
(1995) 07 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 963 of 1981

Major Prithipal Singh	Vs	APPELLANT
Financial Commissioner and Others		RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Citation : (1996) 112 PLR 166

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : I.K. Mehta and K.K. Mehta, for the Appellant; Manjit Singh, A.A.G. and D.S. Chadan, for the Respondent

Judgement

T.H.B. Chalapathi, J.—This petition is filed to issue a writ of certiorari to quash the order of Financial Commissioner, Revenue and Secretary to Government, Punjab, Rehabilitation Department passed in Misc. Reh. No. 71 of 1979-80, dated October 24, 1980, confirming the order of the Chief Settlement Commissioner, Punjab, Jalandhar dated April 3, 1980.

2. The petitioner are the legal heir of Hira Singh son of Deva Singh who was a displaced person and the said Hira Singh settled in village Saloh where he was allotted major portion of the agricultural land in lieu of the land left by him in Pakistan. Hira Singh was not able to find a suitable house in the village Abadi and selected for himself a house known as Chhoti Kothi situated outside the village Abadi. One Jagat Singh selected H. No. 83 within the Abadi of the village and accordingly Jagat Singh had been allotted the said H. No. 83 but the allotment was cancelled by the Deputy Custodian Jalandhar on 16.1.1954, on a revision filed by Shri Mohan Lal, occupant of H. No. 83. Against the said order Jagat Singh filed a revision before the Deputy Custodian, Jalandhar who allowed the revision and passed order dated 11.2.1955 on the condition that Jagat Singh would surrender possession of portion of Kothi Wazir Khan Wali (Chhoti Kothi) on the said basis. Jagat Singh obtained possession of House No. 83 and occupied the same. But because of close relations between Jagat Singh and Gurbachan

Singh son of Hira Singh, Jagat Singh borrowed two Chaubaras of Chhoti Kothi and thereafter started making applications complaining against the allotment of Chhoti Kothi to Hira Singh. The Chief Settlement Commissioner by an order dated 21.1.1960, set-aside the allotment of Chhoti Kothi in favour of Hira Singh. The application u/s 33 of the Displaced Persons (Compensation & Rehabilitation) Act was also rejected by the Central Government. Thereafter, Hira Singh filed a Civil Writ Petition No. 1596 of 1960 in the High Court. In the said writ petition, the notice issued by the Tehsildar-cum-Managing Officer dated 5.10.1960 was set-aside but the orders of the Chief Settlement Commissioner and the Central Government were not touched. The Letters Patent Appeal filed by Hira Singh in L.P.A. No. 33 of 1962 was dismissed on 20.11.1964. The Chief Settlement Commissioner in his order dated 21.1.1960 directed the Managing Officer to provide alternative allotment in accordance with the rules to Hira Singh but no alternative allotment was made and therefore, the petitioners were the legal heirs of Hira Singh continue to occupy Chhoti Kothi. Thereafter, in 1975, the State Government issued instructions regarding disposal of substantial rural evacuee houses. The petitioners applied to the Tehsildar (Sales) for transfer of Chhoti Kothi to them after charging the price which may be fixed by the Department. The Tehsildar (Sales), Jalandhar by his order dated 11.9.1978 fixed the price of Chhoti Kothi at Rs. 20,100/- and directed the transfer of Chhoti Kothi to Hira Singh and his heirs. Against the said orders, the third respondent filed two appeals, one u/s 22 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and another u/s 8 of the Package Deal Properties Disposal Act, 1976 before the Settlement Commissioner, Punjab and Sales Commissioner, Punjab, Rehabilitation Department, Jalandhar. These two appeals were disposed of on 31.12.1979 observing that the third respondent had no right to allotment and that order of transfer in favour of the petitioners was valid. On a further revision by the 3rd respondent under the Displaced Persons (Compensation and Rehabilitation) Act, the Chief Settlement Officer allowed the revision petition and set-aside the order passed by the Tehsildar (Sales) and directed the property to be disposed of in accordance with the rules. The petitioners filed a further revision u/s 33 of the Act to the Financial Commissioner Revenue who dismissed the same on 24.2.1980. The present writ petition is filed challenging the orders of the Financial Commissioner and the Chief Settlement Commissioner, Punjab.

