2025:PHHC:165033

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3307-1998

Harpat (deceased through LRs) **...Appellants**

Versus

Boota Singh and others ...Respondents

Reserved on 20.11.2025
Date of decision: 28.11.2025
Uploaded on 28.11.2025

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. Ashok Kumar Verma, Advocate
for the appellants.

Mr. Rahul Rathore, Advocate
for respondents No.1 to 3.

Mr. Gaurav Garg, AAG, Haryana.

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DEEPAK GUPTA, J.

The present Regular Second Appeal has been filed by defendant No.4 – the allottee Harpat Singh, assailing the concurrent findings recorded by the Courts below, whereby the suit instituted by the plaintiffs – Boota Singh and the legal representatives of Karam Singh *(respondents N: 1 to 3 herein),* seeking declaration of ownership and recovery of possession of suit land measuring 24 kanals situated in village Gidder Khera, District Sirsa, was decreed by the trial Court on 24.09.1994 and affirmed by the First Appellate Court on 23.10.1998.

2. For convenience**,** the parties shall be referred to by their positions before the Trial Court. The trial Court record has been requisitioned and examined.

3. ***Background Facts:*** Upon perusal of the record, it emerges that the surplus-area case of landowner Inder Singh R/o village Ganga was decided by the Collector, Surplus Area, vide order dated 27.09.1961 (Ex.P-9). The suit land measuring 24 kanals, situated in the revenue estate of village Gidder Kheda, Tehsil Dabwali, District Sirsa, and fully described in the headnote of the plaint, was included in the surplus pool of Inder Singh. At the relevant time, Boota Singh (plaintiff No.1) and Karam Singh (predecessor-in-interest of plaintiffs No.2 and 3) stood recorded as tenants in cultivating possession of the suit land. Subsequently, the suit land along with other parcels was allotted to defendant No.4 Harpat Singh *(appellant herein)* vide allotment letter dated 29.09.1989 (Ex.P-10), and pursuant thereto, possession was delivered to him vide Rapat Roznamcha No.86 dated 11.11.1989 (Ex.D-1).

4.1 ***Plaintiffs' Pleadings :*** In this background, the plaintiffs instituted the present suit in November 1989, asserting that they and their predecessors had been in cultivating possession of the suit land for two generations. According to them, their forefathers were occupancy tenants under the Punjab Tenancy Act, 1887, and upon the enactment of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1951, they became owners because they never paid rent to the proprietor and only paid a nominal cash amount less than the land revenue. It was pleaded that while declaring the surplus area of Inder Singh in 1961, the Collector, Surplus Area, did not serve any notice upon them, despite their possession as tenants. Therefore, the order dated 27.09.1961 was asserted to be null, void, without jurisdiction, and inoperative qua their rights.

4.2 The plaintiffs further pleaded that they had earlier instituted a separate suit in 1983 seeking a declaration of ownership in respect of the very same land against Inder Singh and others. That suit was decreed on 21.04.1987 (Ex.P-1), whereby they (plaintiffs) were declared owners in possession. Consequently, at the time when the allotment order dated 29.09.1989 (Ex.P-10) was passed, Inder Singh no longer had any subsisting right in the suit land. The plaintiffs alleged that on the strength of the aforesaid allotment, their possession was forcibly taken and so, the Rapat Roznamcha dated 11.11.1989 (Ex.D-1) was illegal, void, and without jurisdiction.

4.3 On these averments, the plaintiffs prayed for a decree declaring them to be owners in possession of the suit land, and entitled to restoration of possession.

5. ***Stand of State Authorities (Defendants No.1 and 2) :*** The State Authorities contested the suit by raising preliminary objections and submitting that the plaintiffs or their predecessors were merely tenants on *batai-tihai* and had never acquired ownership. It was asserted that the surplus declaration dated 27.09.1961 was legal and valid, having been passed strictly in accordance with law. It was further contended that plaintiff No.1 was already owner in possession of land measuring 146 kanals 6 marlas in Khewat No.59, and plaintiffs No.2 and 3 were owners in possession of land measuring 215 kanals 13 marlas in Khewat Nos.59 and 60 of village Ganga, thus, rendering them ineligible for allotment of any land under surplus-area schemes. The allotment order dated 29.09.1989 was defended as lawful and valid. Other averments of the plaint were denied, and dismissal of the suit was sought.

