(1981) 02 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3525 of 1979

Ishar Singh APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 10-02-1981

Acts Referred:

Punjab Security of Land Tenures (Amendment) Act, 1957 — Section 24A

Citation : (1981) 3 ILR (P&H) 265 : (1981) 83 PLR 314

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

Bench : Single Bench

Advocate : P.N. Aggarwal, for the Appellant; S.K. Syal, A.A.G. (Pb.) for Respondent Nos. 1 and 3, Mr. Bhoop Singh, Addl. A.G. Haryana for Respondent No. 2 and Mr. R.S. Mittal for Respondent Nos. 4 to 6, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—These two writ petitions Nos. 3523 and 3753 of 1979, between the same parties and against the same order of the Financial Commissioner, Punjab, raise an interesting question of law which on first impression appears to be rather ticklish. It arises on the following facts.

2. The petitioner owned land in two villages to the following extent:-

1. Village Fakarsar, Tehsil Muktsar, District Faridkot, (formerly District Ferozepur)

42. 5 1/3 Standard Acres

2. Village Bhagsar, Tehsil & District Sirsa, (formerly District Hissar).

12. 1/4 Standard Acres.

3. Leaving aside 25 Standard Acres of land in village Fakarsar as his permissible area under the provisions of the Punjab Security of Land Tenures Act, 1957 (hereinafter referred to as the Act), the rest of the area in both the villages was declared as surplus by the Special Collector, Punjab, vide his order dated October

7, 1960, Annexure P. 1. According to the petitioner, this order of the Collector was ex-parte against him and there had been no legal or proper service on him prior to the passing of the same. He further maintains that he came to know about this order for the first time on September 20, 1976 when proceedings u/s 24-A of the Act were started against him. Learning about the existence of this order, he secured a certified copy of the same and preferred an appeal before the Commissioner, Ferozepur Division, Ferozepur, on September 21, 1976. The said appeal, however, was dismissed on December 13, 1978. He assailed this order before the Financial Commissioner, Punjab, in a revision petition u/s 84 of the Punjab Tenancy Act, 1887, read with section 24 of the Act and that petition is still pending for final disposal. Along with that petition, he moved an application for ad interim order staying the operation or Implementation of the impugned order of the Special Collector, Annexure P. 1. The Financial Commissioner vide his order dated July 20, 1979, stayed dispossession of the petitioner from the land in question till December 14, 1979, that is, the date for which notice was issued to the respondents.

4. It deserves to be mentioned here that with the passing of the Punjab State Re-organisation Act, 1966, Village Bhagsar, Tehsil and District Sirsa, fell to the share of the State of Haryana and forms part of the territorial limits of that State. The Collector Sirsa or the authorities concerned declined to give effect to the above-noted stay order dated July 20, 1979, passed by the Financial Commissioner, Punjab, and directed the petitioner to get a clarification from him as to how far the said order passed by him was applicable to the land of the petitioner situated in village Bhagsar. In a nut shell, the said authorities, pointed out that the Financial Commissioner, Punjab, had no jurisdiction over them or the area situated within the territories of the State of Haryana. This made the petitioner file two petitions before the Financial Commissioner, Punjab, one for clarification as to whether the authorities of the State of Haryana were bound by the stay order granted by him and the other for impleading the State of Haryana as one of the respondents before him. Notices were issued to the State of Haryana in both these petitions and one Jaswant Singh, Assistant from the office of the Financial Commissioner, Haryana, put in appearance on behalf of the State of Haryana and asked for adjournment to seek clarification from the office of the Legal Remembrancer, Haryana, with regard to the stand to be taken by the authorities of the State. On the subsequent dates the representative of the State of Haryana, however, did not choose to join the proceedings or to put in appearance before the Financial Commissioner, Punjab. On September 6, 1979, the Financial Commissioner, through a composite order, Annexure P. 4 (in both the petitions) summarily rejected these applications. This led the petitioner to file the present petitions to seek the twin reliefs, that is, (i) declaration to the effect that the stay order passed by the Financial Commissioner. Punjab, on July 20, 1979, was binding on the concerned authorities of the State of Haryana and (ii) impleading of the State of Haryana ns a respondent before the Financial Commissioner.

