

(1976) 03 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1544 of 1968

Gurbux Singh

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 19-03-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1976) 03 P&H CK 0022

Hon'ble Judges : S.C. Mittal, J

Bench : Single Bench

Advocate : P.N. Aggarwal, for the Appellant; N.L. Dhingra, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mittal, J.—This petition under Articles 226 and 227 of the Constitution of India for the issuance of a writ in the nature of certiorari or any other appropriate order, is directed against orders Annexures C. D. and F passed by the Special Collector, Feroze-pur, Additional Commissioner, Jullundur Division and the Financial Commissioner, Punjab, respectively.

2. The case of Gurbux Singh Petitioner is that Saudagar Chand owned 50 Standard Acres and 11/4 Units of agricultural land in six villages of Muktsar Tehsil of District Ferozepur now in Faridkot. The land in question measuring 12 Bighas and 2 Biswas (in consolidation of holdings converted into 60 Kanals) situate in village Malout had been under the tenancy of Gurbux Singh since the year 1946-47. The Punjab Security of Land Tenures Act, 1953, came into force on 15th April, 1953. The tenancy of Gurbux Singh was subsisting when the impugned orders were passed and even thereafter. As required by Section 5 of the Act, Saudagar Chand applied for the reservation of his permissible area on 12th October, 1953. In this behalf, form "B" prescribed by Rule 5 of the Punjab Security of Land Tenures Rules, 1953 was submitted but the land under the tenancy of Gurbux Singh was not included. Saudagar Chand having exercised the right of reservation of the permissible area was precluded from making any

variation in the selection by Section 5(3) and 5-B(1) of the Act. Nevertheless, in 1958 Saudagar Chand, in violation of the mandatory provisions of the law, filed another application in form "E" wherein the area comprising the tenancy of Gurbux Singh was included. No notice thereof was given by Saudagar Chand to Gurbux Singh. The surplus area proceedings commenced behind the back of Gurbux Singh. On 29th March, 1962, the Collector of Ferozepur declared the surplus area of Saudagar Chand. Not satisfied, Saudagar Chand appealed to the Additional Commissioner, Jullundur Division, who vide his order dated 23rd May, 1963, set aside the Collector's order and remanded the case. After remand, the matter was dealt with by the Special Collector, Punjab, who by his order dated 12th September, 1963 (Annexure "C") declared the surplus area. Saudagar Chand was not satisfied with that order even. He again appealed to the Additional Commissioner, Jullundur, but was not successful. His appeal was dismissed by order dated 3rd April, 1964 (Annexure "D"). Notwithstanding the inclusion of the area comprising tenancy of Gurbux Singh in the permissible area, Gurbux Singh was not intimated of the aforesaid proceedings at any stage.

3. Gurbux Singh Petitioner's case further is that in the ear 1963, he filed application u/s 18 of the Act aforesaid for purchasing the land under his tenancy against Saudagar Chand and others. His application having been allowed on 18th November, 1964. Gurbux Singh deposited the first instalment of the purchase price on the following 20th, it was during the pendency of the proceedings as to purchase of the land that Gurbux Singh came to know that the land sought to be purchased by him had been included in his premissible or reserved area by Saudagar Chand. At the time, he was legally advised that he could assail the reservation of area made by Saudagar Chand in the course of his application for purchasing the land comprised in bis tenancy. For that reason, he did not take steps for a long time. All the same, by way of abundant caution is in September, 1967, he moved the Financial Commissioner, Punjab u/s 84 of the Punjab Tenancy Act read with Section 24 of the Punjab Security of Land Tenures Act for revising the order of the Special Collector making reservation for Saudagar Chand His revision petition was dismissed by the learned Financial Commissioner on 24th October, 1967, vide Annexure "F", hence the present writ petition.

4. Return was filed by Om Parkash Chhabra,(sic) one of the heirs of Saudagar Chand opposing this petition. His death took place during the pendency thereof. His legal representatives have been duly impleaded.

5. The learned Financial Commissioner dismissed the revision petition by his order Annexure " F" for two reasons ; (1) it having been filed after 90 days of the passing of the order of the Additional Commissioner was barred by time and (2) working under the wrong advice of the counsel was no ground for condoning the delay.

6. With regard to the first reason, learned Financial Commissioner observed that the appeal filed by Saudagar Chand against the order of the Special Collector was dismissed by the Additional Commisisoner. Jullunder, on 3rd April, 1964. The

revision petition was filed by Gurbux Singh on 1st September, 1967. After allowing the normal period of 90 days, the petition was barred by 1155 days. It was further observed that on his own showing in the middle of 1964, Gurbux Singh came to know of the inclusion of the land in question in the permissible/reserved area of Shudagar Chand. Thus, even if the limitation was counted from the time Gurbux Singh acquired knowledge, about three years had passed and for this reason also, the revision petition was barred by time.

