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

CWP-23755-2015 (O&M)
Date of decision : 29.08.2022

SMT. CHANDERPATI AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Radhey Shyam Sharma, Advocate
for the petitioners.

Mr. Amit Aggarwal, D.A.G., Haryana.

Mr. Deepak Kaushal, Advocate
for respondent Nos.3 to 10.

HARSH BUNGER, J.

Petitioners have filed this writ petition seeking quashing of order dated 24.11.2014 (Annexure P-8) passed by the learned District Collector, Fatehabad in exercise of its power under Section 21(4) of the East Punjab Holding (Consolidation and prevention of Fragmentation) Act, 1948 (as applicable to the State of Haryana), (here-in-after referred to as 'the Consolidation Act') whereby, order dated 02.12.2005 (Annexure P-7) passed by the learned District Revenue Officer, Panipat has been set aside and order dated 17.11.2004 (Annexure P-6) passed by the Consolidation Officer, Hisar has been upheld.

It is the contention of the petitioners that private respondents

were big land owners and their land was declared surplus by the prescribed authority vide order dated 12.02.1981 (Annexure P-1) and land in dispute comprised in Rect. No.177, Killa no.24/1 (6-12) had come under possession of fore-fathers of the petitioners. It is contended that if land in question is entered into the name of Ishwar Dass etc., then their land will become $432+06K\ 12M=438K\ and\ 12M$, which is not permissible as per law.

Learned counsel for the petitioners submits that private respondents, in order to get undue benefit for themselves and to cause loss to the petitioners, initiated proceedings under Section 21(2) of the Consolidation Act by claiming that Killa No.177//24 (0-16) (standard area) was to be allotted to them at the time of consolidation, however, the same was wrongly entered in the name of the petitioners in the *jamabandi* for the year 1989-90. Petition under Section 21(2) of the Consolidation Act filed by the private respondents was allowed vide *ex-parte* order dated 01.04.2004, whereby, Rect. no.177//24/1 (6-12) was allotted in their favour. The petitioners sought setting aside of *ex-parte* proceedings, which was allowed by the Consolidation Officer, Hisar vide order dated 05.08.2004 (Annexure P-5) and the matter was fixed for further proceedings, which culminated into passing of order dated 17.11.2004 (Annexure P-6), whereby, it was held that Killa no.177//24 was left out to be entered in the name of Ishwar Dass etc. due to mistake and Killa no.177//24/1 had been wrongly entered in the name of Chander Pati in the *jamabandi* for the year 1989-90 and prior thereto, this land had not been given to anyone.

Order dated 17.11.2004 (Annexure P-6) was further challenged by the petitioners by way of an appeal under Section 21(3) of the

Consolidation Act and the District Revenue Officer, Panipat, vide order dated 02.12.2005 (Annexure P-7) allowed the appeal by holding that Ishwar Dass was a big land owner and his land was declared surplus on 12.02.1981 and at present, the petitioners (appellants therein) were in possession of the land, in question. The said order dated 02.12.2005 was challenged by Ishwar Dass and another by way of filing an appeal, which was accepted by the District Collector, Fatehabad vide order dated 24.11.2014 (Annexure P-8) by holding that Killa no.177//24/1 (6-12) was left to be entered in the name of Ishwar Dass etc. inadvertently and the same was allotted at the time of partition; however, this Killa no. was incorporated in the *Jamabandi* for the year 1989-90 in *khata* of Chander Pati and prior thereto, the said land was not found entered in any *khata*.

This writ petition has been filed assailing the said order dated 24.11.2014 (Annexure P-8).

Notice was issued in the writ petition, whereupon, the official respondents as well as the private respondents have filed their respective written statements.

Respondents no.1 and 2 have filed their written statement by raising certain preliminary submissions and in para Nos.3 and 4 thereof, following stand has been taken :-

“3. xxx xxx It is pertinent to mention here that in the Jamabandi for the year 1989-90, Killa No.177//24/1 was wrongly entered in the name of Smt. Chander Pati/petitioner which was inadvertently left to be entered in the name of Ishwar Dass etc. being owner of this land. Thereafter, Ishwar Dass etc., filed

an appeal before District Revenue Officer, Fatehabad with the power of consolidation Act u/s 21(3) which was allowed and then Ishwar Dass etc., filed an appeal before the District Collector, Fatehabad against the order dated 02.12.2005. The learned District Collector, Fatehabad has passed order dated 24.11.2014 confirming the order dated 17.11.2004 passed by the Assistant Consolidation Officer, Hisar. The order passed by the Assistant Consolidation Officer, Hisar dated 17.11.2004 is upheld.

4. That Ishwar Singh etc. respondent was big land owner of a big chunk of land and the land has already been declared as surplus during the year 1981 and the petitioner has nothing to do with the land in question hence, the State of Haryana is owner of this land and the possession of the petitioners is illegal and unauthorized.”

Still further, in para No.5 of the written statement on merits, respondents No.1 and 2 have taken the following stand :-

“ 5. xxx xxx it is submitted that vide order dated 24.11.2014, the District Collector, Fatehabad has legally held that the petitioners were not in possession of the land in dispute and the same has been left to enter in the name of Ishwar Dass being not owner of this land. It is relevant to mention here that as per order dated 12.02.1981, said Ishwar Dass/land owner can have only 432 kanal (c) category land in his permissible area. And 325 kanal area was declared surplus pool. It is further relevant to mention here that if the land in dispute is entered into the name of said Ishwar Dass then their land will become $432+06K\ 12M=438$ Kanal and 12 marlas which is not permissible as per law. Moreover, the said big land

owner Ishwar Dass never declared the land in dispute under his possession at the time of declaration in the year 1981.”

