

CWP-17097-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17097-2019

Date of Decision: 1st July, 2019

Narender Singh & others

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikram Singh, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 24.09.2018 (Annexure P-13) passed by the Secretary-cum-Financial Commissioner (Revenue), Haryana, whereby, petition filed under the provisions of Haryana Evacuee Properties (Management & Disposal) Act, 2008 (hereinafter referred to as '2008 Act') for setting aside the order dated 31.12.2002 passed by Tehsildar (Sales), Ambala for transfer of evacuee land comprised in Khasra No.78//25/3 (5-8) and 23 (8-0) measuring 13 kanal 08 marla situated at village Pilkhani, Tehsil and District Ambala and order dated 10.02.2003 passed by the Settlement Officer (Sales), whereby, said transfer order was approved and also to set aside the order dated 25.04.2003 passed by the Settlement Officer (Sales), Ambala and order dated 07.09.2006 passed by the Deputy Commissioner-cum-Settlement

Commissioner, Ambala, whereby, the revision petitions were dismissed.

2. It is the contention of the learned counsel for the petitioners that the order passed by the Financial Commissioner (Revenue), Haryana, dated 24.09.2018 (Annexure P-13) cannot sustain in the light of the fact that as per the statute and the rules governing the allotment in favour of the petitioners, they were *bona fide* transferee as per Haryana Government policy and therefore, their rights are protected as there is no fraud or misstatement made on their part. In support of this contention, he has placed reliance upon Section 6 of 2008 Act. He contends that the powers having not been exercised by the Competent Authority i.e. Financial Commissioner (Revenue), Haryana, the orders which have been passed by the authorities, which were the subject matter of consideration before the Financial Commissioner in the impugned order, cannot sustain.

He, however, could not dispute the fact that initially, restricted auction for the land in question was held where the private respondents in the writ petition were successful but vide order dated 05.12.1983, the said restricted auction was set aside by the Settlement Officer (Sales) in the light of the fact that the private respondents failed to deposit the amount for which the auction was held. This action was challenged by the private respondents by filing Civil Writ Petition No.3941 of 1985, which was ultimately allowed by this Court vide order dated 20.10.2011. He, however, states that since the petitioners had no role to play so far as the earlier proceedings are concerned nor were they in any manner involved in the said proceedings, the order which has been passed in favour of the private

respondents by this Court, cannot be an impediment as far as the claim of the petitioners is concerned. He, thus, contends that the impugned orders passed by the authorities below cannot sustain.

3. I have considered the submissions made by the learned counsel for the petitioners and with his assistance have gone through the impugned orders but do not find myself in agreement with the arguments raised by him rather tend to agree with the the reasoning which has been assigned by the Financial Commissioner (Revenue), Haryana, while passing the order dated 24.09.2018 (Annexure P-13).

4. In the light of the admitted facts that the restricted auction, which was in favour of the private respondents, was ultimately cancelled by the Settlement Officer (Sales), vide order dated 05.12.1983, having been challenged by the private respondents in Civil Writ Petition i.e. CWP No.3941 of 1985, which was ultimately decided on 20.10.2011 in their favour, petitioners who came into possession of the said land on the basis of the allotment was only person(s) who had moved into the land because of the cancellation of auction in favour of the private respondents. The matter being pending before this Court, the principle of *lis pendence* would be applicable and accordingly, all consequences with the result of passing of the order of this Court would follow. The authorities below have actually not exercised the powers under the 2008 Act rather they have proceeded to pass the order in compliance with the order of this Court. The plea, therefore, of the counsel for the petitioners that Section 6 of 2008 Act has not been complied with, cannot be accepted.

It may be added here that the petitioners filed an application i.e. CM No.3004 of 2013 for recall of the order dated 20.10.2011 in CWP No.3941 of 1985, which application was dismissed by this Court on 12.03.2013. This order has attained finality.

5. For further clarification, operative part of the order passed by the Financial Commissioner (Revenue), Haryana, is reproduced below:-

“I have gone through the petition and record available on the file. The Settlement Officer (Sales) vide order dated 05.12.1983 set aside the auctions on the objections filed by Sh. Hazara Singh. However, the said order dated 05.12.1983 has been set aside by the Hon'ble High Court vide judgment dated 20.10.2011 passed in Civil Writ Petition No.3941 of 1985. Further, The C.M. application No.3004 of 2013 filed by the present contesting respondents No.1 to 3 before the Hon'ble High Court for reopening of the case has also been dismissed vide order dated 12.03.2013 by giving liberty to approach still a higher forum as an aggrieved party. However, the respondents No.1 to 3 failed to plea and show any evidence that they have approached a higher forum as allowed by Hon'ble High Court. Hence, keeping in view the judgment of the Hon'ble High Court, transfer of the land in question measuring 13K-8M vide order dated 31.12.2002 passed by Tehsildar (Sales) and its approval

order dated 10.02.2003 passed by the Settlement Officer (Sales), Ambala in favour of respondents No.1 to 3 and subsequent aforesaid orders i.e. 25.04.2003 and 07.09.2006 are non-est in the eyes of law. Therefore, the present reference petition is accepted and the Tehsildar (Sales) Ambala is directed to take further action in compliance of the judgment dated 20.10.2011 passed by the Hon'ble High Court in time bound manner in accordance with law.”

6. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

1st July, 2019
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No