
(2009) 02 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2331 of 1983

Kalyan Singh (through L.Rs.)	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 18, 18(7), 21
Punjab Security of Land Tenures Act, 1953 — Section 10A(b), 8, 8(1)(a)

Citation : (2010) 1 RCR(Civil) 167

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Rajinder Chhokar, for the Appellant; R.S. Kundu, AAG, Haryana, for the Respondent No. 1 and Mr. R.S. Budhwar, for the Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Permod Kohli, J.—Vide order dated 19.03.1966, the Collector (Agrarian), Sonapat made a declaration and included area measuring 18 kanals (ordinary), equivalent to one Standard Acre 6-112 Standard Units belonging to the petitioner in surplus pool to be utilized for the resettlement of the ejected and other eligible tenants. Petitioner made an application somewhere in March 1966 before the Collector u/s 10A(b) of the Punjab Security of Land Tenures Act, 1953 (as applicable at the relevant time) for exemption of the said land from utilization in lieu of land measuring 12 kanals 14 marlas (ordinary), equivalent to 1 Standard Acre 9-1/2 Standard Units which had been acquired by the State Government for Drain No.6, out of his permissible area. This application was allowed vide order dated 21.11.1966 and it was ordered that no area be excluded from the surplus area. It is alleged that somewhere in the year 1976, the petitioner learnt that land in dispute was being mutated in favour of the Government and a Scheme is framed for its allotment to eligible tenants under the Haryana reorganization of the State of Punjab. The petitioner claims to have submitted an application to the Collector (Agrarian) objecting to the proposed Scheme relying upon order dated

21.11.1966 which had attained finality. It is further stated that the Collector formulated his opinion that the application of the petitioner is for review of the order dated 19.03.1986 requiring permission of the Commissioner and accordingly applied to the Commissioner for permission. The Commissioner, however, returned the case back to the Collector with the observation that the Collector himself was competent to grant the relief u/s 8 of the New Act, which was called for. The Collector, Sonapat treating himself to be prescribed authority under the New Act granted the prayer of the petitioner u/s 8(1)(a) of the New Act vide his order dated 01.08.1978. According to the petitioner, this order was as a matter of fact reiteration of the earlier order dated 21.11.1966. It is further stated that Naib Tehsildar (Agrarian), the Circle Revenue Officer filed an appeal before the Collector, Sonapat who allowed the same vide his order dated 14.02.1979 and set aside the order dated 01.08.1978 passed by the Collector in favour of the petitioner. This also virtually set aside the earlier order dated 21.11.1966. A Revision Petition filed by the petitioner before the Commissioner, Ambala challenging the order of the Collector dated 14.02.1979 also resulted in dismissal vide his order dated 29.07.1980. On the basis of the aforesaid order, an entry was made in Roznamcha Waqyati showing delivery of the possession of the land to respondent Nos.3 and 4. Petitioner filed a Revision Petition before the Financial Commissioner, Haryana who dismissed the same vide his order dated 21.01.1983. The petitioner has accordingly preferred this petition challenging the order of Collector dated 14.02.1970, order of Commissioner dated 29.07.1980 and order of Financial Commissioner dated 10.01.1983.

Apart from other grounds, petitioner challenged the orders inter alia on the following:

- (i) on account of non-deposit of 30 times of land holdings tax before the Collector, Sonapat at the time of filing of an appeal, the same was incompetent.
- (ii) order of the Commissioner being non-speaking is liable to be set aside.

2. I have heard learned counsel for the parties. Section 18 of the Haryana Ceiling on Land Holdings Act, 1972 deals with filing of appeal, review and revision etc. Appeal lies to the Collector against the order of the Prescribed Authority. Section 18 reads as under:

18. Appeal, Review and Revision - (1) Any person aggrieved by any decision or order of the Prescribed Authority, not being the Collector, may, within [fifteen days] (Vide Act No. 17 of 1976) from the date of the decision or order, prefer an appeal to the Collector in such form and manner as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of [fifteen days] (Vide Act No. 17 of 1976) if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by a decision or order of the Collector (whether acting as Prescribed Authority or not) not being a decision or order made in an appeal

under subsection (1), may, within [fifteen days] (Vide Act No. 17 of 1976) from the date of decision or order, prefer an appeal to the Commissioner in such form and manner as may be prescribed:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of [fifteen days] if he is satisfied that the appellant was presently by sufficient cause from filing the appeal in time.

(3) Omitted vide Act No.40 of 1976.""

(4) Any person aggrieved by an order of the Collector under sub- section (1), may within (Thirty days) from the date of the order, file a revision petition before the Commissioner so as to challenge the legality or propriety of such order and the Commissioner may pass such order as he may deem fit. The order of the Commissioner shall be final.

(5) Omitted vide Act No.40 of 1976.

(6) Notwithstanding anything contained in the foregoing sub- sections, the Financial Commissioner may suo motu at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit.

