(1986) 01 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4977 of 1978

Ganpat Singh APPELLANT

Vs

Financial Commissioner, Haryana RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Citation : (1986) PLJ 442 : (1986) RRR 206

Hon'ble Judges : I.S.Tiwana, J

Advocate : Mr. H.S. Hooda, Advocate., Advocates for appearing Parties

Judgement

I.S. Tiwana, J. (Oral)

1. The petitioner''s claim for the purchase of land under Section 18 of the Punjab Security of Land Tenures Act, 1953 (for short, the Act) was allowed by the Assistant Collector Ist Grade, Jhajjar on 1.6.1968 vide annexure P. 1. This order was later upheld by the Collector and the Commissioner on appeal and revision. However, the Financial Commissioner vide his impugned order dated 25.10.1978 Annexure P. 4 negatived his claim with the following observations :

"I do not want to go into any other aspect of the case, because it is clear from the record that the Assistant Collector was on that date, when he allowed the purchase of the land in question by present respondent No. 1, aware of the order dated 27.10.67 by which the land in question had become part of the reserved area of the landowners (respondents No. 2 and 3 against whom ex parte orders have been passed earlier). Whatever else may be the merits and demerits of the case, it is quite clear that it is not permissible for an Assistant Collector in purchase proceedings to sit in judgment over an order separating reserved area from the surplus area. The Assistant Collector while dealing with this purchase application had no competence to decide that this order dated 27.10.67 ought to be ignored. In doing so he has acted outside his jurisdiction. This irregularity vitiates order dated 1.8.68 passed by the Assistant Collector, Jhajjar, permitting the purchase of the land in question; and the said order is accordingly set aside. For the same reason, the order dated 10.2.69 passed by Collector Rohtak and the order dated 22.8.69 passed by Commissioner, Ambala Division, are also set aside. Further in the interest of justice, it is also ordered that the purchase money, if any, deposited by Shri Ganpat present respondent No. 1 be refunded to him."

It is thus apparent that what has weighed with the Financial Commissioner is that by the time the claim of the petitioner was allowed by the Assistant Collector 1st Grade, the land under his tenancy had become reserved area by virtue of the order of the Circle Revenue Officer (C.R.O) dated 27.10.67 Annexure P. 5. Having heard the learned counsel for the parties, I find that the reasoning adopted by the Financial Commissioner in nonsuiting the petitioner is not tenable. Order Annexure P5 purports to have been passed by the C.R.O. under Section 24A(2) of the Act. This subsection reads as follows :

"Where after the declaration of the surplus area of any person and before the utilization thereof, his land has been subjected to the process of consolidation, the officers referred to in subsection (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation."

2. A bare reading of this section indicates that the officer competent to utilise the surplus area the fact that C.R.O. was such a competent officer is not disputed before me can after a summary enquiry separate the surplus area of a person from his reserved area after the completion of the consolidation proceedings to which the area of that landowner might have been subjected. What can be done by the competent officer under this subsection is that he can separate the two blocks of lands, i.e. the area allotted in lieu of the surplus area and the area allotted in lieu of his permissible or reserved area. He cannot change the nature of the land in the sense that he can treat the surplus area as reserved area of the landowner. Further it is patent that while passing the said order, no notice or hearing of any sort was afforded to the petitioner who was undoubtedly a person concerned in the matter. Thus this order is obviously not binding on the petitioner.

3. In the light of the abovenoted factual and legal position, I am of the opinion that the learned Financial Commissioner has wrongly failed to exercise the jurisdiction vested in him i.e. has wrongly declined to decide the petition before him on merits.

4. For the reasons recorded above, the order of the Financial Commissioner Annexure P. 4 is set aside and the case is sent back to him for deciding the case afresh in accordance with law and the observations made above. No costs.

Petitioner accepted.