6. Defendant No.3, having no direct concern with the dispute, chose not to contest the suit and was accordingly proceeded against ex parte.

7. ***Stand of Defendant No.4 (Allottee-Appellant) :*** Defendant No.4 – Harpat Singh, the allottee, filed a separate written statement adopting in substance the stand taken by the State Authorities. He asserted that the surplus-area order dated 27.09.1961 was valid; that the allotment order dated 29.09.1989 and delivery of possession on 11.11.1989 were lawful; and that he had become owner in possession pursuant to a valid allotment by competent authorities. He too prayed for dismissal of the suit.

8.1 **Findings of the Courts Below :** The learned Trial Court, after examining the evidence, held that the surplus-area order dated 27.09.1961 was not binding upon the plaintiffs. It found that the plaintiffs were recorded tenants in possession of the suit land at the relevant time and no notice had been served upon them during the surplus proceedings, rendering the said order void and without jurisdiction. The Court further observed that in view of the judgment dated 21.04.1987 passed in Civil Suit No.31 of 1983, the plaintiffs had already been declared owners in possession of the suit land. Consequently, the subsequent allotment order dated 29.09.1989, which was also passed without notice to the plaintiffs, was equally liable to be declared null and void.

8.2 The Trial Court accordingly declared the surplus-area order dated 27.09.1961, the allotment order dated 29.09.1989, and Rapat Roznamcha No.86 dated 11.11.1989 as illegal, void and inoperative against the rights of the plaintiffs. It also held that the civil Court possessed the jurisdiction to adjudicate such matters, since the impugned orders suffered from lack of jurisdiction. Declaring the plaintiffs to be owners of the suit land, the

Court further held that, having been dispossessed during the pendency of the suit, they were entitled to recovery of possession.

9. The judgment and decree dated 24.09.1994 passed by the Trial Court as challenged by defendant No.4–Harpat Singh (the allottee), but the First Appellate Court, on re-appraisal of the entire record, concurred with all findings of the Trial Court and dismissed his appeal vide judgment dated 23.10.1998.

10.1 ***Contentions of the Appellant:*** Assailing the concurrent findings of the Courts below, learned counsel for the appellant–defendant No.4 (the allottee) contends that the plaintiffs had nowhere pleaded, when they first acquired knowledge of the surplus-area order dated 27.09.1961. It is argued that neither Inder Singh, the big landowner, nor the plaintiffs ever challenged the said 1961 order prior to the filing of the present suit. According to the appellant, once the surplus order remained unchallenged for nearly three decades, the suit instituted in 1989 was hopelessly barred by limitation.

10.2 Learned counsel further submits that when the plaintiffs filed Civil Suit No.31 of 1983 seeking declaration of ownership, they impleaded only Inder Singh and other private individuals, but not the State Authorities. By virtue of the surplus declaration dated 27.09.1961, the suit land was already vested in the State under the provisions of the Punjab Security of Land Tenure Act read with Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. Consequently, the State had become the full-fledged owner, and any decree obtained against Inder Singh alone could not bind the State. On this premise, it is argued that the judgment dated 21.04.1987 (Ex.P-1) did not confer any rights upon the plaintiffs vis-à-vis the State or its allottee.

10.3 It is also the contention of learned counsel that the judgment of 1987 was procured by the plaintiffs in collusion with Inder Singh, who having lost title in 1961, had no subsisting interest in the suit land. Therefore, the 1987 decree, being collusive and obtained against a person who had no title, was not binding upon any of the defendants in the present proceedings.

10.4 Ld. Counsel for the appellant additionally argues that no notice was required to be served either upon the owner or upon the allottee at the stage of declaring the land surplus. He further relies upon the jamabandi entries from 1955 onwards to contend that the plaintiffs were recorded merely as tenants on 1/3rd batai, thereby negating their claim of being occupancy tenants under Inder Singh. It is submitted that the plea of occupancy tenancy is a self-serving fabrication.

