
(2018) 10 P&H CK 0351

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 24129 Of 2018

Janak Singh And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:

Haryana Ceiling On Land Holdings Act, 1972 — Section 12(3)
Punjab Security Of Land Tenures Rules, 1956 — Rule 6(8)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 1 RCR(Civ) 652

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : A.K. Chopra, Akshit Chaudhary

Final Decision : Dismissed

Judgement

G.S. Sandhawalia , J

The legal heirs of the big landowner Rajender Pal Singh, under Article 226/227 of the Constitution of India, challenge the order of the Division Bench of the Financial Commissioners, Haryana dated 07.08.2018 (Annexure P-6), wherein the order dated 18.01.1979 (Annexure P-3) passed by the Divisional Commissioner, Ambala Division has been upheld. Resultantly the order dated 25.02.1963 (Annexure P-2), whereby the Collector, Jhajjar had declared 281.9 Standard Acres of land surplus of the petitioners father big landowner, namely, Rajender Pal Singh, has also been upheld.

Senior Counsel Mr. A.K. Chopra, Advocate has vehemently argued that the landowner had never been communicated the order of the Collector and, therefore, the proceedings as such were in nullity and in the absence of the statement in Form-F having not been forwarded to the landowner and served upon him, the order declaring the land surplus was not justified. Reliance upon Rule 6 (8) of the Punjab Security of Land Tenures Rules, 1956 (for short as '1956 Rules') is made in this regard and, accordingly, various judgments of this Court

qua this aspect have been relied upon for the said proposition, to submit that the appeal which was dismissed on 18.01.1979 (Annexure P-3) being time barred was not sustainable and, therefore, the same has been wrongly upheld by the Financial Commissioners on 07.08.2018 (Annexure P-6). The judgments passed in 'Dhaunkal Vs. Man Kauri and another' 1970 PLJ 402, 'Vir Singh Vs. The State of Punjab and others' 1970 PLJ 70, 'Dharam Vir Vs. The Financial Commissioner, Haryana and others' 1980 PLJ 403 and in 'Bharat Starch & Chemicals Ltd. VS. State of Haryana and others' 1994 PLJ 392 have been relied upon. Apart from that an argument has been raised that the benefit of the Banjar Qadim and Banjar Jadid has not been given to the petitioners, which should have been given to them and, therefore, the Financial Commissioners have failed to exercise the jurisdiction vested in them under the law.

In order to appreciate the argument raised, the factual matrix is firstly to be seen, as the petitioners predecessor-in-interest Rajender Pal Singh has resorted to various litigations in an effort to protect his surplus area, which also already stands allotted way back on 30.11.1977 to the tenants. Reference has, thus, also to be made to RSA No.3355 of 1986, which the father of the petitioners Rajender Pal Singh had filed. The land of Rajender Pal Singh was situated in 5 different villages of Rohtak and 2 villages of Mahendergarh District and, accordingly, vide order dated 25.02.1963 (Annexure P-1), he was allowed to retain 50 standard acre, as permissible and declared 20 Standard Acre 9 Units as tenants' permissible area, whereas remaining 289 Standard Acre 9 Units was declared as surplus.

The Prescribed Authority-cum-Sub Divisional Officer (Civil), Jhajjar vide order dated 30.11.1977 (Annexure A-1 in RSA No.3355 of 1986) had ordered for delivering the possession of land, after getting the amount deposited. Accordingly, appeal was filed on 30.12.1977 before the Divisional Commissioner, Ambala Division, by the big landowner. In the appeal the plea taken was that Form-F had not been served upon the appellant regarding surplus area and, therefore, the appellant had no notice of the impugned order. The plea was also taken that no order was passed by the Special Collector, Chandigarh declaring the land as surplus and Special Collector, Chandigarh would have jurisdiction and the Collector at Jhajjar had illegally calculated the land and not excluded the land which would not fall under the definition of land under the Punjab Security of Land Tenures Act, 1953 (for short as '1953 Act'). The appellant allegedly came to know about the impugned order dated 25.02.1963 (Annexure P-1) on 01.12.1977 and copies had been applied on 09.12.1977. The appeal was dismissed on 18.01.1979 (Annexure P-3) on the ground of limitation having been filed after a period of more than 14 years and being time barred. It was held that the entire land which was surplus had become ownership of the State Government under Section 12 (3) of the Haryana Ceiling on Land Holdings Act, 1972 (for short as '1972 Act') on 24.01.1971. The factum of tenants having filed separate applications under Section 18 of the 1953 Act to purchase the land of Rajender Pal Singh weighed with the Collector, who noticed that the Rajender Pal

