

2025:PHHC:075816



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

CWP-12236-1993 (O&M)

Date of decision : 11.06.2025

ISHWAR SINGH AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amit Jhanji, Senior Advocate assisted by
Mr. Sangram S. Saron, Advocate
Ms. Eliza Gupta, Advocate,
Mr. Hakikat Grewal, Advocate
and Mr. Sahil Sehrawat, Adocate
for the petitioners.

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J.

CM-9208-2023

This is an application for placing on record Annexures A-1 to A-3.

For the reasons recorded in the application, the same is allowed and Annexures A-1 to A-3 are taken on record subject to all just exceptions.

CWP-12236-1993

Prayer in the present petition, filed under Article 226 of the Constitution of India, is for issuance of a writ in the nature of *certiorari*, for setting aside the order dated 30.04.1992 (Annexure P-11) and order dated 04.02.1993 (Annexure P-13).

2. Briefly, the pleaded case of the petitioners is that one Sh. Gurbaksh Singh Sibia, was a big land owner, who was owning lands in

Village Gobindpura and Kishanpura, Tehsil and District Jind. Petitioners claim that they were old tenants under Sh. Gurbaksh Singh Sibia, on the following lands :-

<i>Petitioner No.1-Ishwar Singh</i>	<i>Comprising</i>	
<i>Area</i>	<i>Rectangle Nos.</i>	<i>Killa Nos.</i>
<i>183 Kanal & 3 Marla</i>	<i>2</i>	<i>9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23</i>
	<i>27</i>	<i>5, 15, 16, 17/1, 24, 25</i>
	<i>28</i>	<i>16, 17, 18, 19, 20, 21, 22, 23, 24, 25</i>
	<i>21</i>	<i>1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11</i>
<i>(all situate in Village Gobindpura)</i>		
<i>Petitioner No.2-Munna Lal</i>		
<i>Area</i>	<i>Rectangle Nos.</i>	<i>Killa Nos.</i>
<i>144 Kanal</i>	<i>33</i>	<i>8, 9, 10, 11, 12/1, 12/2, 13, 14, 15, 16, 17, 18, 19/1, 19/2, 20, 21, 22, 23, 24, 25</i>
<i>(all situate in Village Gobindpura)</i>		
<i>Petitioner No.3-Bakhshish Singh</i>		
<i>Area</i>	<i>Rectangle Nos.</i>	<i>Killa Nos.</i>
<i>66 Kanal</i>	<i>39</i>	<i>13, 14, 15/1, 15/2, 16, 17, 18, 19/1, 19/2, 20, 21/1, 21/2, 22/1, 22/2, 23</i>
<i>(all situate in Village Gobindpura)</i>		
<i>Petitioner No.4-Malvinder Singh</i>		
<i>Area</i>	<i>Rectangle Nos.</i>	<i>Killa Nos.</i>
<i>129 Kanal & 2 Marla</i>	<i>23</i>	<i>1/2, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17</i>
<i>(all situate in Village Gobindpura)</i>		
<i>Petitioner No.5-Gurdev Singh</i>		
<i>Area</i>	<i>Rectangle Nos.</i>	<i>Killa Nos.</i>
<i>120 Kanal</i>	<i>23</i>	<i>1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15.</i>
<i>(all situate in Village Gobindpura)</i>		
<i>Petitioner No.6-Narinder Singh</i>		
<i>Area</i>	<i>Rectangle Nos.</i>	<i>Killa Nos.</i>
<i>64 Kanal</i>	<i>23</i>	<i>18, 19, 20, 21, 22, 23, 24/1, 24/2, and 25</i>
<i>(all situate in Village Gobindpura)</i>		

2.1 Petitioners further claim that in the year 1960, Sh. Gurbaksh Singh Sibia, sold the entire land under the possession of petitioner Nos.2, 4 and 5 namely, Munna Lal, Malvinder Singh and Gurdev Singh, respectively; to the said petitioner Nos.2, 4 and 5 and in respect of remaining petitioner Nos.1, 3 and 6 namely, Ishwar Singh, Bakshish Singh and Narinder Singh, the area under their possession was sold to them for consideration.

