

(2018) 08 P&H CK 0374

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 644 Of 2018 (O&M)

Jasbir Singh And Others

APPELLANT

Vs

Punjab Wakf Board And Others

RESPONDENT

Date of Decision : 08-08-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 22 Rule 4
East Punjab Evacuees (Administration of Property) Act, 1947 — Section 4
Administration of Evacuee Property Act, 1950 — Section 2A(2), 8(2), 8(2A), 27, 54
Displaced Persons (Compensation And Rehabilitation) Act, 1954 — Section 12, 22

Citation : (2019) 1 RCR(Civ) 123

Hon'ble Judges : Ajay Kumar Mittal, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : J.S. Dadwal

Final Decision : Dismissed

Judgement

1. This is an application under Order 22 Rule 4 read with Section 151 of the Code of Civil Procedure, for placing on record the legal representatives of the deceased Dharam Singh.

2. After perusing the averments made in the application, which is supported by an affidavit, the same is allowed, subject to all just exceptions and the applicants, as mentioned in Para 4 of the application are ordered to be impleaded as legal representatives of deceased Dharam Singh. CM stands disposed of accordingly.

3. This Letters Patent Appeal has been filed by the appellants under Clause X (wrongly mentioned as XI) of the Letters Patent against the judgment dated 16.01.2014, passed by the learned Single Judge of this Court in CWP No. 215 of 1994.

4. A few facts relevant for the decision of the controversy involved as narrated in this appeal may be noticed. The subject matter of the present case is land

measuring 16K-17M situated at Village Aur, Tehsil Nawanshahr, District Jalandhar. Before partition in the year 1947, the said land was owned by one Bube Khan S/o Mohammed Bux and Azmat Bibi daughter of Bube Khan in equal shares as reflected in the Jamabandi for the year 1946-47. The said owners migrated to Pakistan during partition, on which account the same became evacuee property as defined under the East Punjab Evacuees (Administration of Property) Act, 1947 (in short 'the 1947 Act'). The said property accordingly vested in the Custodian in terms of Section 4 of the 1947 Act and its possession was taken over by the Custodian. According to the appellants, despite that, no application under Section 7 of the 1947 Act was filed by the Wakf Board to challenge the said vesting. The 1947 Act was repealed by the Administration of Evacuee Property Act, 1950 (in short 'the 1950 Act'). Section 8(2) of the 1950 Act provides for vesting in the Custodian appointed under the 1950 Act of evacuee property which before the commencement of the 1950 Act had vested in the Custodian under any State law repealed by the 1950 Act. However, Sub-section 2A of Section 8 of the 1950 Act provides that any property deemed to have been vested in the Custodian under the 1950 Act in terms of Section 8(2) shall have effect notwithstanding any defect in the vesting of the property under the earlier Act. According to the appellants, as per the law laid down by the Apex Court in "M/s Hazi Esmail Noor Mohammad & Co. & Others Vs. The Competent Officer, Lucknow and Others, AIR 1967 SC 1244", automatic vesting of evacuee property in terms of Sub-Section 2 and 2-A of Section 8 of the 1950 Act cannot be reopened after the enforcement of the 1950 Act. Since in the present case, the vesting in said Custodian was not challenged by the Punjab Wakf Board until the coming into the 1950 Act, the land in question came to be vested in the Custodian after the 1950 Act. Under Section 8(2) of the 1950 Act, such vesting became final and conclusive by virtue of Sub-Section 2A of Section 8 of the 1950 Act. In the year 1954, the Parliament enacted the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (in short 'the 1954 Act'), to provide payment for compensation and rehabilitation grant to displaced persons. Section 12 of the 1954 Act, empowers the Central Government to secure evacuee property for the purposes mentioned therein. In the present case, the land in question was acquired by the Central Government under Section 12 of the 1954 Act. Dharam Singh filed an application No. 183-TSN for allotment of the land in question on the basis of his continuous possession over several years. On 27.03.1979, Tehsildar (Revenue), Nawanshahr, exercising the powers of Settlement Officer passed an order holding that Dharam Singh is entitled to purchase the said land at a total cost of ` 422/-. The Wakf Board filed an appeal against the impugned order dated 27.03.1979 before the learned Sales-cum-Settlement Commissioner under Section 22 of the 1954 Act. Vide order dated 28.05.1981, the Sales-cum-Settlement Commissioner remanded the matter back to the Naib Tehsildar for fresh disposal after hearing the Wakf Board as well. The Naib Tehsildar, Nawanshahr, heard the objections of the Wakf Board, which were primarily based on the fact that the land in dispute was alleged to be shown as Wakf property in notification dated 06.02.1971 issued under the Wakf Act, 1954.

