



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(201)

RSA-2656-1998 (O&M)
Reserved on:- 08.05.2026
Pronounced on: 15.05.2026
Uploaded on: 15.05.2026

THE STATE OF HARYANA AND OTHERS

....Appellants

Vs

JAGJEET SINGH AND OTHERS

....Respondents

CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Ved Prakash, Senior DAG, Haryana.

Mr. Akshay Jindal, Senior Advocate with
Mr. Tushar Kush, Advocate and
Ms. Amyia Malhotra, Advocate
for the respondents.

VIRINDER AGGARWAL, J. (Oral)

1. The present Regular Second Appeal has been filed by the appellants/defendants challenging the judgment and decree dated 17.04.1998, whereby the appeal preferred by the respondent/plaintiff—Jagjeet Singh against the judgment and decree dated 23.11.1993 passed by the learned Trial Court was allowed, and consequently, the suit of the respondent/plaintiff was decreed.

2. Briefly stated, the respondent/plaintiff instituted a suit for declaration claiming ownership and possession over the suit land, as detailed in the head note of the plaint, while assailing the allotment order dated 11.04.1988 as illegal, null and void. The plaintiffs' case was founded on the assertion that one Har Kaur was the owner in possession of the suit land, and that the plaintiff had acquired rights therein on the basis of a civil court decree dated 22.07.1983, pursuant to which mutation No. 2350 was also sanctioned

in his favour. It was further pleaded that surplus proceedings were initiated against Har Kaur under the relevant provisions of the law. In the said proceedings, land owned by Har Kaur was declared surplus vide order dated 18.07.1984. It was asserted that while the land situated in Village Ram Nagar was declared surplus, the remaining land was retained by Har Kaur as reserved area. However, despite the aforesaid factual and legal position, the suit land was allotted to third parties vide order dated 11.04.1988, in complete violation of due process and without adherence to the prescribed legal procedure, as according to the plaintiff, the suit land did not fall within the surplus category. The plaintiff further averred that no notice whatsoever was issued to him prior to passing of the order dated 18.07.1984 declaring the land surplus and the subsequent order dated 11.04.1988 regarding its allotment. It was also pleaded that the plaintiff was recorded as owner in possession of the suit land to the knowledge of the defendants. It was contended that Har Kaur had no authority or competence under the provisions of the Haryana Ceiling on Land Holdings Act to declare or render the suit land surplus, particularly when she was not the owner in possession thereof at the relevant time. On these premises, the suit was filed. The suit was contested by the defendants. It was pleaded that Har Kaur was a big landowner under the Punjab Law as per Collector's order dated 24.04.1962, and that land measuring 156.24 acres, including 38 kanals 8 marlas comprising the suit land, had already been declared surplus. It was further pleaded that the land declared surplus vide order dated 24.04.1962 had vested in the State w.e.f. 24.01.1971, and therefore the State had become owner thereof. It was also the case of the defendants that out of the suit land, an area measuring 38 kanals 8 marlas comprised in

Rectangle No. 89, Killa Nos. 12 min (1-10), 13 (8-0), 18 (9-4), 19 (8-0), 20/1 (7-7) and 22 (4-7), was validly declared surplus and thereafter allotted to eligible persons in accordance with law. It was contended that the civil court decree dated 22.07.1983 had no effect on the land already declared surplus and vested in the State. The validity of the impugned order dated 11.04.1988 was defended on the ground that the same was legal, valid and binding upon the rights of the plaintiff. Due notice had been served upon all concerned persons and Mushtri Munadi was duly effected vide Rapat No. 316 dated 30.03.1988. It was also asserted that Natha Singh, father of the plaintiff (who was then a minor), was present at the time of passing of the relevant orders. Defendant Nos. 4 and 5 also contested the suit, claiming that the land had been validly allotted to them, and that the plaintiff was neither the owner nor in possession of the suit land. It was reiterated that the land had been rightly declared surplus and thereafter lawfully allotted to them vide order dated 11.04.1988. Replication was filed by the plaintiff controverting the pleas raised in the written statement. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues:

