

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

LPA No.2345 of 2017 (O&M)

Date of Decision: November 8th, 2021

Balbir Singh

....Appellant

Versus

State of Punjab and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Appellant-Balbir Singh in person.

AUGUSTINE GEORGE MASIH, J.

CM No.5180-LPA of 2017

Prayer in this application is for condonation of delay of 230 days in filing the appeal.

In the present application, it has been stated by the applicant-appellant that he is financially not sound and his wife was seriously ill and, therefore, he was busy in taking care of her and arranging money for her treatment including borrowing huge amounts from relatives and friends. He was unable to arrange for the money to file the present appeal, which has resulted in the delay. Prayer has thus been made for condoning the delay in filing the appeal as the same is neither intentional nor willful, rather the same has occurred because of the financial constraints and circumstances beyond the control of the applicant-appellant.

In view of the above, we find that the reasons assigned for the delay in filing the present appeal are just and reasonable which are neither intentional nor deliberate and, therefore, we accept the prayer in the application and condone the delay of 230 days in filing the appeal.

LPA No.2345 of 2017

Appellant, who appears in person and claims to be the sole legal heir of Uttam Singh, Deva Singh and Sohan Singh sons of Natha Singh to whom land measuring 8 standard acres – $4\frac{3}{4}$ unit, 8 standard acres – $5\frac{1}{4}$ unit and 8 standard acres – $6\frac{3}{4}$ unit respectively was allotted in Village Enna Khera, Tehsil Malout being displaced persons. Allotments are claimed to have been made between the years 1949-1952.

On an application moved by the appellant that there was deficiency in the area, which was allotted to Shri Uttam Singh because of the error in calculating the area, direction was issued by Director Land Records on 09.06.1992 to the Consolidation Officer to inquire into the matter. The Consolidation Officer proceeded to hold an inquiry and submitted his report dated 02.11.1994, wherein it was found that there was deficiency of 9 bighas and 9 biswas of land relating to the allotment of land to Uttam Singh. This has occurred because of error in calculating the area of Khasra No.384 and it was further mentioned that land comprised in Khasra No.1322/644, 1323 and 1324/643 belong to the local people and thus could not be allotted to him as it was not an evacuee property. It was also mentioned therein that the said deficiency in the allotment of land was to be rectified by the Department of Rehabilitation.

2. In pursuance to the said report and observations made therein, application dated 03.04.1998 addressed to the Special Secretary, Rehabilitation Department, was submitted by the appellant, which remained pending with the Managing Officer (Headquarters). When no further action was taken, he approached the Special Secretary, Revenue-cum-Claims Commissioner, Punjab, which led to the passing of the order dated 06.05.2013 (Annexure P-1), wherein the claim of the appellant was rejected on the ground that the same was barred

by limitation as it has been filed after 31 years from the cut off date as fixed under the first proviso to Rule 67-A of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, according to which a displaced person was mandated to file application for any claim including deficiency, if any, in the area allotted to him on or before 31.12.1963 and after a delay of 35 years before the competent authority i.e. the Managing Officer, where he filed his claim/application in the year 1998 as the appellant had initiated the proceedings for deficiency in allotment of land qua Uttam Singh, his uncle, in the year 1991 before the Consolidation Officer, which is not the competent authority.

Another ground which was taken for not accepting the claim of the appellant was that he had not been able to prove that he was the sole legal heir of his father Sohan Singh or his uncles Uttam Singh and Deva Singh allottees. Reference was also made to the zimni order dated 27.01.2012, where the appellant had himself admitted that he had mother, four brothers and 3 sisters, which clearly depicted that apart from the appellant, there were eight other persons, who would be legal heirs of his father Sohan Singh, what to talk about his two uncles Deva Singh and Uttam Singh. Nothing was produced on record, which would indicate that his uncles had died unmarried or were issueless without any legal heirs.

3. This order of the Claims Commissioner, Punjab, was challenged by the appellant by filing an appeal before the Financial Commissioner (Revenue), Punjab. Before the Appellate Authority, appellant had asserted that a civil suit was filed by the appellant for declaration to the effect that the Department of Rehabilitation as also the Consolidation Department be directed to render the details of the allotment of the land of the persons mentioned therein, which was decreed *ex parte* on 04.12.2008 directing the Rehabilitation

Department along with the Consolidation Department and the Revenue Department to supply the records as sought for by the appellant and to find out if there is any defect or deficiency, the same be corrected and rectified as per the rules. On this basis, he asserted that since a direction has been issued by the Civil Court, department was bound to rectify and make good the deficiency in allotment of the land as mentioned in the report dated 02.11.1994 by the Consolidation Officer.

This additional plea was taken into consideration by the Appellate Authority but found itself not in a position to accept the said plea in the light of the fact that the appellant had approached the competent authority for fulfilling the deficiency in the allotment of the land beyond the period fixed for applying for the same. His first approach before the Consolidation Officer being in the year 1991 followed by his subsequent approach to the Managing Officer in the year 1998, which is after 31 years and 35 years respectively.

In support of the said conclusion that the claim could not be accepted in the light of the provisions of Rule 67-A of the Displaced Persons (Compensation and Rehabilitation), Rules, 1955, reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Union of India and others Versus Hardyal AIR 2010 SC 1155***, decision of this Court in ***CWP No.20606 of 2010*** titled as ***Sunder Kaur and another Versus Financial Commissioner and others***, decided on 18.03.2014 and ***CWP No.4758 of 2014*** titled as ***Jaisa Ram Versus Financial Commissioner, Punjab***, decided on 21.07.2014, where it has been consistently held that such claims with regard to allotment of land and making good of the deficiency in allotment are not maintainable beyond the period fixed under Rule 67-A of the said Rules. Further it was observed that a report has been sought from the Tehsildar, Malout by the Financial Commissioner during the pendency of the appeal, who had submitted his report

dated 06.11.2012 (Annexure A-2), wherein it was concluded that the entire land falling in the area in the share of Uttam Singh, Deva Singh and Sohan Singh stood allotted to them. Apart from this aspect, it was found that the appellant had failed to show that he was the sole legal heir of Uttam Singh, Deva Singh and Sohan Singh, especially in the light of his admission as recorded in the order dated 06.05.2013 by the Claims Commissioner, Punjab, referred to above.

4. This led to the filing of CWP No.9874 of 2015 by the appellant challenging the orders dated 30.09.2014 (Annexure P-2) passed by the Financial Commissioner (Revenue), Punjab, rejecting his appeal and the order dated 06.05.2013 (Annexure P-1) passed by the Claims Commissioner, Punjab-respondent No.2 dismissing his claim for making good the deficiency in allotment of land.

5. Learned Single Judge of this Court proceeded to hear the appellant and dismissed the writ petition vide judgment dated 22.03.2017 by accepting the grounds and the reasons assigned by the revenue authorities for not accepting the claim of the appellant. The present appeal has been preferred challenging this impugned judgment apart from the orders, which were impugned in the writ petition.

6. Appellant has asserted that the authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 as also the learned Single Judge have misguided themselves proceeding on the assumption that the appellant is putting forth his claim under the Displaced Persons (Compensation and Rehabilitation), Act, 1954 for the first time by filing an application before the Consolidation Officer in the year 1991. Rather as a matter of fact, on a direction issued by the Director Land Records, Punjab, on 09.06.1992, an inquiry was held by the Consolidation Officer, who submitted his report on 02.11.1994, wherein deficiency in allotment of land to

Uttam Singh uncle of the appellant stood established, according to which 9 bighas and 9 biswas of land was found deficient because of the error in calculating the area of Khasra No.384 and further, Khasra Nos.1321/644, 1323 and 1324/643 could not be allotted as it belonged to the local people and was not evacuee property. This deficiency was to be made good by the Rehabilitation Department. It is in pursuance thereto that he had approached the Special Secretary, Rehabilitation Department, by an application dated 03.04.1998. His claim is limited to the extent of making good the deficiency in allotment of the land of his uncle Uttam Singh and it is not a fresh claim. The deficiency having been acknowledged, the right of the legal heir of Uttam Singh cannot be defeated on technicalities. He, therefore, prays that the present appeal be allowed and the impugned judgment passed by learned Single Judge and the authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 deserve to be set aside.