3. Annexure P.7 is the order of the Financial Commissioner Revenue dated 24.10.1980. In the said order, the Financial Commissioner observed as follows: -

"It was not quite in order for the Tehsildar, Sales, Jalandhar to allow allotment of this very Chhoti Kothi to the petitioners after getting a sum of Rs. 100/- deposited on account of its valuation being above Rs. 20,000/- by that amount. The benefit of the instructions dated 6.1.1975 could not be given to the petitioners, as argued by the departmental representative before me. As held by the learned Chief Settlement Commissioner in his impugned order dated 3.4.1980, the petitioners had ceased to be allottees after the cancellation of their

allotment on 21.1.1960 and the aforementioned instructions were never intended to cover cases of persons who had ceased to be allottees after cancellation of allotment. Besides, their possession on the property being in dispute, one of the essential requirements of the instructions dated 6.1.1975 was not fulfilled. It would hardly be countenanced that the petitioners sit quietly in unauthorised occupation of the property in dispute for 18 long years, only 7 of which were covered by litigation, and then proceed to defeat the purport of the order of the Chief Settlement Commissioner dated 21.1.1960 by claiming benefit of the instructions issued on 6.1.1975. It was incumbent on the Rehabilitation Department also to provide alternative allotment of houses to the petitioners as soon as their writ petition had been dismissed by the Hon'ble High Court on 16.2.1967. The petitioner were obviously at fault in not applying for the alternative accommodation. But, then, whereas their inaction could be understood as emanating from the desire to cling to possession of Chhoti Kothi for as long as they could, the Rehabilitation Department should not have virtually connived at this through their negligence in complying with the direction contained in the Chief Settlement Commissioner's order dated 21.1.1960".

4. Thus it is clear even according to the Financial Commissioner, it was incumbent on the Rehabilitation Department to provide alternative accommodation to the petitioners as soon as their writ petition had been dismissed by the High Court on 16.2.1967. It is not the case of the Department that any alternative house or accommodation had been provided to the petitioners even after filing of the writ petition. The petitioners have been in possession of the house for over 40 years and for about 35 years after the cancellation of the allotment in favour of Hira Singh in the year 1960. Without providing alternative accommodation as observed by the Chief Settlement Commissioner in his order dated 21.1.1960 while cancelling the allotment, the petitioners cannot be evicted from Chhoti Kothi. Further, both the Chief Settlement Commissioner as well as the Financial Commissioner directed the disposal of the house (Chhoti Kothi) in accordance with the rules. They also held that the 3rd respondent who is the son of Jagat Singh, is not entitled to Chhoti Kothi as there was no allotment in favour of Jagat Singh, the father of the 3rd respondent. Further the orders of the Financial Commissioner as well as the Chief Settlement Commissioner became final so far as the 3rd respondent is concerned. Therefore, the third respondent cannot have any right. As already observed, both the Chief Settlement Commissioner and the Financial Commissioner, Revenue directed the property to be disposed of in accordance with the law and rules.

5. Therefore, in view of my above observation, I direct the authorities not to evict the petitioners till an alternative accommodation is provided to them. As per the direction for the Chief Settlement Commissioner dated 21.1.1960, if no alternative accommodation is possible to be given to the petitioners, the authorities must consider whether the property Chhoti Kothi can be disposed of in favour of the petitioners as per the rules. The authorities are directed to pass

an appropriate order either allotting an alternative accommodation to the petitioners or to dispose of the Chhoti Kothi in favour of the petitioners in accordance with the rules within a period of three months. The petition is accordingly disposed of with no order as to costs.