
shall mature for consideration in view of para 2(a) of 1993 instructions after completion of 14 years actual sentence including under-trial period and after earning 6 years remissions.

(8) For the reasons given above, this Crl. Misc. petition fails and dismissed.

J.S.T.

Before M.L. Singhal, J.

FAQUIRIYA,—*Petitioner/Defendant*

versus

NOOR DEEN AND OTHERS,—*Respondents*

C.R. No. 3708 of 1998

3rd February, 2000

Punjab Security of Land Tenures Act, 1953—Haryana Ceiling on Land Holdings Act, 1972, as amended by Haryana Act No. 40 of 1976—Cl. 12(3)—Haryana Utilisation of Surplus and other Area Scheme, 1976—Cls. 5 to 7—Code of Civil Procedure, 1908—0.39 Rls. 1 and 2—Surplus land—Respondents 1 to 3 cultivating the land as tenants and in possession since 1963—Government allotting land to the petitioner after following the procedure of allotment under the 1976 Scheme—Respondents not found eligible for allotment—Their request for allotment rejected—Balance of convenience in favour of the petitioner—Order of Appellate Court granting ad interim injunction to respondents set aside.

Held, that respondents 1 to 3 may have *prima facie* case in their favour. There is, however, no balance of convenience in their favour inasmuch as this land was allotted to the petitioner,—*vide* allotment order dated 20th April, 1979. Land was to be allotted only to the eligible persons. Form US-4 had already been allotted to the petitioner. Possession of land measuring 19 K 11 M out of 39K 11 M has already been given to the petitioner. Before utilisation of the surplus land, there was munadi effected in the village.

(Para 12)

Further held, that balance of convenience is in favour of the petitioner. This revision succeeds and is accepted. Order dated 2nd April, 1998 passed by Addl. District Judge, Jagadhri, is set aside and that of Addl. Civil Judge, Sr. Division Jagadhri, dated 31st January, 1996, is

restored, whereby application for *ad interim* injunction had been dismissed and whatever has been said above that is only meant to dispose of the temporary injunction matter. After conclusion of the trial, the Courts below are free to take any view as warranted by the evidence on record and the law applicable thereto.

(Para 14)

S.K. Goyal, Advocate,—*for the petitioner.*

S.R. Kanwar, Advocate for the Haryana State and V.B. Aggarwal,
Advocate,—*for the respondents*

JUDGMENT

M.L. Singhal, J.

(1) This is revision against the order dated 2nd April, 1998 passed by Additional District Judge, Jagadhri, whereby he set aside the order dated 31st January, 1996 passed by Additional Civil Judge, Senior Division, Jagadhri, whereby he had refused to grant temporary injunction to Noor Deen and others plaintiffs restraining defendant No. 1 State of Haryana; defendant No. 2 Sub Divisional Officer (C) Jagadhri as Prescribed Authority under the Haryana Ceiling on Land Holdings Act and defendant No. 3 Naib Tehsildar Agrarian, Jagadhri, from delivering the possession of the land in dispute to Faquiriya defendant No. 4 and one Rulia in execution of the allotment order dated 20th April, 1979 passed by Sub-Divisional Officer (C) Jagadhri (Prescribed Authority) under the Haryana Ceiling on Land Holdings Act regarding land measuring 21 Kanals situated in the revenue estate of villages Bhangera Bhangeri/Bagpat Hadbast No. 9 as per jamabandis for the years 1964-65, 1972-73 and 1992-93, tehsil Chhachhrauli, District Yamuna Nagar in favour of Faquiriya and Rulia.

(2) Noor Deen, Mehar Deen and Umar Deen filed suit for declaration against the State of Haryana and others to the effect that the allotment letter dated 20th April, 1979 passed by SDO (Civil), Jagadhri defendant No. 2 regarding land measuring 21 kanals in favour of Faquiriya and Rulia was illegal, null and void and ineffective and not binding on them as they are in possession since before kharif 1968 and had preferential right of allotment as per utilisation Scheme of surplus land formulated in the year 1976 and for permanent injunction restraining the defendants from interfering in any manner whatsoever in their possession in execution of any order passed by SDO (Civil), Jagadhri, and also restraining defendants 1 to 3 from

delivering possession of the said land to Faquiriya defendant No. 4 and one Rulia on the basis of the said allotment order. It was also prayed by them that defendants 1 to 3 be directed to allot the said land to the plaintiffs in terms of Haryana Ceiling on Land Holdings Act and the Haryana Utilisation of Surplus and other area scheme, 1976 framed by the government. It was alleged in the plaint by the plaintiffs that they have been cultivating the said land as tenants firstly under big landowner Gurdial Singh and after it vested in the State Government, they have been cultivating under the State Govt. Gurdial Singh was a big land-owner owning much property. His property including the land in suit was declared surplus under the Punjab Security of Land Tenures Act, 1953. This land was allotted to them temporarily being tenants thereon. They have been cultivating the said land on 1/3rd batai since 1963. After some time, the suit land was allotted to Faquiriya and Rulia without any notice to them. They filed application dated 24th January, 1995 before SDO (Civil) Jagadhri (Prescribed Authority under the Haryana Ceiling on Land Holdings Act) claiming themselves to be eligible allottees falling in category E of the scheme of allotment of surplus land. Noor Deen etc. challenged the said allotment order saying that the same was passed secretly in their absence and without any notice to them and, therefore, the same was illegal and without jurisdiction. No decision was taken on their application dated 24th January, 1995 by the SDO (Civil), Jagadhri (Prescribed Authority under the Haryana Ceiling on Land Holdings Act). Alongwith the plaint, they prayed for the grant of temporary injunction restraining defendants No. 1 to 3 from delivering possession to Faquiriya and Rulia.

