

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

Sr. No.111

**CWP-21228-2020 (O&M)  
Date of decision : 04.07.2022**

Jagir Singh and others

..... Petitioners

**VERSUS**

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. R.S. Mamli, Advocate, for the petitioners.

Mr. Samarth Sagar, Addl. AG, Haryana

Mr. Hemraj Bhardwaj, Advocate, for the caveator.

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**SUDHIR MITTAL, J. (Oral)**

The land in dispute was declared surplus vide order dated 08.12.1983. The said order was reviewed vide order dated 07.02.1985 and the same has been upheld by the Supreme Court of India. Thus, the private respondents are not big landlords and there is no surplus area available for allotment.

During the pendency of the surplus area litigation, the land was allotted to the petitioners vide allotment dated 02.01.1987. Allegedly, first instalment was deposited, thereafter. The private respondents filed an application dated 21.06.2001 for eviction of the petitioners on the ground of non-payment of rent from 1986 to 2000. Soon after, the filing of this application, rent for three years, i.e. from 1997 to 2000 was deposited in Court by the petitioners. On completion of proceedings, the petitioners have been ordered to be evicted on the ground of non-payment of rent and appeal and revision filed by them have failed. Thus, the present writ petition has been filed.

It is relevant to note that the petitioners were tenants on the land in dispute even prior to the declaration of the surplus area.

Learned counsel for the petitioners has argued that rent has been paid by the petitioners from year 2001 to 2010 and the same has been accepted by the private respondents. Thus, they are estopped from seeking eviction of the petitioners. It is further argued that upon allotment of the land and deposit of one instalment, the petitioners became owners thereof and were not bound in law to pay rent. That apart, as the petitioners were not party to the surplus area litigation, they were under the impression that they had become owner of the land by virtue of the allotment and thus, had sufficient reason for not paying the rent. In support of this proposition of law, reliance has been placed upon Ram Kishan and others Vs. Mast Ram and another, 1986 AIR (Punjab) 61. Finally, it has been submitted that the petitioners are ready to pay the arrears of rent even today and thus, the orders of eviction deserve to be set aside.

The arguments of learned counsel for the petitioners have to be considered in the light of fact that the land in dispute is not part of surplus area. In fact, the private respondents have been declared to be small land owners. As such, they are entitled to evict the old tenants so as to complete their permissible area. The order of allotment dated 02.01.1987 would thus, confer no rights on the petitioners as the same is an illegal order. The argument that the petitioners were not aware of the surplus area proceedings, not being party thereto, cannot be accepted. It is common knowledge that the residents of the village are aware of ongoing litigations in the village,

claim themselves to be allottees of such land. The argument that there was sufficient cause for them not to pay rent is thus, not sustainable. The argument regarding acquisition of title is also mis-placed and mis-conceived as the initial order of allotment itself was illegal having been passed two years after the order of declaration of surplus area had been reviewed. For the said reasons, the judgment in Ram Kisan (supra) is not attracted to the facts of this case. The proposition that an allottee becomes owner upon payment of the first instalment is also not attracted and consequently, reliance upon Sher Singh Vs. Financial Commissioner (Revenue) and others, 2014 (3) RCR (Civil), 434 is also of no avail.

Principle of estoppel does not arise in the instant case as the petitioners have not taken any steps which may have altered their position to their detriment irrevocably. Moreover, estoppel is a principle of evidence and it can't taken over-ride the substantive law. Having remained in possession of the land in dispute in an illegal manner, the petitioners were duty bound to pay charges for use and occupation.

Offer of payment of rent cannot be accepted as the private respondents are entitled in law to complete their permissible area by eviction of old tenants as well. The rights of tenants are not superior to those of the land owners and they can get alternate allotment in case entitled in law.

For the aforementioned reasons, the writ petition has no merit and is dismissed.

**(SUDHIR MITTAL)**  
**JUDGE**

**04.07.2022**

Ramandeep Singh

Whether speaking / reasoned  
Whether Reportable

Yes / No  
Yes/ No