- “1. Whether the order dated 11-4-1988 passed by the Allotment. Authority is null and void and is liable to be set aside on the grounds mentioned in the Plaint? OPD.*
- 2. Whether the plaintiff has no locus standi to file the present suit? OPD.*
- 3. Whether the plaintiff has cause of action to file the present suit? OPD,*
- 4 Whether the suit is bad for want of notice u/s 80 COP? OPD.*
- 5. Whether the civil court has no jurisdiction to try the present suit? OPD.*

6. *Whether the suit is not maintainable in the present form? OPD.*

7. *Whether the suit is time barred? OPD.*

8. *Whether the suit is bad for mis joinder and non-joinder of necessary parties? OPD.*

9. *Relief."*

3. After a full-fledged contest, the learned Sub Judge, 1st Class, Dabwali, vide judgment and decree dated 23.11.1993, dismissed the suit. The learned Trial Court recorded a finding that Natha Singh, father of the plaintiff, was present at the time of passing of orders Ex. P-3 and P-4 in the capacity of power of attorney holder of Har Kaur. On that basis, it was held that the plea of non-service of notice upon the plaintiff was not credible. The Trial Court further observed that general proclamation (mushtri munadi) had also been duly effected, as reflected in Rapat No. 316 dated 30.03.1988, and on the strength of the said evidence, the suit was dismissed. Aggrieved by the said judgment and decree, the respondent/plaintiff preferred an appeal. The learned First Appellate Court, vide judgment and decree dated 17.04.1998, allowed the appeal and reversed the findings recorded by the Trial Court. The First Appellate Court returned a categorical finding that no valid notice had been served upon the plaintiff prior to the passing of the orders dated 18.07.1984 and 11.04.1988. It was further held that the orders Ex. P-3 and P-4 were liable to be set aside as the same had been passed in violation of mandatory provisions of law. The First Appellate Court also concluded that the impugned orders were vitiated for non-compliance of Section 8(3) of the Haryana Ceiling on Land Holdings Act, 1972. Challenging the judgment and decree passed by the First Appellate Court, the present Regular Second Appeal has

been preferred, which was admitted vide order dated 11.05.1999. The respondent/plaintiff has appeared through counsel.

4. I have heard counsel for the parties and have gone through the record carefully.

5. Learned State counsel has contended that the learned First Appellate Court has failed to properly appreciate the pleadings as well as the evidence available on record and has erroneously reversed the well-reasoned judgment of the learned Trial Court on the basis of conjectures, surmises, and unwarranted assumptions. It is submitted that the findings recorded by the First Appellate Court are based on flimsy and unreliable grounds and are not supported by the material on record. It is further contended that the learned First Appellate Court has failed to appreciate the crucial fact that the respondent/plaintiff was a minor at the relevant time and that his guardian/father, Natha Singh, was present at the time of passing of both the orders Ex. P-3 and Ex. P-4. According to the learned State counsel, the presence of Natha Singh at the relevant time is sufficient compliance with the requirement of notice and opportunity, and therefore, the finding recorded by the First Appellate Court regarding absence of notice is factually and legally unsustainable. It is also urged that there has been no violation of the provisions of Section 8(3) of the Haryana Ceiling on Land Holdings Act, 1972, and consequently, the findings returned by the First Appellate Court are liable to be set aside and the appeal deserves to be allowed.