(3) Their prayer for temporary injunction was resisted urging that the land in suit was surplus land, which had vested in the State Government immediately after enforcement of the Haryana Ceiling on Land Holdings Act, 1972 and the same was allotted to Faquiriya,—*vide* allotment order dated 20th April, 1979. Before allotment of the land, munadi was got effected in the village. The said land was to be allotted only to eligible persons. Allotment Form US-4 had already been issued in favour of Faquiriya. Plaintiffs did not make any application for allotment of the suit land nor they were entitled to the allotment of the suit land. Plaintiffs had no right to retain possession of the suit land. Faquiriya was allotted total land measuring 39 kanals 11 marlas, out of which, possession of the land measuring 19K 11M was given at the time of the execution of warrant of possession.

(4) *Vide* order dated 31st January, 1996, Additional Civil Judge, Senior Division, Jagadhri declined plaintiffs prayer to the grant of temporary injunction.

(5) In appeal, Additional District Judge, Jagadhri,—*vide* order dated 2nd April, 1998 granted them temporary injunction restraining the defendants from interfering with their possession till the disposal of the suit.

(6) Faquiriya (defendant 4) has knocked the door of this Court through this revision and has prayed for the vacation of temporary injunction granted to Noor Deen etc. by Additional District Judge, Jagadhri.

(7) I have heard the learned counsel.

(8) Learned counsel for the petitioner's submitted that the land in dispute was owned by one Gurdial Singh, who was a big land owner and under the provisions of Punjab Security of Land Tenures Act, 1953, the same was declared surplus. The Haryana Ceiling on Land Holdings Act was amended in 1976 and Clause 12(3) was added by Haryana Act No. 40 of 1976. Clause 12(3) says that "the area declared surplus or tenant's permissible area under the Punjab Law and the area declared surplus under the Pepsu Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab Law or the Pepsu Law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration." It was submitted that under this provision, land in dispute vested in the State Government. The State Government framed the Haryana Utilisation of Surplus and other Area Scheme, 1976 to allot this land to eligible persons. The procedure for allotment of land to the eligible persons is given under Clause 5 of this Scheme, which reads as under :—

Allotment by eligible persons :

"5. (1) The allotment authority shall display for not less than seven days at his office a list of surplus area and the tenants permissible area deemed to have vested in the State Government under Sub-section (3) of Section 12 and the list of the surplus area acquired from time to time under sub-section (1) of Section 12, in each village. He shall also display a list of the categories of eligible persons who may apply, for allotment. The display of the lists shall be announced by beat of drum in the village and the Patwari shall make an entry to that effect in the daily diary."

(2)	XX	XX
(3)	XX	XX
(4)	XX	XX
(5)	XX	XX

(9) It was submitted that under this scheme, munadi was effected for the allotment of the land in the village and different eligible persons gave applications for the allotment of the land and after scrutiny under Clause 6 of the Scheme and following the procedure of allotment under Clause 7 the land was allotted to the petitioner,—*vide* order dated 20th April, 1979 and US form 4 was issued in his favour. It was submitted that big landowner was in possession of the land during Kharif 1978 and Rabi 1979 when proceedings for the allotment of this land was taken by the authorities and Noor Deen etc. were not in possession of the land as per the entries in the Khasra girdawari for these crops and on 4th January, 1980, Noor Deen etc. got the Khasra-girdawari corrected in their favour. It was submitted that Noor Deen etc. got corrected the khasra-girdawari in their favour in collusion with Gurdial Singh the big landowner. It was submitted that there was no need of giving specific notice to Noor Deen etc. for the allotment of this land. It was submitted that the munadi was effected as per clause 5 of the scheme and when on 18th November, 1983, Faquiriya went to take possession in view of the allotment in his favour, Noor Deen etc. became roitous and the police help was sought and Noor Deen etc. have not allowed the allotment order to take effect. In response to the munadi effected for the allotment of the surplus land in the village, Noor Deen and Umar Deen filed application for allotment of surplus land on 14th July, 1976 and Mehar Deen filed application on 6th July, 1976. It was submitted that they were not allotted land by order dated 2nd April, 1979 as they were not found eligible persons and they were also not in possession of the land in dispute at that time. Noor Deen etc. had every notice of the allotment of the surplus land in 1976. It was submitted that no notice was taken of their application dated 24th January, 1995 when the land had already been allotted to Faqiria.

