

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-7386-2006 (O/M)

Reserved on : 20.12.2024

Date of decision : 19.03.2025

Pawan Kumar Singal and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Hemant Bassi, Mr. Deepak Singh Saini, Advocates  
for the petitioners.

Mr. Rajneesh Chadwal, AAG Haryana.

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HARSH BUNGER, J.

1. Petitioners have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 23.04.1999 (Annexure P-9), passed by Sub Divisional Officer-cum-Prescribed Authority, Rewari (in short 'Prescribed Authority under the 1972 Act'), order dated 09.05.2001 (Annexure P-10); passed by learned District Collector, Rewari (in short 'Collector'); order dated 14.07.2005 (Annexure P-11), passed by learned Commissioner, Gurgaon Division, Gurgaon (in short 'Divisional Commissioner') and order dated 30.11.2005 (Annexure P-14), passed by learned Financial Commissioner, Haryana (in short 'Financial Commissioner').

2. Briefly, the land in dispute, situated at village Malpura, District Rewari, was declared surplus area land under the Haryana,

Ceiling on Land Holdings Act, 1972 (in short '1972 Act') and the same was allotted to respondents No. 5 to 7 herein under the provisions of Haryana Utilization of Surplus Area Scheme, 1976 (in short '1976 Scheme') to the following extent :-

<u>Sr. No.</u>	<u>Name of allottee</u>	<u>Land allotted</u>
1.	Ram Mehar	39 Kanal
2.	Badlu Ram	37 Kanal – 18 Marla
3.	Samay Singh	38 Kanal – 13 Marla

2.1 The certificates of allotment in favour of respondents No. 5 to 7 herein have been placed on record as Annexure P-1 to Annexure P-3.

2.2 It appears that the full price of the aforesaid allotted land was paid by the allottees and thereafter mutations No. 1012 to 1014 were sanctioned in favour of the allottees, which have been placed on record Annexure P-4 to Annexure P-6.

2.3 It transpires that the present petitioners purchased the land in dispute, vide sale deeds dated 17.04.1995 and 19.04.1995.

2.4 The Prescribed Authority under the 1972 Act, cancelled the allotment in favour of the original allottees, vide order dated 30.05.1995 (Annexure P-7) and thereafter, the matter was carried on in this Court by filing a writ petition (CWP-12375-1995), which came to be disposed of, vide order dated 25.09.1996 (Annexure P-8), whereby the matter was remanded to the Prescribed Authority under the 1972 Act to pass fresh orders after hearing the original allottees (vendors), vendees as well as representatives of the State.

2.5 Thereafter, the matter was taken up by the Prescribed Authority under the 1972 Act and vide order dated 23.04.1999

(Annexure P-9), the allotments in favour of respondents No. 5 to 7 herein were again cancelled on the ground that the land in question was allotted on 30.03.1995 and the allottees sold the land further to the present petitioners on 17.04.1995, which was in violation of sub-section (5) of Section 15 of 1972 Act.

2.6 Being aggrieved against order dated 23.04.1999 (Annexure P-9), present petitioners preferred an appeal before learned Collector, which was dismissed, vide order dated 09.05.2001 (Annexure P-10).

2.7 Further revision filed by petitioner No. 1 before learned Divisional Commissioner was also dismissed, vide order dated 14.07.2005 (Annexure P-11).

2.8 A further revision (ROR-32-2005/06) was also dismissed by learned Financial Commissioner, vide order dated 30.11.2005 (Annexure P-14). Hence, present writ petition before this Court.

3. Learned counsel for petitioners has primarily raised two submissions; firstly that the allottees had paid full price of the allotted land and, therefore, they had become owners in possession of the allotted land. It is stated that there was no condition neither in the allotment letter nor in the certificate of allotment that allotted land could not be sold for a period of five years. It is submitted that even under the provisions of 1976 Scheme, the only condition was that the allottee was not competent to transfer, sell, lease or mortgage the land allotted to him or transfer his rights thereon in any manner whatsoever to any person till the purchase price and the interest, if any, thereon in respect of such land is paid in full. Accordingly, it is submitted that the allotment in favour of

the original allottees could not have been cancelled in view of sub-section (5) of Section 15 of 1972 Act.

