(1996) 02 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1958 of 1981

Mohinder Singh and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:
Transfer of Property Act, 1882 — Section 41

Citation : (1996) 113 PLR 225

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : P.C. Mehta and Ranjan Lohan, for the Appellant; L.S. Wasu and Manjit Singh, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The petitioners have filed this writ petition invoking the certiorarial jurisdiction of the Court under Article 226 of the Constitution of India to quash the order of Financial Commissioner, Revenue and Secretary to Government, Punjab. Rehabilitation Department, Jalandhar dated 9.1.1981.

2. The brief facts leading to the filing of this writ petition may be stated as follows:-

One Hira Singh was a displaced person from the West Pakistan, where he abandoned agricultural land at the time of partition of thee country in the year 1947. He was allotted agricultural land in village Qadrabad. The said Hira Singh sold a part of the land allotted to him through registered sale Deeds dated 4.9.1962 in favour of the petitioners. The petitioners obtained possession of the lands purchased by them, developed the same and made substantial improvement. Some time in the year 1966, the Managing Officer of the Rehabilitation Department found that the original allottee Hira Singh was holding excess allotment of the land to the extent of 4.7-1/2 standard acres. Accordingly, he recommended cancellation of the proprietary rights in respect of the excess area to the Chief Settlement Commissioner, who vide his order dated 19.7.1966 cancelled the proprietary rights in respect of the excess area. The petitioners made an application to the Chief Settlement Commissioner for setting aside the ex-parte order dated 19.7.1966, who remanded the matter to the Managing Officer for a fresh decision. After the remand, the Managing Officer by his order dated 3.5.1968 retrieved the excess area from the areas purchased by the petitioners. Aggrieved by this order, the petitioners filed an appeal before the Assistant Settlement Commissioner, who was exercising the powers of Settlement Commissioner, Punjab, which was allowed by him vide his order dated 11.6.1968 with the direction that the excess area be retrieved proportionately from the land which is the subject matter of the Sale Deeds at the point of time. The Settlement Commissioner also directed that if the petitioners were prepared to purchase their respective shares, the same should be sold to them in accordance with the rules. The Managing Officer accordingly allowed the purchase of the excess area to the petitioners at one and a half times the normal rates by his order dated 18.12.1975. Feeling aggrieved by the said order charging higher rates than the normal rates, the petitioners filed an appeal before the Assistant Settlement Commissioner who dismissed the same by his order dated 27.2.1978. Then they preferred a revision petition before the Chief Settlement Commissioner, who allowed the same vide his order dated 28.12.1978 (Annexure P-4) holding that the price for the cancelled land would be charged at the rates prevalent in the year 1968 as they had applied for the purchase of the cancelled area in that year. Thereafter the Deputy Secretary to Government. Punjab, Rehabilitation Department, made a suo moto reference to the Financial Commissioner to set aside the order of the Chief Settlement Commissioner dated 28.12.1978. On the said reference, Financial Commissioner exercised his suo moto power and set aside the order of the Chief Settlement Commissioner dated 28.12.1978 on the ground he had no jurisdiction to pass any order in view of the provisions contained under the Punjab Package Deal Properties (Disposal) Act, 1976.

3. Aggrieved by the order of the Financial Commissioner dated 9.1.1981, who exercised his revisional suo moto powers, the petitioners filed the present writ petition inter alia that all the surplus acquired evacuee agricultural lands were transferred by the Central Government to the State Government with effect from 1.4.1961 and the State Government framed Rules in the year 1962 for disposal of package deal properties and as the land stood transferred to the State Government, the authorities under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 have no jurisdiction to pass any order with regard to the package deal property and, therefore, the Chief Settlement Commissioner was not competent to pass any order in respect of the package deal property which stood transferred to the State Government. According to them, the claims of the petitioners to purchase the land in dispute would be considered by the competent authority under the provisions of Punjab Package Deal Properties (Disposal) Act, 1976. However, it was admitted that the

petitioners had purchased the land in dispute from Hira Singh, the original allottee.

4. A separate written statement has been filed by the private respondents pleading that the petitioners have no locus standi to file the writ petition as the allotment in favour of Hira Singh was in excess of his claim and that the petitioners have no legal right to purchase the area, the allotment of which in favour of Hira Singh was cancelled. They also took the plea that the Assistant Settlement Commissioner and the Chief Settlement Commissioner have no power to pass any order after the transfer of the properly to the State Government.

5. Learned Counsel for the petitioners contended that the petitioners are the bona fide purchasers for consideration from Hira Singh and therefore they cannot be evicted from the land allotted to Hira Singh. It is, on the other hand, contended by the learned Counsel for the State as well as the private respondents that after the transfer of the property to the State Government, the Chief Settlement Commissioner has no power to deal with the property and therefore the order of the Chief Settlement Commissioner has been rightly set aside by the Financial Commissioner.

6. There is no dispute that the property in question was allotted to Hira Singh who is an evacuee and that the said Hira Singh, the original allottee sold the property to the petitioners under registered sale deeds date 4.9.1962. It is only in 1976 the Managing Officer found that the allotment of land made in favour of Hira Singh was in excess to which he was entitled to and, therefore, the allotment in respect of excess area i.e. 4.7-1/2 standard acres has to be cancelled. When the matter was taken before the Chief Settlement Commissioner, he vide his order dated 28.12.1978 found that the vendees had applied in 1968 for the purchase of the area and they are to be charged the price in accordance with the instructions prevailing in the year 1968. Accordingly, he set aside the order of the Managing Officer and that of the Appellate Authority and modified the same to the extent that the price for the area cancelled from the vendee should be at the rates prevailing in the year 1968. It is not disputed that the property was allotted to Hira Singh under the Displaced Persons (Compensation and Rehabilitation) Act 1954. Thus, it is clear that the property had already been allotted to Hira Singh before the land was transferred to the State Government and the original allottee Hira Singh sold the said property in September, 1962 under the registered Sale Deeds to the petitioners. According to the petitioners they are bona fide purchasers of the land and therefore, their rights have to be protected in view of the provisions contained in Section 41 of the Transfer of Property Act. It is, therefore, to be seen whether the allotment of the land in favour of original allottee who sold the same to the bona fide purchasers can be cancelled. Learned Counsel for the petitioner relied upon the decision of this Court in Kali Ram and Ors. v. Union of India (1976) 78 PLR 475, wherein it was held as follows:-

