sent by respondent No. 2 to respondent No.3 stating that record of case was not available. The Freedom Fighter Section of Govt. of Punjab, vide impugned letter dated 11.10.2013 (Annexure P-13) rejected the claim of petitioners by saying that the petitioners had already been compensated by the Government in the year 1988.

25. In the circumstances, the petitioners have resorted to present petition before this Court, for setting aside the impugned order and also to direct the State of Punjab to restore the land of Bakshish Singh, confiscated by the British Government, or

provide compensation, as per the direction of this Court in a similar case bearing CWP 14654 of 2010.

26. The respondents, *inter alia*, have pleaded that the heirs of S. Bakhshish Singh have already received full and final compensation of ₹13,000/- qua his confiscated land and nothing more is payable to them.

27. I have perused the record and heard learned counsel for the parties.

28. A Division Bench of this Court in case titled **"Malwinder Jit Singh Waraich v. State of Punjab"** bearing CWP No. 14654/2010, passed an order dated 18.11.2011 (Annexure P/7), of which the relevant part is as under:

" Both the writ petitions raise the issue of return of land of freedom fighter which have been confiscated by the British regime. Though some kind of policy had been framed by the State Government stipulating, inter alia, a cut off date for the submission of applications for return of such land, we are of the view that return of confiscated land not only to the petitioners but also to all freedom fighters is a fundamental obligation of the State. We, therefore propose to go into the matter to ensure that all such lands which have been confiscated before independence from persons who were engaged in the freedom struggle should be returned to them or their heirs/legal representatives. In the event of non-return, they have to be paid the market value of such land.

.....If the land is still available the same should be returned or alternatively the money value thereof will

have to be paid....."

29. In two other similar cases, pertaining to *Gadri Baba Harnam Singh* and *Chuhar Singh*, for their confiscated land, the compensation at market value has been paid by the respondents.

30. Pursuant to an order dated 06.10.2016 passed by this Court, short affidavit of Jasdeep Singh Aulakh, Deputy Secretary, Freedom Fighter has been filed in present writ proceedings. It is relevant to reproduce the same herein below :-

" That the Deputy Commissioner Amritsar has reported vide his letter No.L.F.A/SPL-I dated 15.11.2016 (Annexure P-1) that the land of the petitioners confiscated during the British Rule is not available for restoration in favour of the petitioner.

2. It is further reported that as per Jamabandi for the year 2011-12 of village Gilwali, Punjab Government or Provincial Government do not own any land.

3. It is also further reported that the current market value of the Chahi/Nehri agriculture land of village Gilwali is approximately ₹25,00,000/- (Rupees Twenty Five Lacs) per acre."

31. It is irrefragable in the present case that 33 acres of land, indeed of a freedom fighter hanged in First Lahore Conspiracy Case, was confiscated by the British Government. A meagre compensation of ₹13,000/- was awarded in 1988.

32. The petitioners herein are prepared to return the principle sum of compensation that has been received with interest at the rate it was paid to them.

33. The petitioners have made out a case for issuance of writ of mandamus to direct the respondents to restore their land confiscated by the British Rulers in terms of the applicable policy of the government.

34. Merely because the petitioners/their predecessors'-in-interest had received the paltry amount of ₹13,000/- as compensation for land measuring 262 kanals 12 marlas and ₹ 40,814/- as interest thereon, did not absolve the respondents of their obligation either to return/restore the land or to pay adequate compensation for the confiscated land of freedom fighter S. Bakhshish Singh. More so, when the former have been through out agitating their claim for return of the confiscated land and/or payment of adequate compensation. Secondly, the order dated 18.11.2011 (Annexure P/7) passed by the Division Bench of this Court in CWP No. 14654/2010 and 1336/2011, specifically directed that all such lands which have been confiscated before independence from persons who were engaged in the freedom struggle should be returned to them to their heirs/legal representatives. In the event of non-return, held the Division Bench, they have to be paid the market value of such land. Thus, if the land is no more available, the money value thereof will have to be paid. Thirdly, as per the admitted position, in two other similar cases, pertaining to Gadri Baba Harnam Singh and Chuhar Singh, for their confiscated land, compensation at market value has been paid by the respondents. The

petitioners, being similarly placed, are entitled to be treated at par with them.