(10) It was further submitted that Civil Court has no jurisdiction to undo the order dated 20th April, 1979 allotting land to Faquiriya. Civil Court has no jurisdiction to hold that the proceedings for allotment and for delivering possession are illegal, null, void and ineffective. Jurisdiction of the Civil Court is barred under Section 26 of the Haryana Ceiling on Land Holdings Act, 1972 to go into the matter at the authorities have allotted land to Faquiriya under valid proceedings

under the Haryana Utilisation of Surplus and other Area Scheme, 1976 after following procedure. It was further submitted that no notice is required to be served on a person, who claims to be a sitting tenant so far as the provisions of Haryana Utilisation of Surplus and other Area Scheme 1976 are concerned and only the display of surplus area and the display of eligible persons has to be made by beat of drum. It was submitted that no illegality was thus committed in not giving notice to Noor Deen etc. and there was no violation of principles of natural justice when Noor Deen etc. were not in possession of the land when proceedings for allotment were taken. It was further submitted that there will be no irreparable loss and injury to Noor Deen etc. when authorities are delivering possession to Faquiriya in accordance with law. No injunction can be issued to the statutory authorities restraining them from discharging their duties under the statute.

(11) In Jamabandis for the years 1964-65, 1972-73 and 1987-88, Noor Deen etc. are shown as Gair Maurisian under Pardesh Sarkar. It was submitted by the learned counsel for Noor Deen etc. that they were old tenants and they fall under category E of the scheme of the allotment. They had preferential right over the suit land. It was submitted that the order dated 20th April, 1979 allotting surplus land to Faquiriya was void and the allotment order has no existence in the eye of law and there is no limitation for setting aside void order. Void order can be challenged any time. Learned counsel for the petitioners submitted that it was not void order. Noor Deen etc. applied for allotment. No notice of their application was given nor any decision was made by the competent authorities. It was submitted that civil court shall have jurisdiction to decide the legality of such order when such an order was passed without hearing Noor Deen etc. In *State of Haryana and others v. Vinod Kumar and others (1)* it was held that "Civil Court has got jurisdiction to undo the order where the order was passed by the Tribunal of special jurisdiction in violation of the provisions of statute or the principles of natural justice." Learned counsel for the petitioners submitted that from 27th October, 1978 to 26th March, 1979, Noor Deen etc. did not figure in the Khasra-girdawari. Rather Gurdial Singh the big landowner was figuring in Khasra-girdawari and, therefore, the authority was not bound to give notice to Noor Deen etc. It was after the suit land was allotted to Faquiriya that Khasra-girdawari was got corrected by Noor Deen etc. in collusion with Gurdial Singh on 4th January, 1980. It was also submitted that Noor Deen etc. should have gone in appeal or revision. Faquiriya and Rulia were landless persons. Land was allotted to them. They have deposited the consideration. Mutation has also been sanctioned in their favour and

(1) 1986 P.L.J. 161

they are taking possession in due course of law. It was submitted that taking possession through executing allotment order passed by the prescribed authority is not an injury within the meaning of Order 39 CPC and, therefore, no injunction could be granted. In support of this submission, reference was made to *Piarea Lal and another v. Babu Singh and others* (2) and *D.C.M. Ltd. v. The State of Haryana and another* (3). In category E of the scheme, a person who is tenant settled on surplus area by land owner before 1968 is put.

(12) Noor Deen etc. may have *prima facie* case in their favour. There is, however, no balance of convenience in their favour inasmuch as this land was allotted to Faquiriya,—*vide* allotment order dated 20th April, 1979. Land was to be allotted only to the eligible persons. Form US-4 had already been allotted to Faquiriya. Possession of land measuring 19K 11M out of 39K 11M has already been given to Faquiriya. Before utilisation of the surplus land, there was munadi effected in the village. In *Gujjar Singh and others v. Kaur Singh and others* (4), it was held that notice of allotment through munadi to the eligible persons in sufficient notice. Necessary information to the inhabitants of the village if given by beat of drum is sufficient.

(13) Allotment was made to Faquiriya in the year 1979. In the order of allotment, it is mentioned that 105 applications had been received after proclamation and beat of drum. Those applications were got processed through the revenue staff. After those applications were got processed by the revenue staff, allotment were made by the SDO (Civil)/Allotment Authority, Jagadhri.

(14) Looking to the entire pros and cons of the case, I think balance of convenience is in favour of Faquiriya. For the reasons given above, this revision succeeds and is accepted. Order dated 2nd April, 1998 passed by Addl. District Judge, Jagadhri is set aside and that of Addl. Civil Judge, Sr. Divn., Jagadhri dated 31st January, 1996 is restored, whereby application for ad-interim injunction had been dismissed and whatever has been said above that is only meant to dispose of the temporary injunction matter. After conclusion of the trial, the courts below are free to take any view as warranted by the evidence on record and the law applicable thereto.

J.S.T.

(2) 1990 (1) R.L.R. 133

(3) 1985 R.L.R. 505

(4) 1994 P.L.J. 483