
(1990) 12 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6186 of 1988

Mehar Chand and ors.

APPELLANT

Vs

Financial Commissioner, Haryana and ors.

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Citation : (1991) PLJ 78 : (1991) 1 RRR 591

Hon'ble Judges : G.R.Majithia, J

Advocate : Arun Jindal, Advocate, Mr. A.S. Cheema, Senior Advocate, Advocates for appearing Parties

Judgement

G.R. Majithia, J.

1. The petitioner in this petition under Articles 226/227 of the Constitution of India have impugned the order of respondent No. 1 dated January 9, 1988.
2. Reference to the relevant facts is necessary to resolve the disputed question of law raised in the petition.
3. Petitioner No. 1, after partition of the country, was allotted land measuring 43.7 standard acres in villages Lohgarh, Abusharbar, Jutian Wali, Nai Dabwali in Tehsil Dabwali, District Sirsa in lieu of the land abandoned by him in Bahawalpur State. Proceedings were initiated against him under the Punjab Security of Land Tenures Act, 1953 (for short, "the 1953 Act"). He was not found in possession of any surplus area. On the death of his father some land devolved upon him by inheritance and surplus area case was reopened under the 1953 Act and land measuring 97 Kanals 11 Marlas was declared surplus, which was disposed of by the Prescribed Authority under the Rules. On April 14, 1977 petitioner No. 1 submitted declaration under the Haryana Ceiling on Land Holdings 1972 (for short "the 1972 Act"). The Prescribed Authority Dabwali vide its order dated November 18, 1980 found that land measuring 1416 Kanals 11 Marlas of "C" grade was surplus with the petitioner. On appeal, the order of the Prescribed Authority was upheld by the Collector, Sirsa vide order dated September 6, 1982.

The petitioner challenged the orders of the Prescribed Authority and the Collector in revision before the Commission, Hissar Division, Hissar, who vide his order dated June 6, 1984, upheld the principal claim of the petitioner and held that the transfers made by him were bona fide. On Scrutiny of the record, he further found that the position of the petitioner's area was as under :

"(1)

Total area on 24.1.71

...

1656 K11 M

(2)

Total area purchased after 24.1.71

....

195 K 06 M

(3)

Total

....

1851 K17 M

(4)

Gair Mumkin area

....

44 K08 M

(5)

Balance

...

1807 K09 M () 1035 K04 M CCA 772 K05 M UCA (and) 2397 K10 M equal to "C" class

(6)

Transferred area "C" class

....

742 K10 M

(7)

Balance

....

1655 K00 M

(8)

Permissible area which the applicant is entitled 23/5 units

....

1123 K04 M

(9)

Balance area which is declared surplus

....

531 K16 M

The petitioner moved an application before the Commissioner for rectification of the clerical mistake made in the order dated June 6, 1984. It was stated in the application that the Commissioner had mentioned in his order that the transferred area of "C" category was 742 K11 M while in fact it was 936 K13 M. The Commissioner sent for a report from the Prescribed Authority and on receipt of the report he found that the actual transferred area of "C" class was 936 K 13 M. He held that the balance surplus area in the hands of the petitioner would be 337 K13 M instead of 531 K16 M. When the order of the Commissioner dated December 11, 1984 was received by the Collector for implementation, he made reference on December 14, 1984 to respondent No. 1 that the Commissioner had wrongly held that the transfers made by the petitioner were bona fide. On receipt of the reference, respondent No. 1 issued notices to the parties and quashed the orders of the Commissioner dated June 6, 1984 and December 11, 1984. The sole consideration was that the latter had not correctly interpreted the judgment of the apex Court in *Bhupendra Singh v. State of U.P. and others*, AIR 1981 SC 1157.

4. To say the least, the approach of respondent No. 1 is wholly perverse. He did not appreciate that a subordinate authority cannot be allowed to sit in judgment over the orders of the superior authority. The various authorities under the 1972 Act have to act within the framework of the statute. Proceedings under the 1972 Act are between the landowner and the State. The functionaries under the 1972 Act are the officers of the State who perform quasijudicial functions under the statute. Their orders have to be under the Act and not contrary to it. A regular forum is prescribed for an aggrieved party against a particular order passed by the authority under the Act. If the State was aggrieved against the orders the Commissioner dated June 6, 1984 and December 11, 1984, the same could be challenged either in revisions before the Financial Commissioner or in writ petition under Article 226/227 of the Constitution of India in this Court. The

Collector Agrarian could not sit in judgment over the order passed by the Commissioner. He could not comment upon the order to say that the Commissioner had wrongly held that the transfers made by the petitioners were not bona fide. He was obviously acting beyond his jurisdiction. The order of the Commissioner was within jurisdiction. On consideration of the relevant material and the principle of law declared by the apex Court, the Commissioner found that the transfers made by the landowner were bona fide. The State was a party respondent in the revision petition before the Commissioner. If it was aggrieved against the orders dated June 6, 1984 and December 11, 1984 passed by the Commissioner, it could take such steps as were permissible under the law, but it was not permissible for the Collector Agrarian to make a reference asking respondent No. 1 to exercise revisional jurisdiction. The course adopted by the Collector Agrarian deserves to be deprecated. Respondent No. 1 was not correct in holding that the ratio of the judgment of the apex Court in Bhupendra Singh's case (supra) had been wrongly applied by the Commissioner.

5. For the reasons recorded above, this petition is allowed, the order of respondent No. 1 dated January 19, 1988 is quashed and those of the Commissioner, Hissar Division, Hissar dated June 6, 1984 and December 11, 1984 are restored. There will be no order as to costs.