
(2000) 09 P&H CK 0183
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2898 of 1993

Bakhtawar Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (2001) 2 RCR(Civil) 16

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : Mr. P.D. Shakir, for the Appellant; Mr. Ranjit Saini and Mr. C.L. Ghai,
for the Respondent

Judgement

K.C. Gupta, J.—This writ petition is directed by the petitioners, Bakhtwar Singh and Modi Ram under Articles 226 and 227 of the Constitution of India for issuance of a writ of certiorari, quashing the impugned orders Annexures P-I and P-4.

2. Briefly stated, the facts are that the petitioners were Harijans by caste and were residents of Haryana State. The State formulated a scheme to put in restricted auction the evacuee land comprised in Rectangle Nos. 81 to 84 and 86 to 88 situated in village Mori, Tehsil and District Mohindergarh at a nominal price in order to rehabilitate and for the uplift of weaker section of the society i.e. Harijans. Before auction, it was divided into small plots of 4 acres each, so, as to enable many Harijans families to be settled there. A passage was carved out on the northern side of Killa Nos. 81//24 and 25, 82//21, 22, 23, 24 and 25, 83//21, 22 and 23 and on the eastern side of Killa Nos. 83/23 and 86/3.

3. It was further averred that area comprised in Killa No. 83//22 min and 23 min and 86//2 min and 3 min was sold to Modi Ram, petitioner No. 2 and passages on northern side of Killa No. 33//22 min, eastern side of Killa No. 83/23 min and

eastern side of Killa No. 86//3 min were kept intact. However, the area sold to petitioner No. 2 did not include the passage and every right holder, including petitioner Nos. 1 and 2, had been having free access to their land. Later on, it was found that the area sold to Modi Ram, petitioner No. 2, in Killa No. 83 was in fact of Rectangle No. 82 and the land of Rectangle No. 82/22/2 (7-11) and 82//23/2 (7-11) had already been sold (o one Ghasi Ram on 13.11.1964 and as such the sale in favour of petitioner No. 2 was cancelled, as far as it related to Killa No. 83/22(7-11) and the revised sale certificate was issued on 15.11.1971.

4. It was next averred that respondent No. 3. Ram Chand, was employed in the office of Sub Divisional Officer (Civil) and was an influential person and got the entire area of Killa No. 83/22 and 83/23 in a secret auction without excluding the area of the passage on the northern side of Killa No. 83/22 and on the northern eastern side of Killa No. 83/23. The said sale was confirmed on 8.2.1972 and sale certificate was issued on 7.7.1979.

5. It was also averred that the petitioner had tiled an application u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, "the Act"), which was rejected on 7.4.1982 and he further filed revision petition which was also rejected by respondent No. 1 on 20.12.1982. With these allegations the above mentioned petition was filed.

6. On 3.6.1983, notice of motion was issued for 5.8.1983 and ultimately, it was admitted on October 24, 1983.

7. I have heard Sh. P.D. Shakir, counsel for the petitioners, Sh. Ranjit Saini, counsel for respondent Nos. 1, 2 and 4 and Sh. C.L. Ghai, counsel for respondent No. 3 and carefully gone through the file.

8. Counsel for the petitioners inter-alia contended that on the northern side of Killa Nos. 82/24 and 25, 827/21 to 25, 83//21 to 23 and on the eastern side of Killa Nos. 83/23 and 86/3, passage was carved out. For this purpose, he has produced on file sketch plans Annexures P-2 and P-3, showing the passage. A perusal of the Akash chajra of Killabandi Maja Mori, Annexure P-5, shows that there is a passage existing on the northern side of Killa Nos. 81/24/2/2, 25/2, 21/2, 22/2 and Killa Nos. 82/23/2, 24/2, 25/2, 21/2 but no passage exists on the Killa Nos. 83/22 and 83/23 on the northern side as well as on the eastern side of Killa No. 83/23. However, the path exists on the eastern side of Killa No. 86/3. Annexure P-6 is the sale certificate in favour of Modi Ram, petitioner No. 2, issued by the Tehsildar (Sales) on August 6, 1965. A perusal of it shows that it has not been mentioned in it that the passage, as claimed by the petitioners, existed. He was allotted land measuring 30K 7M situated in village Mori comprised in Killa Nos. 82/22 (7-11), 82//23 (7-4) and 867/2 (8-0) and S6//3 (7-12). Bakhtawar Singh, petitioner No. 1, had filed a petition u/s 42 of the Act, which was rejected by the Additional Director, Consolidation of Holdings, Haryana, Chandigarh, vide order dated 7.4.1982, in which it was observed as under :-

"I have heard the learned counsel for the both the parties and have also seen the record. The original Kurrah of the Custodian was duly connected by a path as provided in the Scheme. Admittedly the petitioners had purchased the land after the completion of the consolidation proceedings. The question of providing a path to such vendees does not arise. The petition is, therefore, hereby dismissed."

9. The petitioners further tiled a revision which was dismissed by Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, Haryana, Chandigarh, vide order dated 20.12.1982, Annexure P-4, in which it was observed as under :-

"Coming to the merits of the case the learned counsel for Shri Ram Chancier respondent submitted that he had purchased the land as back as 1972, therefore, the present petition was not maintainable as no objection was filed at the time of auction, nor the matter was agitated by way of revision before the then Deputy Secretary (Reh)-cum-Settlement Commissioner. There was no justification now for the petition being submitted after the lapse of about 10 years. The learned A.D.A. for the State agreed with this submission. I am also in agreement with the above arguments. If the present petitioner feels concerned about the passage being blocked he should have raised the objection within the stipulated period as the auction is held in an open manner and there is no secret about it. The perusal of the record show that all the procedural requirements were met in respect of auction concerning the land comprised in Killa Nos. 83/18 min, 22 and 23, total measuring 18 kanals. There is no irregularity in the conduct of this sale. If the petitioner did not feel any difficulty during past 10 years, it would not be justified now on his part to raise the objection at such a belated stage. If at ail Bakhtawar Singh petitioner claims any right to use this passage, this would be a purely civil matter for which he should approach the concerned Civil Court. There is no merit in the petition which is hereby dismissed."