5. It is needless to point out that both the above noted reliefs are dependant on the answer to the question as to how far the Financial Commissioner, Punjab, has the jurisdiction to pass an order with regard to the land of the petitioner situated in village Bhagsar, District Sirsa. Though to me it looks patent that it is in the interest of the State of Haryana itself to join those proceedings before the Financial Commissioner, Punjab and to raise whatsoever defences possibly it can, yet in view of the reluctance of the authorities of the said State to join there and the seriousness with which the learned Additional Advocate General for the State of Haryana, challenges the jurisdiction of Financial Commissioner in the matter, the question calls for a judicial decision.

6. No doubt it is true that in the light of the provisions of section 2(8) of the Act read with section 75 of the Punjab Tenancy Act, 1887, and section 6(5) of the Punjab Land Revenue Act, 1887, the jurisdiction of the Financial Commissioner extends to the whole of the territory of the State of Punjab and on first look the Financial Commissioner in this case does not appear to have jurisdiction over the area which has gone over to the State of Haryana, but his jurisdiction in this regard has been saved by the provisions in Part X (Sections 88 92 and 93) of the Punjab Re-organisation Act, 1966, by virtue of which Act the State of Haryana itself came into existence. A somewhat similar question with regard to the effect of an order declaring the land of a landowner owning land in both the State, hat is, Slates of Punjab and Haryana prior to November 1, 1966 came up for consideration before a Full Bench of this Court in S. Balwant Singh Chopra and others v. Union of India and others (1971) 73 P.L.R. 335 and this is what has been observed by the said Bench:-

The order declaring the surplus area in the case of the landowner, before 1st November, 1966, the liability attaching to the surplus land belonging to the landowner and the corresponding right accruing to he State Government for utilising the said area for resettling the tenants thereon would not be affected, in any way by the enforcement of the Haryana Adaptation of Laws (State and Concurrent Subjects) Order, 1968, on 1st No ember, 1966. Consequently, the respective State Governments would be entitled to give effect to the order declaring the surplus area by utilising the same or the resettlement of the tenants after the reorganisation of the State of Punjab. To put it differently, it would mean that the order declaring the surplus area would be enforced and the tenants settled thereon by the Government even after 1st November, 1966, as if no change in the law had taken place. The concerned Officer of the States of Punjab and Haryana will continue to act and comply with the orders already passed before 1st November, 1966. It is needless to mention that all the objections and the remedies that were available to the landowners under the provisions of the Punjab Security of Land Tenures Act, before 1st November, 1966, will remain intact and unchanged even after that date.

(Emphasis added)

Thus if the State of Haryana can legally claim rights in the land which was declared surplus earlier to November 1, 1966 by an authority having jurisdiction within the State of Punjab under the Act, then while a superior authority examines the legality or propriety of that order declaring the land in the hands of a landowner as surplus, it cannot possibly take up the plea that the said authority has no jurisdiction in the matter. If that stand of the State is to be accepted then it cannot possibly claim any rights in the surplus area already declared by a Punjab Officer as according to its own stand, the said declaration would amount to be by an officer who had no jurisdiction in the matter. Any way so far as the case in hand is concerned, to my mind, the previsions of section 92 of the Punjab Re-organisation Act squarely cover the matter. This provision reads as under:-

92. Legal proceedings.-Where, immediately before the appointed day, the existing State of Punjab is a party to any legal proceedings with respect to any property, rights or liabilities subject to apportionment under this Act, the successor State which succeeds to, or acquires a share in, that property or those rights or liabilities by virtue of any provision of this Act shall be deemed to be substituted for the existing State of Punjab or added as a party to those proceedings and the proceedings may continue accordingly.

