

In the High Court of Punjab and Haryana at Chandigarh

1. **CWP No. 18514 of 2019 (O&M)**
Reserved on 16.3.2023
Date of Decision: 23.3.2023

Parbhu and othersPetitioners

Versus

State of Haryana and others ...Respondents

2. CWP No. 6204 of 2019 (O&M)

RashmiPetitioner

Versus

State of Haryana and others ...Respondents

3. CWP No. 6213 of 2019 (O&M)

NavnidhiPetitioner

Versus

State of Haryana and others ...Respondents

4. CWP No. 9165 of 2019 (O&M)

ManjuPetitioner

Versus

State of Haryana and others ...Respondents

5. **CWP No. 2355 of 2018 (O&M)**

Mange Ram (since deceased) through LRs.Petitioners

Versus

State of Haryana and othersRespondents

6. COCP No. 1093 of 2018

Mange RamPetitioner

Versus

Suresh Kumar and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Balbir Singh Sewak, Advocate and
Mr. Rajender Mathur, Advocate,
for the petitioner(s)
(in CWP-2355-2018 and in COCP-1093-2018).

Mr. Vijay S. Kajla, Advocate
for the petitioner (in CWP-18514-2019).

Mr. Om Parkash Sharma, Advocate
for the petitioner (in CWP-9165-2019).

Mr. Ajay Jain, Advocate
for the petitioner(s) (in CWP Nos. 6204 and 6213 of 2013)

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Kushaldeep Kaur, Advocate.

Mr. Vikram Singh, Advocate
for respondent No. 6.

SURESHWAR THAKUR, J.

1. Since all the writ petitions arise from a common order, drawn by the learned Financial Commissioner, Haryana, on 2.11.2017, upon ROR No. 75 of 2008-209. Moreover, when they also relate to a common challenge being made to an order drawn on 11.12.2017, by the Assistant Collector Ist Grade, Hisar, whereby mutation, in respect of the petition lands, was sanctioned in favour of co-respondent No. 6. Therefore, all the writ petitions are amenable for being decided through a common order.

Factual background

2. For the sake of brevity, the facts, which are necessary for deciding the above mentioned writ petitions, are being taken from CWP No. 18514 of 2019.

3. The order, carried in Annexure P-9, passed by the Assistant Collector IInd Grade, Hisar, on 11.12.2017, is the subject matter of

challenge in all the writ petitions, whereby the learned Assistant Collector concerned, changed the mutation from the name of the present petitioners to the Gram Panchayat, Balawas, and, thereafter sanctioned mutation No. 1093 qua the Gram Panchayat, Balawas.

4. Prior to the allotments, being made of the petition lands to the allottees concerned, and, in pursuance to the incorporation of Section (ii-a) in Section 2(g) of the Haryana Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961), through an amending Act No. 13 of 1996, the petition lands fell within the inclusionary definition of shamilat deh. Prior to the said amending provision, being inserted in the Act of 1961, through an amending Act No. 13 of 1996, the petition lands being obviously shamilat deh lands, thus they completely vested in the Gram Panchayat concerned. Therefore, the custodian concerned, was not ably empowered to make allotments of the petition lands in favour of the allottees concerned.

5. The said disempowerment of the custodian concerned, but prior to the amended provision becoming validly inserted in the Act of 1961, whereby he became completely disempowered to make allotments of the shamilat deh lands, to the allottees concerned, is banked, upon the judgment rendered by the Hon'ble Apex Court in case titled as ***Gram Panchayat of village Jamalpur versus Malwinder Singh***, and, to which ***Civil Appeal No. 1401(N) of 1973*** is assigned. From a reading of the said decision, it is but clear, that after the coming into force of the Punjab Act of 1953, the custodian concerned, was left with no vestige of jurisdiction to make allotments of shamilat deh lands to the allottees concerned, as the said shamilat deh lands, did rather on migrations of Muslims, from India to Pakistan, became completely vested in the Gram Panchayat concerned.

(ii-a) became inserted in Section 2(g) of the Act 1961, provisions whereof are extracted hereinafter.

