

(2012) 04 P&H CK 0152
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 556 of 2009

Dass Ram @ Gurdas Ram

APPELLANT

Vs

Financial Commissioner (Co-operation), Government of
Punjab and another

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Citation : (2012) 04 P&H CK 0152

Hon'ble Judges : Ranjan Gogoi, C.J;Mahesh Grover, J

Bench : Division Bench

Advocate : Vikas Behl, for the Appellant;

Final Decision : Dismissed

Judgement

Ranjan Gogoi, C.J.—This appeal is directed against the judgment and order dated 26.3.2009 passed by the learned single Judge in Civil Writ Petition No. 4774 of 2009. By the aforesaid order, the learned single Judge has dismissed the writ petition filed by the appellant-writ petitioner challenging the cancellation of the allotments made in favour of the appellant under the provisions of the Punjab Package Deal Properties (Disposal) Act, 1976. The brief facts that will be required to be noticed are as follows:-

On 28.4.1997 appellant-writ petitioner was allotted evacuee land measuring 40 Kanals - 13 marlas at Village Mirzapur. On 27.2.2003 another area of 6 kanals was allotted to the appellant-writ petitioner on the basis of his possession. On payment of the entire amount due the necessary sale certificate was issued in favour of the appellant-writ petitioner.

2. A complaint was filed by respondent No. 2 to the effect that allotment in question had been made in favour of the appellant-writ petitioner by concealment of a previous allotment made in Village Ibrahimpur. According to the complainant, the land allotted to the appellant-writ petitioner in Village Ibrahimpur had been sold within 20 years in violation of the conditions of the

allotment. Furthermore, in the complaint filed, it was stated that the allotment in question had been made on the basis of an application filed by the appellant wherein the fact that an earlier application for allotment of land in Mirzapur village made by the appellant had been rejected had not been stated. On the basis of the aforesaid complaint and upon due verification both the allotments in question were cancelled. The appellant unsuccessfully availed of the statutory remedies provided and instituted CWP No. 10094 of 2008 challenging the cancellations in question. The said writ petition was withdrawn and the writ petition out of which this appeal has arisen was filed disclosing better particulars.

3. Before the learned single Judge it was contended on behalf of the appellant-writ petitioner that the embargo on the sale of land allotted came into force by notification dated 3.9.1991, whereas, the alleged allotment in Ibrahimpur Village was in the year 1977-78. The said embargo imposed in the year 1991, therefore, could not have been applied to the allotment in Ibrahimpur village. It was also submitted before the learned single Judge that the respondent No. 2 has no locus to challenge the allotments made in favour of the appellant-writ petitioner.

4. The learned single Judge took the view that the materials on record clearly establish that the petitioner was allotted land in Village Ibrahimpur on the basis of his possession. Such allotment could have been made only if he was a resident of Village Ibrahimpur. Consequently, his plea that he belongs to village Mirzapur so as to be entitled to allotment in the said village is evidently incorrect. The above apart, it remained undisputed that the allotment in Mirzapur village was refused to the appellant-writ petitioner which refusal was not incorporated in the second application for allotment filed by the appellant-writ petitioner. Consequently, according to the learned single Judge, the allotment in Mirzapur village made in favour of the appellant-writ petitioner was the result of a fraud committed which vitiated the allotment.

5. The above findings recorded by the learned single Judge are unassailable. Learned counsel for the appellant-writ petitioner has not been able to dislodge the fact that there was in fact, an earlier allotment of land in favour of the appellant in Ibrahimpur village.

6. In the impugned order in the writ petition it was observed by the competent authority that the subsequent allotment was incompetent on account of the violation of the terms of the earlier allotment of land in village Ibrahimpur.

7. The petitioner has not brought out any material to offset the aforesaid observation. Neither the instrument of allotment nor the terms governing it are on record. Even there has been no serious attempt to disown such an allotment, rather it was so admitted before the learned single Judge.

8. The above apart, the rejection of the appellant's first application for allotment of land in Mirzapur village and the suppression of the said fact in his second application has not been disputed. Therefore, the second application filed by the appellant on the basis of which allotment had been made suffers from a

fundamental infirmity which makes the allotment order on the basis of such an application the result/outcome of deception/fraud played on a public authority and hence vitiated since inception. We, therefore, do not consider the present to be a fit case for admission. We accordingly decline to entertain this LPA any further and dismiss the same.