

2024:PHHC:115789



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

CWP-15102-2016 (O&M)
Date of decision : 02.09.2024

RABINDER SINGH AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. R.S. Rangpuri, Advocate
for the petitioners.

Mr. Nirmaljit Singh Diwana, Sr. D.A.G., Punjab.

Mr. Sandeep Punchhi, Advocate
for the applicants (in *CM-2886-CWP-2020*).

HARSH BUNGER, J.

CM-2886-CWP-2020

This is an application under Order 1 Rule 10 CPC read with Article 226 of the Constitution of India, for impleading the applicants being tenants as a party/respondents No.7 and 8 to the writ petition.

For the reasons stated in the application, the same is allowed subject to all just exceptions. Amended 'Memo of Parties' is taken on record.

Registry to take steps accordingly.

CWP-15102-2016 (O&M)

Petitioners have filed the present writ petition 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 27.11.2015 (Annexure P-5) passed by the learned Financial Commissioner in **ROR-368-2011**; order dated 17.03.2011 (Annexure P-4) passed by the learned Divisional Commissioner, Ferozepur and order dated 15.03.2005 (Annexure P-3) passed by the learned Collector (Agrarian), Fazilka,

2. Briefly, 0.7793 hectares of 1st quality land (27 K - 0 M) of Village Chak Sawah Wala, belonging to one Smt. Kaushalya Devi, was declared as surplus vide order dated 14.10.1976 (Annexure P-6). It appears that Smt. Kaushalya Devi, also had some land in Village Chak Arniwala, District Ferozepur, however, no land of said Village Chak Arniwala, was declared surplus. On an appeal filed by Smt. Kaushalya Devi, before the learned Divisional Commissioner, the matter was referred back to the learned Collector (Agrarian), Fazilka, who vide its order dated 28.07.1980 (Annexure P-7) held that said Smt. Kaushalya Devi's total holding was 13.1223 hectares of 1st quality land and by giving benefit of one additional family member and one adult son on the appointed date (24.01.1971), there was no surplus area with Smt. Kaushalya Devi.

2.1 It transpires that one Inder Singh son of Amir Singh, submitted a complaint to the concerned authority, highlighting that the benefit of one adult son was wrongly given to Smt. Kaushalya Devi, whereas on the appointed date, she had no adult son. However, the learned Collector (Agrarian), Fazilka, vide order dated 13.05.1993 did not review the earlier order dated 28.07.1980 (Annexure P-7). An appeal filed by said Inder Singh, against the order dated 13.05.1993, was also dismissed by the Divisional Commissioner, vide its order dated 07.11.1994 and thereafter, Inder Singh preferred a Revision Petition (**ROR-230-1994**) before the Financial Commissioner, Punjab. It is borne out from the paper-book that

Smt. Kaushalya Devi, had transferred some of her land on the basis of Civil Court decree(s).

2.2 The aforesaid Revision Petition (***ROR-230-1994***) came to be allowed by the learned Financial Commissioner (Appeals-1), Punjab, vide its order dated 12.01.1999 (Annexure P-8), whereby, a direction was issued to the learned Collector (Agrarian), Fazilka to review his order allowing the land-owner benefit of adult son and to pass a speaking order after taking into account the Civil Court decrees.

2.3 It appears that during the pendency of the afore-said proceedings before the learned Financial Commissioner, two sons of Smt. Kaushalya Devi namely, Surinder Singh and Bhupinder Singh, sold 5 Kanals – 19 Marlas of land of Village ChakArniwala in favour of the present writ petitioners namely, Rabinder Singh and Jaspal Singh sons of Harbaksh Singh, vide sale deed dated 15.07.1996 (Annexure P-2).

2.4 In pursuance to the order dated 12.01.1999 (Annexure P-8) passed by the learned Financial Commissioner, the matter was re-examined by the learned Collector (Agrarian), Fazilka, who vide its order dated 15.03.2005 (Annexure P-3), came to the conclusion that the total holding of the land-owner (Kaushalya Devi) was 13.1223 hectares of 1st quality land and no son of the said land-owner was adult on 24.01.1971 (appointed date) and there were seven members of her family. Accordingly, by giving 9.80 hectares of 1st quality land as permissible area to the land-owner and her family members, the remaining 3.3223 hectares of 1st quality land was declared/included in the surplus pool.