10.5 Ld. Counsel for appellant also asserts that the jurisdiction of the civil Court was expressly barred in matters relating to surplus-area decisions and allotments made thereunder. On these grounds, as well as the plea that the 1989 suit amounted to an impermissible challenge to the surplus order of 1961 after an inordinate delay, learned counsel prays that the judgments and decrees of both Courts below be set aside and the suit of the plaintiffs be dismissed.

11.1 ***Contentions of Respondents – Plaintiffs :*** Refuting the submissions advanced on behalf of the appellant, learned counsel appearing for respondents No.1 to 3 (plaintiffs) contends that the judgment dated 21.04.1987 (Ex.P-1) conclusively declared the plaintiffs to be owners in possession of the suit land after a full-fledged trial in Civil Suit No.31 of 1983. The said suit had been instituted in 1983 and was decided after leading exhaustive oral and documentary evidence. It is argued that the decree was not collusive, as alleged by the appellant, and significantly, neither the

State nor the present appellant ever sought to challenge or set aside that decree by filing any counterclaim or separate proceedings, even when they had the opportunity to do so in the present suit.

11.2 Learned counsel further submits that, even assuming for the sake of argument (though not admitting) that the plaintiffs were not occupancy tenants, the revenue record demonstrates that they were at least tenants in cultivating possession since 1950–51. As such, they were mandatorily entitled to notice before the land could be declared surplus. The surplus-area order dated 27.09.1961, passed without issuing notice to the tenants in possession, was in direct violation of Rule 6 of the Punjab Security of Land Tenure Rules, 1956, and was therefore void ab initio.

11.3 It is argued that vesting of surplus land in the State under Section 12 of the Haryana Ceiling on Land Holdings Act, 1972 applies only to validly declared surplus land. Where the foundational surplus-area order itself is void for the want of mandatory notice to tenants, no title could vest in the State, and consequently the State had no authority to allot the land to defendant No.4. Reliance is placed on the jamabandi for the year 1950-51, wherein the plaintiffs are recorded as tenants on fixed rent less than the land revenue, an indicator of occupancy rights under Sections 5 and 8 of the Punjab Tenancy Act. Ld. Counsel submits that it was only after consolidation that entries were altered to reflect 1/3rd batai, and even this change was made without notice to the plaintiffs. This factual position was considered by the Civil Court in 1987 while holding that the plaintiffs had acquired occupancy rights, which ripened into ownership.

11.4 It is thus urged that, even if the Court were to hold that the plaintiffs had not acquired ownership under the 1952 Act, their long-standing status as tenants in possession since 1950-51 entitled them to a notice under the Punjab Security of Land Tenure Act. In the absence of such no-

tice, the land could not have been declared surplus, allotted to any other person, or possession delivered to the allottee. On all these grounds, learned counsel for the respondents prays for dismissal of the present appeal.

12. This Court has considered submissions of learned counsel for both sides at length and has carefully examined the entire record.

Analysis by this Court:

13.1 Jamabandis from 1950-51 to 1980-81 (Ex.P-2 to Ex.P-8) consistently record plaintiff Boota Singh and his brother Karam Singh (predecessor of plaintiffs No.2 and 3) as tenants in cultivating possession of the suit land. Inder Singh and others were recorded as owners. Owing to this long-standing possession, the plaintiffs instituted Civil Suit No.31 of 1983 seeking declaration of ownership against the recorded landowners. The trial Court, while delivering judgment on 21.04.1987 (Ex.P-1), relied heavily upon Jamabandi 1950-51 and 1955-56**,** showing plaintiffs as tenants on *fixed rent less than land revenue*. Such an entry is a recognised indicia of *occupancy tenancy* under Sections 5 & 8 of the Punjab Tenancy Act, 1887**.**

13.2 The civil court in 1987 judgment Ex.P1 rejected the defence of Inder Singh that he received 1/3rd batai from the plaintiffs. That plea had already been dismissed in appeal by the Assistant Collector, Dabwali, and no reason was shown for the subsequent change of entries to 1/3rd batai in later jamabandis. No evidence explained this change. On these facts, the Civil Court in Ex.P1 gave a categorical finding that the plaintiffs had acquired occupancy rights, which had matured into ownership.

