

Amended Cwp No.9201 of 1994 Vs. State of Punjab and Others

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Court : Punjab and Haryana

Decided On : Nov-29-2012

Appellant : Amended Cwp No.9201 of 1994

Respondent : State of Punjab and Others

Judgement :

CWP No.9201 of 1994 -1- *** IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Amended CWP No.9201 of 1994 Date of decision:

29. 11.2012 Gurbax SinghPetitioner Versus State of Punjab and othersRespondents CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA Present: Mr. Naresh Prabhakar, Advocate for the petitioner. Ms. Anu Pal, Assistant Advocate General, Punjab for respondents No.1 to 3. G.S.Sandhawalia J.(Oral) 1. The present amended writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order of allotment dated 3.3.1994 (Annexure P-5) in favour of respondent no.4 passed by respondent no.3 -Tehsildar Sales, Ludhiana at the instance of respondent no.2 and in the compliance of the order dated 25.3.1992 passed by respondent no.1-Financial Commissioner (Revenue), Punjab (impugned order in Civil Writ Petition No.1717 of 1994).

2. The pleaded case of the petitioner is that he being a displaced person was permanently transferred the land measuring 8 kanals in village Chuharwala, Hadbast No.74, District Ludhiana in Khasra No.13//7 under The Package Deal

Properties Disposal Act, 1976 and the rules made thereunder. The petitioner had been in possession of the said land for the last more than 15 years and the said land was transferred in the name of CWP No.9201 of 1994 -2- *** petitioner on 10.12.1991 for ` 6600/-. The petitioner had been paying the price of the land in installments as per the Government policy. A certificate was duly issued by the Tehsildar (Sales), Mehal Kalan, District Ludhiana and the petitioner had been regularly paying the installments of the price of the land measuring 8 kanals in Khasra No.13//7. A copy of the challan form No.32-A indicating the deposit of installments of price of the said land was appended as Annexure P-2. It has been further pleaded that the petitioner was in actual physical possession of the land till date and the entire revenue record showed the possession of the petitioner. However, the mutation in his favour had not been entered by the revenue authorities. Copies of the Jamabandi for the year 1989-90 and Khasra Girdawaries for the year 1990 to 1994 showing the possession of the petitioner were appended as Annexure P-3 and Annexure P-4 respectively.

3. The petitioner was informed in the second week of May, 1994 that the land in question had been allotted to one Smt. Dyalo vide Parchi allotment dated 3.3.1994 on the direction of the Deputy Commissioner-cum- Chief Sales Commissioner, Ludhiana in compliance of the order dated 25.3.1992 passed by the Financial Commissioner (Revenue), Punjab. The Financial Commissioner (Revenue) had ordered that Smt. Dyalo should be allotted some land in alternative of the land in possession of Smt. Dyalo which was allotted to her in the year 1987-88. Smt. Dyalo had filed Civil Writ Petition against the order dated 25.3.1992 in this Court which was pending. The petitioner was never informed that the land has been transferred to some other person. The petitioner made enquiry and found that Civil Writ Petition No.1717 of 1994 titled Smt. Dyalo Vs. State of Punjab filed by Smt. Dyalo was admitted and status quo had been ordered. The allotment Parchi of Smt. Dyalo was accordingly challenged on the ground that no person could be deprived of his property without any authority or law.

4. The State in its written statement filed by Tehsildar Mehal-Kalan (Sales), Ludhiana on behalf of respondents no.1 to 3 took the defence that it was the duty of the petitioner to get the mutation entered and sanctioned in his favour on the

basis of the allotment of the land but the petitioner failed to do so and the name of the Central Government still stood against the land in question, therefore, the land in question was wrongly allotted to respondent no.4. The petitioner had not made any effort to get the allotment in favour of respondent no.4 cancelled but filed the writ petition. The land could not be mutated in favour of the petitioner due to his lapse and thus, the allotment was made in favour of respondent no.4 Smt. Dyalo. Pendency of the writ petition was admitted and it was prayed that the writ petition may be dismissed.

5. The writ petition was ordered to be heard along with Civil Writ Petition No.1717 of 1994. The records of the Civil Writ Petition No.1717 of 1994 filed by Smt. Dyalo were summoned and from perusal of the same, it transpired that the said writ petition has been allowed in favour of Smt. Dyalo on 14.9.2005 and the order of the respondent no.1 dated 25.3.1992 had been set aside.

