(2013) 12 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 653 of 1996

Amrik Singh and Another APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0060

Hon'ble Judges : Rekha Mittal, J;Rajive Bhalla, J

Bench : Division Bench

Advocate : Som Nath Saini, for the Appellant; Anupama Sharma, Advocate for Ms. R.K. Manaise, Advocate for Respondents No. 6(IX) and (X), Mr. Arun Jain and Mr. Abhishek Dhull, Advocate for Respondent Nos. 10 to 12, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—The appellants pray that order dated 6.2.1996, allowing the writ petition and setting aside orders cancelling allotments,

may be set aside. Counsel for the appellants submits that the land, in dispute, was allotted to Hira Singh, a displaced person, but was cancelled, as

the allotment was in excess of entitlement. The private respondents who are vendees from the legal heirs of Hira Singh, filed an application for

purchase, which was initially allowed, but was eventually set aside by the Financial Commissioner (Revenue) and Secretary to the Government of

Punjab, Rehabilitation Department, in the exercise of suo motu powers u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act,

1954 (hereinafter referred to as ""the 1954 Act""). The Financial Commissioner also rejected a plea raised by private respondents that as they are

bona fide purchasers, they should be allowed to purchase the land. The writ petition has been allowed by holding that as private respondents are bona fide purchasers, much before the sale deeds were cancelled, they are entitled to the land in dispute.

2. Counsel for the appellants submits that as Hira Singh obtained the allotment by fraud, the private respondents are not entitled to benefit as bona

fide purchasers as held in Niranjan Kaur and Others Vs. The Financial Commissioner, Revenue and Secretary to Government and Others, . It is

further prayed that as controversy, in the present case, is squarely covered against the private respondents, by the aforementioned judgment, the

appeal may be allowed.

3. Counsel for the private respondents submits that the Full Bench judgment in Smt. Niranjan Kaur and others (supra) applies to an allotment

obtained by fraud or misrepresentation and not to a case of excess allotment. A perusal of the judgment in Smt. Niranjan Kaur''s case (supra),

reveals that the question posed before the Full Bench, was - ""whether a subsequent purchaser of land, allotted to the original allottee by a fraud or

by misrepresentation, can raise a plea that his sale deed is protected as a bona fide purchase, u/s 41 of the Transfer of Property Act, 1882

(hereinafter referred to as the ""1882 Act""). Neither the department nor the appellants allege fraud or misrepresentation. The facts, in the present

case, are entirely different, as there is no allegation of fraud or misrepresentation on the part of Hira Singh, the original allottee. The department

made an error in allotting excess land to Hira Singh. The private respondents purchased this land in 1962, on a bona fide belief that the title of Hira

Singh was legal and valid. The Full Bench judgment does not apply to the case, in hand, and therefore the order holding that private respondents,

are bona fide purchasers, duly protected u/s 41 of the 1882 Act, being legal and valid, should be affirmed.

4. We have heard counsel for the parties, perused the impugned orders as well as the order passed by the learned Financial Commissioner and

other authorities, exercising powers under the 1954 Act.

5. Admittedly, Hira Singh was a displaced person from Pakistan, who was allotted land to satisfy his verified claim. It is not denied that Hira Singh

sold the land, in dispute, to the private respondents, vide registered sale deed, dated 04.9.1962, before the allotment was cancelled. The

Managing Officer made a recommendation, to the Chief Settlement

Commissioner that as Hira Singh has been allotted land in excess of his

entitlement, the excess allotment should be cancelled. The Chief Settlement Commissioner, vide order dated 19.7.1966, accepted the

recommendation and ordered cancellation of proprietary rights, regarding the excess land. The order was implemented by the Managing Officer on

9.9.1966. The private respondents, vendees from Hira Singh, filed a petition inder Kumar before the Chief Settlement Commissioner impugning

order dated 19.7.1966. The petition was allowed and the case was remanded to the Managing Officer, for a fresh decision. The Managing

Officer, vide order dated 3.5.1968, once again retrieved the excess area, namely, land purchased by the private respondents. The private

respondents, thereafter, filed an appeal before the Assistant Settlement Commissioner, exercising power of the Settlement Commissioner, Punjab.