(ii-a) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July, 1985 ;]

7. The said inserted provision though did assign retrospective validity to allotments made of the shamilat deh lands, by the custodian concerned, but with a cut-off date thereins, inasmuch as, the allotments being required to be made before the 9th day of July, 1985. It is pertinent to mention here, that the vires of insertion of provision (supra) through the amending Act No. 13 of 1996, was challenged before this Court, in a case titled as ***Gram Panchayat of village Kum-Kalan versus State of Punjab and others***, and, to which ***CWP No. 4816 of 1996***, is assigned. However, through a decision made on the said petition, this Court had upheld the vires of the said inserted provision hence through the relevant amending Punjab Act No. 8 of 1995, and, Haryana Act No. 13 of 1996. Though the vires of the provision, as challenged in the petition (supra), appertained to the insertion of the relevant amended provision through an amending Act, as, passed by the Punjab Legislative Assembly, but when the phraseology of the above inserted provision in the Haryana Act of 1961, is but similar to the phraseology of the amended provision, inserted in the Punjab Act 1961, through the relevant amending Act. Therefore, the upholding, by this Court in judgment (supra) qua the vires of the insertion of the amended provision, through the relevant amending Act, does also with equal force apply, to the insertion in the Haryana Act of 1961, of provisions similar to the one, as became inserted in the Punjab Act of 1961.

8. It is but relevant to mention the reasons which prevailed upon, this Court to uphold the vires of the amended provisions. The said reasons are enunciated in paragraphs 39, and, 40 of the judgment (supra), paragraphs whereof stand extracted hereinafter.

39. To the same effect is the judgment of the Hon'ble Supreme Court in The Govt. of A.P. and another v. Hindustan Machine Tools Ltd., AIR 1975 Supreme Court 2037. In that case, it was held as under:-

“8. We see no substance in the respondent's contention that by redefining the term 'house' with retrospective effect and by validating the levies imposed under the unamended Act as if, notwithstanding anything contained in any judgment decree or order of any court, that Act as amended was in force on the date when the tax was levied, the Legislature has encroached upon a judicial, function. The power of the Legislature to pass a law postulates the power to pass it prospectively as well as retrospectively, the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the Legislature to enact laws is plenary.

9. The State legislature, it is significant, has not overruled or set aside the judgment of the High Court. It has amended the definition of 'house' by the substitution of a new section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances.

10. In Tirath Ram Rajindra Nath v. State of U. P. (2), the Legislature amended the law retrospectively and thereby removed the basis of the decision rendered by the High Court of Allahabad. It was held by this Court that this was within the permissible limits and validation of the old Act by amending it retrospectively did not constitute an encroachment on the functions of the judiciary. (emphasis supplied).

40. The Hon'ble Supreme Court while dealing with a similar controversy in M/s Utkal Contractors & Joinery (P) Ltd.'s case (supra), regarding competency of the legislature to pass Act retrospectively/ prospectively, observed as under:-

“14. The next question to be considered is whether the

State while purporting to amend the Act has encroached upon the judicial power and set aside the binding judgment of this Court. We do not think that Mr. Nariman was justified in contending so. The principles have been well established in a string of decisions of this Court, and we may briefly summarise as follows:

The legislature may, at any time, in exercise of the plenary power conferred on it by Arts. 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional limitation. The rendering ineffective of judgments or orders of competent Courts by changing their basis by legislative enactment is a well known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. Hari Singh v. Military Estate Officer (1973) 1 SCR 515: (AIR 1972 Supreme Court 2205), Govt. of Andhra Pradesh v. Hindustan Machine Tools Ltd. 1975 Suppl SCR 394: (AIR 1975 Supreme Court 2037), I.N. Saksena v. State of M.P. (1976) 3 SCR 237: (AIR 1976 Supreme Court 2250) and Misri Lal Jain v. State of Orissa (1977) 3 SCR 714: (AIR 1977 Supreme Court 1686).”

9. A deep reading of the above extracted paragraphs, do make imminent emergencies, qua the legislature being conferred with a plenary power by Articles 245 and 246 of the Constitution, to render a judicial decision ineffective by enacting a valid law. Moreover, it has also been pronounced therein, that to such an enacted law, retrospectivity can be assigned. Therefore, but obviously the insertion of the provision (supra) to the amending Act No. 13 of 1996, did vest, in the custodian concerned, an able empowerment to allot even shamilat deh lands to the allottees concerned. However, obviously with a rider that such allotments were

required to be made on or before the 9th day of July, 1985.

Analysis of Annexure P-8

10. A reading of the order passed by the learned Financial Commissioner, Haryana, as enclosed in Annexure P-8, and, as became drawn on 2.11.2017, does exemplify, that the learned Financial Commissioner concerned, did not make any declaration therein, about the incapacity of the custodian concerned, to make the relevant allotments to the allottees concerned. However, a reading of the operative part of the order, which becomes extracted hereinafter, does reveal, that the Rehabilitation Department concerned, was reserved liberty to make a motion before the Assistant Collector Ist Grade, Hisar, for ensuring that mutations are attested favour of those allottees, to whom written instruments of allotments were issued on or before the 9th day of July, 1985 by Tehsildar (Sales). Moreover, there is also a further rider therein, that the said attestations of mutations were enabled to be well made but only after compensation, as determined by the Collector, Hisar in terms of sub-Section 3 of Section 3 substituted by Haryana Act No. 13 of 1996, rather becomes liquidated to the Gram Panchayat, Balawas.

