
(2001) 05 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 5104 of 2000

Kundan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 4 RCR(Civil) 210

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. A.K. Khunger, for the Appellant; Mr. M.C. Berry, D.A.G. and Mr. C.M. Munjal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—This order will dispose of Civil Writ Petition Nos. 5104 and 15861 of 2000.

2. The five petitioners in Civil Suit No. 5104 of 2000 pray for the issuance of a writ in the nature of mandamus "directing the respondents to return the landas per the policy of the Government and not to dispossess them except in due course of law."

3. A written statement has been filed on behalf of respondent No. 3. The claim made by the petitioner has been controverted.

4. Mr, Khunger, learned Counsel for the petitioners, submits that in the year 1962 seven acres of land was acquired by the Government for setting up brick kilns. After the completion of the Rajasthan Feeder Canal, the site was abandoned. The petitioners took possession. On 17.11.1999, the Government auctioned this land in favour of respondent No. 4 (the petitioner in Civil Writ Petition No. 15861 of 2000). His offer of Rs. 34,61,730/- was accepted. The Counsel submits that in view of para-87 of the Standing Order No. 28 issued by the Financial Commissioner read with para-493 of the Punjab Land Administration Manual, the

petitioners are entitled to the restitution of the land to them by paying "15 % less" than the compensation awarded to them in the year 1962.

5. Mr. Berry, appearing for respondent Nos. 1 and 3, contests this claim. He states that the instructions referred to by the counsel for the petitioners do not confer any right on them for the restitution of the land. The instructions permit the Government to sell it by public auction. In the present case, the Government had taken a conscious decision to auction it. It was sold for an amount of Rs. 34,61,730/-. 25% of this amount was deposited by respondent No. 4. The remaining amount is due from him.

6. Admittedly, the land was acquired in the year 1962. The petitioners had got the compensation in accordance with law. They had, thus ceased to be the owners. The land vested in the State. It is now public property. It belongs to the State. The petitioners have no right left in the land. They cannot claim any right in the land. Their possession is wholly unauthorised and illegal. They are liable to vacate it.

7. Mr. Khunger refers to the instructions issued by the Government, These instructions provide that "there is no legal bar to its being put to auction. But as a matter of grace, Government is usually willing to restore agricultural and pastoral land to the persons from whom it acquired it or to their heirs on their refunding the amount paid as compensation less 15% granted for compulsory acquisition" The instructions only confer a discretion on the State Government to show "grace". These do not bestow any right on the citizen to claim restoration of the land. The discretion to show "grace" is not a duty. The petitioners cannot enforce it.

8. In the present case, the Government has exercised its discretion. It had decided to sell the land by auction. There was a bid of more than Rs. 34 lacs. The petitioners are wanting the restitution on payment of an amount less than what was paid to them in the early sixties. Counsel for respondent No. 4 states that the amount is about Rs. 10,000/-. Such a course of action, if permitted, would result in a substantial loss to the State exchequer. It would lead to undue enrichment of the petitioners. The public interest cannot be sacrificed to permit a purely private gain. If allowed, it can become a dangerous precedent. In the present state of the society, we cannot permit this to happen.

9. Mr. Khunger contends that in certain cases, the State Government had allowed the restitution of the property. It is not clear as to what was the exact situation. In any case, such cases cannot constitute binding precedents either for the Government or for the Court. In fact, such actions are apparently not in public interest. The Court cannot put its seal of approval thereon. Any transaction which puts the public exchequer to an avoidable loss cannot be supported in equity or in law. It only serves private interest. It does not promote any public purpose. Therefore, the petitioners cannot derive any advantage from the stray case where the Government may have permitted the restitution of the land to its

original owners.

10. In view of the above, we find no merit in Civil Writ Petition No. 5104 of 2000. It is dismissed. The parties, are however, left to bear their own costs.

11. Mr. Munjal, learned Counsel for the petitioner in Civil Writ Petition No. 15861 of 2000, states that in view of the order in Civil Writ Petition No. 5104 of 2000, this case has become infructuous and that he may be permitted to withdraw it. Accordingly, Civil Writ Petition No. 15861 of 2000 is dismissed as with-drawn. No costs.

12. Petition dismissed.