
(1988) 11 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 717 of 1979

Mewa Singh and others

APPELLANT

Vs

Financial Commissioner, Punjab, Chandigarh and others

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 22

Citation : (1988) 11 P&H CK 0004

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

Bench : Single Bench

Advocate : Sarjit Singh and Mr. Jagdev Singh, for the Appellant; T.S. Mangat for Respondents Nos. 5 to 9, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—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 thereof.

2. Bhag Singh(sic) father of the present Petitioners was recorded as the owner of 3869 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 Respondent-tenants, namely; Jawan and Chanan Khan, the father of Teja, Tara, Nek and Veda, applied for acquisition of proprietary rights u/s 22 of the Act. This application was dismissed in default on December 19, 1968. About 15 months thereafter, on March 6, 1935(sic), 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 Respondent-tenants for the acquisition of proprietary rights in 42 big has and 5 biswas of land.

4. The Petitioners were minors, when the Assistant Collector allowed the application of the Respondent tenant's, 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 up-held in revision also by the Financial Commissioner, Punjab, by his order of September 21, 1978.

5. In seeking to assail the impugned orders of the revenue authorities, Mr. Sarjit Singh, counsel for the Petitioner, contended that the Respondents-tenants has not fulfilled the two essential pre-requisites 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 a 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 1956-57 were cultivating 41 bighas and 11 biswas of land, while, as per the Khasra Girdwari of 1957-58, the land under their cultivation was 63 bighas and 16 biswas and in 1958-59, it was 14 bighas and 13 biswas while in the year 1959-60, the area under their cultivation was 42 bighas 16 biswas and finally in the khasra girdwari of 1960-61 to 1962-63, 42 bighas and 6 biswas was the land under their cultivation. The Assistant Collector, thereafter, proceeded to hold them entitled to acquire proprietary rights in khasra numbers 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, Jewan 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 and 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 1960-61 to Rabi 1962-1963. The point emphasised being that it was only land comprised in Khasra Numbers 1118 and 1119, which was with the Respondent-tenants 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 Respondent-tenants 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 Ors.* (1971) 73 P. L. R. 481, where it was held, that, "the acquisition of proprietary rights by the tenant u/s 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 there under. The said rights can be acquired with regard to a particular land if he has been in possession thereof for the statutory period."

7. The legal position thus being, as enunciated in *Jaisi Ram's* case (*supra*), there can be no escape from the conclusion that the only land in respect of which the Respondent tenants could acquire proprietary rights was that comprised in Khasra numbers 1118 and 1119 measuring 12 biswas of land. As regards the other land, it had not been found that they had been in continuous possession thereof 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 acquired in khasra numbers 1118 and 1119, an objection was raised by the counsel for the Petitioner that in view of the partition between father and sons in 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 from the counsel for the Respondents.

10. Mr. T. S. Mangat, 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 Respondent-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 Respondent-tenants' application for acquisition of the proprietary rights. It is pertinent to note that there is no mention in that order that the interests of the

minors were at all taken into account. This thus is 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 Respondent-tenants were not entitled to acquire proprietary rights in the land held by them in terms of Section 21 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.