

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

**LPA No. 1303 of 2017 (O & M) and
CWP No. 18452 of 2018
Date of Decision: 15.03.2023**

Ram Kumar and others

.....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

AND

**CWP No. 18452 of 2018
Date of Decision: 15.03.2023**

Zile Singh (D) through L.Rs. and others

.....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. B.S. Rana, Sr. Advocate,
with Mr. Nayandeep Rana, Advocate,
and Mr. Naveep Doon, Advocate,
for the appellants (in LPA-1303-2017).

None for the petitioners (in CWP No. 18452 of 2018).

Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

Ms. Vibha Nagar, Advocate,
for Mr. Vikram Singh, Advocate,
for respondent No.5.

1. The present judgment shall dispose of LPA No.1303 of 2017 and CWP No. 18452 of 2018. CWP No. 18452 of 2018 has been filed by the legal representatives of Zile Singh, who is son of Late Kundan Lal, the big land owner challenging various orders passed by the authorities below wherein, his claim for the separate units by including his two sons namely Zile Singh and Meer Singh, who were major on the appointed day i.e. 15.04.1953 has been denied. In LPA No. 1303 of 2017, challenge is to the order passed by the learned Single Judge whereby the writ petition filed by the same legal representatives of Zile Singh and Meer Singh was dismissed on the ground of delay and laches on 11.07.2017 wherein, challenge had been raised to the allotment of the land made to respondent No.5 Gagan s/o Late Chiman, the original allottee out of the same land which had been declared surplus, which is subject matter of the writ petition. It is in such circumstances, both the cases are being decided together. The learned Single Judge had come to the conclusion that the orders which were being impugned in the writ petitioner which was filed in the year 2017 had been passed by the Financial Commissioner on 17.09.2013 and, therefore, there was substantial delay of four years in preferring the writ petition and, therefore, the appellants had been shown the door.

2. After perusing the file, we are of the considered opinion that the matter needs to be remanded for fresh consideration at the hands of the prescribed authorities as various factors had not been kept into consideration and the orders which have been impugned in CWP No. 18452 of 2018 passed by the statutory authorities have missed out certain relevant facts.

3. It has been pleaded that Kundan Lal s/o Mukh Ram was owner of 67 bighas 8 biswas of land situated in the revenue estate of village

Atil, District Rohtak in the year 1953. After consolidation in the year 1958-59, he was allotted 356 kanals and 15 marlas of land in Khewat No.7690. On 22.04.1960, 7-18 $\frac{3}{4}$ standard acres of land falling in Killa Nos.108/10 to 108/13, 104/12 to 104-19, 21 min. East, 3-8-22 was declared surplus land and he was held entitled for 37-13 $\frac{1}{4}$ standard acres in the *ex parte* proceedings taken against him. His claim was that Zile Singh and Meer Singh were two major sons and were entitled for separate units and they had continued in actual physical cultivating possession of the land in question. Though it has not been pleaded by the writ petitioners but it has come from the written statement as such of the official respondents No.1 to 4 that on 22.07.1974, the SDO (C), Rohtak-cum-Prescribed Authority had directed that since Zile Singh, Power of Attorney of the big land owner Kundan Singh, was not present, though being present on the earlier occasions, he had directed the CRO to fill up Form No.II under Haryana Ceiling on Land Holdings Act, 1972 (in short 'the 1972 Act') against him. A perusal of Annexure R-7 would go on to show that Kundan Singh had filed an application on 31.12.1973 that he could not fill up Form No.I under Section 9 of the 1972 Act and Form No.II may be got filled up as the *Halqa Patwari* had not supplied him the revenue record. He had apparently given the names of his family members and he was thus asked to come present and had remained present on 02.07.1974 and 22.07.1974. A perusal of Annexure R-9 would go on to show that there was a declaration made that form was duly filled up as per the details given and there was a declaration made under Section 9 of the 1972 Act regarding the particulars of land owned by him and he figured in the said declaration alongwith his two adult sons namely Meer Singh and Zile Singh. The forms would show that the total area in their

possession was less than the permissible area due to separate units.

4. Apparently in spite of this on 22.05.1978 (Annexure P-2), allotment of 27 kanals of land was made to Chiman on payment of Rs.8,295-75 which was to be paid in 10 equal installments. The first installment was to be deposited before possession was taken and as per Clause 3 of the said allotment letter, if he failed to take possession within a period of 30 days or such extended period by the allotment authority, the allotment was to be cancelled without any further notice. It is the case of the big land owners that physical cultivating possession was never taken from them or their ancestors and they continued in actual physical possession. The Naib Tehsildar, Agrarian, Rohtak noticed that the installments had not been deposited and neither physical possession had been given to the allottee namely Chiman and, therefore, as per the Haryana Utilization of Surplus and Other Area Schemes, 1976 and the provisions of Clause 10(3), proposed the cancellation of allotment of the surplus land on 07.10.2010 (Annexure P-3). The allottee, on coming to know the same, apparently deposited Rs.34,635/- in the Government Treasury on 11.02.2010 and in the meantime, the formal cancellation order was passed on 02.11.2010 (Annexure P-4) by the SDO-cum-Prescribed Authority. Resultantly, the same was challenged unsuccessfully and on 30.08.2011 (Annexure P-5), directions were issued that the Naib Tehsildar should initiate the proceedings to allot this area to any other allottee by noticing that the challan by which the amount was deposited also did not bear the signatures of any officer or employee and observations were made that the area would continue under the surplus pool.

