
(2003) 04 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16817 of 1998

Des Raj alias Deso

APPELLANT

Vs

Financial Commissioner, Taxation and Others

RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 9(1)
Punjab Tenancy Act, 1887 — Section 82

Citation : (2003) 135 PLR 591 : (2003) 3 RCR(Civil) 493 : (2003) 2 RCR(Rent) 236

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : I.K. Mehta and M.S. Kohli, for the Appellant; Swati Gupta, AAG for Respondent No. 1, Ashwani Chopra, Senior Advocate and Harminder Singh, for Resp. Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioner has filed the instant petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 17.11.1997 (Annexure P-6) passed by the Financial Commissioner, Revenue, Punjab, Chandigarh, vide which he has accepted the review application filed by respondents No. 2 and 3 for reviewing the order dated 19.4.1993 passed by him.

2. The brief facts of the case are that respondents No. 2 and 3 are the landlords and the petitioner is an ejected tenant. The aforesaid respondents filed separate ejectment applications against the petitioner u/s 9(1)(i) of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as "the Act") claiming themselves to be small land owners. The petitioner was ordered to be ejected from the land measuring 3 kanals owned by respondent No. 3 vide order dated 21.8.1978 and from 2 kanals 13 marlas of land measuring 3 kanals owned by respondent No. 3, vide order dated 21.8.1978 and from 2 kanals 13 marlas of

land owned by respondent No. 2 vide order dated 21.6.1979 on the grounds that the aforesaid respondents were the small land owners. The aforesaid ejectment orders were subject to re-settlement of the petitioner on equivalent available land from the surplus pool. The Collector (Agrarian), Gurdaspur, vide his order dated 14.4.1981 allotted the equivalent land to the petitioner from the surplus pool but the petitioner himself got the said allotment cancelled by saying that the said land is of inferior quality and of lessor value. For the second time, the allotment of equivalent land from the surplus pool was again made in favour of the petitioner vide order dated 15.11.1989, but again the petitioner himself got the said allotment cancelled on the same ground by making an application dated 11.1.1990 (Annexure R2/1). In the said application, the petitioner submitted that the land allotted to him in village Kahnuwan vide order dated 15.11.1989 was of very low price and of poor quality and the same is about 20 Kms. away from his residence. In that application, he also prayed that some surplus lands of big land owners which are to be allotted to the ejected tenant are also available in village Gurdaspur and Village Aujla. He gave specific Khasra numbers of the land available for allotment in both these Villages, from which he requested that he may be allotted the land, as he is only to be allotted 5 Kanals 13 marlas of land.

3. By taking into consideration the aforesaid application of the petitioner, the Collector (Agrarian) vide his order dated 10.10.1990 (Annexure R2/2) allotted 5 kanals 13 marlas of land to the petitioner in village Aujla as per the request made by him. The land in village Gurdaspur, as suggested by the petitioner, was found in occupation of the Armed forces, therefore, the same could not be allotted to him. But in spite of the petitioner was allotted the land of his choice at Village Aujla, he did not accept the aforesaid allotment made by the Collector (Agrarian) and preferred an appeal against the said order dated 10.10.1990 before the Commissioner, Jalandhar Division, Jalandhar. In appeal, the petitioner submitted that he should be allotted the land in village Gurdaspur, as though it has been shown in possession of the Armed Forces but it is not owned by them. He further submitted that the land allotted to him in Village Aujla is not at par with the land at Village Gurdaspur. He urged that under the provisions of the Act, he should be allotted the land in the area where he resides. The learned Commissioner, after considering the contention raised by the petitioner, dismissed the said appeal vide order dated 22.1.1992 (Annexure P-1), after holding that the proposed land situated in Village Gurdaspur is in possession of the Armed Forces and the same cannot be allotted to any person. It was also observed that since the petitioner was allotted available surplus land in Village Aujla as per his request, being ejected tenant, therefore there is no ground to interfere in the order dated 10.10.1990 passed by the Collector (Agrarian) allotting the equivalent surplus land in Village Aujla to the petitioner being an ejected tenant.

