

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
115/2

Date of decision: 18.07.2019

**C.M. No. 7091 of 2019 &
CWP-2988-2019**

SOHAN SINGH AND OTHERS
VS.

...PETITIONERS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

**C.M. No. 6537 of 2019 &
CWP-2978-2019**

JASMAIL SINGH AND OTHERS
VS.

...PETITIONERS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CWP-2989-2019

HET RAM

VS.

...PETITIONER

STATE OF HARYANA AND OTHERS

...RESPONDENTS

**C.M. No. 8133 of 2019 &
CWP-3005-2019**

JAGDISH AND OTHERS
VS.

...PETITIONERS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sushil Kumar Verma, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

C.M. No. 7091 of 2019 in CWP No. 2988 of 2019
C.M.No. 6537 of 2019 in CWP-2978-2019
C.M. No. 8133 of 2019 in CWP-3005-2019

C.Ms. are allowed subject to just exceptions. Certified copies
of the written statements dated 19.08.2010 filed by the petitioners are taken
on record as Annexure P-7.

CWP Nos. 2988, 2978, 2989 and 3005 of 2019

By this order, I propose to decide four writ petitions i.e. CWP Nos 2988, 2978, 2989 and 3005 of 2019 as the counsel for the petitioners has asserted that the facts in the orders impugned in these cases are identical and the issues also are the same. For the sake of convenience, the facts are being taken from CWP No. 2988 of 2019 titled as Sohan Singh and others vs. State of Haryana and others.

Challenge in this writ petition is to the order dated 28.12.2016 (Annexure P-3) passed by the Sub-Divisional Officer (Civil) exercising the powers of Assistant Collector, Ist Grade, Sirsa, whereby the petitioners have been directed to pay 1/3rd batai as mentioned in Annexure P-3 in Case No. 82-Ejectment/12.11.2009 titled as Harish Kumar etc. vs. Hamir Singh followed by the warrant of possession dated 19.08.2018 (Annexure P-5), whereby the possession of the suit land has also been taken by respondents No. 5 to 9 in Execution Petition dated 24.05.2018 (Annexure P-4).

It is the contention of the learned counsel for the petitioners on facts that the petitioners were the allottees of the land being tenants of the big landlord whose land was declared as surplus vide order dated 24.05.1962. The big landlord Sewa Ram challenged the said order after exhausting the remedies before the revenue authorities by filing CWP No. 468 of 1980. The said writ petition was allowed by this Court vide judgment dated 21.10.1992 setting aside the order dated 24.05.1962 by the authorities. Subsequent to the writ petition having been allowed, another application was filed by the legal representatives of Sh. Sewa Ram, namely, Tirthi Bai, his wife, by submitting a declaration form under Section 9 of the Haryana Ceiling of Land Holdings Act, 1972 (hereinafter referred to as

'1972 Act') claiming the benefit under Section 10A(b) of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as '1953 Act') on the ground that the big land owner had died on 01.06.1982 during the pendency of the case in this Court. She also claimed exemption of sales effected after the appointed day and claimed an additional unit in respect of her son Radhey Sham. The litigation, which ensued, culminated in the order dated 18.12.2000 when the prescribed authority, Sirsa rejected the claim by concluding that the status of the big land owner was to be seen on 24.01.1971. This order was challenged before the District Collector, who dismissed the appeal which resulted in filing of a revision petition before the Commissioner, Hisar Division, who, vide order dated 27.01.2012, allowed the same and set aside the orders passed by the authorities below. Predecessors-in-interest/petitioners, who were tenants, challenged the said order before the Financial Commissioner, Haryana, who dismissed the revision petition on 03.04.2013. Petitioners then filed CWP No. 7833 of 2015 titled as Sadhu Singh and others vs. State of Haryana and others, which was dismissed by this Court vide judgment dated 27.04.2015 (Annexure P-6), meaning thereby that the possession of the petitioners as allottees stood converted into that of the tenants as this Court had, very clearly and categorically, held that with the declaration of the order of surplus dated 24.05.1962 as illegal and void, the authorities under the 1972 Act did not have the power or capacity to transfer the land in favour of the third party and, therefore, the allotment of such declared surplus land to the petitioners cannot be said to be sustainable. Petitioners/predecessors-in-interest of the petitioners, thus, were reverted to the status of tenants which they continued.

Applications have been filed against the petitioners before the Sub-Divisional Officer (Civil) Sirsa by respondents No. 4 to 8 claiming ejectment of the petitioners for non-payment of 1/3rd batai for the period of Kharif 2006 to Rabi 2009. Notice was issued by the Sub-Divisional Officer (Civil) Sirsa exercising the powers of Assistant Collector, Ist Grade, Sirsa, wherein petitioners, who were respondents therein, appeared and after that, filed a reply to the petition on 19.08.2010 and moved a separate application for dismissal of the application under form-L filed by the private respondents herein. Reply to this application was filed by the private respondents on 22.09.2010. The petitioners (respondents therein) were given last opportunity to put forth their submissions vide order dated 18.11.2016. On 30.11.2016, counsel for the petitioners (respondents therein) failed to appear, because of which, petitioners were ordered to be proceeded against ex-parte and adjourned the case for 28.12.2016 (Annexure P-3). On this date also, none appeared for the petitioners herein and it is then that the Assistant Collector Ist Grade proceeded to assess the amount of batai and directed to pay the amount, so assessed, to the private respondents herein or deposit it in the Government Exchequer within a period of 15 days, failing which they were liable to be evicted from the suit land. When the petitioners failed to deposit the amount, an execution application was preferred by the private respondents on 23.05.2018 and on 24.05.2018 (Annexure P-4), the Assistant Collector Ist Grade issued warrants of possession for reporting on 22.06.2018. The report of the warrant of possession is dated 19.08.2018 (Annexure P-5), according to which, the possession has been handed over to the private respondents after filing due process.

