(2019) 03 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6199 Of 2019

Dilbag Singh And Another — APPELLANT

Vs

Financial Commissioner (DB-2), Haryana And Others — RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972, — Section 18(6)

Citation : (2019) 03 P&H CK 0032

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Sanjeev Kumar Birla

Final Decision : Dismissed

Judgement

Augustine George Masih, J

1. Petitioners have approached this Court challenging the order dated 23.12.2016 (Annexure P-10) passed by the Division Bench of the Financial Commissioners, Haryana, whereby the revision petition preferred under Section 18 (6) of the Haryana Ceiling on Land Holdings Act, 1972, has been dismissed upholding the order dated 15.09.2011 (Annexure P-8) passed by the Sub Divisional Officer (Civil)-cum-Prescribed Authority, Rohtak, and the order dated 12.03.2014 (Annexure P-9) passed by the Commissioner, Rohtak.

2. It is the contention of learned counsel for the petitioners that the predecessor-in-interest of the petitioners i.e. late Shri Kanwar Singh was allotted land which has been declared surplus under the Haryana Ceiling on Land Holdings Act, 1972, on 03.01.1979 (Annexure P-1). The predecessor-in-interest of the petitioners was handed over possession of the same on 30.07.1980 vide rapat roznamcha No.536. As per the terms of allotment, the predecessor-in-interest was required to deposit the first instalment within a period of one month of taking possession as required under para 10 (3) of the Utilization Scheme. The said instalment admittedly was deposited on 20.08.1986. In the terms of

allotment, it was clearly mentioned that in case the allottee fails to deposit the instalment within the period as specified, the allotment shall be cancelled. The competent authority failed to pass such an order, however, in the year 2011, vide order dated 15.09.2011, the Prescribed Authority, Rohtak, cancelled the allotment keeping in view the mandatory provisions of Para 10 (3) of the Utilization Scheme. It has been asserted that the remaining instalments were deposited by the petitioners on 02.07.2008 (Annexure P-7) along with interest and, therefore, the cancellation order could not be passed by the competent authority as there were no arrears on the said date. He, thus, contends that the impugned orders cannot sustain.

3. His further contention is that in the Division Bench judgment of this Court in Sher Singh Versus Financial Commissioner (Revenue) and others 2014 (3) R.C.R. (Civil) 434, it has been held that the cancellation order cannot be passed nor can the possession be ordered to be taken from the allottee because of non-payment of the balance instalments. The mode available for recovery thereof is by way of arrears of land revenue. He, therefore, contends that the cancellation order as passed by the authorities, which has been upheld upto the level of Financial Commissioner, cannot sustain.

4. I have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the records of the case.

5. The admitted facts, as are apparent from the records, are that the predecessor-in-interest of the petitioners namely Late Sh. Kanwar Singh was allotted land out of the surplus pool under the Haryana Ceiling on Land Holdings Act, 1972, by the competent allotment authority on 03.01.1979 (Annexure P-1). According to the said allotment letter, the land was allotted to him for ` 7097.45, which amount had to be deposited in ten equal instalments, details thereof have been mentioned therein. The conditions of allotment were further elaborated therein. As per the scheme of allotment which admittedly applies to the case in hand, para 10 (3) of the said scheme is as follows:-

"Para 10 (3): Every allottee shall be bound to take possession of the land allotted to him within a period of seven days of the date when the same is offered to him, by the allotment authority. The allottee shall further be bound to deposit the first installment of the purchase price of the land within thirty days from the date of taking possession of the allotted land. If he fails to take possession of the allotted land or fails to deposit the first installment within the specified period, the allotment shall be cancelled."

As per the said scheme what is mandated therein is that the first instalment had to be paid within the period of 30 days from the date of taking possession of the allotted land and in case after taking possession, the allottee fails to deposit the first instalment within the specified time, the allotment shall be cancelled.

6. It is an admitted position that the possession was handed over to the predecessor-in-interest of the petitioners on 30.07.1980 vide rapat roznamcha

No.536. If that be so, he was required to deposit the first instalment on or before 30.08.1980, which admittedly he failed to do so. Admittedly the first instalment was paid by the petitioners on 20.08.1986 (Annexure P-2), which is a few days short of six years. Even as per the terms of allotment, there were ten equal annual instalments which were required to be deposited and, therefore, the total amount was required to be deposited by the petitioners on or before 30.07.1990, which admittedly has not been paid. This being the factual position and the amount having been deposited in the year 2008 vide receipt dated 02.07.2008 (Annexure P-7), the same obviously is much beyond the period prescribed for deposit of the instalments.

7. The technical plea, which has been taken by the counsel for the petitioners that the order of cancellation has been passed by the Prescribed Authority-cum-Collector on 15.09.2011 and by that time, there was no due against the petitioners, cannot hold the field in the light of the mandatory provisions of the statute. The authorities below have, therefore, rightly proceeded to pass an order of cancellation of allotment and dismissal of appeal upholding the same vide the impugned order. The orders which are in consonance with the statutory provisions and the scheme applicable, cannot be faulted with. That apart, there has been an inordinate delay on the part of the petitioners in approaching the competent authorities. Even the present writ petition has been filed after a period of more than two years after the dismissal of the revision petition preferred by them. The conduct of the petitioners and the seriousness, with which the matter is being taken up, is writ large.

8. The judgment relied upon by learned counsel for the petitioners i.e. Sher Singh's case (supra) is distinguishable on facts as in the said case, the first instalment had been duly paid well in time and it is in the subsequent instalments that there has been default. That makes a basic difference as on allotment of the land, taking possession thereof and deposit of the first instalment within the time stipulated, leads to the other provisions of the scheme being applicable, which have been relied upon by the Division Bench to hold that merely the non-payment of subsequent instalments on time, would not deprive an allottee of his ownership rights.

9. In the light of the above, the writ petition being without merit, stands dismissed.