Singh had admitted that he

was a big landowner before the Assistant Collector 1st Grade, Jhajjar, Shri R.C. Rao and the applications of the tenants that they were not tenants for a period of 6 years prior to 1953 had been rejected vide order dated 29.11.1976. Similarly, the Commissioner had also noticed the declaration form in Form-1, which had been submitted under the 1972 Act. Resultantly, it was held that the big landowner was in knowledge of the order dated 25.02.1963 (Annexure P-1).

Thereafter, the revision was filed before the Financial Commissioner and the proceedings were adjourned sine die on 22.01/11.1979, on account of the Rajender Pal Singh having filed a Writ Petition No.457 of 1979 before the Apex Court, whereby the dispossession from the land had been stayed. It is not disputed that the writ petition was dismissed on 23.01.1981 (Annexure P-4) and the benefit of stay was given till April, 1981.

It was the case of the petitioners that before the Financial Commissioner an effort was made to revive the proceedings, but the same could not be done as the copy of the order of the Apex Court was not available. Thereafter, Civil Suit No.87 of 1982 was filed against the State Government for declaration of permanent injunction by taking the plea that the case of the surplus land of the plaintiff was to be decided by a Special Collector, since plaintiff's land was situated in three tehsils and 2 districts and there was no entry until 16.09.1974 that land belonging to the plaintiff had been declared surplus and he came to know in December, 1979. The order of the Collector dated 25.02.1963 (Annexure P-1) and that of the Commissioner dated 18.01.1979 (Annexure P-3) were challenged on the ground of jurisdiction and not binding upon the plaintiff, apart from the fact that Banjar and Gair Mumkin land had also been included and, therefore, no notice of being heard was ever issued by surplus department to plaintiff and no service was issued with regard to Form-F.

The State took the plea that the suit was time barred and the plaintiff had lost his case before the Commissioner, Ambala and the High Court. The fact was denied that the plaintiff owned some land in District Mahendergarh and land was not declared surplus at the time of filing Form-A and all the land was in District Rohtak. Therefore, the Collector was entitled to exercise its jurisdiction. The landowner had himself had filed Form-A and the orders of the revenue authorities were legal. It was mentioned that the landowner had been contesting the proceedings of surplus case. It was further mentioned that he presented an application dated 27.02.1981 before the Collector, wherein he wanted to change the numbers of the surplus land and notices were issued to the plaintiff. The tenants namely Janardan, Ram Kishan and Ishwar also filed an application for purchase of land belonging to the plaintiff. The land had to be declared as surplus and was to be vested in Government and the State has a right to utilize it and to give it to tenants.

The Civil Court rejected the plea that the land at Mahendergarh had already been

sold by the plaintiff and no such plea had been taken before the Collector at Jhajjar. It was further recorded that he had taken part in the surplus proceedings in which he himself admitted while appearing as PW-1 that he filled in Form-A (Ex.P1 to P7). Similarly, on the issue of no service of Form-F, it was held that the plaintiff did not chose to summon the case and, therefore, it could not be held that no notice of Form-F was served upon him. The onus to prove was upon the plaintiff and it was his bounden duty to summon the concerned record and to prove his case. Reference was also made to the earlier order dated 07.12.1983, whereby his stay application has been dismissed and the concerned official of the revenue department had brought the record of the case and shown to the plaintiff service of Form-F which was supplied to him by the Government. The relevant portion of the findings of the Civil Court reads as under:-

"As regards contention that no service of Form-F was served upon the plaintiff, there is also no force in this contention since plaintiff at in time of did not choose to summon record of this case from concerned authorities. Without perusal of the same, it cannot be held that no notice of Form-F was served upon the plaintiff. The onus to prove this issue was since on plaintiff, therefore, it was bounden-duty of plaintiff to summon the concerned record and to prove his case. During trial, as what is evident, vide order dated 7.12.83 vide which stay application was dismissed, it was made out that concerned official of the revenue department who brought the record of this case, had shown to plaintiff, service of Form F which was supplied to him by the government."

