

**(2011) 03 P&H CK 0836**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CWP No. 12411 of 1991

Balbir Kaur

APPELLANT

Vs

Financial Commissioner  
(Appeals), Punjab, Chandigarh

RESPONDENT

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**Date of Decision:** March 17, 2011

**Acts Referred:**

- Punjab Package Deal Properties (Disposal) Act, 1976 - Section 15, 16

**Citation:** (2011) 2 ILR (P&H) 15

**Hon'ble Judges:** Hemant Gupta, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

Hemant Gupta, J.

Challenge in the present writ petition to an order passed by the learned Financial Commissioner on 6th June, 1991 (Annexure P. 8), cancelling the allotment of the land measuring 4 kanals of land to the petitioner.

2. The husband of the petitioner died in action during the Indo-Pak War 1971. The petitioner being a war widow was entitled for allotment of the land to the extent of 10 acres in terms of the policy framed by the Rehabilitation Department of the Punjab Government. In terms of the said policy, land measuring 17 kanals 9 marlas including the land comprising in Khasra No. 13//15/1 measuring 4 marlas was allotted to the petitioner by Tehsildar, Sales, Kapurthala, on 1st March, 1983. The petitioner got actual physical possession of the land including the above said land measuring 4 kanals on 25th October, 1983 with the help of the police, after the permission of the District Magistrate, Kapurthala.

3. One Bawa, predecessor-in-interest of respondent Nos. 3 to 8, filed a suit for permanent injunction claiming possession of the said land measuring 4 kanals. The said suit was dismissed on 3rd May, 1984. The appeal filed by Bawa was also

dismissed. As per the facts on record, Bawa, filed an application dated 21st February, 1979 for purchase of the land on the basis of possession. The said application was dismissed by Tehsildar (Sales) on 31st May, 1979. Another application was filed for purchase of the land on the basis of possession, which was dismissed on 23rd June, 1980. Bawa filed an appeal, aggrieved against the allotment of the land to Balbir Kaur, the present petitioner. The Settlement Commissioner, Rehabilitation Department, passed an order on 9th July, 1984, remanding the case to Tehsildar (Sales), to examine the entitlement of Bawa. In pursuance of the said order of Settlement Commissioner, Tehsildar (Sales), passed an order on 9th June, 1988, holding that the previous application for purchase stands dismissed on 31st May, 1979 and 23rd June, 1980, therefore, Bawa is not entitled to purchase as Balbir Kaur is in possession of the land sought to be purchased.

4. The legal heirs of Bawa Singh, not only filed appeal against the said order passed by the Tehsildar (Sales) on 9th June, 1988, but also against an order declining purchase of the land,--vide order dated 23rd June, 1980 along with an application for condonation of delay of almost 8 years. The Sales Commissioner,--vide order dated 14th October, 1988, Annexure P. 4, found that the limitation for filing of appeal against the order dated 23rd June, 1980 would commence on 4th July, 1980, when the certified copy of the order was supplied. The appeal was accepted and the order dated 23rd June, 1980 was set aside. It was ordered that the petitioner be given land in proportionate to her share after cancellation of the land allotted by following the due and proper procedure. Vide a separate order of same date i.e. 14th October, 1988, the allotment of the land in favour of the petitioner,--vide order dated 1st March, 1983 and the challenge to which was declined on 9th June, 1988, was also accepted. The allotment of the land in favour of the petitioner was cancelled and it was directed to be regularised through the Court of competent jurisdiction, after following the proper procedure.

5. Two appeals were filed by the petitioner against the orders Annexures P. 4 and P.5. Such appeals were accepted by the Chief Sales Commissioner, Kapurthala,--vide order dated 31st January, 1989, Annexure P.6. It was found that Bawa has filed a civil suit for permanent injunction and the report of delivery of possession was in the knowledge of Bawa Singh in the said suit. But he has not preferred any appeal within the period of limitation. It was found that Bawa challenged the order dated 23rd June, 1980 before the Sales Commissioner only when he was not able to get relief from the Civil Court. It was found that there was no valid application of Bawa pending before the competent authority for transfer of suit land on the basis of possession. Consequently, the appeal against the orders dated 23rd June, 1980 and 9th June, 1988 was accepted and the allotment of the land in favour of the petitioner was upheld. The challenge to the said orders before the Commissioner, Jalandhar Division, Jalandhar was dismissed on 17th July, 1990. However, the learned Financial Commissioner accepted the revision u/s 15 of the Punjab Package Deal Properties (Disposal) Act, 1976 (for short "the Act"), exercising the powers of the State

Government.

6. The learned Financial Commissioner found that the application of Bawa for purchase of land was wrongly rejected on 31st May, 1979 on the basis of the wrong and incorrect report of Patwari that Bawa has purchased this area and the amount deposited. Again the application for purchase was rejected by Naib Tehsildar on 23rd June, 1980, on the basis of report of the Patwari, that the land has been allotted to one Lachhman Dass. therefore, the land cannot be transferred. The learned financial Commissioner found that no attempt has been made to reconcile the two orders of the Naib Tehsildar, whereby the application of" Bawa was rejected. It was found that since Bawa was in cultivating possession of the land in dispute, therefore, his application has been wrongly rejected. Since the application is for purchase of land on the basis of possession, he is entitled to allotment of land, whereas the petitioner, who is entitled to land as a war widow can get alternative land.