“After considering rival submissions, it is hereby ordered that the Rehabilitation Department will be at liberty to approach the Assistant Collector Ist Grade, Hisar, for entering and sanctioning mutations of Gram Panchayat lands in favour of such allottees to whom written instruments of allotments were issued on or before the 9th day of July, 1985 by the Tehsildar (sales). The mutation will be sanctioned only after compensation is paid to the Gram Panchayat Balawas as determined by the Collector, Hisar under Sub Section (3) of Section 3 (substituted by Haryana Act No. 13 of 1996). The compensation so ascertained by the Collector, Hisar at the time of allotment shall be paid to the Gram Panchayat with

interest calculated at 8% per annum compounded on annual basis from the date of allotment. Any amount already received by the Gram Panchayat will be adjusted against the amount payable.”

11. However, it appears, that the Assistant Collector concerned, on an apparent misreading of the order (supra), as made by the Financial Commissioner concerned, proceeded to, in respect of the allotments made to the allottees concerned, hence annul the mutations, as became sanctioned in favour of the allottees concerned, and, thereafter proceeded to attest the mutations of the lands mentioned in Annexure P-9 rather in favour of the Gram Panchayat concerned.

Submissions of the learned Additional Advocate General, Haryana

12. The learned Additional Advocate General has made a very valiant effort to validate Annexure P-9, and, his said argument is rested upon the premise, that since the allottees breached the terms and conditions of the relevant allotments, inasmuch as, theirs not liquidating the sale price as per the schedule, as set-forth in the allotment letters. Therefore, he submits, that assuming if the allotments, were made prior to the cut-off date (supra), as prescribed in the inserted provision (supra) in the Haryana Act of 1961, yet the said issuance of allotment letters or sanads, but prior to the cut-off date rather is meaningless, as the completest conferment of valid title qua the allottees concerned, hence would occur only when there was no breach of the terms and conditions of the allotments. He further submits, that since there is a breach but in the above manner, by the allottees concerned, qua the terms and conditions of the allotments, therefore, Annexure P-9 is to be validated. However for the reasons to be assigned hereinafter, the above argument is completely devoid of merit, and, is rejected.

Reasons for rejecting the above submissions

13. The primary reason for making the above inference, is rested upon the order, made by the District Revenue Officer-cum-Settlement Officer, Hisar on 2.8.2005, and which becomes appended as Annexure P-2 to CWP No. 18514 of 2019. A reading of the said order reveals, that the authority, who made it, had granted time to the allottee concerned, and/or to the applicant thereins, who had failed to make timely deposit of the instalments, and, which resulted in forfeiture of the deposited amount, rather for making the relevant deposits, but only after the order making forfeiture of the deposited sum hence becoming rescinded. Moreover, the applicant also became granted, the further relief of his being permitted to deposit the balance sale price with simple interest within one month from the date of passing of the said order. The said order resulted in the balance price, as revealed by Annexure P-3, being deposited by the applicant concerned. However, the said order was set aside vide an order made on 8.3.2006, by Deputy Commissioner-cum-Settlement Commissioner, Hisar.

14. The order dated 8.3.2006 became challenged before the appellate authority concerned, and, the appeal reared thereagainst was allowed vide order dated 25.9.2006, and, thus the order dated 8.3.2006 was set aside. In the revision petition, as was directed against the order of the appellate authority concerned, the mutation, as sanctioned in favour of the Gram Panchayat Balawas was annulled, and, the orders passed by the Assistant Collector Ist Grade, Hisar, and, the Commissioner, Hisar Division, Hisar, were upheld. In addition, this Court in a decision made on the Civil Writ Petition No. 16644 of 2006, titled Gram Panchayat Balawas versus State of Haryana and others, proceeded, to also affirm the above alluded

concurrently made orders, by the statutory authorities, whereby the order

making forfeiture of the deposited amount, by the applicant concerned, was set aside, and, also whereby further time was granted to the applicant to deposit the outstanding sale price in installments. Importantly, when the said decision was upheld by the Hon'ble Apex Court in a decision made on 25.4.2014, upon Special Leave to Appeal (Civil) CC 6281-6283/2014, therefore, all the above orders acquire conclusive, and, binding effect.