"That the order of Chief Settlement Commissioner has no other effect than this that the rights of the predecessor-in-title of the plaintiffs stood cancelled and the suit land became the property of the Union Government by virtue of the same being the evacuee property. However, the right which, the plaintiffs acquired in the property by virtue of the application of the principles contained in Section 41 of the Property Act, does not as such militate against the ownership right of the Union Government and, therefore, it was not necessary for the plaintiffs to challenge the validity of the order passed by the Chief Settlement Commissioner u/s 24 of the Rehabilitation Act. The provisions of Section 41 of the Property Act protect the bona fide purchaser for consideration from an owner. In the present case, neither their is any doubt, nor has it been questioned before me that the plaintiffs were bona fide purchasers for consideration and had, at the time of purchase, made enquiries from the village Patwari about the title of the vendor and had also consulted the record of rights wherein it was Hari Chand and Ram Chand who had been recorded the absolute owners of the entire suit land and prior to that their grand father Daulat Ram had been recorded as the owner thereof, which means that their vendors were the ostensible owners of the suit land with the express consent of the Government of India when the same was purchased by them, for it is the functionaries and the officials of the Union Govt. who had effected the entries in the record of rights regarding his ownership rights and so the provisions of Section 41 of the Property Act are clearly attracted to the facts of the present case."

7. Learned Counsel for the petitioners also referred to a Division Bench decision of this Court in State of Haryana and Ors. v. Savitri Devi and Ors. 1986 PLJ 656, wherein it was held as follows:-

"Mr. Gopi Chand, learned Counsel appearing on behalf of the appellants vehemently urged before us that benefit of Section 41 of the Transfer of Property Act was not available to the respondents inasmuch as they had failed to prove that they were bona fide transferees. In the circumstances of the case, we are unable to agree with the submission of the learned Counsel. The allotment in favour of Mohan Lal (Respondent No. 5 in the writ petition) was made in the year 1957. After remaining in continuous possession of that land till the year 1963, he sold away the same in favour of the respondents. The respondents continued to be in peaceful possession of the land in dispute till the year 1970. In this situation, we find that the learned Single Judge was justified in arriving at the conclusion that the respondents (petitioners) were bona fide transferees and Mr. Gopi Chand, learned Counsel appearing for the appellants, has not been able to persuade us to take a contrary view."

8. The same view was taken by this Court in Rattan Singh and Anr. v. Chief Settlement Commissioner, Haryana and Ors. 1978 PLJ 47, wherein it was observed as follows:-

"(a) When a situation is created by the Union of India, acting through its important functionaries under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act and the Rules framed thereunder, by transferring ownership for a sufficiently long time, during which transfers are made by the transferees from the Union of India, the bona fide purchasers for consideration from these transferees cannot be left to suffer. Such a situation calls for the invoking of Section 41 of the Transfer of Property Act for the rights acquired by the innocent purchasers from ostensible owners."

9. Thus, it is clear that a consistent view has been taken by this Court that when the original allottee sold the property, the bona fide purchaser for consideration cannot be made to suffer.

10. The learned Counsel appearing for the private respondents relied upon a decision in Jagmohan Singh v. Union of India and Ors. ILR 1965 148. In that case, there is no sale by the original allottee in favour of a 3rd party. Therefore, that decision has no application to the facts of the present case. He has also referred to a decision of the Supreme Court in Chief Settlement Commissioner (Rural) Punjab and Another Vs. Ram Singh and Others, . But that decision is also of no help to the respondents. In that case too, there was no sale by the original allottee. It was held in the said decision that Rule 73(2)(ii) of Displaced Persons (Compensation and Rehabilitation) Rules, 1955 does not create any right in favour of the displaced persons to whom land has been allotted in excess of their entitlement to insist on the land being sold to them either against cash payment or by way of adjustment against their verified claims. But in the case on hand, the fact that the land has been sold by the original allottee to a 3rd party makes all the difference. This intervening fact protects the bona fide purchaser from being evicted from the land. This aspect of the matter has not at all been considered by the Financial Commissioner. I am, therefore, of the opinion that the order of the Financial Commissioner is liable to be set aside.

11. However, the petitioners themselves made an offer even in the year 1978 to purchase the excess area on payment of the price prevalent at that time. The Chief Settlement Commissioner in his order dated 28.12.1978 accepted the offer of the petitioners for the purchase of excess area. When the petitioners themselves agreed to purchase the excess area. I am of the opinion that they are bound by their offer, even though the orders for their eviction after cancellation of allotment in excess of the entitlement to the original allottee, could not be made as the land having been sold by the original allottee to the petitioners was for a valuable consideration.

12. In this view of the matter, I am of the opinion that the order of the Chief Settlement Commissioner, Punjab, Rehabilitation Department, Jalandhar, dated 28.12.1978 is to be confirmed. The writ petition is, accordingly allowed, the orders of the Financial Commissioner dated 9.1.1981 are hereby quashed and the order of the Chief Settlement Commissioner, Punjab, dated 28.12.1978 is restored. There will be no order as to costs.