
(1993) 04 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7817 of 1988

Dhanpat

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 23-04-1993

Acts Referred:

Citation : (1993) 2 CurLJ 264 : (1993) 2 LJR 732 : (1993) PLJ 540 : (1993) 2 RRR 652

Hon'ble Judges : K.P.Bhandari, J

Advocate : Ashok Verma, Advocate, L.N. Verma, Advocate, Advocates for appearing Parties

Judgement

K.P. Bhandari, J.

1. This judgment will dispose of Civil Writ Petition No. 7817 to 7820 of 1988 as they arise out of common judgment of the Financial Commissioner, Haryana, rendered in R.O.R. No. 308 of 198283. In all these cases, the contest is between the allottees and the ejected tenants. The ejected tenants have been found by the Financial Commissioner to be entitled to superior right of allotment. The allotment in favour of the allotteespetitioners has been found by the Financial Commissioner to be contrary to the law inasmuch as the rights of the ejected tenants were ignored. The facts in the present case have been taken from Civil Writ Petition No. 7817 of 1988. In other writ petitions the petitioners are private respondents and they have been held to be ejected tenants by the Financial Commissioner. The ground for challenge in the writ petition is common that the private respondents are ejected tenants and are benami. The brief facts of the case are as under.

2. The land of Sarvshri Parkash Singh, Gurdas Singh and other members of their family was declared surplus by the prescribed authority, Sirsa under the Haryana Ceiling on Land Holding Act, 1972 (for short the "Act"). Prescribed authority, Sirsa declared 831 ordinary kanals of the joint holding of the family as surplus. The land which was declared surplus was measuring about 831 kanals and was

allotted to the petitioners by the SubDivisional Officer (Civil), Sirsa, vide order dated 2.8.1992, Annexure P/1. The ejected tenants of the land owner filed an appeal against the aforesaid order, Annexure P/1, of allotment claiming that ejecting tenants have the preferential right of allotment of the surplus area. The land has been illegally allotted to the writ petitioners. The Collector, vide his order dated 23.11.1982, Annexure P/2, dismissed the appeal.

3. Respondent No. 6 being dissatisfied with the order of the Collector filed a revision petition before the Commissioner, Hissar Division, Hissar. The Commissioner also dismissed the revision petition vide order dated 28.4.1983, Annexure P/3. Thereafter respondent No. 6, filed a further revision petition, before the Financial Commissioner, Haryana. The Financial Commissioner, Haryana, accepted the revision petition on 9.7.1988, Annexure P/4. The Financial Commissioner, Haryana, held that respondent No. 6 was ejected tenant and he had preferential right of allotment of the surplus land according to the scheme made under the Act. Financial Commissioner held that the order of ejectment of respondent No. 6 was not collusive. The findings of the authorities below holding the order of ejectment to be collusive was held to be erroneous. The Financial Commissioner after setting aside the order of allotment remanded the case to the prescribed authority with the direction that he will reallocate the area accepting the claims of the petitioner as tenants of "C" category. He also held that allotment was basically wrong and therefore it is liable to be set aside.

4. Aggrieved against the order, Annexure P/4, of Financial Commissioner, the petitioner/allottees have come up in writ petition in this Court. The main challenge in the writ petition is that the order of ejectment of respondent No. 6 was collusive because they continued to be in possession for a considerable period even after the order of ejectment.

5. Written statement was filed by respondent No. 6. In the written statement, it was averred that even after the order of Financial Commissioner, Annexure P/4, remanding the case to the prescribed authority, the prescribed authority has allotted the land to the tenants of the landowner. The present allottees have not filed any appeal against the order of allotment. A copy of the allotment has also been filed with the written statement as Annexure R/1. It was averred in the written statement that in the order of ejectment passed against respondent No. 6, it is clearly stated that respondent No. 5 is a tenant of small landowner and he is to be ejected after allotment of five acres of land out of the surplus area. This order was passed by the concerned officer in accordance with the provisions of Section 9A of the Punjab Security of Land Tenures Act, 1953. It is further averred in this written statement that the prescribed authority before passing the order of allotment on 9.8.1992 in favour of the petitioners did not serve any notice on respondent No. 6 and other ejected tenants. The petitioner claimed himself to be one of the ejected tenants of the landowner and claims that he has superior right of allotment of land. It is further averred that the order of the Financial Commissioner is in accordance with law and no interference is called for in the

order of the Financial Commissioner.

