

---

**(2008) 08 P&H CK 0125**  
**In the Punjab And Haryana At Chandigarh**

Kirpal Singh

APPELLANT

Vs

Financial Commission and Others

RESPONDENT

---

**Date of Decision :** 08-08-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 145

**Citation :** (2009) 154 PLR 30 : (2009) 1 RCR(Civil) 497

**Hon'ble Judges :** Rajive Bhalla, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

## Judgement

Rajive Bhalla, J.—This order shall dispose of CWP Nos. 5533 and 5334 of 1982, as identical questions of fact and law arise for adjudication.

2. The petitioner prays for the issuance of a writ in the nature of Certiorari for quashing the orders date 12.5.1981 and 22.9.1982, passed by the Commissioner, Ambala Division, Ambala and the Financial Commissioner, Haryana, respectively. In order to appreciate the controversy obtaining herein a brief narrative of the facts that have been extracted from CWP No. 5533 of 1982, would be appropriate.

3. Shiv Dev Singh-respondent No. 8 and his wife Harbans Kaur are admittedly big land owners. Shiv Dev Singh's surplus area case was decided by the Collector, Panipat on 26.10.1960 by declaring 36 Std. Acres and 12.1/2 units of land as surplus. After a prolonged bout of litigation, the Financial Commissioner set aside the order of surplus area and remanded the case to the Collector for redetermination. In the meanwhile, the petitioner, a tenant of a small land owner evicted from his tenancy, subject to his re-settlement on surplus area, was allotted 5 Std. Acres of land from Shiv Dev Singh's surplus area, Shiv Dev Singh's surplus area was redetermined on 14.7.1976, and the area, which was allotted to the petitioner in 1971 once again fell in the surplus pool. The petitioner therefore approached the Collector, Agrarian for allotment/delivery of

possession of the land allotted to him on 20.9.1971. Vide order dated 14.7.1976, the Collector Agrarian, accepted the petitioner's prayer and directed delivery of possession of land to the petitioner. Pursuant to warrants of possession issued by the Collector, possession was delivered to the petitioner. Thereafter, an attempt was made to dispossess the petitioner. Proceedings u/s 145 Cr.P.C. were initiated and the land was attached. The petitioner, approached the Hon'ble High Court where the attachment was quashed on 22.8.1978, thus, accepting the petitioner's possession.

4. Apparently, disappointed with the failure of his attempt to thwart the allotment of land to the petitioner, the big landowner manipulated two applications from respondents No. 4 to 7, in the shape of objections, to the order of allotment, dated 14.7.1976. Respondents No. 4 to 7 claimed that the land had been wrongly allotted to the petitioner, as he had colluded with his land owner to procure an order of ejectment. They also alleged that as they were sitting tenants of Shiv Dev Singh, they had a preferential right to allotment. The Collector, considered these objections but rejected them by holding that he has no jurisdiction to review his order.

5. Respondents No. 4 to 7, instead of filing an appeal against the order of allotment, filed an appeal against the order dismissing their objections. The Commissioner, Ambala Division, Ambala, vide order dated 12.5.1981, accepted the appeal and held that while considering allotment to the petitioner, the Collector should have considered the provisions of The Haryana Utilisation of Surplus and other Area Scheme 1976 (hereinafter referred to as the "Utilisation Scheme"), that prescribes the mode of allotment amongst various eligible categories of persons. The case was, therefore, remanded to the Collector. The petitioner filed a revision before the Financial Commissioner, Haryana, which was dismissed on 22.9.1982. The learned Financial Commissioner accepted the petitioner's contentions that the order dated 14.7.1976 would be deemed to be an order allotting surplus area to the petitioner after its fresh determination, but however, held that allotment of surplus area to the petitioner would have to be examined afresh in terms of the order passed by the Commissioner.

6. Counsel for the petitioner submits that the learned Commissioner and the Financial Commissioner remanded the case to the Collector, without application of mind and for entirely irrelevant and illegal reasons. The Collector rightly held that he has no jurisdiction to entertain the so called objections, as there was no provision in the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the "Haryana Act") that empowered him to entertain and adjudicate such objections. Neither the Commissioner nor the Financial Commissioner dealt with the maintainability of the objections or the claim by the private respondents that they were sitting tenants of the big land owner. It is further submitted that accepting though not conceding that private respondents were sitting tenants of the big land owner, the Utilisation Scheme, confers a preferential right to allotment upon the petitioner vis-a-vis respondents No. 4 to 7. It is further

submitted that neither the Commissioner nor the Financial Commissioner, dealt with the question, whether the Collector had jurisdiction to review the order of allotment and, therefore, committed errors of jurisdiction in remitting the matter to the Collector.