10. The son of Bakhtawar Singh and his grandson had again filed a revision petition which was dismissed vide order dated 23.5.1983, Annexure R-1, by the Joint Secretary (Reh.)-cum-Settlement Commissioner, Haryana, Chandigarh.

11. Respondent Nos. 1, 2 and 4 had filed written statement. Para Nos. 2, 3 and 4 read as under :-

"2. In reply to Para No. 2 of the petition it is submitted that in the year 1961 the erstwhile State of Punjab purchased the rural evacuee agricultural land and properties from the Government of India in a Package Deal and the State Government became its owner (1973 P.L.J. 183). It is further submitted that the Rules were framed for the disposal of rural package deal land and properties and also instructions were issued for its disposal from time to time. It is also submitted that it was decided to sell the rural evacuee agricultural land in restricted auction amongst Harijans and they were entitled to purchase the same on easy instalments upto five standard acres including their own holdings, if any. It is further submitted that the perusal of the sale files shows that there is

nothing on the record to show that any passage was carved out of any Khasra numbers mentioned in the writ petition, by the officer who conducted the auction of land, at the time of auction.

3. In reply to Para No. 3 of the petition it is submitted that Khasra Nos. 82/22, 23 and 86/2 and 3 were put to restricted auction amongst Harijans on 23.11.64 in which Shri Modi Ram offered the highest bid of Rs. 2850/-. This auction was confirmed in his favour on 11.12.64 and a sale certificate was also issued in favour of Shri Modi Ram. Subsequently it was found that Khasra Nos. 82/22 and 23 had already been sold to one Shri Ghasi Ram. Accordingly the sale of the land comprised in Khasra Nos. 82/22 and 23 made in favour of Shri Modi Ram was set aside by the Settlement Officer (Sales) on 25.11.71. The sale certificate issued to Shri Modi Ram was also revised. It is further submitted that the sale file does not show that any passage was left at the time when the land was sold to Shri Ghasi Ram and Modi Ram.

4. In reply to para No. 4 of the petition it is submitted that Khasra Nos. 81/24/2 min, 25 min, 24/1, 88/5, 6/1, 87/1, 2, 3 and 82/21, 22 and 23 measuring 70 Kanals 3 Marlas were put to auction on 13.11.64 in sale file No. 156/1 in which one Shri Ghasi Ram offered the highest bid of Rs. 3600/-. This auction was confirmed on 21.12.64 and a sale certificate was issued in favour of Shri Ghasi Ram on 6.4.65. It is further submitted that the land comprised in Khasra Nos. 82/22, 23, 86/2 and 3 measuring 30 Kanals 7 Marlas was put to auction on 23.11.64 in sale file No. 191/1 in which one Shri Modi Ram offered the highest bid of Rs. 2850/-. This auction was confirmed in his favour on 11.12.64 and a sale certificate was issued to him on 6.4.65. Subsequently, it was found that Khasra Nos. 82/22 and 23 had already been sold in favour of Shri Ghasi Ram and as such the sale of land comprised in Khasra Nos. 82/22 and 23 made in favour of Shri Modi Ram was set aside by the settlement Officer (Sales) vide his order dated 25.11.71 and a revised sale certificate was issued to Shri Modi Ram on 15.12.1971. It is further submitted that in sale file No. 466/A-V the land comprised in Khasra Nos. 83/18, 22 and 23 measuring 18 Kanals was sold on 13.1.72 in which one Shri Ram Chander offered the highest bid of Rs. 3800/-. This auction was confirmed in his favour on 8.2.72 and a sale certificate was issued in his favour on 7.6.79. The averment of the petitioners in this para of the writ petition that , Khasra Nos. 82/22/2 and 82/23/2 were sold to Shri Ghasi Ram is incorrect. The reference of the alleged passage in this para of the writ petition is also incorrect."

Therefore, from the above documents and averments, it is clear that no passage was allotted to Bakhtawar Singh and Modi Ram, petitioners, when they were allotted land in restricted auction and further the petitioners had got a thoroughfare of 3 Karams with which entered in Killa No. 20, 6, 10, 21 and Killa No. 20 belonged to his son and that passage was also being used by Bakhtawar Singh. There is nothing on record to show that any passage was carved out of any Killa Numbers mentioned in the writ petition by the officer who conducted the auction

of the land. At the time of auction, if the petitioners were aggrieved, as no passage was provided to them, then they should have filed objections under Rule 9 of the State rules framed for the disposal of Rural Package Deal land and properties but they did not do so. The request of the petitioners for providing a path had already been rejected by the Additional Director, Consolidation of Holdings, vide order dated 7.4.1982, as they had purchased the land after the completion of the consolidation proceedings and question of providing a path to such vendees did not arise and further the original Kurrah of the Custodian was duly connected by a path as provided in the scheme. The objections were filed by the petitioners after a period of 10 years. It was observed by the Joint Secretary (Reh.)-cum-Settlement Commissioner that if the petitioner, Bakhtawar Singh, did not feel any difficulty during the last 10 years for approaching to his land, then it was not justified for him to raise objections at a belated stage.

Therefore, in view of the fore-going reasons, there is no force in the writ petition and as such the same is dismissed.

12. Petition dismissed.