6. Written statement has also been filed on behalf of respondent Nos. 1 to 5 by the SubDivisional Officer (Civil), Sirsa, respondent No. 2. It is averred in this written statement that respondent No. 6 is eligible tenant and under Category "C" he has superior right of allotment. It is further stated in the written statement that allotment could only be made in accordance with the provisions of the Act and the Scheme made under the Act. It is also averred in the written statement that allotment in favour of the writ petitioner was in violation of the provisions of the Act and the Scheme and therefore it has been rightly set aside by the Financial Commissioner.

7. Learned counsel appearing for the petitioner strongly contended that order of ejectment in favour of respondent No. 6 benami and therefore he was not eligible tenant.

8. Mr. J.N. Kaushal, Sr. Advocate, counsel for respondent No. 6 submitted that the order, Annexure P/4, passed by the Financial Commissioner considered all the points raised by the petitioner. The Financial Commissioner has held that the order of ejectment is not benami and respondent No. 6 is ejected tenant of the landowner and, therefore, he has superior right of allotment. He submitted that in writ jurisdiction, this Court should not review the findings of fact recorded by the Financial Commissioner.

9. After hearing counsel for the parties, I am of the opinion that Financial Commissioner in his order has held that respondent No. 6 was to be ejected after allotment of surplus area. Respondent No. 6 was to continue in possession of the land till the surplus area was allotted to him. Financial Commissioner observed that the ejected tenants allotted were to continue till they were allotted surplus area. No adverse inference can be drawn merely because they continued in possession even after the ejectment order and on that basis it cannot be considered that respondent No. 6 was benami tenant. As a result of appreciation of the evidence of record, the Financial Commissioner recorded a firm finding of fact that the petitioners are ejected tenants of the land owner and they have superior right of allotment of surplus land. The allotment in favour of the petitioner was made by the prescribed authority by ignoring the superior claim of the petitioners. This finding has been recorded by the Financial Commissioner after considering the material on record.

10. The counsel for the petitioner has not been able to point out as to how the order of the Financial Commissioner suffer from illegality. The only argument advanced by him was that the ejected tenant, respondent No. 6 was benami as he continued in possession even after the order of ejectment. I am afraid, the learned counsel is not appreciating that the tenant could not be ejected unless he was allotted land from the surplus area. As no allotment was made, he continued in possession. It is not possible to draw an inference that the ejected tenant was benami, merely because he continued in possession even after the order of

ejectment. They continued in possession in obedience of the statutory provisions. It has been laid down by the Supreme Court that for the issuance of a writ of certiorari, the writ petitioner must establish that the impugned order is either without jurisdiction or in excess of the jurisdiction or there is any apparent mistake on the face of the record. It is not permissible to reappraise the evidence. Proceedings regarding issue of writ of certiorari under Article 226 of the Constitution before the High Court are supervisory in character and cannot be resorted to in cases where it involves only reappraisal of evidence.

11. No other point has been urged by the counsel for the parties.

12. In my opinion, the impugned order, Annexure P/4, of the Financial Commissioner is well considered. In the order he has appreciated the entire evidence on record and he has rightly held on the basis of the evidence on record that respondent No. 6 was an ejected tenant and he has superior right of allotment according to the provisions of the Act and the Scheme made thereunder. It is also significant to note that respondent No. 6 is recorded as tenant in the jamabandi and therefore there is presumption of correctness to the entries made in the jamabandi under Section 44 of the Land Revenue Act. Further, the order of ejectment is a judicial order and there is presumption of correctness with regard to the order passed by the Judicial Officer unless such order is reversed in appeal or revision. Nothing could be pointed out by the learned counsel to show that on what basis it can be said that respondent No. 6 was a benami tenant.

13. In view of the above discussion, all the writ petitions are dismissed with no order as to costs. It is hoped that the prescribed authority will take care to allot any other surplus area, which may be available, to the petitioners, if they are found eligible according to the provisions of the Act and the Scheme made thereunder.