6. Per contra, learned counsel for the respondent/plaintiff has supported the judgment and decree passed by the First Appellate Court and contended that the findings recorded therein are well-reasoned and based on

proper appreciation of evidence. It is submitted that there is no material on record to show that any valid notice was ever served upon the respondent/plaintiff prior to the passing of the impugned orders Ex. P-3 and Ex. P-4. It is further submitted that the presence of Natha Singh, father of the plaintiff, cannot be construed as compliance of statutory requirement of notice, as he was present in a different capacity, namely, as general attorney of Har Kaur, and not as guardian of the plaintiff in the proceedings in question. It is also contended that before passing the impugned orders, it was mandatory for the competent authority to issue notice to the respondent/plaintiff and afford him an opportunity of hearing in accordance with law. It is further argued that even at the stage of appropriation, the land already alienated or transferred by Har Kaur ought to have been excluded, and in case the remaining land in her hands was found insufficient to meet the ceiling limit, then the transferred land should have been adjusted on a pro-rata basis, which has not been done in the present case. On these premises, it is contended that the findings recorded by the learned First Appellate Court are perfectly legal and justified and do not call for any interference by this Court in the present appeal.

7. In the present case, it is an admitted position that the suit land stood recorded in the name of and in possession of the respondent/plaintiff at the time of passing of the impugned orders. It is further not in dispute that mutation regarding ownership in favour of the plaintiff had been duly sanctioned and reflected in the revenue record. In such circumstances, the plaintiff, being an ostensible owner/recorded transferee in possession, was clearly an interested person whose rights were likely to be adversely affected

in the proceedings for declaration of surplus area. In view of the settled legal position, such a person is required to be associated in the proceedings and afforded an opportunity of hearing before any adverse order affecting his rights is passed. In this regard, reliance can be placed upon the judgment of the Hon'ble Full Bench of this Court in *Harnek Singh and another vs. State of Punjab and others*, 1972 PLR 127, wherein the following question was considered: "Where a transfer is made by a landowner after August 21, 1956, is the transferee an interested person to whom a notice must be given before declaring the surplus area of the transferor under the Pepsu Tenancy and Agricultural Lands Act, 1955?" The Full Bench answered the reference in the affirmative and held that "where a transfer is made by a landowner after August 15, 1956, the transferee is a person interested in participating in the proceedings for declaration of surplus area, and he must be given an opportunity of being heard so as to avoid prejudice to his rights before declaring the surplus area of the transferor under the Act." Applying the aforesaid principle to the facts of the present case, it is evident that the respondent/plaintiff, being a recorded owner/transferee in possession, was entitled to notice and opportunity of hearing before passing of the impugned orders declaring the land surplus.

8. In the present case as well, since the respondent/plaintiff was a transferee from Har Kaur prior to the declaration of surplus area in her hands vide order dated 18.07.1984, it was incumbent upon the competent authority to issue notice to the respondent/plaintiff and afford him an opportunity of hearing, so as to avoid any prejudice to his rights. The requirement of notice to such a transferee has been consistently recognized and reiterated by this Court

in *Balwant Singh vs. State of Haryana*, 1997(2) PLJ 193, *Mange Ram vs. Dhan Singh*, 1992 PLJ 87, and *Gulzari Begum (since deceased) through LRs vs. Liakat Ali Khan and others*, 2026 NCPHHC 53521.

9. In the present matter, it is not disputed that the father of the respondent/plaintiff was present at the time of passing of both the impugned orders. However, his presence at the time of passing of order dated 18.07.1984 (Ex. P-3), whereby the land of Har Kaur was declared surplus, was in the capacity of General Power of Attorney of Har Kaur. Similarly, though his presence is reflected in the order dated 11.04.1988 (Ex. P-4) in the capacity of father of Jagjeet Singh, such presence cannot be construed as compliance of the mandatory requirement of service of notice upon the actual transferee/recorded owner in possession, namely the respondent/plaintiff. Significantly, even in Ex. P-3, there is a categorical reference that a part of the land had already been transferred by Har Kaur to Jagjeet Singh. Despite such admission on record, no notice was ever issued or served upon the respondent/plaintiff before passing of the order dated 18.07.1984. In these circumstances, the order dated 18.07.1984 cannot be sustained as it stands vitiated for non-compliance of mandatory provisions of law as well as principles of natural justice. Once the foundational order Ex. P-3 itself is found to be unsustainable, the subsequent order dated 11.04.1988 (Ex. P-4), which is consequential and based upon Ex. P-3, would also fall to the ground. Further, the learned First Appellate Court has rightly placed reliance upon Section 8(3) of the Haryana Ceiling on Land Holdings Act, 1972, which mandates adherence to prescribed procedure and observance of principles of natural justice before declaring surplus area.

