

(2013) 01 P&H CK 0250

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No"s. 1481 and 1521 of 2013

Harmesh Lal and Others

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 01 P&H CK 0250

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : S.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—The instant order proposes to dispose of two writ petitions filed by the same petitioner against the same respondents, bearing CWP Nos. 1481 and 1521 of 2013. However, for the facility of reference, facts are being culled out from CWP No. 1481 of 2013. Feeling aggrieved against the orders dated 28.3.2012 (Annexure P-10), whereby the order dated 21.4.2010 (Annexure P-8), passed by respondent No. 2 and also the order dated 17.5.2006 (Annexure P-6), were upheld, accepting the appeal of respondent No. 5, petitioners have approached this Court, by way of these writ petitions, invoking its writ jurisdiction under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing of the above said impugned orders.

2. The brief facts of the case, which are hardly in dispute, are that surplus area case of the big land owner, namely Ram Niranjana son of Shri Devi Dutt, was decided by the prescribed authority, vide order dated 27.2.1979, declaring 174 kanals of "C category land as surplus, in the hands of big land owner. Thereafter, the surplus land was to be utilised as per the provisions of Haryana Utilisation Scheme, 1976 ("Scheme of 1976" for short). It is also not disputed that surplus land which was available for utilisation in view of the above orders, was situated within the revenue estate of village Farwai Khurd, Tehsil and District Sirsa, which

is the village of respondent No. 5. The prescribed authority, without meticulously following the relevant provisions of the Scheme of 1976 and giving preference to the eligible evicted tenants of village Farwai Khurd, eligible for allotment under the Scheme of 1976, allotted the land in question to one Daulat Ram-predecessor-in-interest of the petitioners, who was resident of village Maujdeen, Tehsil Rania, District Sirsa.

3. It is also not in dispute that village of the petitioner was at a distance of about 30 kilometers from village Farwai Khurd. It was further alleged by respondent No. 5 that prescribed authority did not issue any notice to the eligible tenants, including respondent No. 5, before allotting the land in favour of Daulat Ram. It was also alleged that Munadi was not conducted in the village because of which, the eligible tenants of village Farwai Khurd could not come to know about it. However, on the other side it was alleged that Munadi was conducted on 4.5.1996 and the order of allotment dated 15.5.1996 was passed in favour of Daulat Ram, when nobody came forward from the village.

4. Having come to know about the allotment in favour of Daulat Ram (father of the petitioners), respondent No. 5 filed his appeal before learned District Collector-respondent No. 3, who condoned the delay and accepted the appeal of respondent No. 5, vide order dated 17.5.2006 (Annexure P-6). Daulat Ram (father of the petitioners), filed one revision petition No. 13 against the interim order of the District Collector, vide which the delay in filing the appeal by respondent No. 5, was condoned. Daulat Ram also filed the appeal against the final order passed by learned Collector, accepting the appeal of respondent No. 5-Mani Ram. The revision petition as well as appeal filed by Daulat Ram were dismissed vide a common order dated 21.4.2010. The matter was taken before learned Financial Commissioner by filing two revision petitions No. 30 and 31 of 2010-11, by Daulat Ram through his L.Rs i.e. the present petitioners. Both the revision petitions were dismissed by learned Financial Commissioner, vide a common order dated 28.3.2012 (Annexure P-10).

5. Thus, the petitioners have approached this Court by way of these writ petitions, challenging all the orders passed by the respondent authorities. That is how, this Court is seized of the matter.

6. Learned counsel for the petitioners submits that the impugned orders passed by the respondent authorities are contrary to the facts of the case. The inordinate delay in filing the appeal by respondent No. 5 had been illegally condoned by the Collector. Learned Commissioner as well as learned Financial Commissioner failed to appreciate true facts as well as legal aspect of the matter, while passing their respective impugned orders, causing serious prejudice to the petitioners. Learned counsel next contended that predecessor-in-interest of the petitioners was fully eligible for the allotment of the surplus land in question and the prescribed authority committed no illegality in allotting the land to the father of the petitioners. He concluded by submitting that the impugned orders may be set aside and both the writ petitions deserve to be allowed.

7. Having heard the learned counsel for the petitioner, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that no interference is warranted at the hands of this court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

8. During the course of arguments, when a pointed question was put to the learned counsel, as to how the provisions of para 5(5) of the Scheme of 1976 were complied with by the prescribed authority, before passing the orders of allotment in favour of father of the petitioners, he very fairly states that meticulous compliance of provisions of para 5(5) of the Scheme of 1976 was not there. In fact, realising that he was walking on a slippery pitch, learned counsel made this fair statement about non compliance of the relevant provisions of law contained in para 5(5) of the Scheme of 1976.

9. In this view of the matter, hardly anything is left to be observed any further and both the writ petitions, being bereft of any merit and without any substance, are bound to fail. Before passing the order dated 17.5.2006 (Annexure P-6), learned District Collector, Sirsa, has discussed each and every aspect of the matter rightly appreciating the factual position as well as the provisions of the Scheme of 1976.

10. While passing his order dated 17.5.2006, learned Collector, after discussing the facts of the case in detail, recorded his findings, which read as under:-

I have heard the arguments of the counsel for both the parties and perused the file. The appellant is a evicted tenant as per order dated 10.06.1966 passed by Assistant Collector 1st Grade, Sirsa and is entitled for allotment of surplus land as C Category tenant. A copy of the eviction order of the appellant has been sent to C.R.O. As per the allegation of the appellant the procedure which has been adopted by the court for passing the order dated 15.05.1996 seems to be totally wrong. Because under para 5(2) of Haryana Utilization Scheme, 1976 there is a provision of making an application within 30 days after proclamation of Munadi from their eligible persons. But in this case the allotment has been made after 10 days from the date of publication. Secondly, the suspicion of the appellant that there was no proclamation has done in the village which was a formality only seems to be prima facie from the under mentioned facts.

