



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

CWP-954-1999

Date of Decision: 12.12.2024

Mohinder Kumar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. G.S. Punia, Senior Advocate assisted by
Ms. Manleen Kaur, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab.

Mr. Sandeep Khunger, Advocate and
Mr. Saksham Khunger, Advocate
for respondent No.5.

HARSH BUNGER J. (ORAL)

Petitioner (Mohinder Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 05.04.1994 (Annexure P-1) passed by the learned Collector, Agrarian, Fazilka; order dated 10.10.1994 (Annexure P-3) passed by the learned Commissioner, Ferozepur Division, Ferozepur; and order dated 04.12.1998 (Annexure P-7) passed by the learned Financial Commissioner, Punjab.

2. Briefly, vide order dated 31.08.1982 passed by the learned Collector (Agrarian), Fazilka, the petitioner was allotted land measuring

78 Kanal-12 Marla in Village Khanwala, Tehsil Fazilka, District Ferozepur, under the Punjab Utilization of Surplus Area Scheme.

2.1 It transpires that one Sh. Bhajan Lal filed a complaint against the petitioner, *inter alia*, stating that petitioner owned 1/4th share of land measuring 101 Kanal-8 Marla in Village Kherian, Tehsil Fazilka; and therefore, he was not eligible for the aforesaid allotment.

2.2 Upon receipt of the said complaint, the learned Collector, Fazilka sought permission from the learned Divisional Commissioner, Ferozepur for review of the allotment order dated 31.08.1982; and the same was granted by the learned Divisional Commissioner, Ferozepur. Thereafter, the learned Collector (Agrarian), Fazilka reviewed the order dated 31.08.1982 and cancelled the allotment made in favour of the petitioner, vide order dated 05.04.1994 (Annexure P-1).

3. Being aggrieved against the aforesaid order (Annexure P-1), petitioner preferred an appeal before the learned Divisional Commissioner, Ferozepur; however, the same was dismissed vide order dated 10.10.1994 (Annexure P-3).

3.1 A further revision petition filed by the petitioner before the learned Financial Commissioner, Punjab was also dismissed vide order dated 04.12.1998 (Annexure P-7). Hence, the present writ petition.

4. Learned senior counsel representing the petitioner submits that the authorities below have erred in law and fact in passing the impugned orders. It is submitted that under the Punjab Utilization of Surplus Area Scheme, petitioner is entitled for the allotment of land out of the surplus pool, however, he has wrongly non-suited on the ground that he had concealed the material fact as regards his ownership of land in Village Kherian. Learned senior counsel contends that the petitioner owned only 1

Acre-10 Marla of land, however, there was a wrong entry in the revenue records, reflecting him to be the owner of 1/4th share of the land measuring 101 Kanal-8 Marla; which was subsequently corrected by way of *Fard Badr*. Accordingly, it is stated that the claim of petitioner for allotment of land under the Punjab Utilization of Surplus Area Scheme could not have been rejected on the basis of wrong entries in the revenue records.

4.1 With the aforesaid submissions, learned senior counsel representing the petitioner has prayed for setting aside the orders dated 05.04.1994 (Annexure P-1), 10.10.1994 (Annexure P-3) and 04.12.1998 (Annexure P-7).

5. Per contra, learned State counsel as well as learned counsel for respondent No.5 have opposed the prayer made on behalf of the petitioner by submitting that the petitioner had concealed the material factum regarding his ownership of land and he claimed allotment by representing himself as a 'landless' person. It is stated that under the Punjab Utilization of Surplus Area Scheme, the list of eligible persons is prepared in such a manner that the person who does not own any land, is placed at the top followed by the persons owning land, who are placed below according to the area possessed by each of them in an ascending order. It is stated that the petitioner is not entitled to any relief as his conduct is not above board and the allotment of land in favour of petitioner was rightly cancelled. Accordingly, prayer for dismissal of the instant writ petition has been made.

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

7. Here, it would be apposite to refer to Rule 6 of the Punjab Utilization of Surplus Area Scheme, which reads as under:-

“6. Procedure for allotment of surplus area-

(a) After the procedure prescribed in paragraph 5 has been followed, the Circle Revenue Officer shall prepare a list of all eligible person for each revenue estate in such a manner that the person who do not own or hold any land are placed at the top and the persons who own or hold any land are placed according to the area possessed by each in an ascending order:-

Provided that where more than one person have equal claim, their names in the priority shall be arranged by drawing of lots by the Circle Revenue Officer so that person, whose lot is drawn first get preference over the persons whose lots are drawn subsequently.

(b) The Circle Revenue Officer shall also prepare a list of Khasra numbers (with area) of the land comprised in the surplus area available for allotment in a revenue estate mentioning such numbers in the numerical order. Where there are killas and rectangles, the numerical order of the rectangles shall be observed first and then of killas in each rectangle.

(c) The record of each case alongwith the list referred to in sub-paragraph (a) and (b) shall be forwarded to the Collector who shall proceed to allot the surplus area to eligible persons in order of the priority shown in the lists prepared under sub-paragraph (a); Provided that a tenant cultivating the surplus area shall be allotted land cultivated by him subject to the conditions that the land allotted to him together with the land already owned by him does not exceed 2 hectares of the first quality land or an equivalent area.