2.2 Petitioners also claim that in the year 1972, there arose some dispute between Sh. Gurbaksh Singh Sibia and the petitioners, whereupon the petitioners filed Civil Suits before the Court of Senior Sub Judge, Jind (Haryana) seeking declaration that they are the exclusive owners of the lands under their possession (as noticed above). Petitioners state that on 25.08.1972, the Court of Senior Sub Judge, Jind passed the declaratory decrees in favour of the petitioners, declaring them to be the full and exclusive owners of the lands as mentioned above. It is also claimed that on the basis of the above referred decrees, mutations were sanctioned in favour of petitioners on 26.12.1973 and 27.12.1973.

2.3 It is required to be noticed herein that the petitioners have not placed on record any sale deed in support of their plea that Gurbaksh Singh had sold the land mentioned above in favour of the petitioners. Further, only a true copy of decree dated 25.08.1972 in favour of petitioner No.2- Munna Lal has been attached with the writ petition and no other decree in favour of petitioners No.1, 3 to 6, is forthcoming. Still further, even the so-called mutations claimed to have been sanctioned in favour of the petitioners on 26.12.1973 and 27.12.1973, are also not forthcoming.

2.4 It is also pleaded by the petitioners that in the year 1980, Sh. Gurbaksh Singh Sibia, had bequeathed by way of Will dated

28.02.1980, the remaining holdings of petitioner No.1-Ishwar Singh, petitioner No.3-Bakshish Singh and petitioners No.6-Narinder Singh, to them.

2.5 Petitioners state that as per jamabandi for the year 1983-84, the petitioners are shown as 'full owners in exclusive possession' of the afore-said land. The jamabandi for the year 1983-84, in respect of each of the petitioners have been attached with the writ petition as Annexures P-2 to P-7. It is noticeable that the extent of areas reflected in the names of the petitioners in the afore-said revenue records does not match with the extent of area claimed by the petitioners in the writ petition (as reflected in the table extracted above).

2.6 It appears that the prescribed authority under the Haryana Ceiling on Land Holdings Act, 1972 (in short 'the 1972 Act'), while considering the declaration submitted by Sh. Gurbaksh Singh Sibia, under Section 9 of the 1972 Act, in respect of Village Gobindpura, passed an order dated 04.01.1990 (Annexure P-8), thereby declaring *3917 kanals-8 marlas* of land, out of total land measuring *4488 kanals*, owned by Sh. Gurbaksh Singh Sibia and his wife; to be surplus under the 1972 Act.

2.7 It transpires that the petitioners approached this Court directly by filing a writ petition (*CWP-1663-1990*), seeking quashing of the order dated 04.01.1990 (Annexure P-8) on the plea that while passing the said order, the petitioners had not been afforded any opportunity of hearing. In the said writ petition, the dispossession of the petitioners was stayed.

2.8 Petitioners state that subsequently, learned Collector, Jind passed an order dated 29.10.1991 (Annexure P-10) on the appeal preferred by the legal heirs/successors of Sh. Gurbaksh Singh Sibia, whereby the

order dated 04.01.1990 (Annexure P-8) was set aside and the matter was remanded to the prescribed authority for fresh decision.

2.9 Petitioners contend that even after the matter was remanded to the prescribed authority, no notice was issued to the petitioners and vide order dated 30.04.1992 (Annexure P-11), the prescribed authority determined that *326 kanals-13 marlas* area of Sh. Gurbaksh Singh and his wife was surplus.

2.10 It appears that the afore-said order dated 30.04.1992 (Annexure P-11) was challenged by the State of Haryana by filing an appeal before the learned Collector, Jind, who vide his order dated 04.02.1993 (Annexure P-13) determined that *670 kanals-6 marlas* area of Sh. Gurbaksh Singh and his wife, was surplus.

2.11 In the afore-mentioned circumstances, the petitioners have again filed the present writ petition (***CWP-12236-1993***) seeking setting aside the order dated 30.04.1992 (Annexure P-11) and order dated 04.02.1993 (Annexure P-13) before this Court, again on the plea that while determining the surplus area of Sh. Gurbaksh Singh Sibia and his wife, the petitioners have not been afforded any opportunity although they had acquired the land in question (as mentioned in the table extracted above) from Sh. Gurbaksh Singh Sibia.

