(1992) 01 P&H CK 0192

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12510 of 1991

Mohinder and ors. APPELLANT

Vs

Amrit Kaur and ors. RESPONDENT

Date of Decision : 24-01-1992

Acts Referred:

Citation : (1992) 2 LJR 378 : (1992) PLJ 36 : (1992) 2 RRR 605

Hon'ble Judges : A.L.Bahri, J and V.K.Bali, J

Advocate : Mr. Rajesh Girdhar, Advocate, Mr. B.R. Mahajan, Advocate, Mr. J.S. Yadav, Advocate, Mr. Harbhagwan Singh, Sr. Advocate, Advocates for appearing Parties

Judgement

A.L. Bahri, J. (Oral)

1. By this order two Civil Writ Petitions (Nos. 12510 and 13415 of 1991) are being disposed of as most of the facts are common. The facts are being taken from petition No. 12510.

2. The petitioners in these petitions claim to the tenants. Surplus area of the landlady Smt. Amrit Kaur was declared surplus by the Collector under the Pepsu Tenancy and Agricultural Lands Act on July 18, 1963, vide Annexure P1. An appeal was taken before the appellate Authority against that order, which was disposed of on May 19, 1964, vide order, Annexure P2. Ultimately the Financial Commissioner on the application of the landlady Smt. Amrit Kaur remanded the case vide order Annexure P4 dated April 10, 1985. It was remanded for redetermination of the surplus area.

3. In the meantime the petitionerstenants applied for grant of proprietary rights. The landlady also made certain transfers. The Collector Agrarian disposed of the matter vide order dated June 3, 1986, Annexure P5. The Commissioner disposed of appeal of the tenants on November 2, 1987 (as stated). The matter was taken to the Financial Commissioner by the petitioners/tenants, which was disposed of vide order dated February 13, 1990, Annexure P11 on both these petitions

although the orders are of the same dates, however, the annexure marks are different. The Financial Commissioner disposed of the matter by passing the following order on February 13, 1990 :

"In this revision against the order of the Collector (Agrarian), Safidon, dated 3.6.1986 in surplus area case and confirmed by Commissioner on 2.11.1987 under the Pepsu Tenancy and Agricultural Land Act, 1955, learned Counsel for the petitioners concedes that the apprehension of ejectment is premature in this petition and claim for alternative land for resettlement can be made only if he is sought to be ejected from the permissible area. Revision is, therefore, not pressed. It is dismissed."

4. The case of the petitioners, in nut shell, is that the earlier order of the Financial Commissioner dated April 10, 1985, Annexure P/4, was void and nonest and the Financial Commissioner had no jurisdiction to pass the order in exercise of power under Section 32(D)(4) of the Pepsu Tenancy and Agricultural Lands Act, more so, when the order of determination of surplus area had become final under orders of the Commissioner dated May 19, 1964, Annexure P2. All subsequent orders passed by the authorities, as stated above, thus, would be without jurisdiction as the basis thereof is the order of Financial Commissioner dated April 10, 1985, Annexure P/4.

5. The respondentlandlady while contesting the Writ Petitions has raised some preliminary objections, which are to the following effect :

1) Annexure P/11, order of the Financial Commissioner is based on concession of the petitioners, counsel and, thus, cannot be questioned in the Writ Petition;

2) The Financial Commissioner, whose orders are being challenged, has not been impleaded as a party;

3) The challenge in the Writ Petitions is to the order passed by the Financial Commissioner on April 10, 1985, Annexure P/4, to which the petitioners were parties and no reasonable explanation worth consideration has been put forth to entertain the writ petitions after so much delay and the writ petitions should be dismissed on the ground of laches;

4) As mentioned in the grounds of appeal, filed before the Commissioner by the petitioners, Annexure P/6, it was mentioned that the petitioners had challenged the order of the Financial Commissioner by filing the writ petition. However, in the present writ petition, this fact was concealed and it should be taken that the aforesaid writ petition was dismissed and now again the petitioners cannot challenge the order of the Financial Commissioner Annexure P4.

6. After hearing learned counsel for the parties, we are of the firm opinion that these writ petitions merit dismissal on the preliminary objections raised. Order of the Financial Commissioner has already been reproduced above. It was on the statement of counsel appearing on behalf of the petitioners that the Revision Petition filed by them was got dismissed as not pressed. It is not asserted in the

writ petitions that such a concession was wrongly given or the same was given without any instructions from the petitioners. An order which has been passed on concession, thus, cannot be questioned.

7. The Writ petition of Mohinder Singh etc. is also liable to be dismissed on the ground that the petitioners have concealed material facts while filing the same. In the grounds of appeal before the Commissioner, it was specifically mentioned in para 22 that the petitioners had challenged the order of the Financial Commissioner dated April 10, 1985, by filing a Writ Petition in the High Court. It was expected of the petitioners to approach this court with clean hands and not to conceal this material fact. Obviously, if the previous Writ petition was dismissed the petitioners cannot approach this Court again for the same relief. The Financial Commissioner, who passed the impugned orders or the state, who were necessary parties, have not been impleaded as parties in the Writ Petitions inspite of objection being taken in the written statement filed by respondent No. 1 as far back as December 16, 1981. Writ Petitions are liable to be dismissed on this ground as well.

8. There is inordinate delay of about six years to challenge order dated April 10, 1985, in this petition, nor which there is no explanation. The petitioners were parties to the aforesaid order and if they felt aggrieved, they should have filed the writ petition within a reasonable time. As already stated, one set of the petitioners did file writ petition earlier but without success.

9. The contention that the aforesaid order was void and could be ignored has not appealed to us. Section 32D (4) of the Act authorises the State Government in the exercise of revisional power to alter or modify the declaration of the Collector regarding surplus area in spite of Appellate Authority''s order passed on appeal under Section 32D(3) of the Act.

10. For the reasons recorded above, these writ petitions are dismissed with costs, which are quantified at Rs. 1,000/ in each case.