However, the Naib Tehsildar rejected the contentions of the Board vide order dated 11.12.1981 and confirmed the earlier order dated 27.03.1979. The Punjab Wakf Board filed an appeal under Section 22 of the 1954 Act before the Sub-Divisional Officer (Civil), Nawanshahr on 12.03.1982. Vide order dated 28.06.1982, the said appeal was dismissed. Aggrieved thereof, the Punjab Wakf Board could have filed the revision petition before the Chief Settlement Commissioner under Section 24 of the 1954 Act. However, no such revision petition was filed. Therefore, the order dated 28.06.1982 attained finality. On 12.07.1982, the Central Government sold the said land to Dharam Singh. The appellants assert that the Punjab Wakf Board without availing its remedy under Section 24 of the 1954 Act, filed Civil Suit on 02.02.1983 before the Trial Court at Nawanshahr for possession of the said land without seeking declaration that the sale-deed dated 12.07.1982 was void and without impleading the Central Government as a defendant. Vide judgment and decree dated 22.12.1983, the Trial Court held that the Central Government was owner of the said land and Dharam Singh proved that he was owner in possession of the said land by virtue of sale deed dated 12.07.1982. Aggrieved by the order, the Wakf Board filed an appeal before the Additional District Judge, Jalandhar. Vide order dated 27.05.1985, the Additional District Judge, Jalandhar, dismissed the appeal relying upon the entries in the Jamabandi and the sale of the said land by the Central Government to Dharam Singh. According to the appellants, having lost in two separate rounds of litigation, the Wakf Board filed a petition under Section 27 of the 1950 Act, challenging the vesting of the land in the Custodian and its subsequent disposal in favour of Dharam Singh. According to the appellants, Section 27 of the 1950 Act provides for a petition against the order of the Custodian. Since, there was no order of the Custodian under challenge, the Custodian-General vide order dated 25.05.1987, marked the petition filed by the Wakf Board to the Additional Custodian, Jalandhar, for enquiry and report. The Additional Custodian, Jalandhar, submitted the report dated 19.09.1988 to the effect that the land in question was not a Wakf Property and that the Wakf Board had already lost in two separate rounds of litigation. After considering the said report, the Assistant Custodian-General vide order dated 13.02.1990, dismissed the revision petition. Thereafter, the Wakf Board filed a revision petition under Section 54 of the 1950 Act before the Financial Commissioner (Appeals), Punjab. Vide order dated 06.09.1990, the said petition was dismissed. The Wakf Board filed a Civil Writ Petition No. 215 of 1994 before this Court. Both the State of Punjab as well as Dharam Singh, filed the written statements. Vide order dated 16.01.2014, the learned Single Judge of this Court allowed the writ petition on the basis of the earlier judgments in CWP Nos. 16837 & 14872 of 1992. Hence, the instant Letters Patents Appeal before this Court.

5. We have heard learned counsel for the appellants.

6. It is not disputed by the learned counsel for the appellants that identical issue has already been settled in favour of the respondents vide judgment dated 19.08.2014, rendered in LPA No. 482 of 2014, titled as "Sucha Singh and

another Vs. Punjab Wakf Board, Ambala Cantt and others". The order in the said case reads thus:-

"This letters patent appeal impugns the order dated 16.01.2014 passed by the learned Single Judge whereby allotment of the disputed land in favour of the vendor of appellants by the State Government, has been held to be invalid, on the ground that the said property belongs to Wakf Board. The learned Single Judge has held so while accepting the petition filed by Wakf Board wherein the orders passed by the Chief Settlement Commissioner, etc., were challenged.

It is an undisputed fact that vide notification dated 11.09.1971 (Annexure P-13), the subject land was declared as 'wakf property' and it also appears from the photographs on record that a Masjid was constructed on the part of the land. In the light of the overwhelming proof including entries in the revenue record, the finding returned by the learned Single Judge calls for no interference.

As regard to the appellants, who are vendees of the original allottee, the learned Single Judge has given them liberty to approach the State Government for the allotment of alternative land.

In this view of the matter, while we decline to interfere with the order passed by the learned Single Judge, the instant appeal is disposed of with a direction that as and when the appellants apply for allotment of alternative land, the State Government/Competent Authority shall decide their claim within a period of six months from the date of submission of such an application."

7. In view of the above, we do not find any ground to interfere with the judgment passed by the learned Single Judge. Consequently, the present appeal is hereby dismissed. As a result, applications for condonation of delay in filing and refilling the appeal are also dismissed.