3. On the other hand, learned State counsel, while referring to the written statement filed on behalf of respondent-State submits that the big land owners had already challenged the order dated 04.02.1993 (Annexure P-13) by filing an appeal before the learned Commissioner, Hisar Division, Hisar; wherein also the transfer of land made by big landowners after the appointed date under the 1972 Act i.e. 24.01.1971 are under consideration; therefore, the writ petition was not maintainable. It was further submitted

that the petitioners have not exhausted their remedies before the authorities under the 1972 Act and on this ground also, the writ petition was liable to be dismissed. It was also stated that petitioner No.2-Munna Lal had filed a Civil Suit, challenging the order dated 04.02.1993 (Annexure P-13), which has also been impugned in the present writ petition. The suit was stated to be pending and therefore, it is submitted that the writ petition is liable to be dismissed on this score as well.

3.1 On merits, the State has disputed that the petitioners are the old tenants as claimed by them as there is no entry regarding tenancy in favour of the petitioners in the jamabandi for the year 1962-63 and 1966-67. It is claimed that the petitioners are *benami purchasers* and the possession of the land in question was still with the wife of Gurbaksh Singh (since deceased) and his other legal heirs. It is further stated that even as per the report of Tehsildar, Jind, the petitioners were not the residents of Village Gobindpura nor they have their votes in the said village. It is stated that the alleged transfers/transactions claimed by the petitioners are fictitious and the petitioners fall in the category of *benami transferees*. It is stated that no sales were made by Gurbaksh Singh Sibia, to the petitioners in the year 1960; rather petitioner No.2-Munna Lal, had secured a collusive decree dated 25.08.1972, which is subsequent to the appointed date i.e. 24.01.1971 under the 1972 Act. It is further stated that the petitioners have been reflected as owners on the basis of mutation sanctioned in their favour on the basis of a Will dated 28.02.1980, executed by Gurbaksh Singh Sibia. It is contended that mutation No.442 in favour of the petitioner after the appointed date i.e. 24.01.1971 has no effect on the surplus area of the big landowner. It is the stand of the State that all the transactions have been effected by the big landowners i.e. Sh. Gurbaksh Singh Sibia and his wife

in order to save their land from being declared as surplus. It is claimed that the surplus area of Sh. Gurbaksh Singh Sibia and his wife was rightly declared by the authorities and the said orders were in full knowledge of the petitioners; however, they intentionally chose to stay away from the proceedings undertaken by the successors/legal heirs of Sh. Gurbaksh Singh Sibia.

3.2 During the course of hearing of this petition, learned State counsel has also handed over a certified copy of the order dated 06.12.1993 passed by the learned Commissioner, Hisar Division, Hisar; whereby, a revision petition filed by the successors/legal heirs of Sh. Gurbaksh Singh Sibia against the order dated 04.02.1993 (Annexure P-13) has been dismissed and as a consequence thereof, the area to the extent of *670 kanals-6 marlas*, of Gurbaksh Singh Sibia and his wife, which was declared surplus vide order dated 04.02.1993 (Annexure P-13) had been upheld.

4. At this stage, learned counsel appearing for the petitioners has handed over a photocopy of judgment and decree dated 05.05.1997 passed in the suit filed by petitioner No.2-Munna Lal; whereby, the order dated 04.02.1993 (Annexure P-13) has been declared to be null and void and not binding on the rights of plaintiff-Munna Lal (petitioner No.2 in the writ petition). It appears that the afore-said judgment and decree dated 05.05.1997 was upheld in appeal by the District Judge, Jind vide judgment and decree dated 28.08.2000 and even a Regular Second Appeal (*RSA-4063-2000*) was dismissed by this Court on 06.11.2000. Even a further Special Leave Petition (*SLP(C)No.004296/2001*) is stated to have been dismissed on 23.03.2001.