(d) The allotment of the surplus area determined under the Punjab law and the PEPSU law may be undertaken before the determination of the surplus area under the Act. Such area shall be allotted to eligible persons, who have made application under Paragraph 3 of this Scheme or are considered eligible for allotment under paragraph 4.

(e) Where mortgage rights in respect of any land falling within the surplus area have vested in the State Government under the proviso to Section 8 of the Act, such land shall not be allotted

to any person until the Government becomes its full owner. The Government may give such land on lease to any person from year to year.”

8. In the instant case, the petitioner was allotted land measuring 78 Kanal-12 Marla under the Punjab Utilization of Surplus Area Scheme, vide order dated 31.08.1982, by treating him as a landless person. It appears that subsequently the additional area of 15 Kanal-5 Marla was also allotted to the petitioner vide order dated 17.06.1986. Thereafter, on a complaint being submitted against the petitioner by Sh. Bhajan Lal, the learned Collector, Agrarian, Fazilka sought for review of the allotment orders from the learned Divisional Commissioner, Ferozepur; which was accorded and the learned Collector, Agrarian, Fazilka, vide its order dated 05.04.1994 (Annexure P-1), cancelled the allotment of land in favour of the petitioner.

8.1 An appeal filed against the aforesaid cancellation order (Annexure P-1) was also dismissed by the learned Divisional Commissioner, Ferozepur vide order dated 10.10.1994 (Annexure P-3) by observing that the petitioner had concealed his true land holding at the time of registering himself as a candidate for allotment of surplus area under the Punjab Utilization of Surplus Area Scheme.

8.2 A further revision petition filed by the petitioner before the learned Financial Commissioner, Punjab has also been dismissed vide order dated 04.12.1998 (Annexure P-7) by holding as under:-

“ - x - x -

*3. The petitioner claims that the impugned orders cancelling the allotment in his favour are wrong since he was owner in possession of 1/12th share of 101K-8M, i.e. about 1 acre only and not owner in possession of 1/4th share of 101K-8M in village Kherian, tehsil Fazilka, hence was eligible for allotment under the Rules *ibid*. The record shows that the*

petitioner had, in his original application date the 25th August, 1973, stated that he did not own any land anywhere in the State of Punjab. He also submitted a misleading affidavit dated the 9th August, 1982 that he does not own any land "in the village". Despite a report dated the 7th August, 1982 of the halqa patwari that the petitioner was in fact owner of 1A-0K-10M land, the claim of the petitioner for allotment of surplus area was considered. Under Rule 6 of the Punjab Utilization of Surplus Area Scheme, 1973 the Circle Revenue Officer is required to prepare a list of all eligible persons for each revenue estate in such a manner that the persons who do not own or hold any land are placed below, according to the area possessed by each, in ascending order. Despite the fact that the petitioner owned some land, he was placed at Sr. No.6 of the said list among the landless persons, although Col. No.3 of the list showed him to be owner of 1A-0K-10M land. Many applicants who owned no land were denied allotment on the ground that they did not reside in village Khanwali, whereas the petitioner who claimed to be resident of village Khanpur was considered for allotment and allotted land at priority no.2. The allotments in favour of the petitioner being patently illegal have rightly been set aside. The petition is accordingly dismissed.

4. However, I notice from the list that other persons holding land, some in excess of the maximum presented under the Rules, and some holding less than that maximum, have also been allotted surplus land; and some landless persons have not been considered for allotment since they had died in the interim i.e. the period between the date of submitting application and the date of allotment. The Collector Agrarian, Fazilka is directed to review all allotments made, from the list, to persons owning or holding any land whatsoever, after due notice to the legal heirs of the landless applicants who are reported to have died, and any other person who may have a right to be heard."

It is undisputed that the petitioner had got allotment of land in

his favour under the Punjab Utilization of Surplus Area Scheme by representing himself as a landless person, whereas as per the revenue records, he owned land to the extent of 1/4th share in Village Kherian. Although as per the petitioner, the entries were wrongly made in the revenue records and he owned only 1 Acre-10 Marla of land and the said wrong entries were subsequently corrected; however, it does not take away the fact that petitioner did own some land at the time when he got allotted land in his favour as a landless person under the Punjab Utilization of Surplus Area Scheme. Evidently, under Rule 6 of the said Scheme, the list of eligible persons is prepared in such a manner that the person who does not own any land is placed at the top followed by the persons owning land, who are placed below according to the area possessed by each of them in an ascending order.

9.1 Had the petitioner disclosed the true facts, he may have been eligible for allotment of land under the Punjab Utilization of Surplus Area Scheme, but his priority would have been changed; and instead of him, some other eligible person would have got the land under the said Scheme.

10. In view of the above discussion, since the petitioner had concealed the material fact as regards his land holdings; in my considered view, the authorities below have rightly cancelled the allotment of land in his favour. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

11. All pending application(s), if any, shall also stand closed.

12.12.2024

Apurva

(HARSH BUNGER)
JUDGE

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| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |