
(2012) 02 P&H CK 0291

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 272 of 2012 (O and M)

Daleep Singh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 166 PLR 706

Hon'ble Judges : Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : R.K. Malik, with Mr. Mohan Singla, for the Appellant;

Judgement

Satish Kumar Mittal, J.—This Letters Patent Appeal has been directed against the judgment dated 11.01.2012 passed by the learned Single Judge, whereby the writ petition (CWP No. 16338 of 1995) (since reported as (2012-2)166 P.L.R. 77) filed by the appellant challenging the order dated 9.6.1994 passed by the Financial Commissioner, Haryana; and the order dated 29.8.1995 passed by the Prescribed Authority, Ellenabad under the Haryana Ceiling on Lands Holdings Act, 1972 (hereinafter referred to as "the Act") has been dismissed. We have heard the learned counsel for the appellant.

2. The appellant Daleep Singh was a big land owner as he was owning 922 (canals 12 marlas of "C" category of land as on 24.1.1971 - the prescribed date fixed under the Act. On that date, his mother Smt. Dakhan was owning 5 kanals 8 marlas of "C" category of land. On 14.8.1976 the appellant filed his declaration form u/s 9(1) of the Act before the Prescribed Authority showing himself, his wife and three children as family and, thus, claiming one primary unit. Undisputedly, Smt. Dakhan, who was a small land owner on the notified date as owning only 5 kanals 8 marlas of land, did not file any declaration form under the Act. However, when the declaration form filed by the appellant came up for consideration before the Prescribed Authority, Smt. Dakhan moved an application along with her affidavit that the declaration form filed by her son (appellant herein) should be

deemed to have been filed by her being head of family, and submitted that the surplus area with regard to total land measuring 928 kanals (922 Kanals 12 Marlas + 5 Kanals 8 Marlas) be determined after giving one unit to her and one unit to her son (appellant). The Prescribed Authority accepted her prayer. Out of the total land, both Smt. Dakhan and Daleep Singh were allowed to retain 864 kanals of "C" category land and the remaining land of 64 kanals of "C" category was declared surplus vide order dated 5.4.1984.

3. When the Commissioner, on the basis of the inspection note dated 20.2.1986 to 27.2.1987 submitted by Tehsildar Agrarian, came to know about the aforesaid illegal order passed by the Prescribed Authority, he recommended to the Financial Commissioner to set aside the said order in exercise of suo motu power u/s 18(6) of the Act. On the recommendation of the Commissioner, the Financial Commissioner vide order dated 9.6.1994, in exercise of suo motu power u/s 18(6) of the Act, set aside the order dated 5.4.1984. The Financial Commissioner held that the Prescribed Authority in utter disregard to the statutory provisions of Section 3(f) of the Act, gravely erred while treating the declaration filed by the appellant as has been filed by his mother and then granting her the benefit of two units, i.e., one for herself and the other for her son, resulting into loss to the surplus pool. It was held that the declaration form submitted by appellant Daleep Singh should have been considered to be filed by him and after deducting the area of one primary unit i.e. 432 kanals, the remaining area of 490 kanals 12 marlas of "C" category land should have been declared as surplus, but the Prescribed Authority had adopted a totally wrong procedure in declaring only an area of 64 kanals of "C" category land as surplus area. After setting aside the order, the Financial Commissioner remanded the case to the Prescribed Authority for calculating the surplus area afresh after allowing one unit of permissible area to Daleep Singh, the big land owner and his family, and thereafter he be given opportunity to select his permissible area of one unit.

4. It may be mentioned here that instead of challenging the said order, the appellant submitted to the jurisdiction of the Prescribed Authority. The Prescribed Authority after providing opportunity of hearing to him vide order dated 29.8.1995 declared 490 kanals 12 marlas of land as surplus in the hands of the appellant and he was permitted to select his permissible area with regard to 432 kanals of "C" category of land. The land measuring 5 kanals 8 marlas owned by the mother of the appellant was excluded from the determination of the surplus land.

5. The appellant without challenging the said order passed by the Prescribed Authority by filing the appeal or revision under the Act straight away filed the Civil Writ Petition challenging the order dated 9.6.1994 passed by the Financial Commissioner, Haryana as well as the order dated 29.8.1995 passed by the Prescribed Authority. The learned Single Judge by detailed judgment has dismissed the writ petition.

