



CWP-5576-1996 (O&amp;M)

-1-

210

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

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**CWP-5576-1996 (O&M)**  
**Date of Decision: 27.08.2024**

Kultaran Singh and another

....Petitioners

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Vineet Sharma, Advocate  
for the petitioners.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. B.B.S. Randhawa, Advocate  
for respondent No.8.

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**HARSH BUNGER, J. (Oral)**

1. The instant Writ Petition has been filed under Articles 226/227 of the Constitution of India *inter alia* seeking a writ in the nature of Certiorari for setting aside the order dated 25.08.1986 (Annexure P-4) passed by learned Chief Settlement Commissioner, (Rehabilitation), Punjab and also the order dated 31.05.1990 (Annexure P-5) passed by learned Financial Commissioner (Appeals), Punjab.

2. Briefly, one Surat Singh s/o Shri Narain Singh was allotted 64 *kanals*-12 *marlas* land in Village Ahmedabad, Tehsil Batala, District Gurdaspur. Out of the aforesaid allotment, an area of 2.1/1/2 standard acre

**CWP-5576-1996 (O&M)****-2-**

was ordered to be canceled vide order dated 17.06.1968. It transpires that prior to the aforesaid cancellation, the said Surat Singh had sold the entire land i.e. 64 *kanals*-12 *marlas* vide two separate sale deeds executed on the same date (18.12.1956), as follows :-

(a) 49 *kanals*-15 *marlas* land was sold in favour of Smt. Gurcharan Kaur w/o Makhan Singh (predecessor in interest of the present petitioners).

(b) 14 *kanals*-19 *marlas* land was sold to Ajit Singh and Raghbir Singh sons of Narain Singh (respondents No.6 and 7 respectively).

2.1 It appears that the above referred cancellation order dated 17.06.1968 came to be implemented by the Managing Officer, Jalandhar on 17.10.1969, whereby an area equivalent to 15 *kanals*-11 *marlas* comprised in *khasra* No.15//1/1, 10/2, 11/1, 20, 21/1 of Village Ahmedabad (as sold to Smt. Gurcharan Kaur) was sought to be retrieved.

2.2 The aforesaid order dated 17.06.1968 was challenged in appeal by Smt. Gurcharan Kaur before the learned Settlement Commissioner, Punjab; which was allowed vide order dated 19.09.1980 (Annexure P-1) by holding as under:-

*“4. I have heard the Ld. counsel for the appellants and Chanchal Singh, respondent in person. Since the allottee sold his entire land partly in favour of Gurcharan Kaur vide mutation No.667 and partly in favour of other vendees, the excess allotment with the allottee should have been cancelled after hearing all the vendees in accordance with the instructions issued by the department. As all proceedings have been taken ex-parte qua the appellant, I accept the appeal, set aside the cancellation order as well as subsequent allotment in favour of respondent No.2 and remand the case to the Tehsildar (Sales)-cum-Managing Officer, Gurdaspur, for fresh decision with the*

**CWP-5576-1996 (O&M)****-3-**

*direction that he shall re-check the land account of the allottee in the presence of the appellant as well as other vendees and retrieve the excess area if any from the last vendee. The respondent can get allotment of that area, which might be surrendered by the vendee or some other area as per his choice.”*

2.3 On remand, the learned Tehsildar (Sales)-cum-Managing Officer, Gurdaspur decided the matter vide its order dated 22.03.1982 (Annexure P-2) by holding as under:-

*“5. Both the parties have been heard at length and record has been gone through carefully. According the decision of the appellate court, dated 19.9.80, the land account of the vendees was required to be checked which is done. Both the deeds of sale were executed on the same day i.e. 18-12-1956, and cancellation is therefore liable to be done proportionately from the shares of both the Vendees. The Patwari Circle with the record is present. Hence, I order that the cancellation retrieval of 2-1 1/2 SAS be implemented proportionately.”*

2.4 The aforesaid order dated 22.03.1982 (Annexure P-2) came to be challenged by Smt. Gurcharan Kaur as well as Raghbir Singh and Ajit Singh by filing their separate appeals before the Settlement Commissioner, Punjab. Both the aforesaid appeals came to be decided vide a common order dated 31.07.1984 (Annexure P-3) whereby the order dated 22.03.1982 (Annexure P-2) was set aside and the matter was remanded to the Tehsildar (Sales)-cum-Managing Officer, Gurdaspur to decide the matter afresh after inquiring into the exact dates on which the sale deeds were registered before the Sub-Registrar and then to proceed and retrieve the excess land, if any, from the last vendee in accordance with the order dated 19.09.1980 of the Settlement Commissioner, Punjab.

2.5 It appears that the aforesaid order dated 31.07.1984

**CWP-5576-1996 (O&M)****-4-**

(Annexure P-3) came to be challenged by Chanchal Singh (respondent No.8), who claimed to have been allotted land to the extent of 2/1/1/2 S.A., which was held to be a surplus allotment in favour of Surat Singh. The said appeal came to be allowed by the Chief Settlement Commissioner, Gurdaspur vide its order dated 25.08.1986 (Annexure P-4), whereby the order dated 31.07.1984 (Annexure P-3) was set aside and it was further directed that the order dated 22.03.1982 (Annexure P-2) passed by the Tehsildar (Sales)-cum-Managing Officer, Gurdaspur be implemented with immediate effect.

2.6           Feeling aggrieved against the aforesaid order dated 25.08.1986 (Annexure P-4), Smt. Gurcharan Kaur (predecessor of the present petitioners), filed an appeal before the learned Financial Commissioner (Appeals), Punjab, which was dismissed vide order dated 31.05.1990 (Annexure P-5) by holding as under:-

*“I have heard the Ld. Counsels for the parties and perused the record. None has disputed about the excess allotment and then cancellation land in the hands of Surat Singh, original allottee. Since the sale of land by the original allottee to the petitioner and respondent No.2 & 3 was registered on the same date, the Tehsildar(s)-cum M.O. rightly retrieved the excess land proportionately from both the vendees and this has been upheld by the Chief Settlement Commissioner, Gurdaspur by his order dated 25.8.1986. I see no reason to intervene and the petition is dismissed. As the allotment was cancelled in 1968 the orders dated 22.3.1982 be implemented without any further delay.”*

2.7           It appears that thereafter the present petitioners filed a Civil Suit for declaration and permanent injunction before the learned Civil Judge (Junior Division), Batala on 06.08.1990, wherein it was *inter alia* prayed for

**CWP-5576-1996 (O&M)****-5-**

restraining the Punjab State to execute the order dated 31.05.1990 (Annexure P-5) passed by the learned Financial Commissioner (Appeals), Punjab. The said Civil Suit filed by the petitioners was dismissed on 11.01.1996 (Annexure P-6) by holding that the suit was not maintainable.

3. In the aforementioned circumstances, the petitioners have filed the instant Writ Petition before this Court in the year 1996 for the reliefs as noticed hereinabove.

4. A perusal of the order sheets would reveal that this Writ Petition was earlier dismissed by a Co-ordinate Bench of this Court vide order dated 21.03.2013, however, upon filing of a Review Application by the petitioners, the order dated 21.03.2013 dismissing the Writ Petition was recalled and the matter was reopened for fresh consideration.

5. Learned counsel for the petitioners has submitted that vide order dated 19.09.1980 (Annexure P-1), the matter was remanded to the Tehsildar (Sales)-cum-Managing Officer, Gurdaspur with a direction to recheck the land account of the allottee i.e. Surat Singh and to retrieve the excess area (if any) from the last vendee. It is submitted that the said direction was not complied by the Tehsildar (Sales)-cum-Managing Officer, Gurdaspur and rather vide order dated 22.03.1982 (Annexure P-2) it was ordered that since both the sale deeds were executed by the allottee (Surat Singh) on the same date i.e. 18.12.1956, therefore the cancellation of the excess area is required to be done proportionately from the shares of both the vendees.

5.1 The only argument raised by learned counsel for the petitioners is that since the sale deed executed in favour of Smt. Gurcharan Kaur (predecessor of the petitioners) was prior in time then the sale deed executed

**CWP-5576-1996 (O&M)****-6-**

in favour of respondents No.6 and 7 (Ajit Singh and Raghbir Singh sons of Narain Singh), therefore the cancellation of excess area (if any) has to be done from the land sold to respondents No.6 and 7 and not from the petitioners. With the aforesaid submissions, learned counsel for the petitioners prayed that the impugned order(s) be set aside and appropriate direction be issued to the Authorities to comply with the order dated 19.09.1980 (Annexure P-1).

6. Per contra, learned counsel for the State as well as learned counsel appearing for respondent No.8 have opposed the submissions made on behalf of the petitioners by submitting that the Writ Petition has been filed challenging the order dated 31.05.1990 in the year 1996 i.e. beyond a period of three years, therefore, the Writ Petition is liable to be dismissed on account of delay and laches. It is further submitted that even otherwise, there is no illegality or perversity in the order dated 22.03.1982 (Annexure P-2), passed by the Tehsildar (Sales)-cum-Managing Officer, Gurdaspur wherein, it has been held that since the sale deed in favour of Smt. Gurcharan Kaur (predecessor of the petitioners) as well as sale deed in favour of Ajit Singh and Raghbir Singh (respondents No.6 and 7 herein) were executed on the same date i.e. on 18.12.1956, therefore the cancellation of the excess area was liable to be done proportionately from the shares of both the vendees. It is further submitted that the said direction is fair and justified in the facts and circumstances of this case; therefore no interference is required to be made by this Court. Accordingly, prayer for dismissal of the instant Writ Petition has been made.