35. Affidavit dated 11.04.2017 of Shri Jasdeep Singh Aulakh, Deputy Secretary, filed on behalf of respondent No. 1 shows that as per jamabandi 2011-12, the Punjab Government or the Provincial Government does not own any land in village Gillwali and that the current market value of the chahi/nehri (irrigated) agricultural land of village Gillwali is approximately ₹25,00,000/- (Rupees twenty five lakhs) per acre.

36. In the circumstances, if the respondents are asked to find alternate land elsewhere and offer the same in lieu of the confiscated land of S. Bakhshish Singh, that too would entail a lot of further delay. Besides, in such an exercise, other difficulties and problems are likely to arise as such alternate land found and arranged by the respondents may or may not be acceptable to the petitioners.

37. As noted above, in terms of the order dated 18.11.2011 (Annexure P/7) passed by the Division Bench of this Court in CWP No. 14654/2010 and 1336/2011, in the event of non-return of land confiscated before independence from persons who were engaged in the freedom struggle, to them or their heirs/legal representatives, they have to be paid the market value of such land. In the circumstances, the petitioners are held entitled to the payment of market value at the rate of ₹ 25,00,000/- (Rupees twenty five lakhs) per acre, for the land

measuring 262 kanal 12 marlas of S. Bakshish Singh, which was confiscated by the British Government.

38. Admittedly, the amounts of ₹13000/- as compensation and ₹40,814/- as interest thereon were earlier paid to and utilized by the heirs of S. Bakhshish Singh. Record does not show the rate at which interest was paid by the respondents. The petition only indicates the interest amount of ₹40,814/- was for the period 01.04.1926 to 25.06.1988 on the principal amount of ₹13,000/-. In fairness to both sides, these amounts already paid to and utilized by the petitioners along with interest thereon should be adjusted out of the amount of their entitlement on account of compensation.

39. The present petition has been filed only by two persons, namely, Charan Singh son of Dalip Singh (petitioner No. 1) and Kulwant Singh son of Ninder Singh (petitioner No. 2). In his letter (Annexure P/8), written by Charan Singh petitioner No. 1, to the Deputy Commissioner, Amritsar, besides himself and Kulwant Singh (petitioners No. 1 and 2 herein), the names of seven other persons are mentioned as the legal heirs of S. Bakhshish Singh, who is described as their maternal grand father (Naana). They are (i) Swaran Singh son of Dalip Singh, (ii) Kanso, (iii) Jogindro and (iv) Viro daughters of Dalip Singh; (v) Tarsem Singh son of Ninder Singh, (vi) Massa Singh son of Dyal Singh and (vii) Jaspal Singh son of Kunan Singh. The aforesaid remaining seven legal heirs of S. Bakshish Singh are not parties

to the petition. The amount of compensation payable for the confiscated land of S. Bakhshish Singh is distributable amongst all his legal heirs according to their respective shares. Leaving that question to be resolved/determined *inter se* the legal heirs of S. Bakhshish Singh, it is held and directed that:

(a) The impugned letter dated 11.10.2013 (Annexure P/13) rejecting the petitioners claim is quashed and it is held that legal heirs of S. Bakhshish Singh are entitled to enhancement of the compensation @ ₹25,00,000/- (Rupees twenty five lakhs) per acre for his land measuring 262 kanal 12 marlas in village Gillwali, District Amritsar which was confiscated by the British Government;

(b) Out of the amount of compensation thus worked out, deduction shall be made of the previously paid principal amount of ₹13,000/- as compensation and ₹40,814/- as interest thereon for the period 01.04.1926 to 25.06.1988 along with interest on these two sums (i.e. ₹13,000/- and ₹40,814/-) from the date of their respective payments till date at the same rate at which interest was calculated and paid by respondents.

(c) The amount of compensation as mentioned at (a) after deduction of the amount as mentioned at (b) above, shall be paid by the respondents to the petitioners with interest @ 9% per annum from the date of affidavit filed by Sh. Jasdeep Singh Aulakh, Deputy Secretary, i.e. 11.04.2017 till actual date of payment;

(d) Within two months of the payment of the amount by respondents as directed above, the petitioners herein shall distribute the same amongst all the legal heirs of S. Bakhshish Singh according to their respective shares failing which they (the petitioners) shall also to pay interest @ 9% per annum from the date of receipt of payment from the respondents till further payment of the respective shares to the concerned other legal heirs of S. Bakhshish Singh.

40. The writ petition is allowed and disposed of accordingly.

(ARUN MONGA)
JUDGE

NOVEMBER 28, 2018
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |