
(2001) 10 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition 15039 of 1990

Dewan Chand

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Citation : (2001) 10 P&H CK 0071

Hon'ble Judges : N.K. Sud, J

Bench : Single Bench

Advocate : Pawan Kumar, for the Appellant; Sukhbir Singh, Addl. Ag and Vikas Bahl, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sud, J.—The petitioner is aggrieved by the orders of the Deputy Secretary (Rehabilitation-cum-Settlement Commissioner), Haryana, dated 1.10.1981 and the Financial Commissioner and Secretary, Government of Haryana, Rehabilitation Department, dated 6.9.1990 whereby his claim for purchase of 26 kanals 1 marla land already sold to respondents No. 3 and 4 in open auction has been rejected.

2. Before dealing with the point at issue, the relevant facts may first be noticed.

3. The petitioner was allotted 2.13 units of land in village Sewan on 8.7.1949 in lieu of land left by him in Pakistan on partition of the country in 1947. Later on, it was found that he had been allotted 0.6 units of land in excess of his entitlement and, therefore, allotment to that extent was cancelled. However, he was permitted to buy the excess land, i.e. 0.6 units against payment of market price at the rate of Rs. 675/- per acre which he did in 1960.

4. Subsequently, on receipt of revenue record from Pakistan, it was found that the petitioner was not holding any land in Pakistan and, therefore, was not entitled to any allotment of 2.13 units made on 8.7.1949 and referred it to the Chief Settlement Commissioner for affirmation. The Chief Settlement

Commissioner vide order dated 13.8.1963 affirmed the cancellation. The petitioner then applied to purchase the area covered by the cancellation order. The purchase was allowed on payment of market value but he refused the offer as he insisted on paying only the reserve price which was not acceptable to the Rehabilitation authorities. His prayer was accordingly declined vide order dated 5.9.1963.

5. The petitioner, thereafter, approached this Court in CWP No. 2280 of 1963 challenging the orders dated 13.8.1963 cancelling the allotment and dated 5.9.1963 declining the permission to purchase the area at reserve price. The said writ petition was dismissed in limine on 20.12.1963 by a Division Bench of this Court.

6. Thereafter, the petitioner again applied for permission to purchase the aforesaid land at revenue price. He was once again offered the land on payment of market price which was not acceptable to him. Thus, permission to purchase the land at reserve price was again declined vide order dated 31.10.1967 by the Managing Officer. This order was challenged by the petitioner in a revision before the Chief Settlement Commissioner, which also dismissed on 29.1.1968.

7. Since, the petitioner's claim for purchase of land at the reserve price had already been declined and he was not prepared to purchase it at market price, the land was put to auction on 20.2.1968 and was purchased by Sarvshri Mohan Singh and Sohan Singh (respondents No. 3 and 4) and one Saudagar Singh.

8. The petitioner had also filed an application u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, for getting the order dated 29.1.1968 passed by the Chief Settlement Commissioner cancelling his allotment set aside. This application was also rejected on 18.4.1968.

9. The petitioner filed CWP No. 1390 of 1968 praying for quashing of the following orders:-

- i) order dated 13.8.1963 vide which the Chief Settlement Commissioner had cancelled the allotment of 2.13 units made to him on 8.7.1949
- ii) order dated 5.9.1963 whereby permission for purchase of the disputed area at reserve price was declined.
- iii) order dated 31.10.1967 whereby his second request for purchasing the disputed land at reserve price was declined; and
- iv) order dated 29.1.1968 whereby his revision petition against order dated 3.10.1967 had been dismissed.

The petitioner also challenged the auction held on 20.2.1968.

10. The respondents controverted the claim of the petitioner. In addition, a preliminary objection was raised that the writ petition was barred by the principles of res-judicata as a similar writ petition challenging the orders of the

Managing Officer and the Chief Settlement Commissioner cancelling his allotment had earlier been dismissed in limine vide order dated 20.12.1963 in CWP No. 22800 of 1963. This objection was overruled by the learned Single Judge who vide order dated 19.9.1974 allowed the writ petition. The cancellation of allotment of the area in question to the petitioner was held to be illegal.

11. The findings of the learned Single Judge were challenged in Letters Patent Appeal No. 618 of 1974, which was decided on 16.3.1978. The plea of the respondents that the cancellation of allotment could not be challenged a second time and that the order dismissing CWP No. 2280 of 1963 operated as res-judicata was accepted. It was held that the petitioner had earlier challenged the legality of order of cancellation of allotment and had failed in his attempt to have it set aside. He, therefore, could not be allowed to re-agitate the same matter all over again.

12. The question of the right of the writ petitioner to purchase the disputed land measuring 2.7 units at the "reserve price" was referred to the learned Single Judge for determination as he had not decided this issue earlier in his order dated 19.9.1974. In respect of the auction of 2.13 units of land on 20.2.1968, it was held that since out of this land, the petitioner had already become the owner of 0.6 units by purchasing it from the Rehabilitation Department in 1960, the auction to that extent was not valid. Thus, the auction of 06 units out of 2.13 units was struck down.

13. Thereafter, the learned Single Judge considered the claim of the petitioner about his right to purchase the disputed land measuring 2.7 units at the reserve price. He turned down his claim vide his order dated 31.8.1979 on the ground that the land had already been auctioned and the same was not available for transfer to the petitioner. The petitioner filed a Letter Patent Appeal, which was also dismissed on 21.12.1979. In further appeal, the Supreme Court dismissed the SLP (Civil No. 4762 of 1980) vide order dated 9.5.1980 in the following terms:-

"Upon hearing counsel, the court dismissed the petition. The petitioner will be at liberty to approach the authorities for buying the land on market rates which may be considered."

14. Thereafter, the petitioner made a claim to buy the balance 2.7 units of land at market price. This claim was considered by the Deputy Secretary (Rehabilitation-cum-Settlement Commissioner), Haryana, in his order dated 1.10.1981. He observed that out of 2.7 units, only 28 kanals and 6 marlas land was available with the Department as the auction purchaser Saudagar Singh who had given a bid had backed out and had got his money refunded. The balance land measuring 26 kanals 1 marlas had been purchased by respondents No. 3 and 4 in the auction and the sale had been confirmed in their favour. The Commissioner, therefore, observed that the petitioner being in continuous cultivating possession of the land was, prima facie, eligible for making application

for transfer of 28 kanals 6 marlas of land available with the department in accordance with the instructions dated 25.8.1981. Accordingly, he gave the petitioner the option to apply to the Tehsildar (Sates) before 30.11.1981 for making the necessary application. A copy of the order dated 1.10.1981 has been enclosed as Annexure P-5 with the writ petition.

15. Aggrieved by the order of the Settlement Commissioner, Haryana, the petitioner filed a revision before the State Government contending that as per the order of the Supreme Court dated 9.5.1980 he was entitled to buy the entire land measuring 2.7 units on payment of market price as he is in continuous possession of the same since 1949. According to him once he made the offer to pay the market price for the area in his possession, there was no discretion with the Settlement Commissioner and he was bound to transfer the entire area of 2.7 units to him. The revision petition was dismissed vide order dated 6.9.1990. It was observed that the Supreme Court had dismissed the Special Leave Petition. The petitioner had been granted liberty to approach the authorities for buying the land on market rate for their consideration. It was further stated that the claim of the petitioner had duly been considered and whatever land was available with the Department had been offered to the petitioner for purchase on market price. It was further noticed that the petitioner had duly challenged the auction of 2.13 units of land held on 20.2.1968. However, the High Court had sustained his objection only qua auction of 0.6 units of land which he had already purchased in the year 1960. As far as the auction of balance land is concerned, the same was not disturbed. The order of the High Court dated 16.3.1978 has become final as even the SLP against the said order has been dismissed by the Supreme Court, In other words, the auction of 26 kanals 1 marla land out of 2.7 units of land in favour of respondents No. 3 and 4 stands upheld up to the Supreme Court. Thus, the Rehabilitation Department had no right or claim against the aforesaid land and, consequently, it could not possibly offer it for purchase by the petitioner. The order of the Settlement Commissioner holding that the petitioner could apply to the Tehsildar for purchase of 28 kanals 6 marlas of land under the latest instructions at the rate fixed by the Department was upheld. A copy of the order of the Financial Commissioner (Revenue and Secretary to Government of Haryana, dated 6.9.1990 has been enclosed as Annexure P-6 with the writ petition, it is in this factual background that the present writ petition has been filed praying for quashing of the orders Annexures P-5 and P-6 and seeking a direction to the respondents to transfer the land comprised of 2.7 units to the petitioner at the market price.

16. Mr. Pawan Kumar, Advocate, appearing on behalf of the petitioner, submitted that since the petitioner was in continuous possession of the land in dispute since 1949. he was entitled to purchase the same at the market price as fixed by the Government in terms of Punjab Government's memorandum dated 12.3.1963 (Annexure P-1) He further contended that in view of the observations of the Supreme Court in its order dated 9.5.1980, the petitioner's claim for purchase of the entire and stands upheld and, therefore, the respondents were not justified

in rejecting the petitioner's claim qua 26 kanais 1 marla of land which had been purchased by respondents No. 3 and 4 in the auction held on 20.2.1968.

17. Learned counsel for the petitioner also contended that since the petitioner has been in possession of the land for a period of more than 30 years even after the date of auction, he should not be dispossessed now. For this purpose, he has placed reliance on a judgment of this Court in an unreported case Surjan Dass v. Chief Settlement Commissioner of India etc. 1973 L.P.A. 31 decided on 5.11.1974.

