

(1992) 11 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 81 of 1984

Mehnga Singh

APPELLANT

Vs

Commissioner, Jullundur, Division, Jullundur

RESPONDENT

Date of Decision : 19-11-1992

Acts Referred:

Citation : (1993) 1 CurLJ 659 : (1993) 2 LJR 124 : (1993) PLJ 236 : (1993) 2 RRR 142

Hon'ble Judges : S.D.Agarwala, C.J. and H.S.Bedi, J

Advocate : Mr. R.K. Dhariwal, Advocate, Mr. S.S. Chandi, Advocate, Mr. Prem Chand Mehta, Senior Advocate, Advocates for appearing Parties

Judgement

S.D. Agarwala, C.J. (Oral)

1. This is a Letters Patent Appeal arising out of Civil Writ Petition No. 4631 of 1980 filed by Mehnga Singh, Dharam Singh, Mohinder Singh, Man Singh and Lachhman Singh. The writ petition was filed seeking a relief for quashing the order Annexure P3 dated 1st October, 1980, passed by the Commissioner, Jalandhar Division, Jalandhar, in a reference made to him under the provisions of Section 15 of the Punjab Package Deal Properties (Disposal) Act, 1976 (hereinafter referred to as the "Disposal Act, 1976"). The petition was dismissed by the learned single judge by his order dated 30th November, 1983.

2. The case of the writ petitioner is that they are displaced persons from West Pakistan and after migration, they have settled in village Khilchian. During consolidation operation the land in dispute became a part of the post consolidation khasra No. 118 measuring 2 kanals 12 marlas. In April 1961 an agreement was entered into between the Central Government and the erstwhile undivided State of Punjab by virtue of which all undisposed of rural evacuee property was transferred in favour of the State of Punjab by the Central Government. This agreement was popularly known as the "Package Deal" and the entire evacuee property subject matter of the Package Deal came to be known as the Package Deal Property. It is not disputed that in order to deal with this

Package Deal Property the erstwhile State Government of Punjab framed rules in the year 1962 for the sale of surplus rural properties. These rules were popularly known as Package Deal Rules of 1962.

3. The case of the writ petitioner is that in pursuance of these rules they applied to the Tehsildar Sales, Amritsar, for transfer of the small pieces of land in their favour. It is their further case that the Tehsildar Sales sold the land in their favour, executed the sale deed and as the possession of the land in dispute was already with the writ petitioners their possession was regularised. After the sale, the petitioners constructed houses on the land in dispute. It is not in dispute that the constructions is still existed on the land in dispute and the petitioners are in possession of the said constructions.

4. After the land was sold to the petitioners, a suo moto reference was made under Rule 11 of the Package Deal Rules, 1962, as suggested by the Tehsildar Sales, Amritsar, intimating that the transfer of the land in favour of the petitioners be set aside because the transfer was effected under misapprehension and that the land was the evacuee property. It was also suggested that the entries in the revenue record showed that the land belonged to the Central Government. This suo moto reference came up for hearing before the Deputy Secretary Rehabilitation cum Settlement Commissioner, Punjab, Jalandhar, who vide his order dated 29th December, 1975, declined to interfere with the reference and upheld the sale certificate issued in favour of the writ petitioners. In this order, it has been categorically stated that the petitioners have built their houses, they have already paid the price of the land and sale certificates have been issued to the petitioners in this case. This order has been attached as Annexure P1 to the petition. It may be stated here that this order dated 29th December, 1975 became final and it was not challenged in any competent court of law by the authorities.

5. In the year 1976 the Punjab Package Deal Properties (Disposal) Act, 1976 was enacted which came into force on 30th April, 1976. After this enactment came into force another suo moto reference was made by the Deputy Secretary to the Government Punjab, Rehabilitation Department, again challenging the transfer made in favour of the petitioners. This reference came up for hearing before the Commissioner, Jalandhar Division, Jalandhar. The Commissioner, Jalandhar Division, Jalandhar, vide his order dated 1.10.1980 accepted the reference; set aside the order of Tehsildar Sales, Amritsar dated 30th April, 1973 and of the Settlement Commissioner dated 29th December, 1975, and set aside the sale of the land in favour of the petitioners. Aggrieved, by this decision, the petitioners have filed the petition which has been given reference to the present appeal.

6. Learned counsel for the appellants has contended that the order dated 1st October, 1980 passed by the Commissioner, Jalandhar Division, Jalandhar, is wholly without jurisdiction as Section 15 of the Disposal Act of 1976 is not applicable to the case of the petitioners. Learned Additional Advocate General has contested this submission.

7. Section 15 of the Disposal Act of 1976 under which this reference has been made clearly provides that the State Government may at any time call for the record of any case under this Act pending before or disposed of by, any officer and may pass such order in relation thereto as in its opinion the circumstances of the case require. Section 15 of the Act is quoted below:

"The State Government may at any time call for the record of any case under this Act pending before or disposed of by, any officer and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act of the rules made thereunder."

8. From the reading of this section, it is clear that the State Government is empowered to call for the record of any case which under this Act alone was pending before or disposed of by any officer. This section itself does not empower the State Government to send for the record of any case which has already been concluded prior to the enforcement of this Act. In the circumstances, it is absolutely clear that it does not apply to those transactions which have already been concluded and there is no proceeding in relation to the same pending before any officer under the Act. In our opinion, consequently, the reference made by the Deputy Secretary to the Government Punjab, Rehabilitation Department, vide letter dated 20th July, 1978 is wholly without jurisdiction. The petitioners had already acquired the land; paid the price for the same and the sale deeds now could not have been challenged under the provisions of this Act. In our opinion, the submission made by the learned counsel for the appellants is well founded.

In the result, the appeal is allowed. The judgment of the learned single judge dated 30th November, 1983 in Civil Writ Petition No. 4631 of 1980 is set aside. The Civil Writ Petition is allowed. The order of the Commissioner, Jalandhar Division, Jalandhar, dated 1st October, 1980 Annexure P3 to the petition, is quashed. The parties are directed to bear their own costs of the appeal.