13.3 There is nothing on record to show that the judgment dated 21.04.1987 (Ex.P-1) was ever challenged by Inder Singh or his legal representatives. Even in the present proceedings neither the State nor the allottee filed any counter-claim to annul or even question the decree Ex.P1. This

gives the decree a presumption of correctness under Section 43 of the Evidence Act**,** and a judgment inter parties remains binding unless set aside.

14.1 The appellant contends that because the State was not a party to the 1983 suit, the 1987 judgment (Ex.P-1) cannot bind the State, since the land had allegedly vested in the State in 1961 pursuant to surplus declaration and Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972.

14.2 Although the argument appears attractive at first glance, it collapses upon examination because the appellant's case rests entirely upon the assumption that the surplus-area order of 1961 was valid and operative**.** If the foundational 1961 surplus order itself is void ab initio**,** no vesting under Section 12(3) could ever occur. A void order is a nullity and confers no rights.

15. Rule 6 of Punjab Security of Land Tenure Rules, 1956, are relevant to the case, which reads as under:

> ***"6. Assessment of surplus area, with landowners and tenants. -***
>
> (1) Every patwari shall prepare, in duplicate, statements in Forms D and DD for every landowner and tenant, respectively, who owns or holds land in excess of the permissible area in his circle, and shall retain one copy of each such Form himself and forward the other to the circle kanungo.
>
> (2) The circle kanungo shall, after personal examination, test all entries made by the patwari in Form D or Form DD and forward it to the circle revenue officer.
>
> (3) The circle revenue officer, shall, after holding such enquiry as he thinks fit and after giving the persons concerned, an opportunity of being heard, forward his report to the Collector.

(4) Where, in the case of a landowner, Forms A, C and E, and in the case of a tenant, Forms B and C, have been received by the Collector, from the Special Collector, under rule 4-C, the Collector shall, after holding such enquiry, as he thinks fit, return them to the Special Collector, along with Form D, in the case of a landowner and Form DD in the case of a tenant.

(5) In the case of a landowner or tenant who has furnished his Form to the Special Collector, under rules 3 and 4, the Special Collector shall [after giving the landlord or tenant an opportunity of being heard and] after such enquiry as he thinks fit, assess his surplus area. In doing so, he shall hear any objections made by the landowner or tenant, and in a written order decide such objections. In case no objections are made or the person affected does not appear, the fact shall be stated in the order.

(6) ***In the case of a landowner or tenant who has furnished his Forms of the Collector, under rules 3 and 4, the Collector shall after giving the landlord or tenant an opportunity of being heard and after such enquiry as he thinks fit, assess his surplus area. In doing so, he shall hear any objections made by the landowner or tenant, and in a written order decide such objections. In case no objections are made or the person affected does not appear, the fact shall be stated in the order.***

(7)(i) The Collector or the Special Collector shall prepare a statement in Form F and forward immediately a copy thereof to the landowner or tenant concerned under cover of an endorsement prescribed in the Form and it shall be served upon the landowner or tenant as if it were a summons in the manner prescribed in section 90 of the Punjab Tenancy Act, 1887.

(ii) The Special Collector shall also forward a copy of Form F prepared by him to the Collector of every district in which the surplus area of the landowner or tenant is situate.

(8) Any person aggrieved by a decision of the Collector or the Special Collector, may within 60 days from the date of communication of the decision to such person, to be computed after excluding the time spent in obtaining a copy of such decision, appeal to –

(a) the Commissioner of the Division where the person resides, in case the person resides in Ambala or Jullundur Division;

(b) the Commissioner of the Division where the largest portion of the holding of the person is situate, in case the person resides outside Ambala and Jullundur Divisions; and the decision of the Commissioner which shall be duly communicated by the Commissioner to the Collector or Collectors concerned shall be final.

(9) The Collector or the Special Collector or the Commissioner shall not while deciding any case under this rule, entertain any claim from a landowner for the exemption of any area on any of the grounds set forth in sub-rule (1) of rule 10.]

