

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

(1)

LPA-1001-2018 (O&M)

Yadwinder Singh & others

.....Appellant(s)

Versus

Financial Commissioner (Appeals) Punjab & others

.....Respondent(s)

(2)

LPA-1002-2018 (O&M)

Yadwinder Singh & others

.....Appellant(s)

Versus

Financial Commissioner (Appeals) Punjab & others

.....Respondent(s)

Decided on : 27.02.2023

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

Present:- Mr. A.K.Chopra, Sr.Advocate
with Mr.Akshit Chaudhary, Advocate, for the appellants.

Mr.Amit Jain, Sr.Advocate
with Mr.Chetan Slathia, Advocate, for the caveator-respondents.

G.S. Sandhawalia, J. :-

1. Consideration in the present 2 appeals is to the order dated 05.05.2017 passed in CWP-14143 & 17111-2009 filed by the appellants which were dismissed by the learned Single Judge upholding the orders passed by the authorities below vide which the appellants-tenants had been ordered to be evicted. The subsequent order of review dated 23.04.2018 is also subject matter of challenge as it was passed in pursuance of the fact that earlier LPA-927 & 1198-2017 wherein plea had been taken that the appellants were tenants in the land which was declared surplus in the

hands of the respondent-landlord which denied them any right to seek eviction.

2. Since an order dated 31.01.1990 (Annexure P-14) had been placed on record passed by the revenue authorities in this regard and the Co-ordinate Bench had noticed that the learned Single Judge was deprived of the benefit of these documents and therefore, the appellants were permitted to pursue their remedy before the learned Single Judge by apprising him of the said document and inviting a finding on this vide order dated 06.07.2017. Resultantly, when the matter went back in review, the learned Single Judge noticed that the order which had been relied upon before the Division Bench was dated 30.01.1990 (Annexure P-14) which rather had been set aside on an appeal filed by the landowners before the Commissioner on 23.08.1994 (Annexure A-1) and the redetermination of surplus land was done on 22.10.2002 (Annexure P-15/R-5/1) and vide order dated 31.03.2003 (Annexure P-15/R-5/2), the land in dispute had been kept in the permissible area of the landowners.

3. Resultantly, the learned Single Judge while dismissing the review, came to the conclusion that the argument raised that the tenants had applied for declaring the permissible area in the proceedings as per the Punjab Tenancy and Agricultural Lands Act, 1955 (for short, the '1955 Act') and the utilization scheme of 1973 provided for a limitation for applying for declaration of permissible area and there was no such instructions from the appellants whether they had done so. Similarly, it was noticed that the appeal before the authorities were filed on 20.08.2017 against the order of declaration of the area surplus dated 22.10.2002 (Annexure P-15) for not having availed the remedy in accordance with land and it was a delaying tactic to retain the possession by adopting all

possible methods and the conduct of the appellants was deprecated. The factum that the appeal would not be maintainable as the dispute between choosing the land was between the State and big landowners, was also observed. It was also noticed that the earlier Bench was misled by raising the plea that the order dated 30.01.1990 had attained finality and there was no error apparent on the record.

4. Though Mr.Chopra has tried to argue that the issue No.6A was a contentious issue on which no firm findings had been given by the authorities below and therefore has challenged the orders saying that there was no reasoning given apart from the first order passed by the Assistant Collector. It is submitted that it was the duty of the Collector under Section 6 of the Punjab Land Reforms Act, 1972 (for short, the '1972 Act') to get the requisite information and that there was a right to challenge the order dated 22.10.2002 (Annexure P-15).

5. A perusal of the paperbook would also go on to show that the eviction has been ordered of the appellants from the land measuring 582 kanals 17 marlas situated in the revenue estate of Village Naraingarh Wasawa Singh Wala @ Adaltiwala on the ground that the chakota (rent) was of Rs.12000/- per year and there were arrears. Eventually, eviction had been ordered for the years 1985-86 and 1987-88 by holding out that the appellants-tenants had started cultivating their land since 1975 and there was nothing to show that they were in cultivating possession prior to 1975 from the documentary evidence.

6. In such circumstances, Mr.Jain, Senior Counsel representing the respondents has pointed out that the appellants were never tenants on the appointed date and their claim as per Section 5 of the 1972 Act itself is not permissible and they had no locus standi to take this ground. It is

further submitted that it has never been pleaded that on which portion of the land they were tenants and whether the said land had been declared surplus or not. It is further pointed out that reliance upon the order dated 30.01.1990 (Annexure P-14) was uncalled for since it had already been set aside on 23.08.1994 and therefore, there was consistent misrepresentation on 06.07.2017 when the remand order was passed, in an effort to delay the proceedings since the writ petition was filed in the year 2009 but the said orders were never appended. It is submitted that even thereafter there was an order dated 22.10.2002 (Annexure P-15) wherein it was held that there were four legal heirs of General Gurdial Singh Harika who were major and all were entitled to retain 7 standard hectares each and therefore the landowners were entitled to retain 28 hectares of land and the remaining area measuring 4.06.68 standard hectare land was declared surplus and the applicants were directed to furnish their choice within one month. It is pointed out that the needful was done on 31.03.2003 (Annexure P-16) and these facts were never brought on record at the time of filing of the writ petition and there is no specific averment as to they were in possession of the said land and for which selection had been made under the Utilization Scheme. Accordingly, it is pointed out that they were repeated defaulters and petitions were also pending regarding the arrears of rent qua the subsequent years also. The demand draft for the outstanding amount was firstly placed on record in the year 2009 with the writ petition to show their bona fides which was at a belated stage and resultantly, reliance was placed upon the fact that time-line of 6 months is prescribed from the date of the decree of the order and the said time period could not be extended.

7. Keeping in view the above, we are of the considered opinion that there is no substance in the case of the appellants. As noticed, the

ejection of the appellants was on account of non-payment of Rs.36,000/- for the years 1985-86 and 1987-88 while noting that the arrears were paid for 1981-82 to 1983-84 @ Rs.12,000/-. The claim under Section 6A was rejected on the ground that the order dated 30.01.1990 on the basis of which they had claimed to be saved from ejection was that the land had been declared surplus but the said order was stayed by the Commissioner. It is apparent that at that point of time also on 26.10.1995 when the ejection was directed by the Assistant Collector for the first time, the said order had already been set aside on 23.08.1994 by the Commissioner, Patiala Division which has been placed on record as Annexure A-1 while noticing that the Collector had wrongly passed the order of surplus since the original landlord had already expired on 04.01.1987. This aspect was also not brought to the notice of the Assistant Collector while placing reliance upon the order dated 31.01.1990 which had already been set aside.

8. No effort was made to deposit the amount within the prescribed period of 6 months under Section 7(1)(b) proviso of which would have protected the tenants under the Act of 1955. The appeal was also not filed within time and rather the same had been dismissed on 26.11.1997 (Annexure P-3) by the Collector being time-barred having been filed after 9 months. Therefore, the argument raised that the matter was not decided by the authorities below is baseless since the appeal itself was time-barred. Even otherwise, as noticed in the order of the Collector it has been held that they were tenants after 1975 and not on the appointed date and the argument that Issue No.6A had not been considered by the authorities below is an argument in despair. Similarly, the Divisional Commissioner dismissed their revision on (Annexure P-5) while noticing

that the statute did not permit extension of time and the period of 6 months was the indulgence which could be granted from the date of the decree while noticing also that they were not paying the rent of chakota for many years and enjoying the fruits of the land for many years.

9. The Financial Commissioner vide order dated 04.02.2009 (Annexure P-7) noticed the fact that the 6 months period was to be given for paying the rent and ejectment is to be ordered on failing to comply with the same and as the order of the Assistant Collector had not been complied with, dismissed the revision petition. The said order had accordingly been tested before the learned Single Judge for the first time on 05.05.2017 and the learned Single Judge, at that point of time, had noticed that no effort was made to send the arrears of rent by way of draft or cheque or through registered process and held that the orders of ejectment are perfectly legal and justified.

10. After approaching the Co-ordinate Bench by placing an order dated 31.01.1990 on record which had already been set aside on 23.08.1994 (Annexure A-1) the true facts had been concealed and the matter had been sent back to the learned Single Judge on 06.07.2017. It was, thereafter, on 20.08.2017, an appeal was also filed which apparently has now been dismissed on 08.11.2019 by the Divisional Commissioner, Patiala who also noticed that only 81 kanals 18 marlas (4.06.68 hectares) was declared surplus and not 27.12 hectares and there was nothing to show that the balance land was declared surplus and rather they had already been evicted on 26.10.1995 whereas the order of surplus was passed on 22.10.2002 and the land opted for on 31.03.2003 (Annexure P-16).

11. In **Ram Mehar & others Vs. The State of Haryana & others, 2016 (2) Law Herald 1753**, the provisions of Section 7(1)(b) of

the 1955 Act were also analyzed and while placing reliance upon the Full Bench judgment in **Gurmej Singh Vs. Financial Commissioner, 1981 PLJ 168** and **Charan Dass Vs. Financial Commissioner, Haryana, 1997 (2) PLJ 639** it was held that the statute prescribed a specific period for compliance of a particular act. The time thus cannot be extended and therefore, if there was a default, nobody can claim any indulgence and especially one who is to gain by the delay.

12. The conduct of the appellants has already been noticed that not only they are persistent on misrepresentation but the appeal itself was dismissed on account of delay aspect. Now for them to argue on merits trying to object to the fact that issue under Section 6A was not deliberated is an exercise in futility especially keeping in view the fact that it has been pointed out that their possession as a tenant came in 1975 much after the appointed day. Thus, we are of the considered opinion that the present appeals are misconceived and the matter has been continuously delayed by the present appellants by placing reliance upon the orders which were not in force and had been set aside by misleading the Courts consistently.

Resultantly, in view of the above discussion, the present appeals are hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

27.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No