

(2013) 12 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7216 of 1993

Avtar Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0024

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Som Nath Saini, for the Appellant; Rajiv Malhotra, Additional Advocate General Haryana and Shri Ram Rattan, Tehsildar (Sales), Rehabilitation Branch, Chandigarh, for the Respondent

Judgement

Tejinder Singh Dhindsa, J.—The predecessor-in-interest of the petitioners, Natha Singh, was allotted land in village Taraf Insar, Panipat, in lieu of the land left by him in Pakistan. The land to the extent of 11 standard acres, 13-1/2 units, was allotted upon oral verification. Upon receipt of the record from Pakistan, it was found that land to the extent of 4-10-1/2 standard acres had been allotted in excess. The Chief Settlement Commissioner vide order dated 20.5.1965 set aside the allotment of the excess land. Natha Singh filed Civil Writ Petition No. 559 of 1967 in this Court impugning such action. The writ petition was dismissed on 13.10.1980 with the following observations:

However it may be mentioned that authorities have been allowing the person allotted land in excess of their entitlement to purchase such land at the price to be determined by the Department. I am sure in these cases also, the authorities will not depart from the practice and will sympathetically consider the case of the petitioners for allowing them to purchase these lands.

Apparently, the Additional Settlement Officer (Sales), Karnal, acting upon an application having been submitted for purchase of the excess land, passed an order dated 20.7.1988 assessing the price at Rs. 33,000/- per acre. The Tehsildar (Sales), Karnal, vide order dated 19.8.1988, offered the transfer of land

measuring 24 Bighas 12 Biswas comprised in Khasra Nos. 247M (0B-9B), 248 (3B-18-B), 249 (4B-4B), 250 (5B-5B), 251M (4B-9B) and 5249/4M (6B-9B) (5A-14M) for a total price of Rs. 1,67,898/- and called upon the petitioners to deposit Rs. 41,975/- i.e. 1/4th of the total price subject to approval of the Settlement Commissioner i.e. the competent authority. The amount of Rs. 41,975/- was duly deposited. Tehsildar (Sales), Karnal vide communication dated 23.8.1988 forwarded the matter for approval, but such proposal was ostensibly returned as the same was not supported by the revenue records as also for the reason that the price of a part of the land had not been got assessed and the rent for the use and occupation of the land had not been got deposited. The Tehsildar (Sales), vide communication dated 26.5.1989, reported the matter to the Settlement Commissioner clarifying that in the order dated 19.8.1988, the area of Khasra No. 248 which was in possession of Natha Singh is 3B-18B, whereas price of 3B-16B had been assessed and, consequently, including the price of 2B, the total price of the land now comes to Rs. 1,69,744/-. The Tehsildar (Sales), Karnal also submitted his report dated 15.7.1990 to the effect that rent amounting to Rs. 11,870/- for use and occupation of the land had also been deposited on 22.6.1989 and that the land in question is sub-urban/one km. away from the municipal limits of Panipat. Thereafter, Settlement Commissioner passed an order dated 30.11.1990 to the following effect:

The price fixed by Settlement Officer is absurd and very low. Rs. 33,000/- per acre in Panipat 1-1/2 km. outside municipal limit is prima facie misleading. I shall inspect when next in Panipat and if necessary, call for explanation of S.O.

2. The matter was then taken up by the Settlement Commissioner on 2.4.1991 and the following order was passed:

ORDER

During my last visit to Karnal I could not visit and inspect the land in question. Additional Settlement Officer (Sales) located/positioned at Karnal. He may inspect and report what should be the correct rate at which transfer can be made in term of the Hon"ble High Court's direction. It is most certainly against the State Government's interest to transfer at throw away prices for a valuable land which on a rough calculation recommends itself at the rate of at least" 2 lacs per acre. I would have taken the then Additional Settlement Officer to task had he been in service still for misleading Govt. To come up within a fortnight. Tehsildar (Sales) Karnal is present. He may take the file dasti to hand over to ASO (S).

Sd/- Jt. Secretary to Govt. Haryana, Rehabilitation Department.