Conclusion

15. The conclusion which is drawn from the above concurrently made orders, is that, the learned Additional Advocate General, Haryana, can not argue, that if any part of the sale consideration, did not become liquidated by the applicant concerned, or the allottees concerned, thereupon the said failure of timely liquidations, rather resulting in annulment of the allotment letters, which but were uncontestedly made before the cut-off date (supra).

16. The learned Additional Advocate General, Haryana also cannot argue, that the order made by the Assistant Collector concerned, on 11.12.2017, and, as comprised in Annexure P-9, and, which is but on a complete misreading of the order, drawn by the learned Financial Commissioner, Haryana, is to be upheld by this Court.

Analysis of Annexure R-1 appended to reply in CWP-18514-2019

17. A reading of Annexure R-1, appended to the reply on affidavit, furnished to CWP-18514-2019, by the respondents concerned, contents whereof are extracted hereinafter, does but candidly reveal, that in terms of sub-Section 3 of Section 3 substituted by Haryana Act No. 13 of 1996, the compensation in respect of the petition lands, as fall in Hisar, became liquidated to the Gram Panchayat, Balawas.

eighty three thousand nine hundred ninety five only) is allocated to the following districts in the State of Haryana for the payment of compensation to the Gram Panchayats mentioned at enclosed Annexure A in lieu of sale of evacuee share from shamlat land realised by Rehabilitation Department for the year 2003-2004:-

Sr. No.	Name of District	Amount allocated
1.	Ambala	Rs. 60,29,941/-
2.	Faridabad	Rs. 29,17,260/-
3.	Hissar	Rs. 12,21,293/-
4.	Bhiwani	Rs. 79,600/-
5.	Sonepat	Rs. 26,150/-
6.	Kurukshetra	Rs. 3,76,151/-
7.	Yamuna Nagar	Rs. 33,600/-
Total		Rs. 1,06,83,995/-

The expenditure is debatable to the head 2215-Other Rural Development Programme 01-Panchayat Development-101-Panchayati Raj-91-Grant of Compensation to Gram Panchayats in lieu of sale of evacuee share from Panchayat land-51-Compensation for the year 2003-2004.

The concerned District Development sand Panchayat Officer will draw the amount as mentioned against his District from Treasury before 31.3.2004 and disburse the same to the concerned Gram Panchayats as per Anneuxre "A" under proper receipt.

It is also clarified that share of remaining districts be allocated in the next financial years according to the availability of funds provided by the Finance."

18. Therefore, when the operative part of the order made by the Financial Commissioner, Haryana, assigned liberty to the Rehabilitation Department concerned, to access the Assistant Collector Ist Grade, Hisar for attesting mutation in favour of the allottees concerned, but if such allotments were made on or before the 9th day of July, 1985, and, when the said liberty

of sub-Section 3 of Section 3 substituted by Haryana Act No. 13 of 1996, be made to Gram Panchayat, Balawas. Necessarily when as unfolded on a reading of Annexure R-1, the said compensation became deposited. Resultantly, when all the statutory mandates, as carried in the above statutory provision, became complied with hence at the instance of the writ petitioners. Therefore, also there was no occasion for the Assistant Collector Ist Grade, Hisar to, through the impugned order cancel the allotments, as were made in favour of the allottees concerned, and, nor was he empowered to mutate the petition lands, in favour of the Gram Panchayat concerned.

Final order

19. In view of the above stated reasons, this Court does find merit in the instant petitions, and, is constrained to allow them.

20. Consequently, the order dated 11.12.2017, passed by Assistant Collector IInd Grade, Hisar, on 11.12.2017, and as carried in Annexure P-9 is quashed, and, set aside. All the five writ petitions are allowed. However, the order passed by the Financial Commissioner, Haryana, as became drawn on 2.11.2017 (Annexure P-8) is upheld. Nonetheless, since in terms of the said order dated 2.11.2017, the compensation in terms of sub-Section 3 of Section 3 substituted by Haryana Act No. 13 of 1996, has been liquidated to the Gram Panchayat concerned, therefore, if the mutations in favour of the allottees concerned, are not attested, thereupon they be forthwith attested or entered by the Assistant Collector concerned but in favour of the allottees concerned. However, if the said mutations are earlier entered in favour of the Gram Panchayat concerned, thereupon, the said mutations are cancelled, and, rescinded, also obviously thereupon fresh mutations be attested by the Assistant Collector concerned, but in favour of the allottees concerned.

21. Since the above mentioned writ petitions have been decided, therefore, COCP No. 1093 of 2018, does not survive, and, is disposed of as such.

22. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 23, 2023
Gurpreet

Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**