18. On the other hand, Mr. Vikas Bahl appearing on behalf of respondents No.3 and 4, contested the claim of the petitioner. It has been pointed out that there is no dispute about the petitioner's right to purchase the land at market price in terms of the memo of the State Government dated 12.3.1963 (Annexure P-1). However, this memorandum merely gives him an option to purchase the land at the stipulated price. It does not cast any obligation on the Department not to auction such land even if the person in occupation refuses to buy it at the stipulated price. He further pointed out that the entire land of 2.7 units had been offered to the petitioner under this policy of the Government on two occasions prior to the auction. However, the petitioner had declined the said offer as he was claiming his right to purchase it at the reserve price which was not in accordance with the policy of the Government. It is only after the rejection of the offer by the petitioner that the LAND had been put so auction on 20.2.1968. This auction had even been challenged by the petitioner before the High Court which had quashed it only to the extent of 0.6 units about which there is on dispute in the present writ petition. It was, therefore, contended that once the validity of the auction of 2.7 units was upheld by the High Court and the order of the High Court having become final, there was no legal right with the department to nullify the effect of this auction and take back the land from respondents No.3 and 4 and offer it to the petitioner for purchase.

19. I have heard the rival contentions and perused the orders referred to above. There is no dispute about the proposition that the petitioner had a right to purchase the land at the market price in terms of memo of the State Government dated 12.3.1963 (Annexure P-1). The Only question for determination is whether he could exercise this right at the stage at which he did. It is clear from the facts already narrated above that the petitioner was given the option to purchase this land on two earlier occasions - in 1963 as well as in 1967. He did not accept this offer as he insisted on his right to purchase the aforesaid land at the reserve price. He indeed had no such right as is evident from the fact that he failed up to the Supreme Court. It is evident from the factual position that after the petitioner had declined the offer to purchase the land at market price, the department had auctioned the same on 20.2.1968. Out of 2.7 units of land claimed by the petitioner, 26 kanais 1 marla land had been purchased by respondents No. 3 and 4 and the balance 28 kanais 6 marlas by one Saudagar Singh. As far as respondents No. 3 and 4 are concerned, the sale

had been confirmed, consideration paid and the transaction finalised. The auction was challenged by the petitioner and was upheld by the High Court. There was no further challenge to this auction before the Supreme Court. In the light of these circumstances, it has been correctly pleaded that the department had no right to nullify the effect of this auction and resume the land already sold to respondents No. 3 and 4 and allotted to the petitioner. Thus, the Settlement Commissioner as well as the Financial Commissioner were justified in rejecting the claim of the petitioner to that extent. In fact, the Settlement Commissioner has very fairly offered the balance 28 kanals 6 marlas of land to the petitioner which was available with the department as the auction purchaser Saudagar Singh had backed out from the transaction and had obtained refund. Thus, the land to that extent being available with the department and was very fairly offered to the petitioner despite the fact that he had turned down such an offer twice before in 1963 and 1967.

20. During the course of arguments, learned counsel for the petitioner, had time and again referred to the observations of the Supreme Court in its order dated 9.5.1980 wherein liberty had been granted to the petitioner to approach the authorities for buying the land on market rate for their consideration. According to the learned counsel for the petitioner, this observation tantamounted to a direction to the respondents to allot the entire land in dispute to the petitioner against payment of market price.

21. I am unable to accept this contention. The appeal before the High Court wherein the claim of the petitioner to buy the disputed land at reserve price had been turned down. The Supreme Court had dismissed the SLP. It is apparent that at that stage the petitioner must have pointed out that there was a provision for purchase of this land at market price and sought liberty to approach the authorities for that purpose- The observation of their Lordships of the Supreme Court merely directs the authorities to consider the prayer of the petitioner to buy the land at market price. It cannot be read to mean that the claim of the petitioner was directed to be accepted. It is not the case of the petitioner that the authorities have refused to consider the claim. In fact, they have duly considered the prayer and have even granted it partially to the extent to which it was possible at that stage. Thus, it cannot be said that the authorities have not complied with the observations made by the Apex Court in its order dated 9.5.1980. No fault can, therefore, be found with the orders, Annexures P-5 and P-6, whereby it had been held that the prayer of the petitioner to buy the land in question at the market price could be only allowed to the extent of 28 kanals 6 marlas of land which was available with the respondents.

22. It may be mentioned that the decision of this Court in the case of Surjan Dass (supra) is not applicable at all. Firstly, I am not called upon to decide the issue about possession in this writ petition. Secondly, in that case, the Court was dealing with the issue of dispossession of a displaced person to whom a house had been allotted in 1947-48. It was auctioned in August, 1959 to the appellant

therein but the auction purchaser did not bother to get the possession of the same for a number of years. It was only in May, 1969 when the contesting respondents were asked to quit, they became aware about the auction. Prior to that they were kept totally ignorant about the auction in favour of the appellant. In the present case, it has already been noticed that the petitioner was not only aware of the auction in favour of respondent Nos. 3 and 4 but had also challenged its validity in this Court. However, the petitioner continued to be in possession of the land so auctioned not because respondents No. 3 and 4 did not bother to take possession but because of the protracted litigation in which the parties were involved. In fact, it is one of the grievances projected on behalf of respondents No. 3 and 4 that the petitioner is trying to prolong the litigation to continue his possession.

23. No other point has been raised.

24. In the light of the observations made above, I find no ground to interfere with the impugned orders. The writ petition is, accordingly, dismissed. However, in the circumstances of the case, there shall be no order as to costs.