16. The plaintiffs were recorded as tenants since 1950-51. Under Rule 6(6) of the Punjab Security of Land Tenure Rules, 1956, as reproduced above, notice to tenants in cultivating possession is mandatory before declaring land as surplus. Admittedly, no notice was served upon the plaintiffs before passing the surplus-area order dated 27.09.1961. Orders passed behind the back of mandatory necessary parties are void. Reliance can be placed on ***State of Punjab v. Amar Singh****, AIR 1974 SC 994;* and ***Ram Swarup v. S.N. Maira****, AIR 1999 SC 2427*.

17. A surplus-area order passed without jurisdiction cannot vest land in the State under Section 12 of the 1972 Act. Hon'ble Supreme Court has held that vesting under Ceiling Acts applies only to validly declared surplus land. Reliance can be placed on ***Kela Devi v. Financial Commissioner****, (1980) 3 SCC 64.*

18. The central argument advanced on behalf of the appellant—that once land is declared surplus under the Punjab Security of Land Tenure Act, it vests in the State under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, irrespective of utilisation or continued possession, proceeds upon the assumption that the surplus-area order dated 27.09.1961 was validly passed in accordance with law. It is on this premise that learned counsel for the appellant has placed reliance on a catena of judgments including ***Dharampal v. State of Haryana, 2002 (2) RCR (Civil) 37; Amar Singh v. Ajmer Singh, 1994 Supp (3) SCC 213; Dona Ram v. State of Haryana, 2012 (1) LAR 384; Gopal v. State of Haryana, 1997 (3) RCR (Civil) 466; Gurbaksh Singh v. State of Haryana, 2013 (1) Law Herald 302; Surendranath Diwan v. State of Haryana, 1994 (3) RRR 115; Smt. Bhagwanti Devi v. State of Haryana, 1994 (2) RRR 358; and Ujagar Singh v. State of Haryana, 2012 (3) RCR (Civil) 960.*** These decisions no doubt hold that once surplus-area proceedings have attained finality, and a valid surplus declaration exists, vesting in the State occurs by operation of law and is not dependent on utilisation or the continued possession of the landowner.

19. However, the aforesaid line of decisions rests upon one foundational presumption, which is conspicuously absent in the present case, namely, that the surplus-area order was validly made. Here, the record leaves no manner of doubt that the plaintiffs were tenants in cultivating possession of the suit land ever since 1951–52, as evidenced by jamabandis from 1950–51 to 1980–81. Under Rule 6 (3) and 6 (4) of the Punjab Security

of Land Tenure Rules, 1956, it was mandatory upon the Collector to serve notice upon such tenants before declaring any land as surplus. The admitted position is that no such notice was ever served upon the plaintiffs prior to passing of the surplus order dated 27.09.1961. The surplus declaration was, thus, passed in complete violation of the statutory mandate and without affording any opportunity of hearing to the tenants, whose rights were directly affected.

20. Hon'ble Supreme Court in ***State of Punjab v. Amar Singh (supra)*** and ***Ram Swarup v. S.N. Maira (supra)*** has authoritatively held that an order passed without notice to a person, who is mandatorily required to be heard is wholly without jurisdiction and void ab initio. A void order is non-est in the eyes of law and cannot confer any rights on any party. Vesting under Section 12(3) of the Haryana Ceiling Act can take effect only where surplus land is validly declared. This principle is further fortified by the decisions in ***Financial Commissioner v. Kela Devi (supra),*** wherein the Supreme Court held that vesting under Section 12(3) postulates a valid surplus declaration.

21. Consequently, the surplus-area order dated 27.09.1961, having been passed without jurisdiction, could not have resulted in vesting of title in the State on 23.12.1972 or on any subsequent date. Once the very foundation of the State's title collapses, the entire edifice of allotment in favour of the appellant necessarily falls.

22. Further, Ld. Counsel for the appellant's reliance on judgments such as ***Smt. Radha Bai v. State of Haryana, 1997 (3) RCR (Civil) 509; Meg Raj v. Manphul, 2019 (2) RCR (Civil) 649; Devender Singh v. State of Haryana, 2006 (3) RCR (Civil) 491; Mahinder Singh v. State of Haryana, 2008 (1) PLR 96;*** and ***Azad v. Dharampal, 1999 (2) RCR (Civil) 139,*** to contend that the civil Court's jurisdiction is barred by Section 26 of the Haryana Ceil-

ing Act, is equally misplaced. The bar under Section 26 applies to orders passed within jurisdiction by the prescribed authorities under the 1972 Act. It has no application to a case, where the foundational order is void ab initio.

