

2025:PHHC:008822



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

CWP-5161-1985 (O&M)
Date of decision : 14.01.2025

TEJA SINGH AND OTHERS

...Petitioners

Versus

DISTRICT JUDGE, GURDASPUR AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sanjay Majithia, Senior Advocate assisted by
Mr. Sumit Sinha, Advocate
for the petitioners.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

Mr. Sudeep Mahajan, Advocate
and Ms. Saachi Mahajan, Advocate
for respondents No.1 to 12.

HARSH BUNGER, J.

Prayer in the present petition, filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *certiorari* for quashing the order dated 06.09.1985 (Annexure P-2) passed by the learned District Judge, Gurdaspur; whereby, a revision petition filed by the petitioners under Section 15 of the Evacuee Interest (Separation) Act, 1951 (in short 'the 1951 Act'), was dismissed.

2. From the facts noticed by the learned District Judge, it is borne out that one Kharak Singh son of Bhawani Singh, was owner of

621 *kanals* – 08 *marlas* of land, situated in Village Lamin, Tehsil and District Gurdaspur and he mortgaged this land with the Muslim Evacuees to the extent of 28/30th share and the remaining 2/30th share was mortgaged to one Sata Singh son of Deva Singh, vide registered mortgage deed dated 25.03.1946. It appears that the muslim mortgagees (Babu and Talib Hussain) sold their mortgagee rights to the extent of 2/30th share in favour of one Santa Singh, accordingly, the share of muslim mortgagees in the afore-said land was reduced to 26/30th share. It transpires that the present petitioners purchased land from afore-said Sh. Kharak Singh, which was subjected to mortgages created by said Kharak Singh, accordingly, they became the mortgagors in respect of the land in question.

2.1 It appears that the competent authority initiated proceedings for separation of evacuee interest in the land in question, for which, a notice was issued to the predecessors of the petitioners, who appeared and claimed that the land in question was non-evacuee. The competent officer passed an order dated 30.04.1956, accepting the plea that the land in dispute was non-composite. Said order dated 30.04.1956 was challenged by the custodian by filing an appeal before the Appellate Authority, which came to be allowed. During the course of hearing, it is informed that the afore-said appeal was allowed on 01.03.1957 and a further writ petition bearing **CWP-696-1957** filed by the petitioners and/or their predecessors was also dismissed on 13.03.1958, although, a copy of the afore-said orders has not been placed on record.

2.2 Be that as it may, it is borne out from the pleadings that vide order dated 02.12.1959, the mortgage debt on the land in dispute was determined to the tune of Rs.50,071/-.

2.3 It appears that the competent authority passed an order dated 30.06.1960, directing that the property in question be put to auction and the auction was held on 02.09.1960 and the sale was confirmed on 12.10.1960.

2.4 Thereafter, the petitioners challenged the above-referred orders dated 30.06.1960 and 12.10.1960 by filing a petition under Section 15 of the 1951 Act, which was dismissed vide impugned order dated 06.09.1985 (Annexure P-2), passed by learned District Judge, Gurdaspur.

2.5 In the afore-mentioned facts and circumstances, the present writ petition has been filed before this Court.

3. Learned senior counsel for the petitioners submits that the learned District Judge, Gurdaspur, has erred in law and fact in passing the impugned order dated 06.09.1985 (Annexure P-2). It is submitted that the petition filed by the petitioners has been dismissed primarily on the ground of delay without appreciating the provisions of Section 15 of the 1951 Act, which provided that the concerned authority can entertain the revision 'at any time'. It is submitted that the auction of the property in question was conducted in breach of the mandatory provisions of the statute and thereby, rendering the auction proceedings as void and as soon as, the petitioners learnt about the afore-said proceedings, they filed the petition under Section 15 of the 1951 Act; therefore, the petition could not have been dismissed on the ground of delay, especially when the petitioners remained in possession of the land in question. It is, accordingly, submitted that the impugned order may be set aside.

4. Per contra, learned State counsel as well as learned counsel appearing for the private respondents, have opposed the submissions made on behalf of the petitioners, by submitting that the petitioners were very well aware of the proceedings undertaken by the authorities under the 1951

Act as they had carried the litigation upto this Court by way of filing **CWP-656-1957**, which was dismissed on 13.03.1958. It is submitted that after the dismissal of the afore-said writ petition, the authorities had determined the mortgage debt at Rs.50,071/- and since the said amount was not paid and the mortgage was not re-deemed accordingly, the property was put to auction, which was confirmed on 12.10.1960. It is submitted that the petitioners slept over the matter for more than 20 years and filed the afore-said petition under Section 15 of the 1951 Act only in the year 1984, which came to be dismissed by the learned District Judge, Gurdaspur, vide order dated 06.09.1985 (Annexure P-2). It is submitted that the impugned order is justified in the facts and circumstances of the case and the same does not call for any interference by this Court. Accordingly, prayer for dismissal of the writ petition has been made.

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

6. In the present case, the short question, which arises for consideration is as to whether the petition under Section 15 of the 1951 Act, filed by the petitioners suffered from delay and laches, especially in the context of Section 15 of the 1951 Act.