7. Counsel for the respondents, however, assert that as the order declaring surplus area was set aside on 27.6.1975, the prior allotment in favour of the petitioner was non-est. The Collector had no jurisdiction, even if, the same area was declared surplus after redetermination, to allot the land and direct delivery of possession to the petitioner. It is further argued that before allotting land to the petitioner, the Collector was required to examine the rights of all sitting tenants i.e. respondents No. 4 to 7 and only thereafter, proceed to pass an order, in accordance with the provisions of the Utilisation Scheme. It is submitted that as the impugned orders do not suffer from any error of jurisdiction or of law, the writ petitions be dismissed.

8. I have heard learned Counsel for the parties and perused the impugned orders.

9. Facts, necessary for adjudication of the writ petitions having been enumerated herein above, they do not merit a detailed reference. The petitioner, an ejected tenant with a right to resettlement, has fought a battle for three decades to confer legitimacy to his allotment. Respondents No. 4 to 7, apparently, at the behest of the big land owner filed applications, titled as objections, to the order dated 14.7.1976, whereby, the Collector, Agrarian, directed delivery of possession of land allotted to the petitioner on 20.9.1971. In their objections, respondents No. 4 to 7 positively alleged that the petitioner had colluded with his landlord, to procure an order of ejectment, so as to attain the status of an ejected tenant, entitled to resettlement. The other objection was that respondents No. 4 to 7 are sitting tenants of big land owner since 1961-62 and as such have a preferential right to allotment.

10. As noticed herein above, the Collector held that he had no jurisdiction to review or recall his order dated 14.7.1976. The Commissioner, however, accepted the appeal, filed by respondents No. 4 to 7, without dealing with the jurisdictional constraints raised by the Collector, without deciding whether the objections were tenable or maintainable, without examining their merits and without dealing with the legal impediments pointed out by the Collector. The Commissioner did not examine the "Utilisation Scheme". Para 4 of the scheme details the category of persons eligible for allotment of surplus land. The petitioner, an ejected tenant of a small land owner with a right to resettlement, falls in category "C", whereas the respondents, even if, sitting tenants fall under the category "C-C" or category "D". The petitioner would, therefore, be entitled to a preferential right to allotment over respondents No. 4 to 7 in accordance with the order of preference set out in the Utilisation scheme. In view of the above referred provisions of the Utilisation Scheme, remand to the Collector to re-examine the allotment to the petitioner and the rights of the private respondents was meaningless. In addition the Commissioner failed to deal with

the question, whether the Collector was empowered to review his order. The Haryana Ceiling of Land Holdings Act does not confer a power of review upon the Collector. The Commissioner, therefore, had no jurisdiction to remit the matter to the Collector without first dealing with the question, whether the Collector had jurisdiction to entertain the so called objections and review his order dated 14.7.1976. This apart, the least that was expected, of the Commissioner and the Financial Commissioner was to record, before remitting the matter, their satisfaction as to the status of respondents No. 4 to 7, as tenants of the big land owner and their locus standi to file objections. The absence of any such adjudication, compels me to hold that the impugned orders are illegal and void.

11. Though, the learned Financial Commissioner held that the Collector's order dated 14.7.1976, would be deemed to be an order of allotment after fresh declaration of surplus area, his failure to rectify the legal infirmities that prevade the Commissioner's order, renders the order passed void and unsustainable.

12. The petitioner's battle for justice must, therefore, end in his favour as even if respondents No. 4 to 7 are sitting tenants, the petitioner has a preferential right to allotment under the Utilisation Scheme. The order of remand passed by the Commissioner and affirmed by the Financial Commissioner is, therefore, legally untenable.

In view of what has been stated herein above, the writ petitions are allowed, the orders dated 12.5.1981 and 22.9.1982, passed by the Commissioner, Ambala Division, Ambala and the Financial Commissioner, Haryana, respectively are set aside, leaving it open to respondents No. 4 to 7, to seek any remedy, in law to establish their status as sitting tenants of the big land owner and his wife and their consequent entitlement to allotment of some other part of the surplus area. No costs.