

(2017) 01 P&H CK 0177
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6634 of 2010

Manjit Kaur

APPELLANT

Vs

Financial Commissioner

RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, Section 12

Citation : (2017) 2 RCRCivil 784

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Som Nath Saini, Advocate, for the Petitioner; Mr. Yatinder Sharma, Addl. A.G. Punjab, for the Respondents Nos.1 and 2 CWP No.6634 of 2010; Mr. R.S. Chauhan, Advocate, for the Respondents No. 3 to 7 COCP No.796 of 2010 and CWP No.6634 of 2010

Final Decision : Dismissed

Judgement

Amit Rawal, J. (Oral) - This order of mine shall dispose of two aforementioned cases i.e. one contempt petition and one writ petition. In the amended writ petition, challenge is to the orders dated 11.09.2012 (Annexure P-10) and 18.09.2012 (Annexure P-11), whereby vide order dated 18.09.2012 ROR No.863 of 2009, has been dismissed.

2. Mr. Som Nath Saini, learned counsel appearing on behalf of petitioners submits that for the last 30 years, land measuring 25 kanals 10 marlas, situated in revenue estate of Village Rod Majri, Tehsil Samrala, District Ludhiana was in cultivation and in possession of the petitioner and had been paying rent and occupation charges to the Government. Vide Annexure P-1 dated 04.12.2000, private respondent got allotted land in question in the name of Ujjagar Singh against claim of 1-12⁷/₈ acres in lieu of the land allotted earlier in District Fatehgarh Sahib. The land in question is Chahi and standard value is 13 anna per acre and its valuation comes to 3 standard acres-3 units but the same has been allotted at the claim of 1-12⁷/₈ standard acre. The petitioners filed an appeal

against the aforementioned allotment before the Sales Commissioner but the same was dismissed on 26.11.2002 (Annexure P-2). The aforementioned order was assailed before the Chief Sales Commissioner but the same also met with the same fate vide order dated 02.05.2003 (Annexure P-3). Civil suit challenging the allotment and seeking injunction was also filed where there is interim injunction restraining the respondents not to forcibly interfere had been granted. However, vide judgment dated 22.04.2009 (Annexure P-4), the same was dismissed. The respondents moved an application for the delivery of the possession of the allotted land but the same was refused. Appeal of the respondents vide order dated 13.12.2016 (Annexure P-5) was also rejected by the Chief Sales Commissioner. However, the matter was taken up before the Divisional Commissioner, who remanded the matter to Tehsildar (Sales) Samrala with the direction that the application of the respondents be decided afresh, if any, after following the due process of law. Copy of the same is at Annexure P-6. It is the said remand matter which was assailed by the petitioner by filing the revision but the same was dismissed. Though, there was interim order on 03.12.2009. Application for amendment of the revision petition was sought but the same was also dismissed. In the meantime, warrant of possession dated 17.11.2009 (Annexure R-3/6) was shown to have been issued. Information was obtained under RTI Act, which shows proceedings qua issuance of warrant of possession were taken on the orders of Tehsildar-Sales, Samrala. Initially, writ petition was filed and this Court vide order dated 09.04.2010 by noticing the contention had stayed the dispossession which reads thus:-

"Counsel for the petitioners submits that though there is no order of ejectment, the Tehsildar (Sales) Samrala, has issued warrants of possession and an entry has been made in the revenue record.

Notice of motion for 6.7.2010.

Dispossession of the petitioners shall remain stayed till further orders.

To be put up before the Registrar (Judicial-III) on the adjourned date for completion of service."

3. The Court found that the petitioner had been ejected in the absence of any order of ejectment, in essence, proceedings were initiated by the respondents on the application of the respondents without following due procedure of law. Even Civil Court also while deciding one of the issue held that possession cannot be taken except in due course of law. In fact, original allotment of the petitioner was cancelled way back in the year 1967. The respondent namely Ujjagar Singh was alive till 1970. In view of Rules 67-A of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, application in 1993 was not entertain able as it was to be submitted on or before 31.12.1963. All these factors have not been taken into consideration by the Commissioner in the impugned orders, and therefore, orders are liable to be set aside. Valuation report, as already indicated above, taken from Jalandhar or from land in Ludhiana has gone unexplained and thus,

urges this Court for setting aside the orders as the petitioner has locus standi to challenge the allotment and as well as for protecting the possession. No person can be dispossessed except in due course of law.