Resultantly, the suit was dismissed after recording the finding under issue No.1 that the order dated 25.02.1963 and the order dated 18.01.1979 were legal with jurisdiction and were binding upon the plaintiff and case of the surplus cannot be re-opened by plaintiff by filing a civil suit since he has exhausted all the remedies available to him. The suit was also dismissed on the ground that the Civil Court has no jurisdiction apart from the fact that necessary parties have not been impleaded and also it was time barred.

In appeal, the findings were upheld by the Additional District Judge, Rohtak vide order dated 10.11.1986, after perusing the revenue record that he had already sold the land. It was also noticed that once there was an admission with regard to submission of Form Ex.P1 to P7 and his presence during the surplus proceedings, proved that. Before the lower Appellate Court even the State filed an application to produce additional evidence that notice of Form-F was served upon the plaintiff and also upon Janardan, Ram Kishan and Ishwar who had purchased the land according to rules, who were tenants. The application was, however, dismissed on the ground that the appeal was being dismissed and the application had become infructuous. Secondly on the ground that the documents should have been produced before the trial Court, once the same were within the knowledge of the department.

Not being satisfied, the appellant Rajender Pal Singh had filed RSA No.3355 of 1986 alongwith application for additional evidence bearing CM-3875-C-1986 that

the Form-A submitted by the applicant was returned to the Collector Rohtak for examination by the Special Collector, Chandigarh vide order dated 23.09.1958. In the appeal application was filed for being impleaded as party by the applicant-Sujender as respondent No.3, on account of land being declared surplus and allotted to various persons and even the order of the allotment dated 30.11.1977 was placed on record as Annexure A-1. Similarly, application was also filed by Ram Kishan and Bohti for impleading as respondents No.3 and 4. Annexures A-1 and A-2 to show that Ram Kishan and Bohti were allotted land out of the surplus area as per under Section 3 of the 1972 Act on 20.04.1979. The allotment order of 44 allottees was also placed on record. One of the applications for impleadment of Ram Kishan and Bohti was dismissed on 09.08.2007. The RSA was eventually dismissed as withdrawn on 09.02.2011, which reads as under:-

"After arguing the matter at some length, learned counsel for the appellant submits that he may be permitted to withdraw the suit in view of bar of jurisdiction of the Civil Court to enable him to pursue ROR No.118 of 1978-79.

Learned counsel for the respondent on the other hand has objected to the request of the counsel for the appellant to withdraw the suit.

In the present case, since the jurisdiction of the Civil Court was barred, it would be interest of justice to allow that appellant to withdraw the suit to enable the plaintiff to pursue his ROR No.118 of 1978-79, titled as 'Rajender Pal Singh Vs. State'. Accordingly, the suit of the plaintiff is dismissed as withdrawn. The judgments and decrees passed by the Courts below are set aside being redundant."

The Financial Commissioners perused the record and recorded that the original order dated 25.02.1963 is in Urdu language and the Roman letter 'F' was clearly visible. It was further also noticed that the trial Court had discussed regarding the service of Form-F which aspect has also been reproduced above. The stay had been declined at that point of time by the trial Court on account of the fact that service had already been effected by Form-F. It has further been held that the stand that knowledge of the order dated 25.02.1963 was passed ex parte and without any notice was not tenable, as three separate applications had been filed through tenants for purchasing permissible area as surplus and he was already a party in those proceedings which was filed on 10.03.1976 and had been rejected on 29.11.1976 in the presence of Rajender Pal Singh who appeared before the Assistant Collector 1st Grade and filed his written statement stating that applicants were Gair Marusi tenants and be permitted to purchase the land under their tenancy. Therefore, the knowledge as such was a year earlier, whereas it has been held out that it was in the grounds of appeal before the Commissioner that the knowledge was only obtained on 01.12.1977 and the copy having been applied on 09.12.1977 and delivered on 22.12.1977, the appeal having been filed on 30.12.1977. It is pertinent to notice that the plea qua knowledge in civil suit is of the period of December, 1979.