2.5 Feeling aggrieved against the afore-said order dated 15.03.2005 (Annexure P-3), the present petitioners preferred an appeal before the Divisional Commissioner, Ferozepur, which was dismissed vide

order dated 17.03.2011 (Annexure P-4). A further Revision Petition (**ROR-368-2011**) filed by the petitioners before the learned Financial Commissioner (Appeals-1), Punjab, was also dismissed vide order dated 27.11.2015 (Annexure P-5).

3. In the afore-mentioned circumstances, the petitioners have filed the present writ petition before this Court, for the relief as noticed here-in-above.

4. Learned counsel for the petitioners submits that the impugned orders are illegal and perverse and therefore, the same are liable to be set aside. It is submitted that the petitioners are the *bona fide* purchasers for valuable consideration, vide sale deed dated 15.07.1996 (Annexure P-2) and at the time of said sale, there was no encumbrance on the land in question. It is submitted that no opportunity of hearing has been afforded to the petitioners, especially when prior to the declaration of land as surplus area vide order dated 15.03.2005 (Annexure P-3), the petitioners had already purchased the land in question and the mutation was also sanctioned in their favour. It is next submitted that their vendors have sold the land to various persons like the petitioners, however, that land has not been included in the surplus area. It is, accordingly, contended that the land purchased by the petitioners is required to be included in the permissible area of the land owner and appropriate directions be issued for re-determination of the surplus area of the big land-owners.

5. With the afore-said submissions, prayer has been made for setting aside of the impugned orders.

6. Per contra, learned State counsel has opposed the submissions made on behalf of the petitioners by submitting that the orders passed by the authorities below are well reasoned and justified, which does not call

for any interference by this Court. It is submitted that the big land-owner, while submitting her declaration in Form 'A', had wrongly mentioned that on the appointed date, she had one adult son. It is submitted that on account of this wrong declaration, the benefit of 7 hectares of land was given to the big land-owner Smt. Kaushalya Devi, which was not permissible as she did not have any adult son on the appointed date. It is next submitted that once the big land-owner had wrongly availed the benefit as admissible to an adult son; the petitioners, who are otherwise also the subsequent purchasers, cannot agitate that they are the *bona fide* purchasers or that the land in the hands of big land-owner be determined afresh. It is also submitted that all the relevant factors have been considered by the authorities below and there is no scope for any interference by this Court. Accordingly, prayer for dismissal of the writ petition has been made.

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

8. In the present case, the learned Financial Commissioner, vide its order dated 12.01.1999 (Annexure P-8) had allowed the Revision Petition (***ROR-230-1994***) filed by one Inder Singh against Kaushalya Devi and had directed the Collector (Agrarian), Fazilka, to review his order allowing the land-owner, benefit of adult son. It appears that the said order (Annexure P-8) had already attained finality. In pursuance to the said order dated 12.01.1999 (Annexure P-8), the learned Collector (Agrarian), Fazilka, considered the matter afresh and vide order dated 15.03.2005 (Annexure P-3) declared 3.3223 hectares of 1st quality land as surplus, by observing as under :-

*“In this way, in the light of the order of learned
Financial Commissioner (Appeals-1), Punjab,*

Chandigarh, on perusal it was found that big landowner has tried to retain land by making false statement and intentionally wasted the precious time of the courts, whereas area of the landowner should have got declared as surplus much prior in time. Now also, the landowners are trying hard to retain the surplus area with them. As per provisions of Punjab Land Reforms Act, 1972, any decree/judgment/sale which reduced the area of landlord, is liable to be ignored. In this way, the total holding of the landowner was 13.1223 hectare of first quality land, no son of the landlord was adult on 24.1.1971 and there were 7 members in her family. In this way, by leaving 9.80 hectare of first quality land as permissible area to the land owner and her family members, the remaining 3.3223 hectare of first quality land as per Annexure 'A' is included in surplus pool. In this manner, Gurdeep Singh appellant would also be satisfied. Notice under Section 9(1) be issued for the allotment of surplus area."