7. We have considered the submissions made by the appellant and with his assistance, have gone through the records of the case, impugned orders and the judgment of learned Single Judge but do not find ourselves in a position to accept his contentions in the light of the provisions as contained in Rule 67-A of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which specifies that the claim, not only for the allotment of land by a displaced person but also the deficiency, if any, found therein, to be submitted on or before 31.12.1963. The report dated 06.11.2012 (Annexure A-2) of the Tehsildar, Malout, which had been called for by the Financial Commissioner, Revenue, Punjab (Appellate Authority), clearly establishes the fact that the allotment had in fact been made to all three i.e. Uttam Singh, Deva Singh and Sohan Singh sons of Natha Singh, according to their claims. In case of deficiency, the claim should have been put forth by the appellant or his

predecessors-in-interest as per the statute, which had prescribed the cut off date for putting forth such claims as 31.12.1963.

It is an admitted position on facts and as is apparent from the records that no such claim had been put forth by the predecessors-in-interest of the appellant, Uttam Singh or even by the appellant prior to the said cut off date. As per the admission on the part of the appellant, his first application before the Director Consolidation is of the year 1991 and his approach to the competent authority under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 is in the year 1998, which is much beyond the period of limitation as prescribed under the statute i.e. Rule 67-A. Even the delay has not been explained as it is not apparent from the pleadings as to how the time prior to 1991 was spent by the appellant or Uttam Singh and his predecessors-in-interest. The law on this aspect is clear. Reference in this regard can be made to the judgment of this Court in **CWP No.3142 of 1987** titled as **Vidyasagar Versus State of Haryana**, decided on 29.11.2010, wherein it has been clearly held that the application for allotment/making good the deficiency in the land allotted can be made not later than 31.12.1963.

8. Thus it is apparent that the approach by the appellant to any of the departments including the Consolidation Department is delayed by 31 years as the first application was filed in the year 1991 and a delay of 35 years in approaching the competent authority i.e. the Special Secretary, Rehabilitation Department in the year 1998.

9. Appellant has sought to place heavy reliance upon the *ex parte* judgment and decree dated 04.12.2008 (Annexure A-10) passed by the Additional Civil Judge, Senior Division, Malout, where it has been stated that the defect or deficiency in the allotment, if detected by the departments, shall be corrected and rectified but he had overlooked the aspect that it qualifies it by

adding that the same shall be 'as per the rules'. The operative part of the judgment reads as follows:-

“10. Hence forth in view of the above mentioned exparte evidence, suit of the plaintiff is exparte decreed only to the effect that the defendants departments especially, the Rehabilitation Department along with Consolidation Department, Revenue Department are directed to issue to the plaintiff the record regarding allotment of land to Uttam Singh, Sohan Singh and Deva Singh on the basis of documents placed on file as Ex.P1 to Ex.P9 and if any defect or discrepancy is detected by any of the Departments, they are further directed to correct and rectify the same as per rules. Decree sheet be prepared and file be consigned to the record room.”

Perusal of the above clearly shows that although a direction has been issued to correct and rectify the error, if any but the same has to be as per the rules. Although there appears to be some deficiency qua the land allotted to Uttam Singh son of Natha Singh, uncle of the appellant but in the light of the specific bar qua the claim to be entertained, making claims for allotment or for making good the deficiency, if any, in the allotment beyond 31.12.1963, the claim could not have been entertained and, therefore, the authorities and the learned Single Judge has rightly proceeded to reject the said claim as approached by the appellant. The claim, therefore, of the appellant cannot be accepted and the orders and the judgment passed by the learned Single Judge are in accordance with law.

10. Another aspect which cannot be ignored nor overlooked is that the appellant admittedly is not the son of Uttam Singh. He has also admitted a fact which stands recorded in the order passed by the Claims Commissioner, Punjab, that the appellant had claimed himself to be nephew of Uttam Singh. Nothing has been disclosed with regard to there being either sons, daughters or wife of Uttam Singh. However, he has admitted that he has 4 brothers and 3 sisters

apart from his mother as legal heir of Sohan Singh, his father. It has also not been stated that Uttam Singh died a bachelor or issueless. This aspect has not been disclosed by him in his application dated 03.04.1998 but he has himself claimed to be the only legal heir without there being any proof to that effect. This again impinges upon the *bona fides* of the appellant apart from the fact that he has not been found to be entitled to the claim according to the statute above.

11. We do not find any ground to interfere in the present appeal as the same is devoid of any merit and dismiss the same.

12. In the light of the dismissal of the appeal, CM No.5181 of 2017 stands disposed of as having been rendered infructuous.

13. Copy of this order be sent to the appellant who appeared in person on the address mentioned in the memo of parties through registered post.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 8th, 2021
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned Yes

Whether reportable No