The appeal was allowed vide order dated 11.6.1968 and it was ordered that land be retrieved proportionately from the last sale deed and in case

the private respondents/vendees are prepared to purchase the land, they may be allowed to pay the price prevalent in 1968. The Assistant

Settlement Commissioner, therefore, affirmed the finding that land was allotted in excess but ordered that it be retrieved from the last sale deed,

thereby putting at rest the controversy.

6. The Deputy Commissioner, Rehabilitation, forwarded a suo motu reference to the Financial Commissioner for setting aside this order by alleging

that as the land, in dispute, is package deal property, the Chief Settlement Commissioner has no jurisdiction to pass an order allowing private

respondents to purchase the land.

7. The Financial Commissioner, vide order dated 9.1.1981, accepted the reference, set aside the order allowing the private respondents to

purchase the land, in dispute, by holding that as the land, in dispute, is package deal property, authorities under the 1954 Act, have no jurisdiction

to deal with the land, in dispute. The Financial Commissioner, however, directed that the case of private respondents shall be considered and

decided, in accordance with provisions of the Punjab Package Deal Properties (Disposal) Act, 1976. Aggrieved by this order, the private

respondents filed a writ petition, which has been allowed by holding that, as private respondents are bona fide purchasers, their sale deeds are protected by Section 41 of the Transfer of Property Act.

8. The factual narrative raises a question whether the private respondents are entitled to protection of Section 41 of the 1882 Act on the ground

that they are bona fide purchasers for valuable consideration, without notice of any defect in the title of their vendor?

9. Admittedly, the land, in dispute, is part of the excess land allotted to and retrieved from Hira Singh, after it was sold, by Hira Singh, to the

private respondents, vide registered sale deed, dated 04.9.1962. The excess allotment was cancelled on 19.7.1966 and implemented on 9.9.1966

but the private respondents were allowed to purchase the land, in dispute. The Financial Commissioner, Punjab, has set aside the order, allowing

purchase.

10. A question whether a plea of bona fide purchase is available to beneficiary of an allotment obtained by fraud or by misrepresentation, has been

answered by a Full Bench in Smt. Niranjan Kaur''s case (supra) by holding that a subsequent purchase of an allotment obtained by fraud cannot

raise a plea of a bona fide purchase. Neither the appellants nor the department alleges that allotment made to Hira Singh was obtained by fraud or

misrepresentation. The Full Bench judgment, therefore, does not apply to the facts of the present case. The learned Single Bench has, while

reversing the order passed by the Financial Commissioner, held as follows:--

There is no dispute that the property in question was allotted to Hira Singh who is an evacuee and that the said Hira Singh, the original allottee sold

the property to the petitioners under registered sale deeds dated 4.9.1962. It is only in 1976 the Managing Officer found that the allotment of land

made in favour of Hira Singh was in excess to which he was entitled to and, therefore, the allotment in respect of excess area i.e., 4.7 ï¿½ standard

acres has to be cancelled. When the matter was taken before the Chief Settlement Commissioner, he vide his order dated 28.12.1978 found that

the vendees had applied in 1968 for the purchase of the area and they are to be charged the price in accordance with the instructions prevailing in

the year 1968. Accordingly, he set aside the order of the Managing Officer and that of the Appellate Authority and modified the same to the extent

that the price for the area cancelled from the vendee should be at the rates prevailing in the year 1968. It is not disputed that the property was allotted to Hira Singh under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Thus, it is clear that the property had had

already been allotted to Hira Singh before the land was transferred to the State Government and the original allottee Hira Singh sold the said

property in September, 1962 under the registered sale deeds to the petitioners. According to the petitioners they are bona fide purchasers of the

land and, therefore, their rights have to be protected in view of the provisions contained in Section 41 of the Transfer of Property Act. It is,

therefore, to be seen whether the allotment of the land in favour of original allottee who sold the same to the bona fide purchasers can be

cancelled....

In the absence of any allegation, much less proof of the plea of fraud, we find no reason to interfere with the order allowing the writ petition. The

appeal is, consequently, dismissed.