3. At this stage, the petitioners filed Civil Writ Petition No. 10060 of 1991 impugning the order dated 2.4.1991. The writ petition was found to be premature as the price pertaining to the excess land had not yet been fixed by the competent Authority and the writ petition was disposed of on 28.11.1991 in the following terms:

After hearing the learned counsel for the parties, we found that the petition is pre-mature as the price has not been fixed by the competent authority. We dispose of the petition with the direction that the price shall be fixed by the authority concerned within the period of three months after associating the petitioner in the process of fixation of price.

4. The Additional Settlement Officer (Sales) vide order dated 27.2.1992, Annexure P11, assessed the price at the rate of Rs. 1,50,000/- per acre for the sub-urban land measuring 18B-5B comprised in Khasra Nos. 247 (0-9), 248 (3-18), 249 (4-4), 250 (5-5) and 251 (4-9) and further assessed price at Rs. 8 lacs per acre for the land measuring 7B -17B comprised in Khasra No. 5249/4.

5. The petitioners preferred a revision petition under Rule 11 of the Package Deal Rules against the order dated 27.2.1992 and such revision petition was dismissed by the Chief Settlement Commissioner, Haryana vide order dated 21.5.1993 at Annexure P12.

6. The instant writ petition is directed against the order dated 27.2.1992 at Annexure P11 passed by the Additional Settlement Officer (Sales), Karnal as also order dated 21.5.1993, Annexure P12, whereby the revision petition against such order stands rejected.

7. Learned counsel appearing for the petitioners would vehemently argue that directions had been issued for considering the purchase of excess land allotted to the predecessor-in-interest of the petitioners in the year 1980 by this Court, but the State Government kept sleeping over the matter. It is argued that the respondents were bound in law to assess the reserved price on the basis of the price prevailing in the year 1980 or at the most, the price could be assessed in relation to the year 1983 i.e. on account of the application dated 21.11.1983, Annexure P1, having been submitted by the predecessor-in-interest of the petitioners for transfer of the excess allotted land. Learned counsel would further contend that the respondents have no jurisdiction to charge the market price and the petitioners would be liable only to pay the reserved price as prevailing in the year 1980 or at the most, the price prevailing in the year 1983 when the application at Annexure P1 was made. In support of such contention, reliance has been placed upon a Division Bench order dated 18.9.1984 passed by this Court in Civil Writ Petition No. 2725 of 1984 (Smt. Vishan Devi @ Ram Piari v. Financial Commissioner and Secretary to Government Haryana Rehabilitation Department and others).

8. It has further been argued on behalf of the petitioners by referring to documents at Annexures P6 to P10 that the respondents themselves had transferred same kind of land for lesser price from the year 1982 to the year 1988 and as such, the price assessed in terms of the impugned order dated 27.2.1992 at Annexure P11 is highly excessive. It has been submitted that since an amount of Rs. 41,975/- already stood deposited on 19.8.1988 i.e. 1/4th of the tentative price assessed, the petitioners cannot be made to suffer due to

inaction on the part of the Government.

9. Per contra, learned State counsel would submit that the land in dispute came to vest in the State Government immediately upon the setting aside of the allotment of the excess land in the year 1965. It is contended that the land is owned by the Government and the Government has every right to sell it at the price it deems fit. The petitioners are stated to have no legal vested right, title or interest in the land in dispute and it is not open for them to dictate terms to the Government to transfer the same at a certain price. Learned State counsel would further submit that the question as regards the quantum of price having been assessed in the light of the impugned order dated 27.2.1992 at Annexure P11 cannot be a subject matter of adjudication by the writ Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

10. Learned counsel for the parties have been heard at length. Even the records of the case that had been summoned vide order dated 19.9.2013 have been perused with the able assistance of Mr. Rajiv Malhotra, Additional Advocate General, Haryana.

11. It would be pertinent to note that while issuing notice of motion in the instant writ petition on 11.6.1993, the operation of the impugned orders at Annexures P11 and P12 had been stayed. Such interim protection has continued till date. The petitioners, as such, have continued in possession of the land in dispute.

