
(1988) 11 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 717 of 1987

Mewa Singh and ors.

APPELLANT

Vs

Financial Commissioner, Punjab and ors.

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Citation : (1989) 1 CurLJ 278 : (1989) PLJ 82 : (1989) 1 PLR 100 : (1991) 1 RRR 247 : (1989) 1 RRR 14

Hon'ble Judges : S.S.Sodhi, J

Advocate : him.), Mr. Sarjit Singh Sr. Advocate (Mr. Jagdev Singh, Advocate, Advocates for appearing Parties

Judgement

S.S. Sodhi J.

1. The matter here arises under the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Act) and concerns the acquisition of proprietary rights by tenants in terms of the provisions there of.

2. Bhag Singh, father of the present petitioners was recorded as the owner of 38.69 standard acres of land on May 4, 1955, the date when the Act came into force. A partition was effected between father and sons on December 10, 1957 and in view thereof, 2/5th of the said 38/69 standard acres of land fell to the share of the father Bhag Singh and the remaining 3/5th to the three petitioners in equal shares. This mutation of partition was sanctioned on December 19, 1957.

3. Later on August, 26, 1963, the respondenttenants, namely : Jawan and Chanan Khan, the father of Teja Tara, Nek and Veda, applied for acquisition of proprietary rights under Section 22 of the Act. This application was dismissed in default on December 19, 1963. About 15 months thereafter, on March 6, 1965, the respondents applied for restoration of their application for the acquisition of proprietary rights. In these proceedings, Bhag Singh made an application on April 7, 1965 to the effect that he had no objection to proprietary rights being conferred upon the tenants. The Assistant Collector Ist Grade, Patiala, by his

order of November 30, 1965 consequently allowed the application of the respondenttenants for the... acquisition of proprietary rights in 42 bighas and 3 biswas of land.

4. The petitioners were minors, when the Assistant Collector allowed the application of the respondent tenants, for the acquisition of proprietary rights. On March 16, 1971, they filed an appeal before the Collector, Patiala against the order of the Assistant Collector. This appeal was dismissed by the Collector, by his order of November 28, 1973, holding that the appeal was barred by time and that it was otherwise too devoid of merit. The revision petition filed against this order was dismissed by the Commissioner, Patiala Division, by his order of May 17, 1976 and this order was later upheld in revision also by the Financial Commissioner, Punjab by his order September 21, 1978.

5. In seeking to assail the impugned order of the revenue authorities, Mr. Surjit Singh, counsel for the petitioner, contended that the respondenttenants had not fulfilled the two essential prerequisites for the acquisition of proprietary rights under the Act, namely; that they were in possession of the land in question both on the day on which the Act came into force as also on the date of the application for the acquisition of proprietary rights and further that they had been in continuous possession of such land for period of over 12 years. He adverted in this behalf, to the order of the Assistant Collector, Patiala of November 30, 1965 where it was recorded that the respondent tenants, according to Khasra Girdwari of 195657 were cultivating 41 bighas and 11 biswas of land; while, as per the Khasra Girdwari of 195758, the land under their cultivationwas 63 bighas and 16 biswas and in 195860, the area under their cultivation was 42 bighas 16 biswas and finally in the khasra girdwari of 196261 to 196263, 42 bighas and 6 biswas was the land under their cultivation. The Assistant Collector, thereafter, proceeding to hold them entitled to acquire proprietary rights in Khasra number 1114, 1115, 1116, 1117, 1118, 1119 and 1120.

6. Turning next to the order of the Commissioner, Patiala of May 17, 1976, counsel referred to the finding there that the record showed that on October 30, 1956, Jawan and Chanan Khan (the respondent tenants and their father) were tenants on land comprising Khasra numbers 1105, 1106, 1107, 1111, 1112, 1113, 1118 and 1119 that subsequently they appeared to have shifted to Khasra numbers 1114 to 1120 measuring 42 bighas and 5 biswas as per the khasra girdwari for Kharif 196061 to Rabi 19621963. The point emphasised being that it was only land comprised in Khasra Numbers 1118 and 1119, which was with the respondenttenants on the date when the Act came into being and also on the date of the application for acquisition of proprietary rights and that none of the other area was shown to have been in the possession of the respondent tenants for the requisite period of 12 years. It was thus his contention that at best, the respondenttenants could acquire proprietary rights in the land held by them in Khasra numbers 1118 and 1119 measuring 12 biswas of land. Cited in support of

the proposition canvassed being the judgment of the Division Bench in *Jaisi Ram v. The Financial Commissioner, Revenue Punjab and others*, 1971 Revenue Law Reporter 87 where it was held, that, "the acquisition of proprietary rights by the tenant under Section 22 of the Act has to be with regard to a particular piece of land". It was further observed, that "if a person has been a tenant of some area of land under the landlord, but he was occupying different parcels of land, though of the same area, he cannot acquire proprietary rights in any of such parcels. He has to be continuously in possession for the statutory period of the same piece of land before he can claim proprietary right thereunder. The said rights can be acquired with regard to particular land if he has been in possession thereof for the statutory period."

7. The legal position thus, being as enunciated in *Jaisi Ram*" case (supra), there can be no escape from the conclusion that the only land in respect of which the respondenttenant could acquire proprietary rights was that comprised in Khasra number 1118 and 1119 measuring 12 biswas of land. As regards the other land, it has not been found that they had been in continuous possession therefore for the statutory period. The impugned orders of the Financial Commissioner and the other revenue authorities below have consequently to be modified accordingly.

8. Even with regard to 12 bighas of land comprised in Khasra numbers 1118 and 1119, an objection was taken by the counsel for the petitioners that in view of the partition between father and sons on December, 1957 this land comprised the permissible area of the petitioners.

9. Reference was, in this behalf, made to the provisions of Section 32 KK of the Act with a view to show that partition of land in the family was deemed to be a disposition only for the purpose of Section 32 FF of the Act and not for any other purpose meaning thereby that it is only in respect of surplus area that such partition is to be ignored. In other words, where it concerns, not the surplus area but merely the acquisition of proprietary rights by the tenant, partition between father and son cannot in terms of Section 32 KK, be ignored. There was indeed, no answer to this contention for the counsel for the respondents.

10. Mr. T.S. Managat, counsel for the respondents on his part sought to contend that the petitioners were not entitled to any relief as claimed by them in view of the inordinate delay on their part in seeking to challenge the order of the Assistant Collector granting proprietary rights to the respondents tenants. The stress in this behalf being on the finding of the Collector that the appeal filed by the petitioners was barred by time. This is indeed a contention that cannot stand scrutiny as it will be seen that neither Commissioner, Patiala nor the Financial Commissioner treated the application of the petitioner to be barred by time. At any rate, the petitioners were minors when the Assistant Collector allowed the respondenttenants' application for acquisition of the proprietary rights. It is pertinent to note that there is no mention in that order the interests of the minors were at all taken into account. This thus in no ground to deny to the petitioners the relief claimed.

11. An attempt was also made to argue that a mere mutation, meaning that pertaining to the partition of land between Bhag Singh and his sons the petitioners here did not create or extinguish any title. Counsel however, failed to show how and in what manner this partition between the father and sons was in any manner invalid or contrary to law.

12. It follows therefore, that the respondenttenants were not entitled to acquire proprietary rights in the land held by them in terms of Section 22 of the Act. This being so, the impugned orders of the Financial Commissioner as also the revenue authorities below are hereby quashed.

13. This petition is thus accepted. There will however, be no order as to costs.