

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

CWP No. 34336 of 2019

Date of decision : 12.12.2019

Hazara Singh

.... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present : Mr. Pradeep Virk, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. A. G., Haryana.

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DAYA CHAUDHARY, J.

Petitioner Hazara Singh has approached this Court by way of filing the present writ petition for quashing of impugned order dated 06.02.2018 (Annexure P-1) passed by Collector, Sirsa, whereby the application filed by the petitioner under Section 5 of the East Punjab Utilisation of Lands (Haryana Amendment) Act, 2014 (for short – Amended Act, 2014) for renewal of lease of the land in dispute in terms of order dated 11.02.2016 passed by this Court in CWP No.8151 of 2015 (Annexure P-2), has been dismissed. A further prayer has also been made for direction to Collector, Sirsa to reconsider the claim of the petitioner in view of the aforesaid direction.

Petitioner filed CWP No.8151 of 2015 before this Court to challenge order dated 18.06.2013 passed by the Collector as well as order dated 24.06.2014 passed by the appellate authority. Said petition was

disposed of vide order dated 11.02.2016. The relevant portion of the order is reproduced as under : -

“In order to protect the petitioner’s possession and rights it is ordered that in the event of the petitioner making an application under Section 5 of the East Punjab Utilization of Land (Haryana Amendment) Act, 2014 on or before 31.03.2016, the respondents and the petitioner shall maintain status quo of the property till the same is decided and for a period of 8 weeks after the service of the order upon the petitioner in the event of the same being adverse the petitioner.”

In pursuance of said order dated 11.02.2016, the petitioner moved an application for renewal of lease of land as per the Amended Act, 2014, however, the same was dismissed vide order dated 06.02.2018.

Learned counsel for the petitioner submits that vide impugned order passed by learned Collector, the application moved by the petitioner has wrongly been dismissed by holding that the lease land was owned by Haryana Urban Development Authority (for short – “HUDA”) now Haryana Shehri Vikas Pradhikaran (for short - “HSVP”) and the concerned authority, to deal with the application, was the Estate Officer, HUDA, who was discharging the role of Collector. Learned counsel also submits that the application has wrongly been dismissed on the ground that the suit land was under ownership of HSVP and, therefore, grant of renewal of lease was outside his jurisdiction and as such the claim of the petitioner could not have been adjudicated by him under Section 5 of the Amendment Act, 2014. Learned counsel also submits that the petitioner was given liberty to move fresh application to the Administrator-cum-Collector, Haryana Urban Development Authority. The land in dispute was allotted to the father of the

petitioner under the East Punjab Utilisation of Land Act, 1949 and not under Haryana Urban Development Authority Act, 1977. The case of the petitioner should have been adjudicated under the Amended Act, 2014. Accordingly, the order passed by the Collector is contrary to the findings recorded by the Division Bench. The claim of the petitioner was accrued to him in the year 1986 and the land came under the ownership of HUDA in the year 2005 and as such, the impugned order is liable to be set aside.

On the other hand, learned State counsel submits that the father of the petitioner was allotted the land on lease for a period of 20 years, which had expired in the year 1978. Thereafter, the lease was never extended. Order of eviction was passed by the Additional Collector, Sirsa on 27.03.1980. The appeal filed before the Commissioner was also dismissed on 18.12.1980, which was not challenged. The mutation was entered in favour of HUDA. Accordingly the land was vested with HUDA. The petitioner did not file any appeal even against entry of mutation in favour of HUDA in the revenue record. Even the Jamabandi in favour of HUDA has also not been challenged.

Heard arguments of learned counsel for the parties. We have also perused impugned order dated 06.02.2018 (Annexure P-1) and other documents available on the file.

Admittedly, the petitioner filed CWP No.8151 of 2015, which was disposed of vide order dated 11.02.2016. In view of the observations made in paras No.5 and 6 of order dated 11.02.2016, it was held that under the Amended Act, 2014, the petitioner's right remained unaffected. Petitioner was given liberty to move fresh application under Section 5 of the

Amended Act 2014 on or before 31.03.2016 and the parties were also directed to maintain *status quo* qua the property till the same was decided. A period of 8 weeks was given for taking decision.

In pursuance of order dated 11.02.2016 passed by the Division Bench of this Court, the petitioner made application under Section 5 of the Amended Act before the District Collector, Sirsa, which was dismissed being not maintainable vide order dated 06.02.2018 on the ground that as per notification, the property in dispute was entered in the name of HUDA, Sirsa and the same was entered in the *Jamabandi* for the year 2006-2007. HUDA Department was having ownership right over the property in dispute and the Estate Officer, HUDA, Sirsa was empowered to hear the land cases of HUDA being Collector.

In the Amended Act, 2014, Section 5 of the principal Act *i.e.* East Punjab Utilisation of Lands Act, 1949 has been substituted, which is relevant and reproduced as under : –

“2. For section 5 of the East Punjab Utilisation of Lands Act, 1949 (hereinafter called the principal Act), the following section shall be substituted namely :-

“5. Where the Collector has taken possession of any land under section 3, he may lease or renew the lease to any person on such terms and conditions, as he may deem fit, for the purpose of growing any type of crop:

Provided that the Collector may renew the lease, which expired on or before the 24th September, 1986, and the lessee is in cultivating possession of the land belonging to State Government or Gram Panchayat, as the case may be :

Provided further that the period of lease shall not be less than seven years and more than ninety-nine years in totality :

Provided further that the Collector shall take the use

and occupation charges from lessee for the period from expiry of lease till its renewal.

Explanation I. - For the purpose of this section, the words “any person” shall mean a person himself who was granted lease by the Collector on or before 24th September, 1986 under the provisions of this Act, or his legal heir.

Explanation II. - The cultivating possession of the lessee shall be ascertained on or before the 24th September, 1986.”

However, the application was not considered in view of the direction issued in the writ petition. Accordingly, the Collector (respondent No.5) is directed to re-consider the application moved by the petitioner in view of directions issued by this Court in CWP No.8151 of 2015 and to take fresh decision. The necessary exercise be done within a period of four weeks from the date of receipt of certified copy of this order.

Disposed of accordingly.

(DAYA CHAUDHARY)
JUDGE

Dated : 12.12.2019
sunil yadav

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No