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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-4183-CWP-2022 in/and
CWP-2582-2018

Date of Decision: 12.07.2022

Balbir Chand

....Petitioner

VS

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: None for the petitioner
Mr. Arun K. Kaundal, DAG Punjab
Mr. R.K. Sharma, Advocate
for respondent No. 5

SUDHIR MITTAL, J. (Oral)

CM-4183-CWP-2022

Since the main case has been listed today, the present application has been rendered infructuous and the same is disposed of as such.

CWP-2582-2018

The petitioner and respondent No. 5 had made joint purchase of certain land owned by Smt. Champa Devi and Kanwal Phool (big land owners) daughters of Thakar Singh vide registered sale deed dated 13.06.1973. Joint mutation was entered. Thereafter, land of the big land owners was declared surplus and the surplus land (including the land purchased by the petitioner and respondent No. 5) was allotted to Gidda @ Gurdita and Gian sons of Gopi vide order dated 31.03.1975. The said order was, however, set aside in appeal filed by the petitioner and respondent No. 5. Thereafter, vide order dated 30.01.1985 allotment of the surplus land was made in favour of respondent No. 5 alone. Subsequently, vide order dated 19.03.1986 the Collector held that the big land owner did not have any surplus land. Vide order dated 09.12.2014 appeal against order of allotment in favour of respondent No. 5 was dismissed and challenge

thereto has failed as the Commissioner has rejected the challenge vide order dated 22.09.2017.

A perusal of the order dated 22.09.2017 shows that the Commissioner has held that order passed in review can not be challenged. The original order has to be challenged and since the original order has not been challenged the challenge to order dated 09.12.2014 could not have been made as the said order was passed in a review application.

A perusal of the record shows that order of allotment in favour of respondent No. 5 was challenged by way of a petition styled as a petition for 'review', although infact it was an appeal against the order of allotment. The substance of the challenge has to be seen and not the nomenclature mentioned in the petition. Order dated 09.12.2014 was passed in an appeal against the order of allotment and, thus, the Commissioner was not justified in rejecting the challenge on the ground that no challenge can be laid to an order passed in review application.

Learned counsel for respondent No. 5 has placed reliance upon judgment dated 05.12.2019 passed by the civil Court in **Civil Suit No. 173 of 2016** titled as **Balbir Chand vs. Manju etc.** to submit that the civil Court has rejected the claim of the petitioner for grant of ownership on the basis of sale deed dated 13.06.1973.

It is not clear whether the said judgment has been appealed or not. Be that as it may impugned order dated 22.09.2017 passed by the Commissioner deserves to be set aside. It is so ordered and the matter is remanded to him for a fresh decision in accordance with law and after consideration of the merits of the case. While passing the said order he shall keep in view the legal position that the big land owners did not possess any surplus area and the sale deed dated

decree passed by the civil Court.

The writ petition stands disposed of.

12.07.2022

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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No