5. The allottee Chiman filed an appeal before the Collector, which was allowed on 09.11.2011 (Annexure P-6) on the ground that possession

had been delivered on 22.07.1980, which has been recorded in the revenue record and since the entire amount had been deposited alongwith interest, the cancellation could not be justified and the amount could have been recovered as arrears of land revenue under Clause 11(2) of the Utilization Scheme.

6. The State filed an appeal before the Commissioner, Rohtak, which was accepted on 21.11.2012 (Annexure P-7) by noticing that the allottee had been served notice on 04.04.1982 for depositing the amount of the first installment but even that had not been done and the deposit on 11.02.2010 had been done at his own level, which is after a period of 30 years. In a revision filed by the allottee, the Division Bench of the Financial Commissioners of Haryana allowed the revision on 17.09.2013 (Annexure P-8) and came to the conclusion that the authorities had no jurisdiction to cancel the allotment and the same was done without any notice and without providing any opportunity of hearing and, therefore, the principles of natural justice had been violated and, therefore, set aside the orders of the Commissioner dated 21.11.2012 and the cancellation order dated 02.11.2010. However, liberty was given to proceed afresh in the matter after affording reasonable opportunity of hearing to the land owner. As noticed, the learned Single Judge refused to interfere in the said orders on the ground of delay as the writ petition was only filed 4 years' later in the year 2017.

7. In the meantime, the land owner had filed an application under Section 8 of the 1972 Act on 18.12.2014 for release of the land in question from the surplus pool on the ground that possession was being taken in June, 2014 from him. The same was dismissed by the SDO on 18.03.2015 on the ground that it was time barred and since the land had been declared surplus

made as such at that point of time to the form which had been filled up in the year 1974 under Form Nos.I and II wherein, conclusion was arrived at that the total area was less than the permissible area due to separate units being allotted to the sons Meer Singh and Zile Singh. The appeal filed by the legal representatives of Kundan Singh, the big land owner was dismissed on 28.04.2015 by the Collector, Rohtak that the case could not be re-opened and there was no illegality in the order passed. No success was met before the Commissioner on 03.08.2016. The Division Bench of Financial Commissioners also dismissed the revision petition though it was brought up in detail before them that Zile Singh was 26 years old and Meer Singh was 33 years old on 15.04.1953 and also the fact that Zile Singh had presented himself on 05.06.1974, 20.06.1974 and 11.07.1974 before the prescribed authority. It was held that now the case could not be re-opened after a period of 58 years.

8. The reply of private respondent No.5 also goes on to admit these facts regarding the factum that Form Nos.I and II were filled up by the CRO. Nothing has come on record and fallen from the authorities as to how they had come to the conclusion that the total area was less than the permissible area due to separate units in view of the forms being filled, though the proceedings had been dismissed in default and directions had been issued to fill up the forms since on an earlier occasion, the big land owner had appeared. Thus, this aspect has not been discussed at all by the concerned authorities if the form had been filled up on 22.07.1974, the question of allotment on 22.05.1978 could not arise and, therefore, the subsequent alleged possession also could not have been given on 22.07.1980 to Chiman.

after the land was declared surplus on 22.04.1960 as alleged, whether possession was taken and the utilization was done.

9. Thus, we are of the considered opinion that sketchy findings have been recorded by the concerned authorities on this aspect where valuable rights as such of the land owners are involved. The factum that whether they were major at the time the declaration was done and land was declared surplus would have to be gone into afresh and the benefit has necessarily has to flow to the big land owner if the major sons were available for giving the benefit to them. In such circumstances, we are of the considered opinion that the exercise has to be re-conducted by the prescribed authority/SDO (C), Sonapat and he would have to decide whether once the forms had been filled up on 22.07.1974 any surplus land was left for allotment and also the issue whether utilization had taken place after 22.04.1960 and when mutation had been entered in the name of the Government, as has been pleaded herein.

10. Resultantly, the letters patent appeal i.e. LPA No.1303 of 2017 is allowed by setting aside the order passed by the learned Single Judge dated 11.07.2017. Similarly, the orders dated 18.03.2015, 28.04.2015, 03.08.2016 and 24.04.2018 passed by the authorities dismissing the case of the land owners are also set aside in CWP No. 18452 of 2018. The necessary exercise be conducted after hearing the concerned parties. Keeping in view the fact that the right of the tenant for allotment is involved and his cancellation has also been ordered to be heard afresh by the Division Bench of the Financial Commissioners on 17.09.2013, the same would only be subject to the fact that if the authorities arrive at the conclusion that there was surplus land

State and was available for allotment. The rights of the tenant would have to be adjudicated thereafter.

(G.S. SANDHAWALIA)
JUDGE

15.03.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes