
(2003) 04 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6218 of 1992

Antu and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Nazool Lands (Transfer) Haryana Amendment Rules, 1976 — Rule 3, 8

Citation : (2003) 135 PLR 378 : (2003) 3 RCR(Civil) 153

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : C.B. Kaushik, for the Appellant; Amol Rattan Singh, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioners, who are the members of the Scheduled Castes community, have filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order/letter dated 6.9.1991 (Annexure P-14) issued by respondent No. 1 vide which it was decided to transfer the Nazool land measuring 131 kanals 14 Marias, which is in cultivating possession of the petitioners, to the Forest department, and in case the Forest department does not want it, the same may be sold in open auction; and further for the issuance of a writ in the nature of mandamus directing the respondents to transfer the aforesaid land to the petitioners on the basis of their long cultivating possession in accordance with the provisions of Nazool Lands (Transfer) Rules, 1956 and the Nazool Land (Transfer) Haryana Amendment Rules, 1976.

2. In the petition, the petitioners have stated that the land in question measuring 131 kanals 14 Marias, which is situated in Village Siwan, Tehsil and District Kaithal, is the Nazool land. This land was given by the Government to the petitioners on lease for cultivation about 25 years back, At that tune, it was not fit for cultivation. The petitioners, with their hard labour, reclaimed the said land

and made it cultivable. With the object to transfer the Nazool lands the State Government has framed the Rules known as Nazool Lands (Transfer) Rules, 1956. Under the aforesaid Rules, the Government issued instructions to the effect that such land should be transferred to only those members of the Scheduled castes community who are actual tillers of the soil. After the formation of the State of Haryana, the aforesaid Rules were amended by the Government of Haryana vide the Nazool Land (Transfer) Haryana amended Rules, 1976. According to these Rules, it was obligatory on the Government to transfer all the Nazool land to the members of the Schedule Castes community who are already cultivating such land. Since the petitioners are the members of the Scheduled Castes community and are cultivating the land in question for the last so many years, therefore, the Nazool land in their possession was required to be transferred to them according to the aforesaid Rules. In this regard, the petitioners filed representation (Annexure P-10) dated 26.5.1986 before the authorities. The Deputy Commissioner, Kurukshetra considered that representation and recommended the claim of the petitioners to the Government for transfer of the land in question to them on the fixed price. But the State Government vide its order/letter dated 6.9.1991 (Annexure P-14) decided to transfer the land in question to the Forest Department and in case the Forest Department is not interested, then the same may be sold in open auction. The said order has been challenged by the petitioners in the instant writ petition.

3. Learned counsel for the petitioners, while referring to the decision of the Hon"ble Supreme Court in Charan Singh and ors. v. State of Punjab and ors. 1997(1) P.L.J. 188, has submitted that the petitioners are in cultivating possession of the land in question from the year 1969 when it was leased out to them by the Government being members of the Scheduled Castes community. It is submitted that according to Rule 3(b) of the Nazool Lands (Transfer) Rules 1956 as amended by the State of Haryana, it is mandatory for the Government to transfer the Nazool lands to the Cooperative Societies which were formed by the heads of the Scheduled Castes families and if such Societies are not available, then the Nazool lands may be allotted to the members of the Scheduled Castes community individually upto the unit the Nazool lands as defined in Clause (e) of Rules 2. For the purpose of allotment of Nazool Lands to the individual members of the Scheduled Castes, who are already cultivating such lands, shall be given preference. Such land is required to be transferred to the individual allottee on one-third of the market price as determined by the Collector of the District. Learned counsel for the petitioners further submitted that the decision of the Government vide the impugned order/letter transferring such land to the Forest Department or in alternative to be sold in open auction is totally contrary to the aforesaid provisions. He further submitted that the Deputy Commissioner, Kurukshetra has recommended for the permanent allotment of the land in question to the petitioners vide his order dated 6.6.1984, according to which each lease holder (four in number) should be allotted 24 kanals of Nazool land and the remaining 35 kanals 14 marlas of land be got vacated from

them and the same be sold in open auction.

4. On the other hand, learned counsel for the respondents submitted that the Government has decided to transfer the land in question to the Forest Department or in alternative to sell the same by Public auction by taking into consideration the public interest. Learned counsel for the respondents could not controvert the fact that the petitioners are the members of Schedules Castes community and the land in question is Nazool land and for the disposal of the said land Nazool Lands (Transfer) Rules, 1956 as amended by the State of Haryana are applicable. It has also not been disputed that the Deputy Commissioner has recommended that each of the four lessees of the land in question should be allotted 24 kanals of land on the fixed price.