“8(3) If any person transfers or disposes of any land after the appointed day in contravention of the provisions of sub-section (1), the land so transferred or disposed of shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer is equal to the surplus area so calculated the entire area left with him shall be deemed to be the surplus area. If the area left with him is less than the surplus area so calculated the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area. If there is more than one transferees the deficiency of the surplus area shall be made up from each of the transferees in the proportion to the land transferred or disposed of to them.”

10. As per the said provision, the surplus area is required to be determined strictly in accordance with the prescribed statutory scheme. The permissible area is to be first ascertained, and thereafter the surplus area of the landowner is to be worked out. In the first instance, the area actually remaining in the hands of the big landowner is to be taken into consideration for the purpose of appropriation towards surplus pool. If the area available in the hands of the landowner is equal to the surplus area determined, then the entire such area is liable to be declared surplus. However, if the area available in the hands of the landowner is less than the surplus area so assessed, then the entire land in his/her possession is to be taken as surplus, and the shortfall, if any, is required to be made good from the land already transferred by the landowner after the appointed day. The learned First Appellate Court has, thus, rightly held that the aforesaid statutory mandate lays down a clear and obligatory procedure to be followed by the competent authority while dealing with land transferred by a big landowner after the appointed day. The

provision is mandatory in nature and requires strict compliance, ensuring that transferred land is appropriately taken into account for the purpose of surplus determination in accordance with law.

11. In the present case, the allotment authority has failed to take into consideration the mandatory requirements of Section 8(3) of the Haryana Ceiling on Land Holdings Act, 1972 while declaring the land of Har Kaur as surplus. The statutory procedure, as noticed hereinabove, has not been followed in its true letter and spirit, resulting in material illegality in the passing of the impugned orders.

12. So far as the question of limitation is concerned, it is noticed that the respondent/plaintiff has challenged the orders dated 18.07.1984 and 11.04.1988 by way of the present suit, which was instituted on 12.04.1988. The plaintiff has specifically pleaded in paragraph No. 9 of the plaint that the cause of action accrued to him on 11.04.1988, when he first came to know about the impugned orders at the time when the defendants allegedly threatened him.

13. In the facts of the present case, it is evident that no notice was ever served upon the plaintiff prior to the passing of the order dated 18.07.1984, and consequently, no opportunity of hearing was afforded to him at that stage. It is further evident that at the time of passing of the order dated 18.07.1984, no representative of the plaintiff was present. As regards the order dated 11.04.1988, though the father of the plaintiff was present, his presence, as noticed above, cannot be construed as valid service upon the plaintiff in accordance with law. In these circumstances, the cause of action, as pleaded and established on record, cannot be said to have arisen prior to 11.04.1988.

The suit having been instituted on 12.04.1988, is thus clearly within the prescribed period of limitation, both with respect to the date of knowledge of the order dated 18.07.1984 as well as the passing of the order dated 11.04.1988. Accordingly, the suit is held to be within limitation.

14. In view of the above discussion and finding no merit in the appeal preferred by the appellants/State, the same is hereby **dismissed**. However, it is made clear that the appellants/State shall be at liberty to initiate fresh proceedings strictly in accordance with law, by commencing from the stage of issuance of notice to all interested and affected persons, for the purpose of determining surplus area in respect of the land of Har Kaur.

15. Pending application, if any, shall stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

15.05.2026
kv

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