

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 14117 of 2010 (O&M)

Date of Decision: 10.4.2024

Dalbir Kaur (since deceased) through LRs.

.....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Atul Lakhanpal, Senior Advocate with
Ms. Neha Lakhanpal, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

Mr. Radhe Shyam Sharma, Advocate
for respondent No. 5-Gram Panchayat.

SURESHWAR THAKUR, J.

CM-5626-CWP-2024

1. It is averred in the instant application, that during the pendency of the instant petition, before this Court, the demise of sole petitioner one Dalbir Kaur had occurred on 16.1.2013. The deceased petitioner concerned, is averred in the application, to be succeeded by her legal representatives, as enumerated in paragraph 2 of the application. It is further averred that for the continuation of the instant writ petition, the substitution of the legal heirs of the deceased petitioner, is imperative.

2. Therefore, the prayer made in the application for the substitution of the deceased petitioner, being made by her LRs, is accepted.

3. Accordingly, the application stands allowed. Amended memo of parties is taken on record. Registry is directed to tag the same at the appropriate place.

CWP No. 14117 of 2010

1. In the instant petition, the petitioner seeks the quashing of the order dated 15.4.2010 (Annexure P-4) passed by the District Development and Panchayat Officer-cum- Assistant Collector Gr-I, Fatehabad, the order dated 25.5.2010 (Annexure P-5) passed by the Collector, Fatehabad, and, the order dated 20.7.2010 (Annexure P-6) passed by the Commissioner, Hissar Division, Hissar.

Factual background

2. The petitioner Dabir Kaur (since deceased) is stated to be the owner in possession of land measuring 152 kanals and 12 marlas, situated in the revenue estate of Hijrawan Kalan, Tehsil and District Fatehabad. Out of the above mentioned lands, 47 kanals 12 marlas of land equivalent to 5 standard acres 9-1/4 units was allotted to one Bajj Nath son of Kirpa Ram through an order dated 16.6.1982 passed by the Tehsildar, Managing Officer, Hisar. Similarly vide order dated 16.6.1982 passed by the Tehsildar, Managing Officer, Hisar 5 standard acres and 7 units of land equivalent to 46 kanals 6 marlas was allotted to one Deen Mohd. Son of Maniya. Moreover, 5 standard acres and 7 units of land equivalent to 46 kanal 8 marla was allotted to one Santa Singh @ Banta Singh on 16.6.1982, besides 1 standard acre and 5-3/4 units equivalent to 11 kanals 10 marlas of land was allotted to one Labh Sinjgh son of Wadhava Singh on 16.6.1982. The possession of the above said lands were given to the allottees concerned on 23.6.1982. It is further stated in the petition that the petitioner (since deceased) purchased the above mentioned lands from their respective owners vide four registered sale deeds dated 29.6.1982, 21.2.1984, 29.6.1982 and 21.2.1984. Mutation Nos. 818, 819 and 820 also became sanctioned in favour of the petitioner (since deceased).

3. The Assistant Collector concerned, after having effected the partition of the land measuring 367 kanals 16 marlas entered 11/12 share of the shamlat deh in favour of the custodian, and, the remaining 1/12 share in favour of Gram Panchayat concerned, vide rapat No. 468 dated 8.6.1982, and, on the basis of the said partition, mutation No. 692 was registered and sanctioned on 13.6.1982. The Gram Panchayat concerned, challenged the said rapat, and, mutation No. 692 by filing CWP-5280-1983 before this Court. This Court through an order made on the above petition, on 23.8.1985, allowed the said petition, and, cancelled the rapat (supra), and, mutation (supra). Thereafter, keeping in view the order (supra), the Chief Settlement Commissioner, Haryana, Chandigarh vide order(s) dated 8.10.1987 cancelled all the allotments made in favour of Baij Nath, Santa Singh @ Banta Singh and Din Mohammad alias Dina Nath. The above order(s) had been challenged before this Court by filing of CWP Nos. 2116, 2117 and 7259 of 1988, whereby the order(s) (supra) were stayed by this Court, and, were also ultimately quashed by this Court.

4. The Gram Panchayat concerned, filed a petition under Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 seeking thereby the eviction of the petitioner (since deceased) from the petition lands, and, through the order made thereons on 15.4.2010 (Annexure P-2), the said petition was allowed to the extent that the decision in regard to land measuring 47 kanalas 12 marlas, was deferred till the final decision of this Court on CWPs (supra). Being aggrieved from the said order, the petitioner (since deceased) preferred an appeal, and, through a verdict made thereon by the statutory appellate authority below on 16.6.2009 (Annexure P-3), the said appeal was allowed, and, the case was remanded to the District

respondent.

5. After remand of the said case, the same was allowed by the DDPO-cum-Assistant Collector concerned, through an order made thereons on 15.4.2010 (Annexure P-4). Being aggrieved therefrom, the petitioner preferred an appeal before the statutory appellant authority below, who through an order made on the said statutory appeal, on 25.5.2010 (Annexure P-5), dismissed the said appeal. The petitioner challenged the said order by filing revision petition before the Commissioner concerned, who through an order made thereons, on 20.7.2010 (Annexure P-6), dismissed the said revision petition.

For the reasons to be assigned hereinafter, the orders challenged before this Court are quashed and set aside, and, the instant writ petition is allowed.

6. 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, rather 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.

7. 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

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.

8. However, through the amending Act No. 13 of 1996, Section (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 ;]

9. 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

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.

10. 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).”

11. 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.

12. Resultantly, the impugned orders are contrary to the mandade enclosed in the said inserted provisions through the amending Act No. 13 of 1996, besides contravenes the judgment made by this Court, whereby this Court in CWPs (supra) had set aside the order passed by the authorities concerned, whereby the allotments made in favour of the predecessor(s)-in-interest of the present petitioner were quashed and set aside. Since apparently the present petitioner is the vendee from the allottees concerned, thereby she acquired a valid title qua the disputed lands from such allottees, as such, there was no occasion for the statutory authorities below, to order for the eviction of the present petitioner from the petition land(s).

Final order

13. In view of the above stated reasons, this Court does find merit in the instant petition, and, is constrained to allow it.

14. Consequently, the instant petition is allowed. The impugned orders are quashed, and, set aside. 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/vendees concerned.

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

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

April 10, 2024
Gurpreet

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