7. Here it would be relevant to extract Section 15 of the 1951 Act, which reads as under :-

“15. Power of revision of the appellate officer.

The appellate officer may at any time call for the record of any proceeding in which the competent officer has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:

Provided that the appellate officer shall not pass an order under this section prejudicially to any person

without giving him a reasonable opportunity of being heard."

8. In the above-said Section 15 of the 1951 Act, the term used is 'at any time'. Hon'ble Supreme Court in the case of ***Loku Ram v. State of Haryana, 2000(1) RCR (Civil) 141***, while considering the expression "***at any time***" as appearing in Section 18(6) of the Haryana Ceiling on Land Holdings Act, 1972; observed as under:-

“4. Section 18(6) of the Act reads thus :-

"Section 18(6). - Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit."

5. No doubt, the Section uses the expression "at any time" but it cannot be indefinite. The power has to be exercised within a reasonable time. While construing the expression "at any time", this Court in ***State of Gujarat v. P. Raghav, AIR 1969 Supreme Court 1297***, has stated the law thus :-

"11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

6. Section 18(2) of the Act prescribed a period of 15 days for filing an appeal and Section 18(4) prescribes a period of 30 days for filing a revision before the Commissioner. When the two Sub-Sections prescribed a very short period of 15 and 30 days respectively, it will be unreasonable to hold that the

Financial Commissioner has unlimited power to entertain a revision after a lapse of several years.

7. The test prescribed by this Court in Raghav's case has been ignored by the Financial Commissioner in the present case. His order does not disclose any reason to hold that a period of nearly seven years is reasonable on the facts of the case. Nor has the High Court gone into the question and decided whether the power has been exercised on the facts and circumstances within a reasonable period. Hence we allow the appeal and set aside the order of the High Court...”

9. In the present case, the learned District Judge, Gurdaspur, vide impugned order dated 06.09.1985 (Annexure P-2) has dismissed the petition under Section 15 of the 1951 Act, filed by the petitioners, by observing as under :-

“...And after pondering over the matter I think it cannot be said in this case that the delay in filing the revision petition is not undue, or that it could not be avoided. Rather the delay is certainly undue and had the revision petitioners been not negligent or careless, they could have filed the revision petition much earlier. The Competent Officer in this case took up the question of determining the interest of the custodian in this property as far back as the year 1955-56. The predecessors-in-interest of the revision petitioners claimed that the mortgage in favour of Muslim evacuees had already been redeemed. The Competent Officer accepted this plea but in appeal by the Custodian the Appellate Officer vide judgment dated 1.3.1957 reversed the decision of the Competent Officer and held that the mortgage had not been redeemed. The predecessor-in-interest of the revision petitioners went up in writ petition to the Hon'ble High Court and vide judgment dated 13.3.58 the Hon'ble High Court dismissed the writ petition. That means the petitioners must have known in the year 1958 when the writ petition was dismissed, that they were to deposit the mortgage money and unless the mortgage money was deposited, the land would be sold as was held by the Appellate Officer vide order dated 1.3.1957. However, the revision petitioners or their predecessors-in-interest did not care to deposit

the mortgage money. Even after the land was sold, they did not take action for a number of years. There are judgments of Shri M.S. Ahluwalia, Senior Sub Judge, Gurdaspur, and Shri H.S. Bakhsi, Addl. District Judge, Gurdaspur placed upon the file of the Competent Officer which show that there was previously litigation between the revision petitioners and some of the respondents and it was brought to their notice that the land was sold by the Competent Officer after the decision given by the Hon'ble High Court in writ petition vide judgment dated 13.3.58. That means in the year 1977-78 when there was litigation between the parties, the revision petitioners had come to know of the orders of the competent officer putting the land to sale and confirming the sale in favour of the Custodian. In spite of that, the revision petitioners did not take any action to get the orders set aside and no explanation for the same is forthcoming. In these circumstances there can, I think, be no two opinions that the delay in filing the revision petition is not undue and is not such which could not be avoided.

9. Therefore I think this revision petition is liable to be dismissed solely on the ground that it has been filed after undue delay which could be avoided, had the revision petitioners been not negligent. The same is, therefore, dismissed accordingly. The file be consigned."

10. When the afore-said observations made in the impugned order are tested on the touchstone of the findings rendered by the Hon'ble Apex Court in case of **Loku Ram (supra)**, it would be evident that the petitioners were very well aware of the pending proceedings under the 1951 Act and since they failed to challenge the orders dated 30.06.1960 and 12.10.1960 within a reasonable time, the revision petition filed by the petitioners under Section 15 of the 1951 Act, in the year 1984 i.e. after a period of almost 24 years; clearly suffered from gross delay and laches and the learned District Judge, has rightly dismissed the same vide impugned order dated 06.09.1985 (Annexure P-2).

11. Considering the totality of circumstances, I do not find any

merit in the present writ petition and the same is, accordingly, dismissed.

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

January 14, 2025
gurpreet

(HARSH BUNGER)
JUDGE

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