4. Per Contra, Mr. R.S. Chauhan, learned counsel appearing on behalf of respondent Nos.3 to 7 submits that Ujjagar Singh was displaced person. He was allotted the land measuring 9 bighas 4 biswas bearing khasra Nos.226, 227, 229, 230 and 231 situated in area of Village Attewali, Tehsil and District Fatehgarh Sahib on 12.07.1955 by the Revenue and Rehabilitation Department and Sanad in this regard was issued on 30.06.1956. Since aforementioned land had already been acquired by the Construction Committee of Gurudwara Shree Fatehgarh Sahab/Jyoti Sarup, the possession of the land could not be delivered. Ujjagar Singh, in this regard, on 06.06.1957 had suffered statement and resultantly allotment was cancelled. Since, the claim of Ujjagar Singh was pending and thus was entitled to the allotment of alternative land i.e. the authorities were required to issue alternative allotment letter but having failed to do so, therefore in the year 1993, the LRs moved an application and it was recorded that allotment was cancelled. In this background of the matter, the proceedings were initiated. The Commissioner, Patiala vide order dated 30.01.1996 ordered the Deputy Commissioner that since allotment was cancelled on 12.08.1957, the successors-in-interest of the Ujjagar Singh were entitled to the allotment of the land. In fact, Ujjagar Singh was having a verified claim yet it was never fructified into possession, much less, allotment of the land, as noticed above.

5. He submits that accordingly on 04.12.2000 the allotment of the land in Village Rur Majri, Tehsil Samrala, District Ludhiana was made. The said allotment was challenged by the petitioners by filing the appeal before the Sub Divisional Magistrate, exercising the power of Sales Commissioner, Samrala. Same was dismissed vide order dated 26.11.2002 (Annexure P-2) and appeal before the Appellate Authority was also dismissed on 02.05.2003 (Annexure P-3). The aforementioned order attained finality, in essence, allotment became final. However, Civil Suit was also filed but the same as indicated above, was dismissed on 22.04.2009. There is no decree of ejecting the petitioner from the land in question, except in due course of law. Respondents were constrained to file an execution application for taking the possession and police help was accorded and the proceedings were kept pending since 2003 owing to the pendency of the civil suit. However on dismissal of the civil suit, the petitioner preferred an appeal before the lower Appellate Court but the same was withdrawn after three years, in essence, liberty was sought to withdraw the suit but the findings of the civil suit cannot be ignored and can always be read into for the adjudication of any lis as it is a piece of evidence. Once petitioner failed from all corners, fresh application dated 22.09.2009 (Annexure R-3/5) for taking the possession was moved and on 17.11.2009 (Annexure R-3/6), warrant of possession was issued. Possession of the aforementioned premises was handed over on 10.03.2010 vide rapat roznamcha and, therefore, the order of stay which was granted was primarily on the statement of the counsel and not on the basis of the record. In

fact, the order of stay of dispossession by this Court dated 09.04.2010 was inconsequential as possession had already been delivered, therefore, there was no question of contempt.

6. Contempt petition has been filed only on as pressure tactics rather act of brone beat. In support of his contention, he has relied upon judgment rendered by Division Bench of this Court in Nirmal Singh and others v. Faqir Singh and others, 2011(2) RCR (Civil) 811, whereby while dealing with the two provisions of Act i.e. Displaced Persons (Compensation and Rehabilitation) Act, 1954 and as well as Punjab Package Deal Properties (Disposal) Act, 1976, this Court in paragraph 12 held that displaced person have a preferential right for allotment of an evacuee property including surplus and urges this Court for dismissal of the writ petition with exemplary costs.

7. Mr. Saini, in rebuttal has relied upon ratio decidendi culled out in judgment rendered by Division Bench of this Court in Smt. Prem Kumari and others v. Commissioner and Secretary, Rehabilitation Department, Chandigarh and others, 2005(3) RCR (Civil) 654, and para No.14 to contend that contention of moving application beyond period i.e. cut off date of 31.12.1963 as per 1955 Rules had been rejected and similar is the position in the present case, and therefore, authorities below have not appreciated the aforementioned Rules, therefore, allotment in favour of the private respondent was liable to be set aside. It is in this backdrop of the matter, application for amendment of the revision petition has erroneously been dismissed.