7. I have heard learned counsel for the parties and perused the paper book with their able assistance.

**CWP-5576-1996 (O&M)****-7-**

8. At the outset, it is required to be noticed that the order impugned in the present Writ Petition is the order dated 31.05.1990, passed by the learned Financial Commissioner, Punjab (Annexure P-5) whereas the Writ Petition came to be filed in the year 1996, which is clearly beyond a period of three years from the passing of the aforesaid order dated 31.05.1990 (Annexure P-5). It is well settled law that the limitation to file Writ Petition cannot be more than the period prescribed for the filing of a Civil Suit as has been held in the case of “*State of Madhya Pradesh v. Bhai Lal Bhai AIR 1964, Supreme Court 1006*” and “*Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu*”, 2014 A.I.R. (S.C.W.) 1142.

8.1 Although the petitioners have stated in the Writ Petition that after the passing of order dated 31.05.1990 (Annexure P-5), the petitioners filed a Civil Suit which came to be dismissed vide order dated 11.01.1996 (Annexure P-6) by holding that the suit was not maintainable, however, in the entire Writ Petition there is no plea taken by the petitioners that they had filed the Civil Suit under some mistaken belief or on account of some wrong legal advice tendered to the petitioners or that petitioners were litigating before a wrong forum. In the absence of any justified ground/reason in filing Writ Petition beyond period of three years, it is held that the Writ Petition suffers from delay and latches.

9. That apart, it is not disputed that 64 *kanals*-12 *marlas* of land was allotted to one Surat Singh, who further sold the land measuring 49 *kanals*-13 *marlas* in favour of Smt. Gurcharan Kaur (predecessor of the petitioners) and 14 *kanals*-19 *marlas* in favour of respondents No.6 and 7 (Ajit Singh and Raghbir Singh). During the course of hearing, learned

**CWP-5576-1996 (O&M)****-8-**

counsel for the parties have not disputed the fact that both the sale deeds were executed on the same date (18.12.1956) and also at the same time, which is borne out from the fact that the *wasika* number of sale deed executed in favour of Smt. Gurcharan Kaur (predecessor of the petitioners) is 3621, whereas the *wasika* number of sale deed executed in favour of respondents No.6 and 7 (Ajit Singh and Raghbir Singh) is 3622. It is also not disputed that on the basis of the aforesaid sale deeds, even the mutations have been sanctioned simultaneously bearing Mutation Nos. 667 and 668.

10. In view of the aforementioned facts, there is no merit in the plea of learned counsel for the petitioners that since *wasika* No. of the sale deed in favour of the petitioners was 3621 and that of respondents No.6 and 7 is 3622, therefore petitioners' sale deed is executed prior in time then the sale deed executed in favour of respondents No.6 and 7. I would have accepted the aforesaid contention made by learned counsel for the petitioners had there been even one single sale deed executed in between the sale deed executed in favour of Smt. Gurcharan Kaur (predecessor of the petitioners) and the sale deed executed in favour of respondents No.6 and 7 (Ajit Singh and Raghbir Singh). Learned counsel for the petitioners has been unable to show the time on which the aforesaid two sale deeds were executed, so as to see as to whether actually there was any time gap in the execution of both the sale deeds.

11. Apparently, both the sale deeds were presented on the same date (18.12.1956) and at the same time and the same were registered one after the another vide *Wasika* Nos.3621 and 3622. Since both the sale deeds were in favour of different persons and in respect of different areas, it is but natural that each sale deed would be endorsed with the separate *wasika* numbers.

**CWP-5576-1996 (O&M)****-9-**

Only on the account that the sale deed in favour of Smt. Gurcharan Kaur (predecessor of the petitioners) has been executed vide *wasika* No.3621, which is prior to the *wasika* No.3622, which was executed in favour of respondents No.6 and 7, it cannot be accepted that the sale deed in favour of Smt. Gurcharan Kaur (predecessor of the petitioners) was prior in time. In my considered view, the Tehsildar (Sales)-cum-Managing Officer, Gurdaspur has taken a very fair, justified and a possible view by ordering that the excess area which is required to be canceled from the original allotment made in favour of Surat Singh be done proportionately from the shares of both the vendees. The said order dated 22.03.1982 (Annexure P-2) passed by the Tehsildar (Sales)-cum-Managing Officer, Gurdaspur has been further upheld by the Chief Settlement Commissioner, Gurdaspur vide its order dated 25.08.1986 (Annexure P-4) and also by the learned Financial Commissioner, Punjab vide order dated 31.05.1990 (Annexure P-5).

12. Keeping in view the aforementioned facts and circumstances, I do not find any merit in the present Writ Petition and the same is accordingly dismissed.

13. All pending applications (if any) shall also stand closed.

**27.08.2024***Himani***(HARSH BUNGER)  
JUDGE**

Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/No