12. The land in dispute i.e. land allotted in excess of entitlement in favour of the predecessor-in-interest of the petitioners was set aside by the Chief Settlement Commissioner vide order dated 20.5.1965. Such land, accordingly, came to vest in the State Government. No statutory provision has been brought to the notice of this Court on the strength of which the petitioners would be vested with a right to get the land allotted in excess of entitlement and further insist on such land being sold to them at a particular price. The application dated 21.11.1983 at Annexure P1 seeking allotment of the excess land was not in furtherance of any vested statutory right. As such, it would not be open for the petitioners to stake a claim on the land in dispute on the basis of the price prevailing as on the date of submission of application dated 21.11.1983. In Chief Settlement Commissioner and another v. Sampuran Singh and others, 1946 RLR 69, it had been held that no direction can be given to the State that a person shall be entitled to purchase the excess land held by him on the basis of a reasonable price obtaining at the time proprietary rights were granted in his favour.

13. For that matter, there was no positive direction even by this Court as regards permitting the petitioners to purchase the excess allotted land. While dismissing Civil Writ Petition No. 559 of 1967, this Court had made observations on 13.10.1980 only as regards according a sympathetic consideration of their claim to purchase such land that had been allotted in excess.

14. It is only for benevolent reasons and in the nature of a concession that the

State Government had afforded consideration on the claim of the petitioners to purchase the excess allotted land and had assessed the price in the light of order dated 27.2.1992 at Annexure P11. This would be the relevant date. The contention raised by the learned counsel for re-assessment of the price as on the date of submission of the application i.e. 21.11.1983 is without merit. Even if the State Government had not acted upon the application for a number of years, no premium from such inaction can possibly flow in favour of the petitioners as they have continued to enjoy the usufruct of the land in question which actually had come to vest in the State Government after the setting aside of the allotment of the excess land in the year 1965 itself. The reliance placed by the learned counsel upon the Division Bench order passed in Smt. Vishan Devi (supra) is misplaced. Such judgment does not lay down a proposition so as to vest a right in favour of the displaced person to get allotment of land beyond entitlement and that too at a particular price.

15. There is, however, another aspect of the matter. The State Government has afforded consideration to the claim of the petitioners to purchase the land allotted in excess and has assessed the price at a certain rate i.e. Rs. 1,50,000/- per acre pertaining to land comprised in khasra Nos. 247M (0B-9B), 248 (3B-16-B), 249 (4B-4B), 250 (5B-5B), 251M (4B-9B) and Rs. 8 lacs per acre for the land comprised in khasra Nos. 5249/4M measuring 7-17 vide order dated 27.2.1992, Annexure P11. Even the revision petition filed against such order stands rejected. However, in the impugned order, there is no basis disclosed for arriving at such assessed price. Even though the land in dispute vested in the State Government, still the market price to be assessed by the competent Authority has to be based upon some objective material. Such basis is not discernible even from the original record that had been summoned and perused. State action in such regard lacks objectivity and fairness. I am of the considered view that it is a fit case for remand.

16. For the reasons recorded above, the writ petition is allowed. The impugned orders dated 27.2.1992, Annexure P11, and dated 21.5.1993 at Annexure P12 are set aside. The matter is remanded back to the competent authority for assessment of the price of the land in dispute afresh. In making such fresh assessment, the relevant date would be taken as 27.2.1992 i.e. the date of the passing of the impugned order at Annexure P11. The competent Authority shall take into account the relevant material/documents pertaining to the adjacent and contiguous land and prevailing price thereof as on such date and the same would be a relevant factor towards finalization of such process of re-assessment of the price of land in dispute. It shall also be open for the petitioners to adduce evidence in regard thereto and which shall also be taken into consideration by the competent authority. Such an exercise be completed in terms of passing a fresh order within a period of three months from the date of receipt of a copy of this order. Upon fresh price having been assessed, the petitioners would be liable to deposit the same forthwith in addition to the payment of rent that the competent Authority would determine towards use and occupation of the land.

Petition allowed in the aforesaid terms.