(7) No appeal under sub-section (1) or sub-section (2) or revision under sub-section (4) shall be entertained unless the appellant or the petitioner, as the case be, has deposited a sum equal to thirty times the land holdings tax payable in respect of the disputed surplus area or has furnished a bank guarantee of the equal amount as security with the appellate or revisional authority;

(8) Notwithstanding anything contained in Section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails, shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a licence fee equal to thirty times the land holdings tax, recoverable in respect of this area, (Vide Act No.34 of 1980).

(9) Omitted vide Act No.34 of 1980.

3. The prescribed authority referred to u/s 18 means the authority prescribed under the Rules namely the Haryana Ceiling on Land and Holdings Rules, 1973. Rule 3 defines the prescribed authority and reads as under:

3. Prescribed Authority.- Unless otherwise provided in these rules, the prescribed authority shall be -

(i) Sub-Divisional Officer (Civil) where the land owned or held by a person is situated in the same sub-division;

(ii) Collector where the land owned or held by a person is situated in more than one sub-division but in the same district;

(iii) Special Collector where the land owned or held by a person is situated in more than one district.

(iv) Any officer not below the rank of an Assistant Collector of the first grade empowered in this behalf of the State Government in respect of any particular area.

Rule 13 also provides the form and manner of appeal and revision and reads as under:

13. Form and Manner of Appeal and Revision (Section 18):

(1) The memorandum of appeal shall be in the form of narrative and it shall set forth, concisely and under distinct heads, the grounds of objection to the order appealed from and also the relief claimed.

(2) The memorandum of appeal shall be accompanied by a certificate copy of the order appealed from.

(3) The memorandum shall be presented to the appellate authority by the appellant or his duly authorised agent and it shall be signed and verified in the manner in which plaints are signed and verified.

(4) The aforesaid provisions regarding the memorandum of appeal shall apply mutatis mutandis, to the applications for revision.

4. In para 6 of the writ petition, it is mentioned that at the time of filing of the appeal 30 times of the land holdings tax was required to be paid as fee which has not been paid. There is a specific provision 18(7) for deposit of a sum equal to 30 times of the land holding payable in respect to the disputed land or furnishing a bank guarantee with the Appellate or Revisional Authority. This provision has not been complied with. The issue is squarely covered by judgment of Hon'ble Supreme Court reported in case of Seth Nand Lal & Anr. v. State of Haryana & Ors., 1980 PLJ 470 wherein following observations have been made:-

...The next provision challenged as unconstitutional is the one contained in Section 18(7) imposing a condition of making a deposit of a sum equal to 30 times the land holding tax payable in respect of the disputed area before any appeal or revision is entertained by the appellate or revisional authority a provision inserted in the Act by Amending Act 40 of 1976. Section 18(1) and (2) provide for an appeal, review and revision of the orders of the prescribed authority and the position was that prior to 1976 there was no fetter placed on the appellate/revisional remedy by the statute. However, by the amendments made by Haryana Act No.40 of 1976, subsections (7) and (8) were added and the newly inserted sub-section (7) for the first time imposed a condition that all appeals under sub-section (1) or sub-section (2) and revisions under subsection (4) would be entertained only on the appellant or the petitioner depositing with the appellate or the revisional authority a sum equal 30 times the land holding tax.

It is well settled by several decisions of this Court that the right of appeal is a creature of a statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory (vide the latest decision in *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, . Counsel for the appellants, however, urged that conditions imposed should be regarded as unreasonably onerous especially when no discretion has been left with the appellate or revisional authority to relax or waive the condition or grant exemption in respect thereof in fit and proper cases and, therefore, the fetter imposed must be regarded as unconstitutional and struck down. It is not possible to accept this contention for more than one reason. In the first place, the object of imposing the condition is obviously to prevent frivolous appeals and revisions that impede the implementation of the ceiling policy; secondly, having regard to sub-sections (8) and (9) it is clear that the cash deposit or bank guarantee is not by way of any exaction but in the nature of securing mesne profits from the person who is ultimately found to be in unlawful possession of the land; thirdly the deposit or the guarantee is co-related to the land holding tax (30 times the tax) which we are informed, varies in the State of Haryana around a paltry amount of Rs.8/- per acre annually; fourthly, the deposit to be made or bank guarantee to be furnished is confined to the land holding tax payable in respect of the disputed area i.e. the area, or part thereof which is declared surplus after leaving the permissible area to the appellant or petitioner. Having regard to those aspects, particularly/the meager rate of the annual land tax payable, the fetter imposed on the right of appeal/revision, even in the absence of a provision conferring discretion on the appellate/revisional authority to relax or waive the condition, cannot be regarded as onerous or unreasonable. The challenge to section 18(7) must, therefore fail.

The vires of this provision has been upheld by the Hon''ble Supreme Court and thus the provision is mandatory in nature. A specific averment is made in para 6 of the writ petition which has not been denied in the reply filed. In this view of the matter, the impugned order of the Collector and all subsequent orders passed are hereby quashed.

In view of the above, other points are not being dealt with.