9. The aforesaid order dated 15.03.2005 (Annexure P-3) has been further upheld in appeal and revision filed by the petitioners.

10. From the perusal of the findings returned by the authorities below, it is evident that the big land-owner had tried to retain land by making false statement/declaration, wherein the benefit of land permissible to an adult son on the appointed date, was wrongly extended to the big land-owner. Neither before the authorities below nor before this Court, any document/material has been placed on record, which would indicate that the big land-lord Kaushalya Devi had one adult son on the appointed date i.e. 24.01.1971 under the Punjab Land Reforms Act, 1972. In this view of the matter, no fault can be found with the findings returned by the learned Collector (Agrarian), Fazilka, declaring 3.3223 hectares of 1st quality land as surplus.

11. As regards the plea of the petitioner that they are the *bona fide* purchasers of the land; it is observed that on the date of execution of sale deed dated 15.07.1996 by Surinder Singh and Bhupinder Singh, sons of Kaushalya Devi, the proceedings were pending before the learned Financial Commissioner in **ROR-230-1994**. Still further, a perusal of the sale deed (Annexure P-2) would clearly indicate that the parties were aware that there were some proceedings as regards the determination of surplus area is concerned, as a specific recital was made in the sale deed, which reads as under :-

“The aforesaid land is not surplus area and if same is found to be, then abovesaid area be considered in reserve area...”

11.1 In view of the afore-said categoric recital in the sale deed, it can be taken that the parties to the sale deed were aware of the pending surplus area proceedings.

12. Be that as it may, since the petitioners had purchased land during the pendency of the surplus area proceedings, the sale is clearly hit by the rule of *lis pendens*, as envisaged under Section 52 of the Transfer of Property Act.

12.1 In ***Vinod Seth v. Devinder Bajaj (2010) 8 SCC 1***, Hon'ble Supreme Court of India laid down that the doctrine of *lis pendens* does not affect the conveyance by a party to the suit but only renders it subservient to the rights of other parties to the litigation. Hon'ble Supreme Court observed thus :

"42. It is well settled that the doctrine of lispendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but

render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.

43. The principle underlying section 52 of the TP Act is based on justice and equity. The operation of the bar under Section 52 is however subject to the power of the court to exempt the suit property from the operation of Section 52 subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any part to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, we are of the view that this is a fit case where the suit property should be exempted from the operation of section 52 of the TP Act, subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the property in any manner they may deem fit, in spite of the pendency of the suit."

12.2 In ***A. Nawab John v. V.N. Subramaniam (2012) 7 SCC 738***,

Hon'ble Apex Court held as under :

"18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.

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"12. ... The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-

matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court." (Sanjay Verma v. Manik Roy, (2006) 13 SCC 608, SCC p. 612, para 12.)"

12.3 In **Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.** (2013) 5 SCC 397, Hon'ble Apex Court has laid down thus :

"53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor."

13. Once it has been found as a matter of fact that the big landowner-Kaushalya Devi had made a wrong declaration at the time of determination of surplus area proceedings and wrongly availed the benefit of additional land admissible to an adult son although she had no adult son on the appointed date (24.01.1971), if the plea of the petitioner that surplus area of big landowner-Kaushalya Devi be re-determined in view of judgment of Full Bench of this Court in **Sardara Singh vs The Financial Commissioner, 2008(2) RCR (Civil) 744**, the same would, in essence, amount to permitting the big landowner to take benefit of his own

wrong/misdemeanour, which cannot be permitted. Therefore, this plea of the petitioner is rejected.

14. As regards the plea of the petitioner that the big landowner had sold other land also to other persons like the petitioners herein, it is observed that no material in that regard has been placed on record. In the absence of any document/material as regards other sale(s) made by big landowner, the afore-said plea does not require any consideration.

15. Keeping in view the afore-mentioned facts and circumstances, I do not find any merit in the present writ petition and the same is, accordingly, dismissed. However, it is observed that the petitioners (if so advised), may have recourse to their legal remedies as available to them against their vendors, in accordance with law.

16. The present writ petition is accordingly dismissed with the afore-said observation.

17. All pending application/s, if any, shall also stand closed.

September 02, 2024

gurpreet

(HARSH BUNGER)

JUDGE

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