4. Against that order, the petitioner filed a revision petition before the Financial Commissioner by submitting that he should be allotted the land in Village Gurdaspur. He submitted that though the said land is in possession of the Armed

Forces but their possession is of temporary nature and he will take the actual physical possession of the land when the Armed Forces will vacate the same, therefore, he should be allotted the land at Village Gurdaspur. The learned Financial Commissioner, vide his order dated 19.4.1993 (Annexure P-3), allowed the revision petition filed by the petitioner, while observing as under:-

"I am not in agreement with the conclusion arrived at by the Collector Agrarian, Gurdaspur and by the Commissioner, Jalandhar Division that there is no land available being under occupation of the army/para-military forces temporarily, as it has neither been acquired nor requisitioned. Military has temporarily settled down keeping in view the prevailing situation in Punjab as per their strategy and availability of open space. So the land in their occupation can be allotted to the petitioner. Agreeing with the counsel for the petitioner, it is ordered that an area equal to the area from which the petitioner has been ejected be finally allotted to him in Gurdaspur, which is under temporary occupation of army/para-military forces. After the allotment, possession on the papers be given to the petitioner. He is prepared to vacate the land of the respondents as and when army/para-military forces vacate the land in question. Petitioner be given physical possession as per his request. As requested by the counsel for the respondents, it is further ordered that all these formalities be completed and finalised within 3 months so that the respondents, who are small landowners, do not suffer. In view of the above, the revision petition is accepted and impugned orders of Collector Ararian, Gurdaspur are set aside."

Against the aforesaid order, on 19.7.1993, respondents No. 2 and 3 filed a review application (Annexure P-4) u/s 24 of the Act read with Section 82 of the Punjab Tenancy Act, 1887 for reviewing the order passed by the Financial Commissioner on the grounds that possession of the Armed Forces on the available surplus land in Village Gurdaspur is not temporary, rather their possession is permanent as they are in possession of the same for the last many years. In this regard, jamabandis for the year 1963-64, 1969-70, 1974-75, 1979-80, 1984-85 and 1980-90 were produced on record. Respondents No. 2 and 3 Further submitted that the observation made by learned Financial Commissioner that the available surplus land in Village Gurdaspur, is only in temporary occupation of the Armed Forces is a mistake which is apparent on the record and due to that mistake, the petitioner was ordered to be allotted land in Village Gurdaspur, which was wrongly held to be in temporary occupation of the Armed Forces. In the said application, respondents No. 2 and 3 further submitted that in the order dated 19.4.1993, it was further ordered that after the said allotment, possession of the land in Village Gurdaspur be given to the petitioner, but he will vacate the land of the respondents only when the Armed Forces will vacate the land allotted to them. They submitted that since the Armed Forces are not likely to vacate the land in Village Gurdaspur, therefore, the petitioner will never vacate their land, from which he has been ordered to be ejected.

5. The said application, filed by respondents No. 2 and 3, was allowed by the

Financial Commissioner vide his order dated 17.11.1997 (Annexure P-16) while holding that actually the surplus land in Village Gurdaspur is permanently camping ground of Armed Forces and such land cannot be allotted to the ejected tenant. That was a mistake apparent on the face of the record. The petitioner can be settled on the other available land in District Gurdaspur. Before passing the aforesaid order, the learned Financial Commissioner called for the report of the Sub Divisional Officer (C)-cum-Collector Agrarian, Gurdaspur to ascertain the actual factual position at the spot, whether the Armed Forces are in temporary possession of the said land or their occupation is of permanent nature. The said Officer submitted the report that the surplus land in question in Village Gurdaspur is actually a permanent camping ground of the Armed Forces. For that reason, the learned Financial Commissioner reviewed his order as stated above.

6. The petitioner has challenged the aforesaid order dated 17.11.1997 passed by the Financial Commissioner on the following three grounds:

i) That the learned Financial Commissioner has exceeded his jurisdiction while reviewing the earlier order dated 14.11.1993 as the facts of the case do not warrant any review of the earlier order. Though the learned Financial Commissioner has the power of review but the said power is very limited and while reviewing his earlier order, the learned Financial Commissioner has exceeded the limit of his reviewing power;

ii) That the review application was filed by a different counsel, therefore, the same is not maintainable; and

iii) That no harm is being caused to respondents No. 2 and 3 as the petitioner is ready to have only paper possession of the land in Village Gurdaspur; and if the allotment of the said land is made in his favour and he is handed over paper possession of the same, he will immediately vacate possession of the land belonging to respondents No. 2 and 3, from which he has been ordered to be ejected.

7. I have heard learned counsel for the parties on the aforesaid three grounds. The first ground is that the power of review of an earlier order passed by the learned Financial Commissioner u/s 82 of the Punjab Tenancy Act, 1887 is very limited. The said power can only be exercised when there is an apparent mistake or error in the order to be reviewed. While referring to the decision of the Hon"ble Supreme Court in Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, , learned counsel for the petitioner submitted that the power of review should not be exercised on the ground that the decision was erroneous on merit. That would be the province of a Court of Appeal. A power of review is not to be confused with the appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court. He submitted that in the instant case, there was no mistake apparent on the face of the record, rather the Financial Commissioner called for the report dated 21.8.1995 subsequently which was even not available when initially the order was passed.