6. The grouse of the petitioner is very simple that he had filed an application for allotment of land which was duly allotted to him on 10.12.1991 for a sum of ` 6600/- and the order dated 12.12.1991 of the CWP No.9201 of 1994 -4- *** Tehsildar Mehal-Kalan (Sales)-cum-Managing Officer, Ludhiana has been appended as Annexure P-1 and the State is not denying the allotment and only taking a plea that since the mutation had not been entered in favour of the petitioner, therefore, alternative land measuring 79 kanals 19 marlas was allotted to Smt. Dyalo by the Tehsildar on 3.3.1994 (Annexure P-5) and out of this allotment land measuring 8 kanals falling in Khasra No.13//7 also found mentioned which had already been allotted to the petitioner. A perusal of Civil Writ Petition No.1717 of 1994 goes on to show that Smt. Dyalo was aggrieved against the order dated 25.3.1992 passed by the Financial Commissioner (Appeals), Punjab wherein the allotment in her favour had been cancelled and it had been directed that alternative land be allotted to her in lieu of the land measuring 79 kanals 19 marlas situated in village Razapur, Tehsil and District Ludhiana. The said order was quashed by this Court vide order dated 14.9.2005 passed in Civil Writ Petition No.1717 of 1994 by holding that the said petitioners were entitled to allotment of land and no fault could be found in allotment that piece of land to them since they have been in possession of the land for the last 15 years and made improvements

over the same. The land was never transferred to the Central Seed Farm at whose instance allotment of land to the said petitioners was cancelled. The relevant portion of the said judgment reads as under:- In view of facts stated above, it has become clear that the Central Seed Farm has no concern with the land, in dispute. It was property of the State Government and this Court feels that once, it is an admitted fact that both the petitioners were entitled CWP No.9201 of 1994 -5- *** to the allotment of land, no fault can be found in allotting this piece of land to them. Under these circumstances, respondent no.1 was not justified to say that they be allotted another piece of land in District Ludhiana. It is not in dispute that both the petitioners, named above, are in possession of the land since for the last more than 15 years and as per their version, they had made improvements over the same. It is not proved on record that the land was never transferred to Central Seed Farm, at whose instance, allotment of land to the petitioners, was cancelled. State Government has no objection to the allotment made. Under these circumstances, this Court feels that they are entitled to retain the land, which was allotted to them. Accordingly, it is held that the order passed by the Chief Settlement Commissioner, cancelling their allotment and also order of the Financial Commissioner to the extent, vide which it was ordered that they be allotted alternative piece of land, are liable to be set aside. So far as CWP No.5161 of 1994, filed by Sant Singh is concerned, once this Court has come to a conclusion that the allotment made to Smt. Dyalo and Sham Dass is valid then the order dated Annexure P/4, vide which land, which was under his possession, was allotted to Sham Dass, automatically becomes redundant and ceased to have any effect so far as any rights of Sham Dass, petitioner in CWP No.1894 of 1994 are concerned. In view of reasoning given above, CWP Nos.1717 and CWP No.9201 of 1994 -6- *** 1894 of 1994 filed by Smt. Dyalo and Sham Dass, are allowed, CWP Nos. 3894 and 3895 of 1993, filed by Central Seed Farm, Ladhawal (not represented by the Corporation) are dismissed and CWP No.5161 of 1994 is disposed of as having been become infructuous. September 14,2005 (Jasbir Singh) Judge.

7. Once the said writ petition has been allowed in favour of Smt. Dyalo and the order dated 25.3.1992 passed by the Financial Commissioner (Appeals) directing that alternative land be allotted to Smt. Dyalo was quashed and in pursuance

thereof Parchi Allotment was made in favour of Smt. Dyalo, it is obvious that said Parchi allotment no longer subsists. Even otherwise, the said Parchi allotment of land measuring 8 kanals falling in Khara No.13//7 in village Chuharwala, District Ludhiana could not have been allotted to Smt. Dyalo once it had already been allotted to the petitioner. The said order was passed even without issuing any notice to the petitioner which would violate the principle of audi alteram partem. The State has taken only defence that mutation has not been got sanctioned by the petitioner in his favour which the State had to sanction once the allotment was made to the petitioner. Accordingly, Annexure P-5 whereby land measuring 8 kanals falling in Khasra No.13//7 in village Chuharwala, District Ludhiana had been allotted to Smt. Dyalo is quashed.

7. The writ petition is accordingly allowed in the above terms. 29.11.2012
(G.S.Sandhawalia) Pka JUDGE

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