
(2011) 10 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1288 of 1986 (O&M)

Dev Raj

APPELLANT

Vs

Financial Commissioner Revenue, Punjab and others

RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 23

Citation : (2012) 2 RCR(Civil) 162

Hon'ble Judges : K.Kannan, J

Advocate : Mr. Alok Mittal, Mr. R.K. Girdhar, Mr. Akshay Bhan, Advocate. Mr. Navdeep Sukhna, DAG, Punjab., Advocates for appearing Parties

Judgement

K. Kannan, J. (Oral)

1. The writ petition challenges the correctness of the order passed by the Authorities under the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (for short, "the Act, 1954") and the relevant rules. It is an admitted case that the petitioner had bid at an auction of the property that was put up for sale under the Act, 1954 on 21.07.1982 but the same was challenged at the instance of the 3rd respondent on 05.08.1982. His objection was that he had been actually in possession of the property and there was no due publicity for the sale and he could not, therefore, participate in the auction. This objection filed by the 3rd respondent was rejected by the Settlement Commissioner vide his order dated 20.06.1983. The Settlement Commissioner found that the objection itself had been filed beyond the period of limitation as prescribed under Rule 92 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1985, which prescribes a period of 7 days for filing the objections. The 3rd respondent, who was the objector, appears to have filed a civil suit seeking for an injunction contending that he had been in possession of the property even prior to sale and that his possession cannot be disturbed except by due process. The application appears to have been dismissed and an appeal against the order also resulted in dismissal of the 3rd respondent's claim. After trying his luck in the civil Courts,

he has filed an appeal against the order dated 20.06.1983 to the Chief Settlement Commissioner. The Chief Settlement Commissioner set aside the order holding that the sale proclamation itself seemed suspect for the entries relating to the particular khasra numbers appeared to have been tampered and a report Roznamcha of the Patwari did not contain the particular khasra numbers, which were sold. The appellate authority found that there had been no publicity given for the sale and the 3rd respondent, who had been in possession of the property could not have allowed the sale to take place without his participation if due notice had been given for the conduct of the sale. This order was confirmed by the Financial Commissioner when the petitioner had challenged the order of the Chief Settlement Commissioner.

2. The counsel for the petitioner contends that the appeal to Chief Settlement Commissioner itself was not maintainable, since under Section 23 of the Act, 1954, the appeal has to be filed within a period of 30 days from the date of order. However, the Chief Settlement Commissioner could entertain an appeal after the expiry of 30 days if, he was satisfied that appellant was prevented by sufficient cause from filing the appeal in time. The said section would require to be reproduced for a proper understanding of the objection of the petitioner:

?23. Appeals of Chief Settlement Commissioner. (1) Subject to the provisions of subsection (2), any person aggrieved by an order of the Settlement Commissioner or the Additional Settlement Commissioner or an Assistant Settlement Commissioner or a managing corporation under this Act may, within thirty days from the date of order, prefer an appeal to the Chief Settlement Commissioner in such form and manner as may be prescribed:

Provided that the Chief Settlement Commissioner may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall lie from any order passed in appeal under Section 22.

(3) The Chief Settlement Commissioner may, after hearing the appeal confirm, vary or reverse the order appealed from and pass such order in relation thereto as he deem fit.?

3. This issue of limitation had been taken before the Chief Settlement Commissioner as well as the Financial Commissioner but none addressed it and both of them had held that there had been some corrections and insertions in the proclamation and, therefore, it would subserve public interest to allow for sale of the property.

4. The learned counsel appearing for the 3rd respondent would contend that although the appeal had been barred by time, the authorities always have a right to reopen the case if, there was a fraud in the conduct of the sale. The learned counsel will refer to a decision of Hon"ble the Supreme Court in ?Gurbax Singh v. The Financial Commissioner and another, 1991 PLJ 192? that held, inter alia, that

a Settlement Commissioner had a power to set aside a sale on his own motion by virtue of Rule 92(4) of the Rules and if he was satisfied that there was any material irregularity or fraud resulting in substantial injury to any person, there would be a good ground for intervention.

5. It must be noticed that this is not an action taken suo moto by the officials that there had been any fraud in the conduct of the sale. If Section 23 itself provides for the extension of the period of limitation then, the provisions must be given a full application to allow the Chief Settlement Commissioner to entertain the appeal if, sufficient cause had been showed. In this case, no such attempt had been made. The 3rd respondent filed a civil suit, which met with adverse orders in two consecutive tiers and being not successful in his attempt to have the sale annulled, came back to the authorities by means of an appeal. The appeal with no justification for the 3rd respondent to file beyond a period of 30 days was certainly not maintainable.

6. If it must be understood that the order passed by the Chief Settlement Commissioner was in his suo moto powers of revision, even such a power could be exercised by the Settlement Commissioner, who must be satisfied that an irregularity or fraud had existed. It will be dangerous to infer fraud by the fact that in the sale proclamation some rewriting was found. What the sale Officer had himself not seen or what the Settlement Commissioner could not also notice, an appellate authority cannot take that to be sufficient ground at the first time. There is no means by which the petitioner could have explained as to how the corrections were found in the sale proclamation. If the sale was sought to be set aside on such allegations of fraud, the notice for such ground must have been put to the petitioner before such a decision was taken. The records were wholly in the custody of the officials and if the official records contained any correction, it should have been definitely possible for the authority to summon their own officials who held custody of the documents and elicited as to how the corrections had come about or fix the responsibility on anyone having the documents for bringing out such corrections. So long as a human element is involved in making entries, corrections are not uncommon. To reject a document on the ground that the sale proclamation seemed to contain corrections or variations, would be a method of making a special plea in favour of the 3rd respondent to the detriment of an auction purchaser. Neither the Chief Settlement Commissioner nor the Financial Commissioner could have undermined their own acts, with such insufficient evidence to annul the sale. Even a reference in the order of the Chief Settlement Commissioner that the property was more valuable and that auction did not fetch the best price was on no material.

7. The impugned orders cannot be sustained for the several reasons enumerated above and the same are, accordingly, set aside. The writ petition is allowed, affirming the order passed by the Settlement Commissioner on 20.06.1983.