Therefore, from this fact, it cannot be said that there was a mistake apparent on the face of the record. I find no force in the contention raised by learned counsel for the petitioner. It is well settled law, as has been held by the Hon''ble Supreme Court in *Smt, Meera Bhanja v. Smt. Nirmala Kumari Choudhury* (Supra), that the power of review is inherent in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But the power is to be exercised in definitive limits. The power of review may be exercised on the discovery of new and important matter on evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. In the instant case, the mistake was apparent on the record. The learned Financial Commissioner, in his earlier order dated 14.9.1993, had observed that the Armed Forces were temporarily in occupation of the available surplus land situated in village Gurdaspur whereas factually this fact was wrong. The Armed Forces are in permanent occupation of the said land and such land cannot be allotted to an ejected tenant, merely on the basis that such tenant made a statement that he was ready to take the symbolic possession of such land. I am of the opinion that the learned Financial Commissioner had committed a mistake which was so apparent on the record which he has rightly corrected while reviewing his earlier order. As far as the report dated 21.8.1985 is concerned, that is a new material. Actually that report was called to verify the fact whether the Armed Forces are in the temporary or permanent occupation of the available surplus land in Village Gurdaspur. Therefore, in no circumstance it can be said that the Financial Commissioner has acted beyond his jurisdiction while reviewing his earlier order; and the said subsequent decision cannot be termed as a decision on merit as taken by an Appellate Authority. Thus, the first contention of the petitioner is hereby rejected.

8. The second contention raised by learned counsel for the petitioner is that the review application filed by a different counsel, who had not argued the case when the earlier order was passed is not maintainable. In support of this contention, learned counsel for the petitioner cited a decision of the Hon''ble Supreme Court in *M. Poornachandran v. State of Tamil Nadu* AIR 1977 SC 1283. I have considered this submission of learned counsel for the petitioner and find no force in the same. In the instant case, the review application has not been filed on the ground that certain points, which were raised by learned counsel for respondents No. 2 and 3 were not taken into consideration by the Financial Commissioner. The ground of review in the instant case is that there is apparent mistake in the earlier order, which has necessitated to file the review application. Such type of review application cannot be dismissed being not maintainable on the ground that it has been filed by a different counsel. The judgment in *M. Poornachandran and Anr. v. State of Tamil Nadu* and *Ors.* (supra) is not applicable to the facts and circumstances of the present case as in the said case the review application was

filed before the Hon"ble Supreme Court even without taking No Objection from the Advocate on record, who filed the appeal. In spite of the fact that the Registry informed the applicant in that case that he had not obtained No Objection from the Advocate on record, the needful was not done. In these circumstances, the Hon"ble Supreme Court has observed that the review application filed by a different Advocate should not be entertained.

9. In support of his third contention, learned counsel for the petitioner submitted that his client is ready to take symbolic possession of the available surplus land situated in Village Gurdaspur and he will hand over possession of the land under his tenancy to the respondents-landlords even without waiting for actual delivery of possession. Therefore, the impugned order be set aside. I do not find any force in this contention of learned counsel for the petitioner. Once it has been found as a matter of fact that the available surplus land in Village Grudaspur is in permanent occupation of the Armed Forces for the last so many years, then such land cannot be allotted to the petitioner. An ejected tenant cannot be allotted the land of his choice. On earlier two occasions, the petitioner refused the allotment made by the Collector Agrarin on the ground that the land allotted to him was of inferior quality and of lessor value. But third time, he was allotted the land as per his own, request in Village Aujla. In his application he himself made a request that he should be allotted the land either in Village Gurdaspur or in Village Aujla. He gave given specific Khasra numbers of the available surplus land in both these Villages and only from those Khasra numbers, he was allotted land in Village Aujla. Now, he cannot be allowed to say that the said land is not acceptable to him and compel the authorities to allot the land at Village Gurdaspur, which is in permanent occupation of the Armed Forces. The allotment of this surplus land in Village Gurdaspur, which is in permanent occupation of the Armed Forces, even will not be in the interest of the security of the Nation. That land cannot be allotted to the petitioner who is simply an ejected tenant and is only entitled to get an equivalent land from surplus pool. He has no right to dictate the authorities to allot him a particular piece of land.

In view of the aforesaid discussion, I find no force in any of the contentions of learned counsel for the petitioner. The writ petition is therefore dismissed being without merit.

No order as to costs.