8. I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Som Nath Saini, for, facts noticed above need not be repeated again as it reveals that petitioners had challenge the order of allotment dated 04.12.2000 which was dismissed vide Annexures P-2 and P- 3. The aforementioned allotment attained finality. Possession has been taken by taking the remedy in due course of law. There is no decree of ordering status quo or granting the injunction in favour of the petitioner in not taking the possession except in due course of law. For the sake of brevity, operative part of the findings given by the trial Court, reads thus:-

"In view of above discussion, suit of the plaintiffs fails. Hence, the same is dismissed with cost. Decree sheet be prepared. File be consigned to the record room."

The Commissioner's order dated 21.04.2009 was only the remand order giving liberty to the authorities i.e. Tehsildar-Sales to entertain the application of the respondents keeping in view the Civil Court order and by following the due procedure of law. Warrant of possession has been issued in accordance with law. Petitioners, having failed to succeed in the case of allotment of the respondents, cannot have right to retain the property as they have not able to show the payment of rent. In fact, they were in unauthorized occupant of the Government

land. Even the civil suit filed in this regard had also been dismissed, in essence, have lost on all accounts yet had an audacity to challenge the order of remand. The aforementioned conduct, in my view, is nothing but delaying tactics to harass the contesting respondents, perhaps with the intention to force them to arrive at some settlement in terms of money. In fact, entire gamut of the story appears to be an Act of aggrandizement. The order granting stay of dispossession by this Court would be inconsequential as the rapat roznamcha dated 10.03.2010, itself shows that possession has been taken. Interim order dated 09.04.2010 as reproduced above, has been passed on the basis of contention of the counsel for the petitioner. All the facts reveals above leaves no manner of doubt that the petition is nothing but a gross abuse of process of the Court, devoid of merits, much less, misconceived.

9. I have no hesitation in dismissing the writ petition by imposing cost but before I could impose cost, I would like to deal with the judgment referred by Mr. Saini. In fact, findings given in para No.14, which reads as under:-

"14. The argument of Shri S.N. Saini that the application filed by the petitioners could not have been dismissed with reference to the period prescribed under Rule 67-A of the Rules sounds attractive, but in the peculiar facts of this case, we are not inclined to accept the same, because, as mentioned above, Shri Pannu Ram neither had any verified claim nor any evidence was produced before the concerned authority and none has been produced by this Court to show that he had left land in Pakistan."

Deals with the claims on or before 31.12.1963 but the aforementioned findings cannot be read in isolation rather have to be read in conjunction with previous paragraphs where the main thrust was whether such applicant had a verified claim or not. It is in that background of the findings, that application was found to be not supported by any verified claim, the application for allotment was held to be bad in law. However, in this case, no documentary evidence has been placed on record that the respondent did not have verified claim rather it has been proved that the allotment made in the year 1957 was after the satisfaction and its verification of the claim. Subsequent application if treated to be fresh would not take away the subsisting rights of the parties vis-a-vis verified claim.

10. I cannot remain unmindful of the fact that claim of petitioners to get property allotted on the basis of the possession, was dismissed vide order dated 30.12.1997 (Annexure R-3/1), which reads as under:-

"In the Court of Tehsildar (S) Sales, Samrala

File No.121/TSS

Date of Institution: 30.5.97

Date of Decision: 30.12.1997

Village: Rur Majri

Type of Case: Regarding transfer of land from kharif 1994 on the basis of possession.

Application from Ajit Singh through Mahan Singh, General Power of Attorney in respect of land comprised in khasra No.8//21 min, 11//15/1/2, 3/1, 4/2 total area measuring 15 K 4 M situated in the revenue estate of village Rur Majri, Tehsil Samrala.

121/T.SS

30.5.97

Photocopy of the order

File was put up. Maha Singh, General Power of Attorney is present. Maha Singh has stated that Ajit Singh is residing in Canada. Therefore, this area does not fall under the category of self-cultivation and as per Government instructions, this area can not be transferred. Therefore, the application is liable to be rejected.

Sd/- Tehsildar Samrala

29.12.97

Sub Divisional Officer (c)

Samrala

1. Filed

2. Inform the concerned quarters on the lines as mentioned at "A" above.

Sd/- SDM

30.12.97"

This fact has not been disclosed in the entire writ petition and there is no rebuttal/rejoinder.

11. Resultantly, present writ petition and contempt petition are dismissed with cost of Rs. 10,000/- to be paid to respondents within a period of two months failing which the Registry shall place the copy of the files before me for implementation of the order.