7. The petitioner has challenged the said order of the financial Commissioner, inter alia, on the ground that Bawa, has not challenged the orders dated 31st May, 1979 and 23rd June. 1980 before any competent authority within the period of limitation. After the said order was passed, Bawa Singh has filed Civil Suit for injunction and sought to protect possession, but said suit was dismissed. The first appeal was also dismissed. It is thereafter, the order dated 23rd June, 1980 is sought to be disputed by filing of appeal after eight years of the passing of the said order. It is contended that the learned Collector has found that the appeal is barred by limitation as Bawa was aware of the order rejecting his request for the purchase of the land and the allotment in favour of the petitioner. Such finding was returned on the basis of the judgment of the Civil Court. The learned Financial Commissioner has not given any reason to differ with the findings recorded. It is contended that there was no challenge at any point of time to the order dated 31st May, 1979. It is also argued that the petitioner has been in possession of the land since 1983, when the actual physical possession of the land measuring 4 kanals was handed over by the orders of the District Magistrate. Therefore, Bawa or his successor-in-interest cannot claim allotment of the land on the basis of possession when they are not in possession of the land in dispute on the date of consideration of allotment of the land.

8. On the other hand, Learned Counsel for the respondents has vehemently argued that the rights of Bawa have to be examined on the date he filed an application for purchase of land. Since on the date of purchase, he was in possession, the allotment is to be made to him. It is not disputed that the land in question measuring 4 kanals is a package deal property, which is governed by the Act and the Rules framed thereunder. In exercise of the powers by the aforesaid Act and the Rules framed therein, the State Government has been framing policies from time to time for sale of the package deal property. One of the policies is of transfer of the land in the rural areas on the basis of possession. The policy is also for allotment of the land in

the rural area to permanently disabled soldiers, widows etc. of the soldiers killed in action.

9. The transfer of land on the basis of possession since 1976 sought by Bawa came to be declined on 31st May, 1979. Subsequent application to purchase on the basis of possession since Rabi 1978. came to be declined on 23rd June, 1980. The order of declining the purchase of land on 31st May, 1979 has not been challenged by Bawa or his legal heirs. The learned Financial Commissioner has set aside the said order while exercising the powers of the State Government u/s 15 of the Act without any challenge to such order. Similarly, the order dated 23rd June, 1980 was challenged after 8 years on the ground that the said order was not communicated. But the fact is that such order was in the knowledge of Bawa as has been noticed by the learned Chief Sales Commissioner. It is held that such order was in the knowledge in view of the proceedings before the Civil Court. The learned Financial Commissioner has not adverted to the said fact or the reasoning given by the Chief Sales Commissioner and confirmed by the Commissioner, exercising the revisional powers.

10 It is the categorical case of the petitioner in the present petition that the land is in physical possession of the petitioner since 25th October, 1983, whereas respondent Nos. 2 to 7, are not asserting their possession after the aforesaid date. The relevant extracts from the written statement read as under :

Para No. 4. Para No. 4 of the writ petition is denied because no evidence in support of the allegation made in this paragraph by the petitioner had been adduced on the record. It is further denied that the petitioner is in physical possession presently.

Para No. 5. In regard to Para No. 5, it is stated that the predecessor-in-interest of the answering-respondents was in actual possession of the disputed land and the jurisdiction of Civil Court was barred as per provision of Section 16 of the Punjab Package Deal Properties (Disposal) Act, 1976.

11. Bawa or his legal heirs have failed to challenge the orders dated 31st May, 1979 and 23rd June, 1980 before the competent authority within the prescribed period of limitation. The only explanation to challenge the order dated 23rd June, 1980 is lack of communication of the said order.

But the factum of such cancellation is noticed by the Civil Court, which fact is evident from the finding recorded by the Chief Sales Commissioner, which is to the following effect:

...It is apparent from the case filed by Shri Bawa in Civil Court for permanent injunction against the appellant Smt. Balbir Kaur and report of delivery of possession dated 23rd June, 1980 was in the knowledge of Shri Bawa and he did not prefer an appeal within limitation before a competent court. He thought of filing an appeal before the Sales Commissioner, Kapurthala, against the order of Naib Tehsildar (Sales), Bholath dated 23rd June, 1980 only on 7th July, 1988 when he was

not able to get relief from the Civil Court. As such the appeal dated 7th July, 1988 before the Sales Commissioner, Kapurthala against the order dated 23rd June, 1980 of the Naib Tehsildar, Sales, Bholath was hopelessly time barred and was wrongly entertained by the Sales Commissioner, Kapurthala.

12. Such finding recorded has not been challenged in revision before the Commissioner or before the Financial Commissioner.

13. The fact whether the report of Patwari was correct, could be examined only in an appeal, if any, preferred by the person against whom the order was passed i.e. Bawa. Bawa has not chosen to make any grievance of such order in appeal. Therefore, the learned Financial Commissioner was not justified in cancelling the allotment of the petitioner on the basis of the alleged wrong report of Patwari, when there was no challenge to the orders passed. The learned Financial Commissioner could not set aside the said order dated 31st May, 1979, when there was no challenge to the said order. Even if the order dated 23rd June, 1980 could not be interfered with, since the appeal was filed after 8 years even though Bawa Singh and/or his legal heirs, were aware of the order of cancellation.

14. Consequently, the present writ petition is allowed. The order dated 6th June, 1991 (Annexure P. 8) passed by the Financial Commissioner, is set aside and the orders of Chief Sales Commissioner, Kapurthala dated 31st January, 1989 and Commissioner, Jalandhar Division, Jalandhar, dated 17th July, 1990, are upheld.