IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15420-2024 (O&M)
Date of decision : 11.11.2024

GURDIAL KAUR (DECEASED) THROUGH LEGAL HEIR-
MOHINDER KAUR (NOW DECEASED) THROUGH
LEGAL HEIR, NARINDER SINGH

…Petitioner

Versus

FINANCIAL COMMISSIONER, PUNJAB AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. P.P.S. Duggall, Advocate
for the petitioner.

HARSH BUNGER, J. [ORAL]

CM-18340-2024

This is an application for placing on record Annexures P-7 to P-9.

For the reasons recorded in the application, the same is allowed and Annexures P-7 to P-9 are taken on record, subject to all just exceptions.

CWP-15420-2024

The instant writ petition has been filed under Articles 226/227 of the Constitution of India, seeking setting aside of order dated 16.08.1976 (Annexure P-2) passed by the learned Collector, Agrarian; order dated

13.03.1978 (Annexure P-4) passed by the learned Collector, Agrarian; order dated 08.08.2016 (Annexure P-5) passed by the learned Commissioner, Jalandhar Division, Jalandhar and order dated 30.11.2021 (Annexure P-6) passed by the learned Financial Commissioner (Appeals), Punjab.

2. Briefly, Smt. Gurdial Kaur, filed her return in Form A under Rule 5 of the Punjab Land Reforms Rules, 1973 regarding her land situate in Village Sohal and Pirdi Sain in proceedings concerning determination of surplus area.

2.1 Learned Collector (Agrarian), Gurdaspur, vide order dated 16.08.1976 (Annexure P-2) declared *90 Kanals* of land of Village Sohal and *61 Kanal-16 Marlas* of land in Village Pirdi Sain, as surplus in the hands of Smt. Gurdial Kaur.

2.2 Smt. Gurdial Kaur, preferred an appeal before the learned Commissioner, Jalandhar Division, Jalandhar, which came to be allowed vide order dated 21.09.1977 (Annexure P-3) and the matter was remanded back to the learned Collector, Agrarian, to decide the case afresh.

2.3 Upon remand, the learned Collector, Agrarian vide order dated 13.03.1978 (Annexure P-4) declared *90 Kanals* of land situate in Village Sohal, as surplus in the hands of Smt. Gurdial Kaur. It transpires that no further action was taken by Smt. Gurdial Kaur, during her life time till her death on 04.02.2002. Her daughter namely, Narinder Kaur also died in the year 2010. However, another daughter of Smt. Gurdial Kaur namely, Mohinder Kaur, challenged the afore-said order dated 13.03.1978 by filing an appeal before the learned Commissioner, Jalandhar Division, Jalandhar, which came to be dismissed vide order dated 08.08.2016 (Annexure P-5) being barred by limitation. A further revision petition (ROR No.886 of

2016) filed before the learned Financial Commissioner, was also dismissed vide order dated 30.11.2021 (Annexure P-6).

2.4 In the afore-mentioned circumstances, the petitioner has filed the present writ petition before this Court.

3. Heard.

4. In the instant case, *90 Kanals* of land of Village Sohal, was declared surplus in the hands of Smt. Gurdial Kaur, who was a big land owner. Smt. Gurdial Kaur, expired on 04.02.2002. Concededly, during her life time, Gurdial Kaur did not take any step to challenge the afore-said order dated 13.03.1978 (Annexure P-4), therefore, the afore-said order attained finality.

5. Apparently, the present petitioner challenged the afore-said order dated 13.03.1978 (Annexure P-4) by filing an appeal before the learned Commissioner, Jalandhar Division, Jalandhar, which was dismissed vide order dated 08.08.2016 (Annexure P-5) being barred by limitation, having been filed after more than 35 years. Said order has been further upheld by the learned Financial Commissioner, vide its order dated 30.11.2021 (Annexure P-6), by holding as under :-

> *"3. I have heard counsel for the petitioners and the Senior State Counsel. In this case Collector passed his order on 13.03.1978 and appeal has been filed before the Ld. Commissioner on 26.06.2013. Resultantly, Ld. Commissioner dismissed the case being badly time barred. I have heard Counsel for the Petitioner on the grounds of delay also which are totally unacceptable and unconvincing. The land owner has to keep track of their land and related case. Under the Punjab Land Reforms Act period of limitation has been clearly defined and cannot be stressed beyond a point which will defeat entire purpose of justice. As per the*

provisions of Section 8 of the Act ibid, surplus area declared under this Act is to vest in the State Government and resultantly effect in the Revenue Record needs to be given if not allotted so far. The Senior State Counsel also pointed out that as per the record, his possession has been taken. The Punjab Land Reforms Act, 1972 is social and economic Reform Law and its purpose should not be allowed to be defeated. Owing to above reasons, the present Revision Petition is dismissed.

4. A copy of the order be provided to petitioner, respondents and be also sent to the concerned Ld. Commissioner, Jalandhar and District Collector, Gurdaspur for further necessary action. The file be consigned to record room."

6. The only contention raised by learned counsel for the petitioner is that Smt. Gurdial Kaur, was never informed of the order dated 13.03.1978 (Annexure P-4); therefore, she could not challenge the same during her life time and the appeal filed by the present petitioner was within limitation from the date of knowledge.

7. I have considered the afore-said submission raised by learned counsel for the petitioner, however, I do not find any merit in the same.

8. The reasoning put forth by the learned counsel for the petitioner is unacceptable. The learned Financial Commissioner has rightly held that the land-owner has to keep track of their land as well as the related cases and the issue pertaining to condonation of delay, cannot be stressed to such an extent that the same shall defeat the entire purpose of law.

9. In somewhat similar circumstances, in ***Ajmer Kaur v. State of Punjab,2004(3) RCR (Civil) 174***; Hon'ble Supreme Court while considering the issue of delay in seeking re-determination of surplus area

on account of opening of succession; held as under:-

> *"8. In our view, it is not necessary for us to enter into the controversy regarding the alleged conflict between the provisions of sub-sections (5) and (7) of Section 11 of the Act. In the circumstances of the case, we feel that these appeals can be decided on the basis of the fact that the initial order whereby the Collector declared 3.12 hectares of land as surplus was passed on 30th September, 1976. The appeal against the said order filed by Daya Singh, land owner, was dismissed on 27th March, 1979. Kartar Kaur wife of Daya Singh, along with whom Daya Singh had filed a joint return with respect to the lands, died on 9th October, 1980. The surplus lands were mutated in favour of the State Government in the year 1982 and the State Government allotted the same to third parties including the respondents No. 5 to 7 herein in the year 1983. Respondent No. 7 has filed an affidavit stating that he is in possession of the land allotted to him. Kartar Kaur is said to have made a Will on 15th October, 1979 regarding a portion of land declared surplus in favour of a Gurudawara which has been impleaded as respondent No. 8 in this appeal. On 15th October, 1979 when Kartar Kaur made her Will she was left with no interest or title in the land and therefore she could not have made a Will with respect thereto. Daya Singh filed an application for re-determination of the surplus land under Section 11(5) of the Act only on 21st June, 1985 on the basis of the fact that Kartar Kaur had died and succession had reopened. This application was made almost 5 years after the death of Kartar Kaur. In our view, this delay in making the application is fatal for Daya Singh and the application for redetermination ought to have been dismissed on this ground alone. Assuming that Daya Singh had a right to make an application under Section 11(5) of the Act but the right had to be exercised within a reasonable time. It cannot be said that the right under Section 11(5) can be exercised at any time at the sweet will of the applicant. The order regarding*

determination of surplus land by the Collector has serious consequences :

1. So far as the land owner is concerned he is divested of the land.

2. The surplus land vests in the State Government.

3. The State Government utilizes the surplus land in accordance with law which includes allotment of the surplus land to third parties like landless persons for purposes of cultivation etc.

9. Permitting an application under Section 11(5) to be moved at any time would have disastrous consequences. The State Government in which the land vests on being declared as surplus, will not be able to utilise the same. The State Government cannot be made to wait indefinitely before putting the land to use. Where the land is utilised by the State Government a consequence of the order passed subsequently could be of divesting it of the land. Taking the facts of present case by way of an illustration, it would mean the land which stood mutated in the State Government in 1982 and which was allotted by the State Government to third parties in 1983, would as a result of reopening the settled position, lead to third parties being asked to restore back the land to the State Government and the State Government in turn would have to be divested of the land. The land will in turn be restored to the land owner. This will be the result of the land being declared by the Collector as not surplus with the land owner. The effect of permitting such a situation will be that the land will remain in a situation of flux. There will be no finality. The very purpose of the legislation will be defeated. The allottee will not be able to utilise the land for fear of being divested in the event of deaths and births in the family of the land owners. Deaths and births are events which are bound to occur. Therefore, it is reasonable to read a time limit in Sub-section (5) of Section 11. The concept of reasonable time in the given facts would be most appropriate. An application must be moved within a reasonable time. The facts of the present case demonstrate that *re-determination under sub-section (5) of Section 11 almost 5 years after the death of Kartar Kaur and more than 6 years after the order of Collector declaring the land as surplus had become final, has resulted in grave injustice besides defeating the object of the legislation which was envisaged as a socially beneficial piece of legislation. Thus we hold that the application for redetermination filed by Daya Singh under sub-section (5) of Section 11 of the Act on 21st June, 1985 was liable to be dismissed on the ground of inordinate delay and the Collector was wrong in re-opening the issue declaring the land as not surplus in the hands of Daya Singh and Kartar Kaur.*

10. The above reasoning is in consonance with the provision in sub-section (7) of Section 11 of the Act. Sub-section (7) uses the words "where succession is opened after the surplus area or any part thereof has been determined by the Collector.....". The words "determined by the Collector" would mean that the order of the Collector has attained finality. The provisions regarding appeals etc. contained in Sections 80-82 of the Punjab Tenancy Act, 1887, as made applicable to proceedings under the Punjab Land Reforms Act, 1972, show that the maximum period of limitation in case of appeal or review is ninety days. The appeal against the final order of the Collector dated 30th September, 1976 whereby 3.12 hectares of land had been declared as surplus was dismissed on 27th March, 1979. The order was allowed to become final as it was not challenged any further. Thus the determination by the Collector became final on 27th March, 1979. The same could not be re-opened after a lapse of more than 6 years by order dated 23rd July, 1985. The subsequent proceedings before the Revenue authorities did not lie. The order dated 23rd July, 1985 is non- est. All the subsequent proceedings therefore fall through. The issue could not have been reopened…"

10. Keeping in view the afore-mentioned facts and circumstances, I am of the considered view that the challenge raised to the order dated

13.03.1978 (Annexure P-4) at the instance of the petitioner by filing an appeal before the learned Divisional Commissioner in the year 2013, suffered from inordinate delay and the same was rightly dismissed by the learned Commissioner vide order dated 08.08.2016 (Annexure P-5) and the same has been rightly upheld by the learned Financial Commissioner. Therefore, finding no merit in the instant writ petition, the same is dismissed.

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

November 11, 2024 **(HARSH BUNGER)**
gurpreet **JUDGE**

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