6. Learned counsel for the appellant raised two-fold submissions. Firstly, that in

the facts and circumstances of the case, the learned Financial Commissioner was not justified in exercising his suo motu power u/s 18(6) of the Act at a belated stage and setting aside the order dated 5.4.1984 passed by the Prescribed Authority. Secondly, the learned Financial Commissioner has committed grave illegality while coming to the conclusion that u/s 3(f) of the Act the word "family" means the husband and/or wife and their minor children. Learned counsel argued that the widowed mother being head of family also constitutes a family with her adult son, therefore, the Prescribed Authority had rightly accepted the prayer of Smt. Dakhan that the declaration form filed by her son be deemed to have been filed by her being head of family.

7. After hearing the learned counsel for the appellant and going through the impugned judgment passed by the learned Single Judge as well as the order dated 29.8.1995 passed by the Financial Commissioner, we do not find any merit in either of the contentions raised by the learned counsel. It is now settled proposition that though suo motu power u/s 18(6) of the Act can be exercised at any time, but such suo motu power can be exercised within a reasonable period depending upon the facts and circumstances of each case (See: Ibrahimpatnam Taluk Vyavasaya Collie Sangham v. K. Suresh Reddy and others,¹ 2004(1) H.R.R. 635). In the present case, the illegalities were noticed by the Commissioner in the inspection note dated 20.2.1986 to 27.2.1987 submitted by Tehsildar Agrarian. Immediately within three years the suo motu power was exercised. Therefore, in the facts and circumstances of the present case, it cannot be said that the suo motu power was exercised at a belated stage. Therefore, the learned Single Judge has rightly observed as under:-

...The Commissioner came across this infirmity while monitoring the progress of surplus cases and took action to refer the matter to Financial Commissioner just within two years of the impugned order. The power u/s 18(6) of the Act, being available without any reference to limitation has to be seen in the facts and circumstances of this case. It appears that there is sufficient reason and explanation forthcoming in this case to show that there was not much unexplained delay on the part of the Commissioner to seek this suo-motu reference to invoke the jurisdiction of the Financial Commissioner. This can not be termed as arbitrary or unfair in any manner. The words used in the Section are "at any time" and these have been interpreted to mean "reasonable time". The delay in this case can be considered to be reasonable and it was entirely within the discretion of the Financial Commissioner to interfere in this matter and this Court would not be inclined to interfere in this discretion in the circumstances of this case in a petition under Article 226 of the Constitution of India.

8. As far as the second contention of the learned counsel that "family" includes the widowed mother and her adult son, the same is wholly devoid of merit. Section 3(f) of the Act defines "family" to mean husband, wife and their minor children, or any two or more of them". u/s 4(1) of the Act, "the Primary unit of

family" is confined to five members, namely, husband, wife and up to three minor children with reference to which permissible area has been prescribed, but u/s 4(2) the permissible area shall be increased by one-fifth of the permissible area of the primary unit of family for each additional member of family subject to the maximum limit of twice the permissible area. The Supreme Court in *Seth Nand Lal and another v. State of Haryana and others*, 2 1980 P.L.J. 470 has held that for the purposes of the Act the concept of family has been defined in an artificial manner as meaning husband, wife and their minor children and excludes major sons and unmarried daughters. The contention of the learned counsel for the appellant that in view of Clause (c) of subsection (4) of Section 9 of the Act which provides that the declaration under sub-section (1) shall be furnished by, in the case of a family, the husband or in his absence, the wife, or in absence of both, the guardian of the minor children, Smt. Dakhan was entitled to file declaration form as head of family of her deceased husband, including her major son Daleep Singh.

9. This contention of the learned counsel is not acceptable because Section 3(f) of the Act clearly defines the word "family", which, according to that sub-clause means husband, wife and their minor children, or any two or more of them. In no circumstances, either the husband or wife or after the death of husband, the wife can constitute a family with her or her major children. The contention of the appellant that a widow can constitute a family with her major son will not only defeat the purpose of the Act but will also go contrary to the explicit and clear language of the provisions of the Act. The learned Financial Commissioner in this respect has given detailed reasons while rejecting the said contention and coming to the conclusion that in view of the definition given in Section 3(f) of the Act, the family only consists of husband and/or wife and their minor children. In our opinion, the major son cannot be included as member of the family and the mother cannot be said to be head of family since she has no minor child of her own at the time of filing declaration form. In the present case, the Financial Commissioner has rightly come to the conclusion that the mother could not have been permitted to adopt the declaration form filed by her son and claim herself as head of family with her major son. Therefore, she should not have been given one unit as on the notified date i.e. 24.1.1971, she was not a big land owner. Thus, in our view after the remand the Prescribed Authority has rightly declared 490 kanals 12 marlas of land as surplus in the hands of the appellant while excluding the land of his mother, who on the prescribed date was a small land owner. In view of the aforesaid, we do not find any illegality in the impugned order passed by the learned Single Judge.

Dismissed.