7. Mr. Bhup Singh, learned Additional Advocate General for the State of Haryana, however, contends that this section only applies to a case where any legal proceeding was pending against the State of Punjab immediately before the appointed day that is, November 1, 1966, and since in the present case no proceeding with regard to the declaration of the surplus area of the petitioner was pending on that day, this section can possibly have no applicability to the facts of this case. To examine the validity of this argument the meaning of the phrase "No proceeding pending before the appointed day before an authority or an officer" needs to be examined. What is the meaning of the word "pending" has been examined by a learned Single Judge of this Court in Chanan Mal Newar and others v. State of Haryana and others (1977) 79 P.L.R. 92. This question arose in that case in the context of section 33 of the Haryana Ceiling of Land Holdings Act (26 of 1972) which came into force with effect from December 23, 1972, on the following facts.

8. Area of one Smt. Rukmani Devi landowner of District Hissar, admittedly in the State of Haryana was declared surplus to the extent of 46 29 Ordinary Acres under the provisions of the Act by the Collector vide his order dated March 10, 1954 This order of the Collector was affirmed by the Financial Commissioner on March 21, 1957. After the coming into force of the Haryana Act No. 26 of 1972, an application for the review of this order of the Financial Commissioner was filed but it was dismissed by him on the ground that since the Act stood repealed by the provisions of section 33 of the Haryana Act No. 26 of 972 and no proceedings were pending immediately proceeding the coming into-force of this Act, the application for the review of an order passed under the Act was not competent. The relevant provisions of section 33 of the Haryana Act No. 26 read as follows:-

33. Repeal and saving.-

(1) The provisions of the Punjab Security of Land Tenures Act 1953, and Pepsu Tenancy and Agricultural Lands Act, 1955, which are inconsistent with the provisions of this Act are hereby re-pleaded.

(2) The repeal of the provisions of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactment, shall not affect.

(i) * * * *

(ii) The proceedings for the determination of the surplus are pending immediately before the commencement of this Act, under the provisions of either of the said enactments, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilized by the State Government in accordance with the provisions of this Act.

After examining the abovenoted provision, it was held by the learned Single Judge that in case a litigant can take any proceeding in any case, under the provision of a law, such proceedings will be considered to be pending The review application, though filed after the coming into force of Haryana Act No. 26 of 1972, yet with the filing of the said application which was maintainable u/s 24 of the Act, the proceedings in the case were to be considered to be pending till the aggrieved party could file the review application. It was further held that suchan application of course would be subject to the law of imitation. Thus it is patent that till a party to a litigation can legally take up a proceeding under the provisions of a statute the proceedings under the statute would be taken to be pending till the matter is finally disposed of. If in the above noted case the review application against an order which had been passed much earlier to the coming into force of Haryana Act No. 26 of 1972, had to be deemed to be pending for purposes of section 33, sub-section (2), clause (ii) of the said Act, then in the present case, the revision petition now pending before the financial Commissioner would also amount to the pendency of the proceedings on the date of coming into force of the Punjab State Re-organisation Act. If that be so, as has been held to be so than in view of the provisions of section 92 of the latter Act already reproduced earlier, the Haryana State would automatically be deemed to be a party before the Financial Commissioner at least can be added as party to those proceedings and the orders passed by the Financial Commissioner, Punjab, in the matter would be binding on the authorities concerned in the State of Haryana. Since it is the undisputed case that the land of the petitioner in village Bhagsar falls within the territories of the Haryana State and as alleged has in fact been utilised by the said State authorities then it is essentially a necessary party to the proceedings which are pending before the Financial Commissioner Thus the learned Financial Commissioner committed a patent error of law in dismissing the applications of the petitioner praying for the impleading of the Haryana State as a party to those proceedings and ordering the compliance of the stay order passed by him Thus the impugned order

Annexure P. 4 is set aside and it is directed that the State of Haryana be impleaded as respondent No 2 in those proceedings.

9. So far as the clients of Mr. R.S. Mitral, the allottees of the land are concerned, though they are not necessary parties in view of the Division Bench judgment of this Court in Bhupinder Singh v. The State of Punjab and others (1980) 82 P.L.R. 206, yet in view of the fact that they have already put in appearance before me and the interest they have shown to join those proceedings before the Financial Commissioner, they are also allowed to be impleaded as respondents in those proceedings. The parties through their respective counsel are directed to appear before the said Court on March 2, 1981.

10. In the light of the discussion above, these petitions are allowed to the extent already indicated with no order as to costs.