

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 23, 2018

1. RA No.361 of 2017 (O&M) in CWP No.17111 of 2009

Yadwinder Singh & others

...Petitioners

Versus

Financial Commissioner (Appeals-II), Punjab & others

...Respondents

2. RA No.360 of 2017 (O&M) in CWP No.14143 of 2009

Yadwinder Singh & others

...Petitioners

Versus

Financial Commissioner (Appeals-II), Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Rai Singh Chauhan, Advocate,
for the review applicant/petitioners in both the cases.

Mr.Arun Jain, Senior Advocate with
Mr.Amit Jain, Advocate,
for the non-applicant/respondents No.5 to 7.

AMIT RAWAL, J.

This order of mine shall dispose of two Review Applications bearing No.361 of 2017 in CWP No.17111 of 2009 and 360 of 2017 in CWP No.14143 of 2017, which have been filed seeking review of the order dated 5.5.2017 rendered by this Court in the aforementioned Civil Writ Petitions, purportedly in compliance with the order dated 6.7.2017 passed

by the Intra Court Bench in LPA No.927 of 2017.

This Court, vide order dated 5.5.2017, decided two Civil Writ Petitions No.14143 and 17111 of 2009 titled as “Yadwinder Singh & others Versus Financial Commissioner (Appeals-II), Punjab. The facts leading to the filing of the review petitions have already been taken note in the aforementioned order and, therefore, there is no need of repetition, for, it was a case of the landlord against the petitioners seeking their ejectment under the provisions of Section 77 (3) (N) of the Punjab Tenancy Act, 1887 (for short “1887 Act”) read with Sections 7 and 8 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (for brevity “1955 Act”), whereby the orders rendered by the revenue authorities ordering ejectment of the petitioners have been challenged. While noticing the respective contentions of the learned counsel for the parties and going through the documentary evidence brought on record and the provisions of the law, the orders impugned in the writ petitions were upheld and the writ petitions were dismissed. Petitioners preferred Letters Patent Appeal, *ibid*, by annexing one copy of the order dated 6.7.2017 before the Intra Court Bench, whereby liberty was given to the petitioners to prefer review petition as this Court was deprived of the benefit of the aforementioned documents. It is in this backdrop of the matter, review applications have been filed.

Mr.Kanwaljit Singh, learned Senior Counsel assisted by Mr.Rai Singh Chauhan, representing the review petitioners submitted that the moot question for adjudication of the matter was whether the suit land, being declared surplus in the hands of the big landowners after having declared surplus under the Punjab land Reforms Act, 1972, had attained finality, nor any right vested to the respondents to seek eviction of the petitioners or not

and in support of the contention, reference has been made before the LPA Bench and this Court, i.e., order Annexure A-14 rendered in File No.544 with regard to the proceedings declaring the area surplus in case of Gurdial Singh son of Nachhittar Singh by submitting that the surplus proceedings had attained finality at the hands of predecessors-in-interest of the respondents and were never challenged, therefore, the said land was in possession of the petitioners as tenants as on 24.1.1971 and the petitioners were entitled to benefit of tenant permissible area and eligible for allotment under the Punjab Utilization of Surplus Area Scheme, 1973, for, the land stood vested with the State as per Section 8 of the Punjab Land Reforms Act, 1972, therefore, respondents did not have any right and title in the property and question of eviction did not arise.

This Court, vide order dated 28.7.2017, issued notice to the non-applicants/respondents No.5 to 7 and also extended the stay granted by the Intra Court for a period of two weeks, for, liberty was granted to seek extension of the same.

Reply on behalf of the non-applicant/respondents No.5 to 7 has been filed.

Mr.Arun Jain, learned Senior Counsel assisted by Mr.Amit Jain, representing non-applicant/respondents No.5 to 7 submitted that as per the reply, a preliminary objection qua maintainability of the review applications or concealment of the fact that the order dated 30.1.1990 was not justified as the same has been set-aside in appeal filed by the landowners by the Commissioner vide order dated 23.8.1994 and the surplus area case on remand was re-determined by the Prescribed Authority on 22.10.2002 and as per the order dated 31.3.2003, the land in dispute was

kept in permissible area of the landowners. Copies of the orders dated 22.10.2002 and 31.3.2003 have been annexed as Annexures R5/1 and R5/2.

On merits, it was stated that as per the averments made in Paras 2 and 3 of the writ petition, the petitioners admitted the respondents to be owners of the land in dispute, therefore, the ownership of the landlord and tenant existed. In other words, has not ceased to exist and prayer was made for dismissal of the review applications as there was no error apparent on record.

I have heard the learned counsel for the parties and appraised the paper book.

Before dealing with the argument of the review counsel, this Court had raised a specific query to Mr.Kanwaljit Singh, learned Senior Counsel as to at any point of time, the tenants had applied for declaring the permissible area in the proceedings initiated for declaring the land surplus as per the provisions of 1955 Act and as well as Utilization Scheme, 1973, for, there is a limitation provided under the aforementioned Act and as well as under the Utilization Scheme and on obtaining instructions from Mr.Chauhan, the answer was in negative.

Learned counsel referred to appeal titled as “Yadwinder Singh and others Versus State of Punjab and others” to submit that after having acquired the knowledge of the aforementioned order, filed appeal dated 20.8.2017, which is pending adjudication before the Commissioner, copy of which has been annexed as Annexure A-17. I am afraid, in the proceedings initiated for seeking ejectment of the tenants under the provisions of Section 7 of 1955 Act, applicant-petitioners cannot be permitted to raise the objection to the declaration of the area as surplus at the hands of the

landowners for not having availed the remedy in accordance with law. This is a delaying tactics to retain the possession by adopting all possible methods, which, in my view, is highly depreciable. Such unscrupulous tenants cannot be permitted to drag the litigation by adopting the aforementioned means, for, it is not discernible whether the appeal in the year 2017 would be maintainable. I refrain myself to delve on merits and demerits as it may not effect the entitlement of the applicant-review petitioners.

Keeping in view the aforementioned position, I am of the view that there is no error apparent on record, for, even the Intra Court was also misled by raising plea that the order Annexurte A-14 dated 30.1.1990 had attained finality. Be that as it may, in view of such fact, there is no error apparent on record in the order under challenge, for, the petitioners have not availed the remedy for declaring the permissible area.

No ground for interference in the order under challenge is made out. Resultantly, the review applications are dismissed.

April 23, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No