7. At the outset, Learned Counsel for Gurbux Singh vehemently urged that the learned Financial Commissioner did not at all take into account the material facts mentioned in the grounds of revision (Annexure " E") explaining not only the delay in filing the revision petition but also setting out cogent reasons for the reversal of the order especially of the Special Collector, assayed before the learned Financial Commissioner. It is patent, urged the Learned Counsel for Gurbux Singh that Saudagar Chand deliberately violated the mandatory provisions of Rule 6 of the Punjab Security of Land Tenures Rules, 1966, by not issuing notice to Gurbux Singh of the area sought to be reserved by him in 1958 in particular. Even in when the earlier reservation was made no information of any sort was ever given to Gurbux Singh. In short, even though Gurbux Singh was a vitally interested party, the reservation proceedings were got conducted behind his back. It was only when Gurbux Singh applied u/s 18 of the Act for purchasing the land comprised in his tenancy that Saudagar Chand confronted him with the reservation in question.

8. Learned Counsel for Gurbux Singh then assailed the decision of the learned Financial Commissioner holding the revision petition to be barred by time on the ground that neither the Punjab Tenancy Act nor the Punjab Security of Land Tenures Act prescribed any period of limitation for filing a revision petition, Reliance was placed on *Kashmir Singh v. Financial Commissioner, Punjab* (1965) 67 LLT 141, in which Grover, J. (as he then was) laid down: -

Since there is no statutory provision prescribing a period of limitation for filing a revision petition, it is difficult to see how the Financial Commissioner can dismiss the revision petition on the ground that it is time barred.

On the other hand, Learned Counsel for Saudagar Chand vehemently urged that the decision as to limitation being discretionary, the same could not be interfered with in the exercise of the writ jurisdiction of this Court. Support was sought from *Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property*, . It was respectfully followed by this Court in the ruling discussed hereinafter.

9. In *Bhup Singh and Ors. v. The State of Punjab*, 1965 PLR 176 Shamsheer Bahadur, J. held that Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules provided limitation for filing a petition u/s 42 of the East Punjab Holdings Consolidation and Prevention of Fragmentation) Act. But where sufficient cause is shown, time-limit can be waived. It is further held

that the question of limitation even if wrongly decided cannot be questioned in the writ proceedings. Similarly, R. S., Narula J. (as he then was) in *Gurdial Singh v. State of Punjab*, 1966 PLJ 276 laid down that it is the pure discretion of the Financial Commissioner to call for the records of a case to exercise his revisional power u/s 24 of the Punjab Security of L and Tenures Act, 1952 or not. the ground of delay on which the Financial Commissioner declined to interfere is a recognised valid ground. Even if this finding of fact as to the actual delay were to be incorrect or even if suo motu limitation for time imposed by the Financial Commissioner on himself was in any manner construed to be rather conservative, it is not open to the High Court to interfere in discretionary order passed in revision by the Financial Commissioner in exercise of writ jurisdiction under Article 226 of the Constitution of India. Then Shamsher Bahadur J. and R. S. Narula, J. (as he then was) in *Brij Lal and Anr. v. The Financial Commissioner*, 1969 PLJ 288 held that the authority of the Financial Commissioner approximates closely to that of the High Court in the exercise of revisional jurisdiction. It is well-known that the High Court does not usually exercise its powers in a petition which is belated though no hard and fast rule can be laid down on that score. It is not correct that a revisional Court is bound to look into the merits before it can dismiss the petition as belated. I may mention here that just as the learned Judge, in the cases discussed above, considered the merits relating to the exercise of discretion by the Financial Commissioner in the case of *Brij Lal and Anr.* (supra) also, the learned Judges in paragraph 13 of the judgment at page 293 observed:

We do not think that the discretion exercised by the Financial Commissioner was in any way arbitrary or unjust.

It was in this context that the learned Judges declined to interfere in the certiorari proceedings under Article 226 of the Constitution. The same Bench in *Sewa Singh v. State of Punjab* ILR 1967 P&H. 89, laid down at page 98 that where the Additional Director, Consolidation of Holdings, noticed the point of limitation but gave extraneous reasons for admitting the application, his decision can be successfully challenged in certiorari proceedings.

10. From the rulings discussed above, it is not possible to deduce that under no circumstances can the High Court interfere with the question of limitation decided by the Financial Commissioner. Apart from *Sewa Singh's* case (supra), I find support from the observation of Mehar Singh C. J. in *Shankar Singh v. Chanan Singh* (1968)70 PLR 455, that the discretion vested in a court of law is always a judicial discretion and where it exercises its discretion against the statutory limitations, it cannot be said to have exercised the jurisdiction judicially. It has, therefore, outstepped its jurisdiction in this respect and hence the matter can be considered u/s 115 of the Code of Civil Procedure.

