

(1967) 11 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1045 of 1967

M. Lal Singh and others

APPELLANT

Vs

The Commissioner, Patiala and others

RESPONDENT

Date of Decision : 21-11-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 39(3)

Citation : (1967) 11 P&H CK 0047

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : Har Bhagwan Singh, for the Appellant; K.C. Puri, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—Lal Singh and five others in this writ petition under Articles 226 and 227 of the Constitution of India against the Commissioner, Patiala Division; Collector Agrarian, Faridkot; and Smt. Gurdial Kaur Respondents have prayed for quashing of an order passed by the first of the respondents on 16th January, 1967, annexure "F" and for declaring the proceedings emanating therefrom as void and without jurisdiction.

2. A few facts relevant for the disposal of this writ petition may be noticed. Respondent No. 2 passed order dated the 16th January, 1961, declaring 25.53 Standard Acres of land owned by respondent No. 3 as surplus under the provisions of the Pepsu Tenancy and Agricultural Lands Act, hereinafter called the Act. Necessary notification was published in the Government Gazette dated the 3rd March, 1931. Respondent No. 3 applied for review of the order but her application was dismissed on 23rd July, 1961. Thereafter she filed an appeal before the Commissioner, Patiala Division, which was dismissed by him on 4th December, 1961, as barred by time, copy annexure "A". Subsequently Smt. Nand Kaur daughter of respondent No. 3 filed a suit for claiming the land as her own property which was dismissed by the trial Court and the appeal was rejected

by the learned Senior Subordinate Judge, Bhatinda, on 8th September, 1965, copy annexure "B". The surplus Area was allotted to the petitioners under Utilisation of Surplus Area Scheme and. they got into possession of the same on 10th January, 1966. Respondent No. 3 again filed a petition u/s 39(3) of the Act for review/revision of the Collector's order dated the 16th January, 1961, before his successor. Respondent No. 2 recommended acceptance of the revision to respondent No. 1, copy of his report is annexure "D" The petitioners on their, application, copy annexure "E" were impleaded as parties to the proceedings pending before respondent No. 1. The latter set aside the order dated the 16th January, 1961, and directed the Collector, respondent No. 2, to go into the merits of the case once again after giving due notice to the landowner, the tenants if any had transferrers from Smt. Gurdial Kaur including Nand Kaur, copy annexure "F". The petitioner alleged that this order was illegal, without jurisdiction and Mala fide on the ground that the Commissioner once having dismissed the appeal preferred by respondent No. 3 against the order of respondent No. 2 dated 16th January, 1961, was not competent to re-open the matter and pass the impugned order as he did as none of the provisions under the Act entitled him to do so.

3. Respondent No. 3 in her written statement maintained that respondent No. 1 was competent to pass the impugned order u/s 33-D 4) of the Act. The case is said to have been re-opened on the ground of non-reference of the matter to the Pepsu Land Commission and the draft statement being illegal and due for the supervening of the consolidation proceedings.

4. There is no denying the fact that the Commissioner had previously rejected an appeal preferred by Smt. Gurdial Kaur against the order passed by the Collector Agrarian, Faridkot, dated 16th January, 1951, copy annexure "A". The Governor of Punjab in exercise of the powers conferred by section 50 of the Act by notification No. S.O. 22 Bep. A. 13/35/S 50/64, dated the 23rd December, 1963, directed that the powers of the State Government exercisable under subsection (4) of section 33 D of the Act shall also be exercisable by the Financial Commissioner, in cases where an order has been passed by the Commissioner, under sub-section (3) of section 32-D and the Commissioner, in cases where no appeal has been preferred under sub-section (3) of section 32-D. In view of the above notification the Commissioner, respondent No. 1, was not competent to pass the impugned order. The Financial Commissioner only in the present case was competent to exercise the powers vested in the Government. The impugned order was thus passed by respondent No. 1 who was not competent to do so, and as such, is bad in law It may also be mentioned that all the proceedings emanating from this order also go along with it.

5. For the above reasons, the writ is allowed and the petitioners granted the relief prayed for therein. No order as to costs.