5. Heard.

6. From the perusal of the paper-book and other documents handed over during the course of the hearing, it is noticed that on one hand, the order dated 04.02.1993 (Annexure P-13) was challenged by the successors/legal heirs of the big landowners Gurbaksh Singh Sibia, before the learned Commissioner, which was dismissed way back on 06.12.1993 and thereby, affirming the declaration of *670 kanals-6 marlas* area of Gurbaksh Singh Sibia and his wife as surplus. Technically, the order dated 04.02.1993 (Annexure P-13) stood merged in the Commissioner's order dated 06.12.1993; however, it appears that said fact was never brought to the notice of the Civil Court by the State authorities. It is interesting to notice that petitioner No.2 never impleaded the big landowner Gurbaksh Singh Sibia or his wife as a party respondent in the civil suit and got a decree dated 05.05.1997 from the Civil Court, declaring the order dated 04.02.1993 (Annexure P-13) to be null and void qua petitioner No.2-Munna Lal, despite the fact that the order dated 04.02.1993 (Annexure P-13) stood merged in the Commissioner's order dated 06.12.1993.

7. Another fact, which needs to be noticed is that when the matter had been listed for hearing before this Court on 15.04.2024, a statement was made on behalf of the petitioners to implead the necessary parties; whereupon, an application (***CM-7282-CWP-2024 in CWP-12236-1993***) was filed for impleading the successors of Sh. Gurbaksh Singh Sibia, as respondents No.4 to 8 in the present writ petition, however, the said application was withdrawn on 14.10.2024 and another application bearing ***CM-15265-2024*** was filed for impleading the successors of Sh. Gurbaksh Singh Sibia, as respondents No.4 to 9 in the present writ petition.

8. In view of the nature of order being passed, I deem not deem it appropriate to implead successors of big landowner(s)-Gurbaksh Singh Sibia and his wife i.e. proposed respondents No.4 to 9 as party respondents.

9. Evidently, the petitioners herein, despite being aware of the proceedings pending before the authorities under the 1972 Act, in respect of declaration of surplus area of Sh. Gurbaksh Singh Sibia and his wife; have chosen not to seek their impleadment in those proceedings so as to put forth their claims (if any), on the basis of Civil Court decree(s), sale deeds, Will etc. Rather they have conveniently chosen to approach this Court directly to challenge orders passed by the prescribed authority whereby the surplus area of Sh. Gurbaksh Singh Sibia and his wife, was initially determined i.e. order dated 04.01.1990 passed by the prescribed authority under the 1972 Act by way of filing **CWP-1663-1990** and another order dated 30.04.1992 passed by the prescribed authority and also the order dated 04.02.1993 passed by the learned Collector, Jind; by way of filing **CWP-12236-1993**.

9.1 Further, although the matter(s) has/have been pending before this Court since 1990; however, in neither of the writ petitions referred above, the big land owners and/or their legal heirs have been impleaded as parties. It is only on 15.04.2024 that a statement was made before this Court by the counsel representing the petitioners that necessary parties are to be impleaded and thereafter, an application bearing **CM-7282-CWP-2024** in **CWP-12236-1993** was filed, however, the same was later withdrawn on 14.10.2024 and another application bearing **CM-15265-CWP-2024** was filed for seeking impleadment of necessary parties.

9.2 Apparently, during the pendency of the afore-said writ petitions, the big land owners and/or their legal heirs continued to pursue

their cases before the authorities under the 1972 Act and initially vide order dated 04.01.1990 passed by the prescribed authority, an area measuring 3917 kanals-8 marlas of the big landowners was declared as surplus. Subsequently, on an appeal being filed by the big landowners, the learned Collector, Jind vide order dated 29.10.1991 set aside the order dated 04.01.1990 and remanded the matter back to the prescribed authority for re-determination of surplus area. On remand, the prescribed authority vide order dated 30.04.1992 declared only 326 kanals-13 marlas area to be surplus by considering the transfer of land by the big landowners before 23.12.1972 as *bona fide* transfers.

9.3 It is a matter of record that the State of Haryana challenged the order dated 30.04.1992 by filing an appeal before the learned Collector, Jind, who vide its order dated 04.02.1993 found that certain transfers of land executed by big landowners were not *bona fide* and accordingly, declared an area of 670 kanals-06 marlas to be surplus in the hands of the big landowners.

9.4 It is again a matter of record that the successors/legal heirs of big landowner had challenged the order dated 04.02.1993 by filing a revision before the learned Commissioner, Hisar Division, Hisar, which was dismissed vide order dated 06.12.1993, a copy whereof, has been supplied only during the course of hearing.

