

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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CWP-11481-2019

Date of decision: 02.05.2019

KAKA SINGH AND OTHERS

...PETITIONERS

VS.

STATE OF HARYANA AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vinod S. Bhardwaj, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 13.11.2018 (Annexure p-15) passed by the Financial Commissioner and Principal Secretary, Department of Revenue in ROR No. 638 of 2017-18, whereby revision petition preferred by the petitioners challenging the order dated 01.05.2018 (Annexure P-13) passed by the Commissioner, Ambala Division, Ambala, stands dismissed.

It is the contention of the learned counsel for the petitioners that the grandfather of the petitioners, namely, Mohar Singh son of Jaswant Singh was a big land owner and area measuring 65 Acres, 13 ³/₄ units, which is equal to 87 Kanal and 18 Marlas falling in the revenue estate of Village Masatpur was declared surplus by the Collector (Agrarian) Ambala on 13.06.1960. Mutation in the name of State Government vide Mutation No. 261 dated 13.02.1985 was entered into as the said order was not challenged by the big land owner. This surplus land was allotted to various persons, who are private respondents, vide order dated 31.12.1985. Form under

Section 3 dated 15.04.1986 was also issued in the name of the private respondents for delivery of possession, which was challenged by the big land owner Mohar Singh by filing CWP No. 1954 of 1986. Mohar Singh died in the year 1998. The writ petition was finally dismissed vide order dated 15.07.2013 but during the pendency of this writ petition, dispossession of the petitioners was stayed. Petitioners filed CWP No. 24962 of 2013 for grant of permission to 'Change of Land Use' under the provisions of the Haryana Ceiling on Land Holdings Act (Amendment) Act, 2011, which was disposed of vide order dated 14.11.2013 (Annexure P-7) directing the petitioners to submit an application in the prescribed format under the relevant law, which had to be considered and decided by the competent authority in accordance with law. The competent authority rejected the request of the petitioners vide order dated 08.05.2014 (Annexure P-8) by holding that the petitioners had no right or title or interest in the land in question.

Thereafter, a petition was filed on 03.08.2014 before the Prescribed Authority by the petitioners for release of the land in question from surplus pool, which was allowed by the Collector (Agrarian) vide order dated 20.08.2014 (Annexure P-10). This order was challenged by the private respondents before the Commissioner, Ambala Division, Ambala, by filing an appeal, which was accepted vide order dated 04.08.2015 (Annexure P-11). While setting aside the order dated 20.08.2014, directions were issued to the Prescribed Authority to deliver possession to the allottees, to which the Prescribed Authority, vide letter dated 31.12.2015, wrote to the Collector that the private respondents (allottees) had failed to deposit the first instalment within the time prescribed and, therefore, the

allotment is liable to be cancelled and in case, the allottees seek allotment, then they should apply afresh. The said letter/order was challenged by the private respondents before the Commissioner, Ambala Division, Ambala, who, vide order dated 01.05.2018 (Annexure P-13), accepted the said petition which led to the filing of the revision petition before the Financial Commissioner by the petitioners which has been dismissed vide order dated 13.11.2018 (Annexure P-15).

Counsel for the petitioners, on the basis of the above, has argued that as per Form issued under Section 3 dated 15.04.1986, possession was to be delivered to the allottees (private respondents) within a period of two months but till date, possession has not been so delivered and the same is with the legal heirs of the big land owner Mohar Singh i.e. petitioners. Because of the possession having not been delivered and the conditions of Form No. 3 having not been fulfilled, the Prescribed Authority has rightly excepted/released the land in possession of the petitioners from the surplus pool and the mutation requires to be entered into in the revenue record accordingly. He, thus, contends that the impugned orders, which have been challenged by the petitioners in the present writ petition, 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 records of the case.

The factum of the land having been declared surplus vide order dated 13.06.1960 (Annexure P-1) passed by the Collector (Agrarian), Ambala, having attained finality as it has not been challenged by the big land owner so also the sanction of mutation of the land in the name of State

Government vide Mutation No. 261 dated 13.02.1985 which continues till date, has not been disputed by the counsel for the petitioners. Once the land has been declared surplus, the same vested in the State Government leaving no right, title or interest in any of the big land owner leaving it to the prerogative of the State Government to utilize the same in any manner as per the scheme framed by the State Government.

It is not in dispute and rather admitted that after the issuance of Form No. 3 dated 15.04.1986 in the name of the private respondents for delivery of possession, the grandfather of the petitioners challenged the allotment of the land which was declared surplus on 31.12.1985 by filing CWP No. 1954 of 1986 in this Court where stay was granted which continued up to the dismissal of the writ petition on 15.07.2013.

It is thereafter, the second round of litigation started where again permission for 'Change of Land Use' under the provisions of the Haryana Ceiling on Land Holdings Act (Amendment) Act, 2011 was sought, which claim was rejected by the competent authority on 08.05.2014 holding that the petitioners have no right, title or interest in the land in question. Thereafter, the petitioners filed a petition on 03.08.2014 before the prescribed authority for release of surplus land in question, which was allowed vide order dated 20.08.2014 by the Collector, Agrarian, which was contrary to the law as the petitioners had no interest in the said land after the same having been declared surplus and that declaration having attained finality with a further sanction of mutation in favour of the State Government with the vesting of the land on declaration.

The private respondents, therefore, challenged the said order dated 20.08.2014 before the Commissioner by filing an appeal wherein the

impugned order was set aside with a direction to the prescribed authority to deliver possession to the allottees, which order has been challenged by filing a revision petition, which has rightly been dismissed by the Court of the Financial Commissioner, Haryana vide the impugned order dated 13.11.2018.

The present writ petition is misconceived especially in the light of the fact that the land, which has been declared surplus, had vested in the State leaves no right, title or interest in the same of the petitioners or their predecessor. Once the said order of declaration has attained finality, the petitioners are left with no cause of action as they have nothing to do with the land in question and it is for the State Government to further proceed in accordance with law.

This Court does not find any merit in the present writ petition nor does it find any equity in favour of the petitioners rather they are in illegal possession of the land in question.

In view of the above, the present writ petition stands dismissed.

May 02, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No