

(1983) 11 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Reg. Sec. Appeal No. 2028 of 1982

Joginder Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 23-11-1983

Acts Referred:

Citation : (1984) PLJ 181 : (1985) RRR 618

Hon'ble Judges : S.P.Goyal, J

Advocate : Jagdish Rai Mittal, Advocate., Advocates for appearing Parties

Judgement

S.P. Goyal, J.

1. This second appeal has arisen out of a suit filed by the appellants for a declaration that the order dated June 14, 1978 passed by the Collector, Bhatinda cancelling the allotment of Nazool land measuring 56 Kanals, 13 Marlas was illegal, without jurisdiction and void and for a permanent injunction restraining the State from dispossessing them therefrom. The suit was dismissed by the trial Court and its decree affirmed on appeal by the Learned Additional District Judge, Bhatinda. Still dissatisfied, the plaintiffs have come up in this second appeal.

2. The only argument raised to challenge the impugned order of cancellation was that the allotment having been once made under the Nazool Lands (Transfer) Rules, 1956 (for short, the Rules), cannot be cancelled as there is no provision in the said Rules authorizing the Collector to review his order. Reliance for this contention was placed on a Division Bench decision of this Court in The State of Punjab and another v. Chinder Pal and another, 1973 P.L.J. 478. The contention raised has no merit.

3. It was not disputed by the learned counsel for the appellants that the said Rules have no statutory force and are in fact executive instructions only. The proposition of law advocated by the learned counsel normally applies to the statutory functionaries and there is no bar on any public functionary against the change of executive orders for valid reasons. The nature of the Rules being

admittedly of executive instructions, the order passed by the Collector was obviously an executive order and as such there was no bar against its cancellation later on the ground that the appellants were not entitled to the allotment of Nazool land in accordance with the Rules.

4. As regards Chinder Pal's case (supra) reliance was placed on the observations made in paragraph 7 that the transfers already made in favour of a member of the Scheduled Caste could not be cancelled in view of the amendments in rule 3 from time to time. This observation was made to repel the argument of the learned counsel for the State that according to the provisions of rule 3, Nazool land could only be allotted to the cooperative societies. When the land was allotted, the provision was that where the land available was less than 10 acres it could be allotted to the present lessees individually upto the limit of a unit of Nazool land. Later on this provision was amended and thereafter Nazool land could be allotted only to the cooperative societies. The land stood allotted to the allottees for 7 years when the order cancelling allotment was passed. The said observation was meant to convey that the allotment once made in accordance with the Rules could not be cancelled later on because of the amendment in the Rules and that the amendment in the Rules had no retrospective operation. The said observation in the context in which it was made cannot be interpreted to mean that once the order of allotment has been passed it cannot be later on cancelled even when the allotment had been made against the existing Rules or secured by misrepresentation or fraud. Reliance on Chinder Pal's case (supra) is thus wholly misplaced.

5. In the result this appeal fails and is hereby dismissed but without any order as to costs.