The Financial Commissioners have also noticed that the tenants have already deposited the amount in installments, apart from the fact that there has been concealment of facts with the purpose to hold on to the surplus land by one way or other. It has also been noticed that the Form F was got removed from the file of the lower Appellate Court as per the statement of Shri Hari Om Sharma, Kanungo, Jhajjar before the said Financial Commissioner on 04.07.2017 and 25.04.2018.

From the cumulative facts, it is apparent that even in the civil suit filed, the plea taken was regarding the jurisdiction of the Collector and the Special Collector and specific pleadings had also been made regarding the knowledge of the plaintiff was in December, 1979 that the land had been declared surplus which is in contradiction to the plea taken before the Commissioner and the fact that the land had been declared surplus on 25.02.1963 and date of knowledge was 01.12.1977, in that set of proceedings.

The arguments which have now been raised before this Court and the judgments relied upon are without any basis, as the petitioners are bound by the findings which were recorded as such with their predecessor-in-interest as he was declined the stay on an earlier occasion in the Civil Court. The Form-F had been served upon him which had been produced by the authorities at that point of time when the stay application was declined. The relevant part of the order dated 07.12.1983 reads as under:-

"During the course of arguments plaintiff was shown Form A furnished by him on which he had admitted his signatures. The explanation furnished by the plaintiff was that he had sold land in Rana Kheri, tehsil Gohana on 18.6.1958 as per statement made by him before the Surplus authorities. The plaintiff had also admitted at the time his counsel was addressing arguments that the land owned by him in Bas Ranila had also been sold by him somewhere around the year 1960 and that he was left only with his share in shamlat deh there. This goes to show that the plaintiff was very much in know of the matter at the time of filing Form A and had purposely not shown his land in District Mohindergarh. It is pertinent to mention here that during the course of arguments, the official of Revenue (Surplus) Department who had brought record pertaining to the case of the plaintiff had shown to the plaintiff Form F which was supplied by the Government to him. This document also contained the signatures of the plaintiff which sets at naught the controversy raised by the plaintiff that he had not been served with the notice before his land was declared surplus or proceedings for the utilization of the same were taken up by the State Government."

The Financial Commissioners have also examined the record in detail to come to the conclusion that the big landowner was present when the order dated 25.02.1963 was passed declaring the land surplus and the same was supplied to him. Now, an argument which has been raised by the Senior Counsel that the same was never supplied, in the facts and circumstances, is not acceptable and for the reasons given above whereby on an earlier occasion itself before the Civil

Court it had been found otherwise while considering the case of permanent injunction. Thereafter, the plaintiff did not get summoned the record while leading evidence to prove that no service of Form-F has been effected and cannot get the benefit having got the original record misplaced during the long drawn proceedings.

Merely, because the suit has dismissed as withdrawn, would not erase the factual findings, which were noticed by the authorities below, as such and the legal heirs cannot take undue benefit. The record has also been examined in detail by two senior most Financial Commissioners and, therefore, this Court does not feel that it is a fit case where further inquiry as such has to be made under Article 226/227 of the Constitution of India. The discretionary relief is to be exercised, specially not for persons who have been abusing the process of system by resorting one or other proceeding to retain the possession of the land, at the cost of the tenants. Factually, once it is found that the service had been effected upon the big landowner, the judgments relied upon by Mr. Chopra, Senior Counsel would be of no help to him.

Resultantly, there is no merit in the present writ petition and same is dismissed in limine.