
(2004) 01 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 45 of 1997

Mitter Kaur

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 137 PLR 180 : (2004) 2 RCR(Civil) 577

Hon'ble Judges : G.S. Singhvi, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : S.N. Saini, for the Appellant; Vijay Dahiya, A.A.G. for Respondent
Nos. 1 to 3 and Amit Jain, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This appeal is directed against order dated 20.8.1996 passed by the learned Single Judge in C.W.P. No. 7843 of 1994.

2. A perusal of the order under appeal shows that while rejecting the prayer of the private respondents for quashing orders dated 27.5.1987 and 17.5.1994 passed by the Financial Commissioner, the learned Single Judge directed him to decide the revision petition filed by appellant Smt. Mitter Kaur against the cancellation of land allotted to her father-in-law, namely, Bawa Mani Singh. The relevant extracts of the order of the learned Single Judge are reproduced below:

"The order of the Financial Commissioner was passed on 27.5.1987. The petitioners filed an application to set aside the order dated 27.5.1987. The Financial Commissioner dismissed the second application on the ground that the order earlier passed by his predecessor on 27.5.1987 has become final and, therefore, he cannot interfere with the same. When the Financial Commissioner passed the order on 27.5.1987, there was no provision to file another application by way of revision to set aside the said order by the same authority. If the petitioners were really aggrieved by the order dated 27.5.1987, they should have

either filed an application of review or challenged the order in the High Court. The petitioners failed to take any such step. Therefore, I do not find any ground warranting interference with the order passed by the Financial Commissioner vide Annexure P.9 dated 17.5.1994.

However, it is an admitted case parties that the allotment of the land in khasra No. 10935/7984 to Bawa Mani Singh through whom the 4th respondent Mitter Kaur has been claiming title to the property has been cancelled by the Chief Settlement Commissioner and the 4th respondent Mitter Kaur filed a revision petition before the Financial Commissioner challenging the order of cancellation. The said revision petition is pending for disposal before the Financial Commissioner.

In the revision petition No. 2862 of 1982 filed by Mitter Kaur, this Court observed as follows:

"Mr. I.S.Saini has brought to my notice that his clients have moved the authorities for cancelling the allotment made to the plaintiff. If that is so, the authorities will dispose of the matter expeditiously in order to avoid hardship to him."

Thus, it is clear that if the allotment of land in Khasra No. 10935/7984 is cancelled, then the plaintiff Mitter Kaur cannot claim that land even in execution of the decree. As already observed, the revision petition filed by Mitter Kaur against the cancellation of allotment of 3 Biswas land in Khasra No. 10935/7984 Before the Financial Commissioner has to be decided expeditiously as possible. If the Financial Commissioner confirms the cancellation of allotment of land in favour of Bawa Mani Singh, then the plaintiff, who is claiming the land through him, cannot execute the decree in respect of Khasra No. 10935/7984. If the Financial Commissioner comes to the conclusion that the allotment of the land in favour of Bawa Mani Singh was validly made and, therefore, it cannot be canceled, then the plaintiff Mitter Kaur will be entitled to execute the decree and take possession of the property.

In this view of the matter, I feel that it is just and appropriate to give a direction to the Financial Commissioner to dispose of the revision petition pending before him as expeditiously as possible preferably within 3 months from the receipt of a copy of this order. Let this order be communicated to the Financial Commissioner. Haryana, forthwith."

3. Shri S.N.Saini, learned counsel for the appellant, argued that the premises on which the learned Single Judge directed the Financial Commissioner to dispose of the revision petition pending before him is per se erroneous, inasmuch as, the appellant had not filed any revision petition against the order passed by the Chief Settlement Commissioner cancelling the allotment made in favour of Bawa Mani Singh,

4. Shri Amit Jain, learned counsel for the private respondents fairly admitted that

appellant-Mitter Kaur had not filed revision petition against the order passed by the Chief -Settlement Commissioner and the observations made by the learned Single Judge with reference to the alleged revision petition filed by her are not correct. He, however, submitted that revision petition filed by grandson of Bawa Mani Singh, namely, Harcharan Singh was pending before the Financial Commissioner on the date of decision of the writ petition and, therefore, the Court may not interfere with the direction given by the learned Single Judge.

5. We have thoughtfully considered the respective submissions. In our opinion, the impugned direction given by the learned Single Judge, which is founded on an assumption that the appellant had filed revision petition against the order of the Chief Settlement Commissioner, is liable to be set aside because as a matter of fact, she had neither any occasion nor she filed revision petition against the order of the Chief Settlement Commissioner. A reading of the order dated 17.3.1994 (marked as Annexure P7 with the writ petition) shows that the Chief Settlement Commissioner had upheld the appellant's claim of ownership over Khasra No. 10935/7984. This is clearly borne out from the following extracts of that order:

"One Sh. Jogi Ram Saini of Prem Nagar, Rohtak has filed an application stating therein that Bawa Mani Singh gifted land measuring 3 biswas comprised in Khasra No. 10935/7984 situated in Rohtak to Smt. Mitter Kaur w/o Man Singh and daughter-in-law of Bawa Mani Singh. The Deptt. had auctioned Khasra No. 10935/7985 to Sh. Hari Singh of Rohtak but possession was given of Khasra No. 10935/7984 which was in fact property of Mrs. Mitter Kaur. The litigation went up to the Court of Ld.F.C.R. who vide his order dated 27.5.1987 directed that Khasra No. 10935/7984 was ownership of Smt. Mitter Kaur and will remain her ownership and Shri Hari Singh was wrongly given its possession. The auction was set aside and he was allowed to take refund of the amount deposited by him. This order of the FCR be carried out by the Tehsildar (Sales) Rohtak within three months and compliance report be sent."

6. The private respondents did challenge the order of the Chief Settlement Commissioner by filing revision petition before the Financial Commissioner which was dismissed. Their writ petition was also dismissed, by the learned Single Judge. It is not their case that they have filed appeal against the partial dismissal of their writ petition. Therefore, we need not go into the correctness of the order passed by the learned Single Judge in that regard.

7. For the reasons mentioned above, the appeal is allowed. The order of the learned Single Judge is set aside. Consequently, the writ petition filed by the private respondents shall be treated as dismissed in its entirety.