
(1972) 03 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 643 of 1965

Naginder Singh and Others	Vs	APPELLANT
Chief Settlement Commissioner, Punjab, Jullundur and Others		RESPONDENT

Date of Decision : 15-03-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1972 P&H 382

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Judgement

1. Natha Singh, a displaced person from West Pakistan, held some land in the Province of Sind. In lieu thereof he was allotted 21.141/2 standard acres of land in village Lutera Khurd, Tehsil and District Jullundur, on his representation that he had abandoned 72 acres of non-perennial canal irrigated land in Sind. His claim was, however, verified on oral evidence of 70 acres and 16 Marlas. It subsequently came to the light that in calculating the area to the allotment of which he was entitled in India wrong valuation had been adopted, since the land on his own showing was non-perennial and it ought to have been evaluated at the rate of 7 annas per acre and not 11 annas per acre. Accordingly, modifying the original order he was held entitled to 17.14 1/2 standard acres.

2. On the receipt of the relevant Jama bandis, the matter was reopened and the Chief Settlement Commissioner by his order dated 3rd of March, 1964 (Annexure "B") held that Natha Singh was entitled to 9.133/4 standard acres only. As in the meantime he had acquired proprietary rights in 8.3/4 standard acres, it was directed that those rights shall stand cancelled. This order was passed in the absence of the claimant Natha Singh. It appears that his failure to appear before the authorities was because of his death. Accordingly, his son Naginder Singh (who had instituted this petition but is now dead and represented by his widow Smt. Harbans Kaur and others) applied for reopening the matter. After hearing him the Chief Settlement Commissioner found that Natha Singh was entitled to

10.11 standard acres and the area to the extent of 7.31/2 standard acres was in excess in the hands of Naginder Singh, who claimed to have succeeded Natha Singh. It is against this order dated 16th November, 1964, that Naginder Singh feeling aggrieved approached this Court under Arts. 226 and 227 of the Constitution.

3. There is no dispute that the land that the petitioner had abandoned in Sind was a Military grant and if he was full owner of the same having made all payments to the Government, he was entitled to the allotment of 17.14 1/2 standard acres in India in lieu thereof. In holding that the area allotted to Natha Singh was in excess to the extent of 7.3 1/2 standard acres, the Chief Settlement Commissioner has relied upon the fact the jamabandis received from Pakistan indicated that Natha Singh has never become the full owner of the land that he held in Sind but was holding the land on zamindari shariyat, implying certain restrictions on transfer, and non-payment of a part of the amount that was due to the Government.

4. Mr. H. S. Wasu appearing for the petitioner contends that the note given in the relevant jamabandi has been misread, and properly interpreted it does not go to show that Natha Singh was not the full owner of the land or that the same was held by him on Zamindari shariat. The relevant jamabandi, as it is stated in the orders of the Chief Settlement Commissioner itself, contains the entry in black ink. It is not recorded in that jamabandi that Natha Singh was not the full owner of the land or that some money was due from him to the Government. It is only on the entry in the remarks column that the Chief Settlement Commissioner has relied in support of his opinion that Natha Singh was not the full owner and his right to transfer the property was restricted. The words appearing in this remarks column are:

"Pabandi Sarian Ji Bandish."

5. In interpreting these words the Chief Settlement Commissioner has observed as follows:

"According to the view taken by the Assistant Registrar the word "Pabandi" is different from "Sarian Ji Bandish." I feel inclined to accept the view taken by the Assistant Registrar because if there was only one Bandish about the plantation of rice, then the only words written would have been "Sarian Ji Bandish" and there could be no occasion for writing the first word "Pabandi". It is correct that according to the instructions of Mr. I. M. Lal, the land given as a Military grant is to be prima facie taken as ownership land even if it is entered in a black ink in the Jamabandi. But the difficulty in the present case is that there is a clear mention of Pabandi in the Jamabandi itself which does not permit the raising of a favourable presumption for the petitioner. I, therefore, hold that the land abandoned in Pakistan was being held on Zamindari shariat and was not being held on ownership basis."

6. I agree with Mr. Wasu that this is not the correct interpretation of the words

"Pabandi Sarian Ji Bandish" occurring in the remarks column of the Jamabandi. If the interpretation put on these words by the Chief Settlement Commissioner is accepted, it would mean that there was double restriction imposed upon Natha Singh, who had acquired the land as Military grant one being restriction on transfer of the land and the second regarding the cultivation of rice. It is admitted in the return filed by the State, and conceded by the Chief Settlement Commissioner, that the expression "Sarian Ji Bandish" means that Paddy is not to be planted. This restriction is on the type of the cultivation for which the land is meant. We are thus left only with the word "Pabandi", which precedes the expression "Sarian Ji Bandish". "Pabandi" when translated means restriction. The word "restriction or "Pabandi" by itself does not convey any meaning as restriction can be of the various types. It may be on the right to hold the land, to alienate it or regarding the type of cultivation to be carried on. If the word "Pabandi" is read divorced from the expression "Sarian Ji Bandish" which it precedes, one is left guessing as to the type and the extent of the restriction imposed, whereas if "Pabandi" is read with the expression "Sarian Ji Bandish", it clearly indicates that the restriction to which the land is subject relates to the non-cultivation of paddy. In my opinion, the word "Pabandi" has been used in the beginning of the remarks just as a heading to specify the type of the restriction to which the land is subject and that restriction is specified in the succeeding words "Sarian Ji Bandish". In other words, the only restriction attached to the land abandoned by Natha Singh in Pakistan was with regard to the cultivation that he was not to plant paddy therein.

7. It is because of this wrong interpretation of the words occurring in the remarks column of the Jamabandi that it had been held that the petitioner was not entitled to allotment of land as a full owner. Admittedly, there was nothing else before the authorities on the basis of which they could arrive at the conclusion that Natha Singh was not the full owner of the land abandoned by him in Pakistan.

8. In the return filed on behalf of the respondents, the impugned order of the Chief Settlement Commissioner is defended on the plea that since the land abandoned by Natha Singh in Pakistan was not canal irrigated but Bet-Darya it had to be evaluated at 4 annas per acre. This is not the basis on which the order of the Chief Settlement Commissioner proceeds and there is nothing on the record to indicate what was the value adopted when an area of 17.14 1/2 standard acres of land was allotted to Natha Singh. If the land was, in fact, Bet Darya and had to be evaluated at the rate of 4 annas per acre and not at 7 annas per acre, the authorities should have calculated the entitlement of Natha Singh on that basis. This has, however, not been done. In any case, in view of my finding that the land was not subject to any restriction except with regard to the growing of paddy, the impugned order of the Chief Settlement Commissioner determining the excess area cannot be sustained. I, accordingly, set aside the order and accept the petition. The authorities are directed to reassess the entitlement of Natha Singh (now deceased) in the light of the observations made

above, and on the assumption that Natha Singh was the full owner of the land that he had abandoned in Pakistan. In re-evaluating the land the question whether the property left by Natha Singh in Pakistan was Bet-Darya and had to be evaluated at 4 annas per acre will also be considered. In determining all these matters and assessing the entitlement of Natha Singh, the successors of Natha Singh, who are now the petitioners before me, shall be afforded an opportunity to re-present their case. If any area is found excess in the hands of the petitioners, the authorities shall deal with it in accordance with law. There will be no order as to costs.

9. Petition allowed.