3.1 The second submission raised on behalf of the petitioners is that the petitioners are bonafide purchasers, therefore, their rights are protected under Section 41 of Transfer of Property Act.

3.2. On the other hand, the submissions made on behalf of petitioners are contested by learned State counsel. It is submitted that the land in question was sold to respondents No. 5 to 7 herein under the provisions of 1976 Scheme, framed under the provisions of 1972 Act, which clearly provides that under sub-section (5) of Section 15, the allotted land could not be sold for a period of five years even though the entire sale price has been paid by the allottee. It is submitted that since the allotted land was sold in less than a month from the date of allotment, there was a clear violation of provisions contained in sub-section (5) of Section 15 of 1972 Act and the same has been rightly cancelled. It is further submitted that since 1972 Act is a special act, therefore, the petitioners cannot claim protection under the provisions of Transfer of Property Act, which is a general act. Accordingly, prayer for dismissal of the instant civil writ petition has been made.

4. Heard.

5. There is no dispute that the land in question was allotted to respondents No. 5 to 7 herein, vide certificates of allotment (Annexure P-1 to Annexure P-3), which are dated 30.03.1995. It is also not disputed that respondents No. 5 to 7 herein (allottees) have further sold the allotted land in favour of present petitioners, vide sale deeds

dated 17.04.1995 and 19.04.1995 i.e. within a period of one month from the date of its allotment.

6. Here, it would be apposite to refer to sub-sections (5) and (6) of Section 15 of 1972 Act, which read as under :-

*“15. Disposal of surplus area.*

xxxxx

xxxxx

xxxxx

*5. [On payment of full price or the first instalment thereof, as the case may be, the prescribed authority, where the allottee is not already in possession in the land, shall put him in possession thereof. The allottee shall, however, become the owner of the land on payment of the full price :*

*Provided that the allottee shall not be competent to transfer, sell, lease or mortgage the land allotted to him or any part thereof or transfer his rights, title or interest therein, in any manner whatsoever, to any person for a period of five years from the date of his taking possession in pursuance of the allotment under the scheme framed for utilising the surplus area under this Act, even though the full purchase price has been paid in a lump sum or in instalments along with interest within the aforesaid period.*

*6. Notwithstanding anything contained in sub-section (5) the allottee shall be competent to mortgage or create a charge on the land allotted to him for raising loan from any co-operative society, bank, scheduled bank or any corporation owned or controlled by the Government, for the purpose of making improvements in the land and for other agricultural purposes.]”*

6.1 Evidently, under the proviso to sub-section (5) of Section 15 of 1972 Act, there is a clear bar of alienation of land for a period of five years.

7. Considering the nature of allotment made to the allottees and the terms of allotment under 1976 Scheme framed under the provisions

of 1972 Act, I am of the considered opinion that the original allottee (respondents No. 5 to 7 herein) could not have alienated or transferred the allotted land in favour of present petitioners, therefore, the sales made by respondents No. 5 to 7 herein in favour of present petitioners are clearly hit by proviso to sub-section (5) of Section 15 of 1972 Act. Further, as regards the plea of the petitioners that their rights are protected under Section 41 of Transfer of Property Act is concerned, suffice it to say that Transfer of Property Act is a general act, whereas 1972 Act is a special act, therefore, Section 41 of Transfer of Property Act will have no application and the consequences emanating from violation of sub-section (5) of Section 15 of 1972 Act would prevail, accordingly, it is held that the petitioners are not entitled to protection under Section 41 of Transfer of Property Act.

8. In view of above discussion, there is no merit in the instant civil writ petition.

9. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

10. Pending application(s), if any, shall also stand closed.

(HARSH BUNGER)  
JUDGE

19.03.2025  
sjks

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