With these submissions, respondents No.1 and 2 have prayed for dismissal of the writ petition.

On the other hand, respondents No.3 to 5 and 10 have filed their written statement, wherein, it is stated that Killa no.177//24/1 (6-12) was allotted to Ishwar Dass but the same was not incorporated in the revenue record by the Consolidation Department due to inadvertent mistake and the same was wrongly entered in the *jamabandi* for the year 1989-90 in the name of Chanderpati for the first time and prior to that, this land was not found entered in any khata. Further stand taken is that respondents were small land owners and Killa no.177//24/1 was not entered in the khata of Ishwar Dass and others due to inadvertence and the petitioners have deliberately got the said Killa no. incorporated in the *jamabandi* with an intention to play fraud. It is also the stand of said respondents that petitioners were never in possession of Killa no.177//24/1 (6-12) and petitioners have no concern with the said Killa no.177/24/1 and they are neither the owners nor in possession of the said land. At the same time, it is the case of the private respondents that said Killa no./land has never vested in the State and was never declared surplus in the hands of Ishwar Dass etc. and was never allotted to the petitioners. It is further contended that consolidation proceedings in Village Bhardana took place in the year 1963-64 and at that time, Nebh Raj son of Gela Ram, Ishwar Dass, Nanak Chand sons of Nebh Raj were owners in possession of land including said land. Said persons were given/allotted land in new numbers in lieu of

old numbers at the time of consolidation proceedings/partition under Section 21(1) of the Consolidation Act vide resolution No.90 of Register proceedings consolidation as mentioned at number 250. Thereafter, at the time of modification/adjustment made under Section 21(2) of said Act by CEO, area measuring 9-2 Std. Kanals was excluded and in lieu thereof, area measuring 8-16 Std. Kanals were given/included in the area of said Nebh Raj etc., regarding which Resolution No.91 was incorporated by CEO on dated 20/21.12.1964. However, at the time of implementation of said order in the Jamabandi, land measuring 6K-12M comprised in Rect. 177//24/1 could not be entered inadvertently by officials although the same was liable to be added and mentioned in the Khewat and Khata of Nebh Raj etc. The said area measuring 6K-12M was/is part of land measuring 8-16 Std. Kanal allotted to Nebh Raj etc. This area which inadvertently remained to be incorporated in the ownership of Nebh Raj etc. was liable to be incorporated in their favour.

With the aforesaid submissions, dismissal of the writ petition with special costs is prayed for.

We have heard learned counsel for the parties and with their able assistance, gone through the paper book.

Petitioners seek quashing of impugned order dated 24.11.2014 (Annexure P-8) primarily on the ground that they are in possession of Killa no.177//24/1 (6-12) and secondly, on the ground that if the said Killa no. is added to the land holding of the private respondents-Ishwar Dass etc., then the same would be rendered surplus.

So far as the first ground is concerned, apart from the bald

assertion that they have come in possession of the said Killa no., learned counsel for the petitioners is unable to point out any documentary evidence placed on record by the petitioners reflecting their entitlement in respect of the land comprised in Killa no.177//24/1 (6-12). Further, the concerned Consolidation authorities have recorded a finding that Killa no.177//24/1 (6-12) was inadvertently not included in the name of Ishwar Dass etc. and said Killa no. was wrongly entered in the name of petitioner No.1-Chander Pati in the *jamabandi* for the year 1989-90 and prior to that, the said Killa no. had not been given to anyone. Similar stand has been taken in the reply filed on behalf of respondents No.1 and 2, wherein, it is categorically stated that Killa no.177//24/1 was wrongly entered in the name of Chander Pati (petitioner No.1) and it was inadvertently left out to be entered in the name of Ishwar Dass etc. There is nothing on record to show the basis of entering such mutation and it is a settled position that mutation does not confer any title. Thus, petitioners' claim regarding Killa no.177//24/1 is rejected being baseless, unsubstantiated and devoid of any merit.

In respect to the second submission, perusal of the file reveals that as per findings recorded by the Consolidation authorities as well as the stand taken by the State, it is an admitted position that Killa no.177//24/1 was not accounted for, until the same was suddenly reflected in the Jamabandi for the year 1989-90 in the name of Chander Pati. It is also the case of the official respondents that this Killa No. was indeed allotted to Ishwar Dass etc. Thus, we do not find any ground to interfere in the impugned order to the extent that the said Killa no.177//24/1 was allotted to

Ishwar Dass etc. However, it is noticed that land of Ishwar Dass was declared surplus in the year 1981 (12.02.1981). Since, Killa no.177//24/1 had not been accounted for in the name of Sh. Ishwar Dass etc., at the relevant time, it would require consideration by the concerned/Prescribed Authority to discern with reference to the relevant record as to whether upon inclusion of the said Killa no. in the account of respondents No.3 to 5 and 10 and/or their predecessors-in-interest, the same would fall within the ambit of surplus land or not. Prior to such consideration, there indeed can be no dispensation holding said respondents entitled to this 6 K – 12 M of land.

Accordingly, the concerned Prescribed Authority, Surplus Area is directed to carry out the necessary exercise in this regard expeditiously and preferably within two months after affording proper opportunity to the concerned affected parties. Aforesaid respondents shall be entitled to said 6 K–12 M of land only in case it is determined that with the additon thereof, land-holding of Ishwar Dass would not be rendered surplus. Needless to say if the land is rendered surplus, it would vest in the State.

Writ petition is accordingly disposed of.

Pending application/s, if any, shall also stand disposed of.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

August 29, 2022

gurpreet

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No