11. It is pertinent to point out here that error of law committed by a Tribunal can be successfully challenged under Article 226 of the Constitution as laid down by their Lordships of the Supreme Court in *Swaran Singh and Ors. v. State of*

Punjab 1976 PLJ 9. The other authoritative pronouncement of their Lordships relied on by the Learned Counsel for Gurbux Singh is Syed Yakoob Vs. K.S. Radhakrishnan and Others, , in which the learned Judge, categorising such like cases, held that if a Tribunal acts illegally or arbitrarily in the exercise of its jurisdiction, its order can be interfered with under Article 226 of the Constitution of India.

12. Now the ruling, direct on the point, of this Court is Saudagar Ram v. Financial Commissioner 1967 LLT 67, in which J. N. Kaushal J. held that there is no statutory provision prescribing a period of limitation for filing a revision petition before the Financial Commissioner. That being so, the revision petition cannot be dismissed on the ground of being time-barred. It is however open to the revisional authority to refuse to entertain the petition for revision if it is filed after undue delay. Upon a consideration of the facts of that case, the learned Judge accepted the writ petition and set aside the order of the Financial Commissioner by which the revision petition had been dismissed as barred by limitation.

13. For the foregoing reasons, I am unable to accept the objection of the Learned Counsel for Saudagar Chand that this Court under Article 226 of the Constitution has no power to go into the question of limitation decided by the Financial Commissioner. It follows, therefore, that the dismissal of the revision petition on the ground that it is barred by time cannot be sustained.

Coming now to the second reason of dismissal, the learned Financial Commissioner expressed himself thus:-

Working under the wrong advice of the counsel is no ground for condoning the delay. This plea of the Learned Counsel for the Petitioner is untenable.

The view of the learned Financial Commissioner so broadly stated is contrary to the long string of authorities, the latest being the authoritative pronouncement of their Lordships of the Supreme Court in The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, headnote (c) of which reads:

If a party had acted in a particular manner on a wrong legal advice given by its legal adviser, it could not be held guilty of negligence so as to disentitle the party to plead sufficient cause u/s 5. AIR 1937 P.C. Relied on

Learned Counsel for Gurbux Singh then urged that the advice given to him by the lawyer was not in fact wrong. In this behalf, the basic fact reiterated was that neither in 1953 nor in 1958 by violating not only the principles of natural justice but also the mandatory provisions of Rule 6 mentioned above, Saudagar Chand moved the authorities concerned for reservation of his premissible area. In such a situation, the view of this Court was that an order passed without notice to the interested party was a nullity. In Sahib Singh v. Deputy Settlement Commissioner 1967 Curr. L. J. 760, R. S. Narula J. (as he then was) held that the order of restoration of appeal was nullity in the eye of law as it was passed

without notice to the other side and it could be ignored as having never been passed so far as the other side was concerned. All subsequent proceedings after the order of restoration were accordingly set aside. Issuance of notice under Rule 6 of the Punjab Security of Land Tenures Rules 1956, to the tenant was emphasized by the learned Judge in *Shrimati Pari v. State of Punjab* 1966 L. L. T. 176. Then as to the determination of the permissible area of a landlord. Tuli J. in *Kesho Dass and Anr. v. Financial Commissioner, Haryana* 1968 P. L. J. 366, laid down that it was open to the tenants to show that with respect to them the area declared surplus areas of the landowners was nullity. Finally, in *Dhaunkal v. Man Kaur* 1970 P. L. J. 402, a Full Bench of this Court expressed the view that the Surplus Area Collector has the jurisdiction to decide the question of surplus area, if any, with the landowner, and where the committed breach of statutory rules in not hearing the tenant; this does not render the order of the Surplus Area Collector void or a nullity, but only voidable and liable to be quashed or set aside at the instance of the tenant. Referring to the year 1964. in which Gurbux Singh acquired knowledge that Saudagar Chand had made reservation, Learned Counsel for the former invited my attention to *Raghubir Singh and Ors. v. Financial Commissioner* 1964 P. L. J. 37, decided by P. C. Pandit J. where in during the course of the application for purchase filed u/s 18 of the Punjab Security of Land Tenures Act by the tenants, the validity of the reservation made by the landlord was gone into. The order of the learned financial Commissioner declaring the entire reservation of the landlord invalid was set aside by the learned Judge and the case remitted for fresh determination. That being so, I have no hesitation in accepting the contention of the Learned Counsel for Gurbux Singh that the legal advice given to him that he could challenge the reservation made by his landlord in the course of the purchase proceedings was not wrong. In the case in hand, error of law apparent on the face of the record appears manifest.

14. In passing, it may be mentioned that the Learned Counsel for Gurbux Singh cited a number of precedents of the predecessors of the learned Financial Commissioner in which very long delays in filing the revision petitions were condoned. I have not considered it necessary to mention them because for the decision of this case what is material are the grounds discussed above on the basis on which the learned Financial Commissioner dismissed the revision petition of Gurbux Singh.

15. In the result, I allow this writ petition, set aside the order Annexure " F " of the learned Financial Commissioner and remit the case to him for decision according to law. The parties are left to bear their own costs.