9.5 Neither the petitioner nor the learned State counsel have been able to disclose before this Court as to whether the above-said order dated 06.12.1993 was subjected to any further appeal/revision and/or whether any other litigation at the instance of big landowners and/or their legal heirs was initiated/pending or decided, which may have affected the final determination of surplus area in the hands of big landowners.

9.6 Learned counsel for the petitioners have also very conveniently handed over a copy of the judgment and decree dated 05.05.1997 passed in a Civil Suit filed by petitioner No.2-Munna Lal, whereby the order dated 04.02.1993 (which has been challenged in ***CWP-12236-1993***) has been declared to be null and void and not binding upon the rights of petitioner No.2-Munna Lal. Other copies of judgment and decree dated 28.08.2000 passed by the learned District Judge, Jind and also judgment dated 06.11.2000 passed in ***RSA-4063-2000*** and also the status of one ***SLP(C) No.004296/2001***, stated to be dismissed on 23.03.2001, have also been handed over in Court.

9.7 Apparently, the afore-said documents have been in existence and in the knowledge of the petitioners for the last more than 20 years; however, the same have not been placed on record of the afore-said writ petitions by filing any application, for obvious reasons.

9.8 *Prima-facie*, the petitioners appeared to be acting as stooge in the hands of the big landowners and/or their legal heirs so as to save the land from being declared surplus. The connivance between big landowners and petitioners is further corroborated from the fact that on one hand, the petitioners claimed that Gurbaksh Singh Sibia, and his wife had sold the land to them in the year 1960 and on the other hand, it is claimed that Gurbaksh Singh Sibia had executed a Will dated 28.02.1980 in favour of the petitioners, thereby bequeathing the lands in possession of the petitioners, to them.

9.9 It is also interesting to note that even the state authorities have not brought to the notice of this Court as regards the Civil Court judgment and decree dated 05.05.1997, which was further affirmed by the Appellate Authority as well as this Court vide judgment dated 06.11.2000 passed in

RSA-4063-2000, against which even the SLP is stated to have been dismissed on 23.03.2001.

10. Concededly, the order dated 04.01.1990 impugned in ***CWP-1663-1990*** already stood set aside by the learned Collector, Jind vide order dated 29.10.1991; therefore, in essence ***CWP-1663-1990*** has been rendered infructuous.

10.1 That apart, the order dated 30.04.1992 (Annexure P-11) and order dated 04.02.1993 (Annexure P-13) as impugned in ***CWP-12236-1993*** stood merged into an order dated 06.12.1993 passed by the learned Commissioner, Hisar, which has not been challenged before this Court, either by seeking amendment of the writ petition (***CWP-12236-1993***) or by filing a separate writ petition.

11. Considering the totality of circumstances, I am of the considered view that the matter in hand requires to be looked into by a Board/Bench of three learned Financial Commissioner(s), which shall be constituted by the State of Haryana, to examine the case in totality so as to see as to whether the determination of surplus area of the big landowners and/or their legal heirs has been dealt with in accordance with the provisions of the 1972 Act. The Bench of learned Financial Commissioners shall also consider the effect of Civil Court judgment and decree dated 05.05.1997, which was further affirmed by the Appellate Authority as well as this Court vide judgment dated 06.11.2000 passed in ***RSA-4063-2000***, against which even the SLP is stated to have been dismissed on 23.03.2001, on the surplus area determination. In case, the Bench of learned Financial Commissioners comes to the conclusion that the proceedings have not been carried out in accordance with the provisions of the 1972 Act and/or that the surplus area determination of the big landowners is affected by any

transaction (sale/transfer/Will/Civil Court decree etc.) then appropriate orders be passed, after affording due opportunity of hearing to the big landowners/their legal heirs and/or any other necessary party (if any, including the petitioners herein).

- 12. Let the afore-said exercise be carried out within a period of nine months from the date of receipt of certified copy of this order.
- 13. The writ petition stands disposed of accordingly.
- 14. A copy of this order be supplied to learned State counsel for onward transmission and necessary compliance thereof.
- 15. All pending applications (if any) shall also stand closed.

June 11, 2025	(HARSH BUNGER)
gurpreet	JUDGE
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No