23. The law in this regard is no longer res integra. In ***Dhulabhai v. State of M.P., AIR 1969 SC 78***, the Supreme Court held that where the order complained of is a nullity, the civil Court retains jurisdiction. This principle was reiterated in categorical terms by the Full Bench of this Court in ***State of Haryana v. Vinod Kumar, 1986 PLJ 161***, wherein it was held that a surplus-area order passed without hearing the landowner/tenant as mandated by Rule 6 is a nullity and that a civil suit to challenge such an order is maintainable notwithstanding Section 25 or Section 26. This binding precedent directly answers the objection raised on behalf of the appellant.

24. Ld. Counsel for the appellant has next relied on ***Ranjit Singh v. Municipal Corporation, Faridabad, 2011 (1) RCR (Civil) 105;*** and ***Smt. Shakuntla v. Satbir, 2011 (1) Rent L.R. 211,*** to contend that the plaintiffs never acquired occupancy rights. These decisions pertain to situations, where tenants paid rent exceeding land revenue and thus, did not fulfil the statutory criteria under Section 5(2) of the Punjab Tenancy Act. In the present case, the jamabandis for 1950–51 and 1955–56 clearly reflect rent less than land revenue. Moreover, the Assistant Collector had already rejected the landlord's claim of receiving batai from the plaintiffs. These facts were considered by the Civil Court in its judgment dated 21.04.1987 (Ex.P-1), wherein it was held, after full trial, that the plaintiffs had acquired occupancy rights, which ripened into ownership under the 1952 Act. That decree has attained finality. Neither the State nor the appellant has taken any steps at any stage to assail that decree. The appellant cannot now indirectly challenge findings which have long since been crystallised.

25. On the question of limitation, reference has been made by Ld. Counsel for appellant to ***Anoop Singh v. Bachani Devi, 1997 (1) RCR (Civil) 26;*** and ***Rajiv Gupta v. Prashant Garg, 2025 AIR SC 2392.*** These cases concerned challenges the mutation orders or sale deeds governed by Articles 58 and 59 of the Limitation Act. The present case is therefore different. The plaintiffs were admittedly dispossessed only on 11.11.1989, as is evident from Rapat Roznamcha (Ex.D-2). The suit was filed immediately thereafter, seeking recovery of possession based on their title.

26. A suit seeking possession on the basis of ownership is governed by Article 65 of the Limitation Act, which provides a period of 12 years. This position is conclusively settled in ***State of Maharashtra v. Praveen Jethalal Kamda, 2000 (3) SCC 460;*** and ***C. Natrajan v. Ashim Bai (2007(14) SCC 183),*** where the Supreme Court held that where the substantive relief is recovery of possession based on title, Article 65 applies, and Article 58 has no application. Further, as held in ***Gurdev Singh v. State of Punjab, (1991) 4 SCC 1,*** limitation does not run in favour of a party, who takes possession under a void and non-est order. The plea of limitation raised by the appellant is, thus, wholly without any merit.

27. Viewed in the totality of circumstances, this Court finds that the surplus-area order of 1961, having been passed without notice to the tenants-in-possession, is void ab initio; that no vesting ever took place in favour of the State; that the plaintiffs' title stood affirmed by the decree dated 21.04.1987, which has attained finality; that the plaintiffs were dispossessed only on 11.11.1989; that the suit filed thereafter was within limitation; and that the civil Court's jurisdiction to adjudicate upon a void order remains intact. Consequently, none of the authorities relied upon by the appellant advances his case, whereas the law cited on behalf of the respondents is fully attracted to the facts in hand.

Conclusion :

28. Consequently, this Court finds no infirmity in the concurrent findings of fact recorded by the Courts below. No substantial question of law arises for consideration under Section 100 CPC. Accordingly, the present appeal is dismissed, being devoid of merits**.**

28.11.2025 **(DEEPAK GUPTA)**
Yogesh **JUDGE**

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