5. I have considered the arguments raised by learned counsel for the parties and have perused the record of the case.

6. Undisputedly, the petitioners are the members of the Scheduled Castes community. The land in question measuring 131 kanals 14 marlas is Nazool Land. This land was leased out to four persons, namely Narata Ram (father of petitioner No. 3), Antu, Lilu and Jogi Ram, petitioners No. 1, 2, and 4 respectively, in the year 1969-70 for its cultivation. It is also not disputed that the Deputy Commissioner, Kurukshetra vide his letter dated 6.6.1984 has recommended to the Government that out of 131 kanals 4 marlas of Nazool Land, 24 kanals of land should be allotted to each of the aforesaid lessee @ Rs.30,000/- per acre. The aforesaid recommendation was made by the Deputy Commissioner on the basis of the provisions of Nazool Land (Transfer) Rules, 1956 as amended by the State of Haryana in the year 1976, Rules 3(b) and 8 of the amended Rules read as under:

"3(b) In the village where available Nazool Land is ten acres or more and cooperative societies were formed by the heads of the Scheduled Castes families prior to 16th May, 1964 in accordance with Rule 4 and these societies still exist, the Nazool land may be allotted to them, failing which the Nazool land may be allotted to the members of the Scheduled Castes, individually upto the unit of Nazool land as defined in Clause (e) of Rule 2:

Provided that the land owned by an individual member and the land allotted to him under these rules shall not exceed the unit of Nazool Land. For the purpose of allotment of Nazool land, to the individual members of the Scheduled Castes who are already cultivating such land shall be given preference. In case, there are more than one claimants for the same piece of land, allotment shall be made by drawing lots."

8. Determination of price,- The price to a cooperative society or an individual allottee for the Nazool land to be transferred to him shall be one-third of the market price of the land as may be determined by the Collector of the District."

In view of the aforesaid Rules, I am of the opinion that it is compulsory for the

State Government to transfer the Nazool lands to the Societies of the Scheduled Castes or the individual members of the Scheduled Castes, The preference has to be given to those members of the Scheduled Castes who are already in cultivating possession of the same. Undisputedly, the petitioners are in cultivating possession of the land in question since 1969-70. Now the petitioners have put their hard labour to make the aforesaid land cultivable, as when it was leased out to them it was barren. In this factual and legal position, the decision of the Government for transfer of the land in question to the Forest Department or in the alternative to sell it in open auction is wholly illegal and arbitrary and contrary to the intends and purposes of the aforesaid Rules. In Charan Singh and ors. v. State of Punjab and ors. (supra), wherein members of the Scheduled Castes were sought to be rejected from the Nazool lands, the Hon"ble Supreme Court while considering the policy of the Government regarding transfer of the Nazool lands has observed as under:

"It is now settled policy of the Government as enjoined under Article 46 of the Constitution and the Directive Principles, particularly Articles 38 and 39(b) and the Preamble of the Constitution that economic and social justice requires to be done to the weaker sections of the society, in particular to the Scheduled Castes and Scheduled tribes and to prevent them from social injustice and prevention of all forms of exploitation. In the light of that constitutional objective of economic empowerment, the Government have rightly taken the policy to assign the lease either to a Cooperative Society composed of the Scheduled Castes or individual members of the Scheduled Tribes, as the case may be, in accordance with their policy then in vogue at the rate of Rs.20 per acre or 90 times the land revenue, whichever is less. Under these circumstances, the appellants having been inducted into possession reclaimed the land and remained in possession after the expiry of the lease, the Government is required to regularise their possession and assign the lands in their possession in accordance with its policy. The appellants, therefore, are directed to make necessary application within four weeks from today to the competent authority and the authorities are directed to regularise their possession imposing necessary conditions for their continuance in possession and enjoyment of the same in the light of the constitution objective of rendering them socio-economic justice, putting restrictions on sub-letting or selling, all the relevant conditions in that behalf may be imposed so that they remain in possession and enjoy the same to improve their social and economic status as enjoined under the Constitution. The authorities also are directed to dispose of the applications within a period of two months from the date of the receipt of the same. The appellants shall remain in possession until the regularisation is done and shall enjoy the lands without any sub-letting or alienation thereof."

In view of the aforesaid observations of the Hon"ble Supreme Court, the decision taken by the respondent Government vide Annexure P-14 is wholly illegal and arbitrary and the same is liable to be set aside; and the petitioners are entitled to have allotment of the land in question according to the provisions of Nazool

Land (Transfer) Rules, 1956 as amended by the Government of Haryana and as per the recommendations of the Deputy Commissioner, Kurukshetra.

7. In view of the aforesaid discussion, the writ petition is allowed. The impugned order/letter dated 6.9.1991 is hereby quashed and the respondents are directed to consider the claim of the petitioners for allotment of the land in question as per the recommendations made by the Deputy Commissioner, Kurukshetra vide his letter dated 6.6.1984.

No order as to costs.