It is the contention of the counsel for the petitioners that the ex-parte proceedings initiated against the petitioners are not sustainable in the light of the fact that they have not been given an opportunity to defend themselves. It is asserted that the resettled tenant on the surplus area of a landowner becomes an allottee and, therefore, ejectment on the ground of non-payment of rent is not permissible as the land vests in the Government and the big landowner is no more owner of the property. He, thus, contends that the orders cannot sustain. In support of this, he has placed reliance upon the Division Bench judgments of this Court in **Gurcharan Singh and others vs. The State of Punjab and others**, 1984 R.R.R. 5, **Amarjit Singh and others vs. Financial Commissioner, Taxation, Punjab and others**, 1978 PLJ 228 and **Smt. Bhagwanti Devi and another vs. State of Haryana and another**, 1994 (2) R.R.R. 358, wherein it has been held that even if the family of the big landowner has expanded and some minors have become major before its utilization, they are not entitled to have their permissible area in the surplus land since the declaration has become final. Assertion has also been made that the respondents have no right or title to the land in question as the land stood allotted to them, which was being used by them for cultivation. He, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the impugned orders as well as the judgment passed by this Court in CWP No. 7833 of 2015 titled as **Sadhu Singh and others vs. State of Haryana and others**, decided on 27.04.2015 (Annexure P-6), which has been preferred by the predecessors-in-interest of the petitioners.

The facts, as narrated above, are not in dispute that after the declaration of the surplus area at the hands of the big landlord Sewa Ram, the order of declaration dated 24.05.1962 has been set aside by this Court vide order dated 21.10.1992 passed in CWP No. 468 of 1980 titled as Sewa Ram vs. Haryana State, meaning thereby that the declaration stood set aside and it is thereafter, a subsequent application has been filed by the legal representatives of Sewa Ram under Section 9 of the 1972 Act claiming the benefit of Section 10A (b) of the 1953 Act, which application initially was dismissed by the competent authority and upheld by the District Collector, Sirsa in appeal vide order dated 31.03.2006 but on a revision preferred by the predecessors-in-interest of the private respondents, Commissioner, Hisar Division set aside the orders passed by the lower authorities on 27.01.2012, which order was upheld by the Financial Commissioner, Haryana on a challenge raised by the predecessors-in-interest of the petitioners vide order dated 03.04.2013 leading to the filing of CWP No. 7833 of 2015 titled as Sadhu Singh and others vs. State of Haryana and others challenging the orders of the authorities, whereby the exemptions, as claimed, were granted to the predecessors-in-interest of the private respondents. The said writ petition was dismissed on 27.04.2015 (Annexure P-6) upholding not only the orders in favour of the private respondents, who were the successors of big landowner, but holding that the status of the petitioners as allottees also stood extinguished in the light of the fact that the order, vide which the land vested in the Government, ceased to operate and the Government did not have the authority and power or capacity to transfer such declared surplus land in favour of the third party i.e. the predecessors-in-interest of the petitioners. In view of the above, the challenge of the petitioners to the

authority of the private respondents to prefer an application for ejectment for non-payment of batai by the petitioners cannot be said to be without jurisdiction.

As regards the judgments, which have been relied upon by the counsel for the petitioners i.e. Gurcharan Singh and others (supra), Amarjit Singh and others (supra) and Smt. Bhagwanti Devi and another (supra), the same would not be applicable in the present case in the light of the judgments passed by this Court in CWP No. 468 of 1980 titled as Sewa Ram vs. Haryana State, decided on 21.10.1992 and CWP No. 7833 of 2015 titled as Sadhu Singh and others vs. State of Haryana and others, decided on 27.04.2015 as the declaration of the surplus area of the big landowners stands set aside and the order of allotment in favour of the petitioners has also been adjudicated upon and found to be without jurisdiction after setting aside of the declaration of the surplus area, as detailed above.

That apart, the orders, vide which the petitioners have been proceeded against ex-parte, also cannot be faulted with in the light of the facts, as mentioned in the order dated 28.12.2016, according to which, not only the petitioners were duly served but they also filed reply to the application under form-L and had also preferred applications dated 22.09.2010 for dismissal of the application under form-L. It is thereafter that the petitioners chose not to appear before the Assistant Collector Ist Grade leading to the passing of the order of proceedings against them as ex-parte on 30.11.2016. After that also, the petitioners did not appear on 09.12.2016 nor on 28.12.2016 when finally, the order was passed, whereby the private respondents had sought ejectment of the petitioners for non-payment of batai holding therein that the petitioners were liable to pay 1/3rd

batai for the period of Kharif 2006 to Rabi 2009 and proceeded to assess the amount due towards them. Petitioners were given opportunity to either make payment to the private respondents or deposit the same with the Government Exchequer within a period of 15 days from the date of order, failing which, they would be liable to eviction. When the amount was not deposited by the petitioners, an execution petition was filed, which has been allowed and the warrants of possession were issued on 24.05.2018 (Annexure P-4), which were duly executed on 19.08.2018 (Annexure P-5), according to which, the possession has been handed over to the private respondents of the land in question. There is no fault in the orders impugned herein, which have been passed by the authorities which would call for interference by this Court.

Finding no merit in these writ petitions, the same stand dismissed.

July 18, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No