
(1998) 07 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8051 of 1993

Kartar Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Citation : (1999) 1 CurLJ 1 : (1999) 1 LLR 284 : (1999) 1 PLJ 636 : (1998) 4 RCR(Civil) 301

Hon'ble Judges : V.K.Jhanji, J

Advocate : Mr. O.P.Goyal, Sr. Adv., Mr. Sandeep Kumar, Advocate, Mr. G.C.Dhuriwala, Advocate & Mr. G.S.Grewal, A.G, Punjab with Mr. S.K. Bhanot, DAG, Punjab., Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. In this petition under Article 226 of the Constitution of India, petitioners are seeking a writ in the nature of Mandamus directing the respondents to allot to them two acres of land as they are in possession since 1978.

2. Waste land measuring 1182 acres 1 kanal and 15 marlas in village Randhirpur and village Mahablipur in Kapurthala district in Punjab was acquired under the provisions of Pepsu Tenancy and Agricultural Lands Act, 1953, for public purpose of establishing a colony of Exservicemen. According to the Scheme, 100 exservicemen were to be given 10 acres of agricultural land. Initially, 62 persons formed a cooperative society called as MahablipurRandhirpur Ex servicemen Cooperative Land Colonisation and Service Society Limited. It was registered on 21.2.1961. In June, 1961, 62 exservicemen settlers were given 10 acres land each. The Deputy Commissioner, Kapurthala, vide letter No. 836/IF dated 17.3.1966 informed the Society through the Secretary that a decision has been taken to allot additional 5 acres of land. It appears that some correspondence on the subject took place between the Deputy Commissioner, Kapurthala and the Revenue Department. Ultimately, vide Government Memorandum No. 40374/79/3161 dated 4.3.1971, the Secretary Revenue Department

communicated approval of the Government about allotment of Additional 5 acres of land to the exservicemen. In pursuance of the decision taken by the Deputy Commissioner, 38 persons were allotted additional plots of 5 acres each. Subsequently, by order dated 5.7.1975, decision to allot additional 5 acres was withdrawn and exservicemen settlers were directed to surrender land to the Government. Exservicemen settlers challenged order dated 5.7.1975 of the Deputy Commissioner by way of Civil Writ Petition No. 2833 of 1975. The writ petition was allowed to be withdrawn on the assurance given by the State Government that petitioners would be dispossessed from the land in accordance with law. Thereafter, eviction proceedings were initiated under Section 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973. Collector vide order dated 1.10.1992 directed ejectment of exservicemen from the additional area. Appeal filed against the order of the Collector was dismissed. Civil Writ Petition No. 1893 of 1993 against the order of Collector was dismissed by the High Court. The matter was taken to Hon"ble Supreme Court by way of Civil Appeal No. 1208 of 1984. The Hon"ble Supreme Court though found that no specific order was communicated to the allottees allotting them 5 acres of additional land, but in the circumstances of the case and in the interest of justice, permitted the appellants therein to retain 2 acres each out of additional 5 acres and directed to surrender the remaining 3 acres each to the Government so that the land available may be utilised for settling the remaining 17 families of exservicemen. The relevant paragraph of the judgment of the Hon"ble Supreme Court reads as under :

"It is no doubt correct that no specific order was communicated to the appellants allotting them the additional 5 acres of land and even the original scheme which provided for allotment of 10 acres was not amended; nevertheless a decision having been taken at the leave of the Deputy Commissioner/State Govt. and possession delivered to the appellants it is difficult to hold that no right had accrued to the appellants who are in possession of the additional 5 acres of land for over two decades. The learned counsel for the State of Punjab has, however, argued that according to the scheme 100 families of the Exservicemen were to be settled on the acquired land. 62 families were initially settled on the land and subsequently 21 more were settled. According to him, there are still 17 Exservicemen who are to be settled but no land is available to accommodate them.

We have given our thoughtful consideration to the arguments of the learned counsel on both sides. We are of the view that interest of justice would be met if we permit the applicants to retain two acres each out of the additional 5 acres and surrender the remaining 3 acres each to the Govt. and that the land available be utilised for settling the remaining 17 families of the Ex servicemen. Learned counsel for the parties are not averse to this arrangement. We, therefore, direct that out of the additional 5 acres land in possession of the appellants they be permitted to retain 2 acres and to surrender the remaining 3 acres to the respondent Deputy Commissioner, Kapurthala on or before June 30,

1993. The net result is that the appellants shall be entitled to retain 12 acres of land each under the scheme.

The appeal is allowed to the above extent. No costs."

Petitioners are heirs of one Mal Singh, an exserviceman, who was allotted land measuring 10 acres in 1975. Mal Singh was not the one in the list of 62 persons. Land was allotted to him subsequently in 1975. Petitioners have averred that in addition to land measuring 10 acres, their father came in possession of land measuring 2 acres. Petitioners have alleged that their father Mal Singh improved the land from Kalar to Chahi and he continued to remain in possession right from 1978 till he died and thereafter, petitioners came in possession of the land. The grievance of the petitioners in this petition is that some of the allottees who are similarly situated have been allotted additional 2 acres of land but petitioners are being denied the same. Petitioners have contended that they are entitled to be allotted additional 2 acres of land as has been allotted to others on the orders of Hon"ble Supreme Court.

3. Official respondents, namely, respondents 1 to 3 have not filed any written statement, but respondent No. 3 in reply to Civil Misc. No. 1 of 1994 has stated that two acres of land was allotted to each of the petitioners in Civil Appeal No. 1208 of 1984 in compliance of the order of the Hon"ble Supreme Court. It is stated that Mal Singh or his successors were not the petitioners in the said writ petition and, therefore, have no right to additional two acres of land. Added respondent Munsha Singh has also not filed any written statement, but in his application, namely, Civil Misc. No. 7345 of 1994 whereby he had made a prayer to become a party respondent to the writ petition, has contended that he is an exserviceman and has been allotted land on 6.4.1994, but possession of the entire land is not being given to him as the petitioners are in possession of part of land.

4. After hearing the learned counsel for the parties and going through the record, I am of the view that the writ petition deserves to be dismissed. Petitioners have laid their claim on two acres of land in the light of directions issued by the Hon"ble Supreme Court in Civil Appeal No. 1208 of 1984. From a reading of order of the Hon"ble Supreme Court, it is abundantly clear that concession of allotment of additional 2 acres of land was extended only to those exservicemen settlers to whom land had been allotted and possession delivered in pursuance of order dated 4.3.1971 of the Government. The concession was not extended to the persons to whom land had not been allotted nor possession delivered. Mal Singh through whom petitioners are claiming, was not allotted additional 5 acres of land nor possession was ever delivered to him. He in fact came in unauthorised occupation of the land and continued to retain possession by virtue of an interim order passed in the present writ petition. Before this Court is called upon to issue a Mandamus, petitioner must show that he has a legal right to the performance of legal duty by the party against whom mandamus is sought. As already noticed, neither Mal Singh nor the petitioners who claim through Mal

Singh, have any legal right to demand that additional land of 2 acres be allotted to them or to retain the same.

Consequently, the writ petition being without any merit shall stand dismissed. No costs.