1. If the proclamation has been done actually it was not possible that the tenant who is eligible for allotment of the village may not come to know whereas, this fact has come to know to a person who is resident of Maujdeen which 30 kilometer from the place where the surplus land is situated.

2. To say that the appellant has not filled Form-U.S. 2 personally does not seem to be proper because it is against human nature that any person who is eligible for allotment and after knowing by way of proclamation will not give any application for allotment of surplus land.

3. As per para 5(5) of Haryana Utilization Scheme it is clear that first of all the surplus land will be allotted their eligible persons belonging to that village where the surplus land is situated. Thereafter, the surplus land would be allotted to the tenants of the same patwar circle of other villages of eligible persons adjoining the area. If any eligible person who has not even applied for allotment on Form-U.S. 2 even then it was the duty of allotment authority to find out the eligible persons from the record and personal notice should have been given after proving the appellant for not entitled for allotment of land the opportunity of allotment could be given to the present respondent. But in this case no enquiry was made for eligible persons for allotment under para 5(5) of Utilization nor similar tenants that of the respondent were given any opportunity of making any application i.e. all the tenants of the Tehsil should have been given an opportunity which has not been given.

Keeping in view the above facts this allotment is shrouded with suspicion, therefore, the order under appeal is set aside with a direction to the trial court that proclamation be made in the village in accordance with the act and allotment be made to eligible persons after receiving their application on the basis of merits and demerits.

11. The above said order passed by learned District Collector, Sirsa, was challenged before learned Commissioner, as noted above. Learned Commissioner also reconsidered the matter and after due application of mind, passed the impugned order dated 21.4.2010 (Annexure P-8), observing as under:-

After hearing arguments from both the sides and perusing documents and record brought on the files, it is revealed that the Collector vide order dated 09.02.2006, condoned delay in filing appeal of the respondent with the observation that the respondent Mani Ram was an ejected tenant and therefore, he should have been given notice about the allotment of surplus land. After perusing the record brought on the file, there does not appear any illegality in this order of Collector who has clearly observed that no notice was given to the respondent and therefore, the delay was condoned in the interest of justice in order to decide the case on merits. So far as the grievance of the Collector has wrongly set aside the order of Allotment dated 15.05.1996 by accepted appeal of the respondent, is concerned, the Collector after considering the record as well as documentary evidence brought on the file, has clearly observed that the respondent is an ejected tenant vide order of AC. 1st Grade, Sirsa dated 10.06.1966 and therefore, his name should have been considered for allotment of surplus land under Category "C. The Collector has also rightly observed that as per provisions of Section 5(2) of Utilization Scheme, 1976, the application for allotment of surplus land can be filed by the eligible persons within 30 days after conducting the proclamation whereas in the present case, the allotment was made only after 10 days after effecting Munadi. Regarding the contention of the petitioner that the respondent did not file Form-US-2, the Collector has rightly observed that as per para 5(2) of Utilization Scheme, the surplus land situated in

the village will be given first to the tenants of all categories residing in the same village and thereafter, the tenants of other village of same Patwar Circle would be considered for allotment only in case the land is available. In such situation, if from the eligible persons, someone did not file Form US-2 for allotment of land, it was duty of the Allotment Authority to give notice to all eligible persons on the basis of the record. The findings of Collector are in detail and the impugned order is speaking one which has been passed after considering and discussing all the points raised by the petitioner. The Collector vide impugned order, has remanded the case with the direction that proclamation be got made as per provisions of law and the allotment of surplus land be made afresh on merit after taking applications of the eligible persons. I do not find any margin to interfere into the order of Collector and accordingly, finding no force in both the present petitions, the same are dismissed.

12. Again, a Bench of two Financial Commissioners heard the matter in detail and discussed the merits of the case, while passing their impugned order dated 28.3.2012 (Annexure P-10). The relevant operative part of the order, reads as under:-

On hearing both the sides it emerges that contentious issue in this case is the preference required to be given to different categories of tenants. Obviously as per the Utilization Scheme 1976 the first reference is required to be given to the tenants residing in the same village. Collector has discussed the case in detail. Land has been allotted to the petitioner who is residing in another village whereas the claimants in the same village have been left out. In the normal course it is not possible that the people residing in the same village are not aware of the Munadi proclaimed and the persons residing at the residence of 30-40 kilometers away came to know of the Munadi conducted. This brings the entire process of allotment under suspicion. Therefore, giving due consideration to the observations made by Collector Sirsa in his order dated 17.05.2006 we uphold his order and also sustain the Commissioners order dated 21.04.2010. Hence, the present revision petitions are dismissed.

13. A combined reading of all the impugned orders passed by the revenue authorities, would make it clear that no error of law has been committed by either of them while passing the impugned orders. Once the prescribed authority failed to comply with the relevant provisions of law contained in Section 5(5) of the Scheme of 1976, the allotment order in favour of the father of the petitioners was without jurisdiction.

14. Having said that, this Court feels no hesitation to conclude that if the order of allotment was void ab initio, learned District Collector Sirsa rightly condoned the delay in favour of respondent No. 5, whose valuable right had been denied by the prescribed authority.

15. Further, learned counsel for the petitioners failed to point out any patent illegality or perversity in any of the impugned orders. No prejudice has been

shown to have been caused to the petitioner.

16. No other argument was raised. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, it is unhesitatingly held that both the writ petitions are bereft of any merit and without any substance, thus, these must fail. No case for interference has been made out.

Resultantly, both the writ petitions are ordered to be dismissed.