
(1991) 09 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3883 of 1986

Nanak Ram and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Citation : (1991) PLJ 675 : (1992) 1 RRR 149 : (1991) 2 RRR 601

Hon'ble Judges : V.K.Jhanji, J

Advocate : Rajiv Vij, Advocate, Anand Swaroop, Senior Advocate, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. This will dispose of Civil Writ Petitions No. 3883 to 3889 and 5014 of 1986 as all these writ petitions have been preferred for quashing orders dated 29th January, 1962, 14th March, 1962, 28th September, 1976 and 18th March, 1985 (Annexures, P1, P2, P3 and P6) passed by Special Collector, Punjab, Allotment Authority, Kaithal and Financial Commissioner, Haryana respectively.

2. In all the petitions, the claim of the petitioners is that they were old tenants under the big landowners Kanwar Sharanvir Singh and Kanwar Danbir Singh. The case of surplus area relating to the land owned by Kanwar Sharanvir Singh was decided by the Special Collector, Punjab, on 29th January, 1962 whereas the case relating to the assessment of surplus area with Kanwar Danbir Singh was decided on 14th March, 1962 by the Special Collector, Punjab vide orders, Annexures P1 and P2, owners were held to be entitled to 50 O.A. whereas land measuring 20.53 O.A. was held to be with the tenants and was thus declared tenants' permissible area. After excluding the area of the landowner and area of the tenants, land measuring 184.13 O.A. was declared as surplus in the case of Kanwar Sharanvir Singh. In the case of Kanwar Danbir Singh, it was held that he was entitled to permissible area of 42.48 O.A. i.e. 30 S.A. Land measuring 20.53 O.A. was held to be tenants' permissible area. As a result thereof, 24.65 O.A. was declared as surplus. In pursuance of orders, annexures P1 and P2 passed by

the Special Collector, Punjab, declaring surplus area, the Allotment Authority, Kaithal, vide order, Annexure P3, allotted a land which was declared surplus under the Haryana Utilisation of Surplus and Other Areas Scheme, 1976 (hereinafter referred to as the 1976 Scheme) to the private respondents who are resettled tenants. This order was challenged by the petitioners in the year 1982 on the ground that they being the tenants and having purchased the land of big landowners, Kanwar Sharanvir Singh and Kanwar Danbir Singh, vide registered sale deeds executed during the period 24th April, 1970 and 8th April, 1975, the order dated 28th September, 1976, Annexure P3 of the Allotment Authority, Kaithal, is illegal. They further claimed that their right of allotment under the 1976 Scheme should be recognised as preferential. They also claimed that though the Special Collector has found, as a matter of fact, that area measuring 20.53 O.A. was under the tenants and was declared as tenants' permissible area but no notice was ever served on them of those proceedings and thus the order is void ab initio. The Collector, Kurukshetra, vide order dated 24th August, 1982 dismissed the appeal being barred by time. The petitioners against the order of the Collector, Kurukshetra, filed appeal before the Commissioner, Ambala Division, Ambala, who vide order dated 26th July, 1983 held that no appeal lay in such cases. However, the appeal filed by the petitioners was treated as revision and the same was dismissed. The petitioners took the matter before the Financial Commissioner, who vide order dated 18th March, 1985 dismissed the revision petitions. Learned Financial Commissioner, Haryana was of the view that the State shall be entitled to the surplus area which has been sold after 30th July, 1958 and moreover as per clarification issued by Government vide Memo No. 5726AR(LA)76/28819 dated 15th September, 1976, any sale beyond 15th April, 1976 shall not be a valid transaction and any such sale effected after that date shall be deemed to have been vested in the Government with effect from the appointed day. He thus concurred with the decision of the Commissioner, Ambala Division, Ambala and the Collector, Kurukshetra. The orders of the Collector, Kurukshetra, Commissioner and Financial Commissioner and that of Special Collector, relating to the assessment of surplus area with Kanwar Sharanvir Singh and Kanwar Danbir Singh have been impugned by the petitioners in the present writ petitions. The petitioners have also filed additional affidavit along with copies of the jamabandis in order to show that they or their predecessors in interest were in possession of the land in dispute much prior to 15th April, 1953 i.e. before the enforcement of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the 1953 Act.)

3. Mr. Anand Swarup, Senior Advocate, learned counsel for the petitioners has contended that though in his orders dated 29th January, 1962 and 14th March, 1962, the Special Collector while deciding the case of the assessment of the surplus area of the big landowners has held that the land measuring 20.53 O.A. was in possession of the tenants but no notice of the same was ever served on the petition and thus the order declaring the land under the tenancy of the petitioners as surplus in the hands of Kanwar Sharanvir Singh and Danbir Singh

was void ab initio and, nonest in the eye of law. He has further contended that once order declaring the area surplus is held void ab initio and nonest in the eye of law, the order, Annexure P3 allotting a part of the area declared surplus is also void and nonest in the eye of law. He has also submitted that no notice was served on the petitioners while allotting the land to the private respondents under 1976 Scheme.

4. On the other hand, learned counsel for the private respondents has contended that the respondents are resettled tenants and they were allotted land in pursuance of 1976 Scheme and this Court should not interfere with the finding given by the Collector, Commissioner and the Financial Commissioner upholding the order dated 28th September, 1976.

5. It has not been disputed before me by the learned counsel for the State that the land was allotted to the private respondents under 1976 scheme vide order dated 28th September, 1976 of the Collector, Kurukshetra and this allotment was made only after the area was declared surplus by the Special Collector vide his orders dated 29th January, 1962 and 14th March, 1962 (Annexures P1 and P2). However, from the written statement filed by Rao Siri Krishan, HCS, S.D.O. (Civil), Guhla, on behalf of respondents No. 1 to 3, it appears that orders of Special Collector dated 29th January, 1962 and 14th March, 1962 (Annexures P1 and P2) were cancelled. The precise stand taken by respondents No. 1 to 3 in their written statements as follows :

"That para No. 3 of the petition is admitted to the extent that land to the extent of 20.53 ordinary acres in each of village Theh Banera was shown with the tenants vide the order of Special Collector Annexures P1 and P2. It is further submitted that order of Special Collector Punjab, Annexures P1 and P2 are not final orders. As per record, form "F" issued by the Special Collector, Punjab, under these orders was cancelled and separate form "F" was issued on 4th May, 1964 in which it has been specifically mentioned that form "F" issued on 2nd April, 1962 has been cancelled. It is also submitted that in new form "F" issued by the Special Collector on 4th May, 1964, no area of the big landowners has been shown under the tenants. It seems that some revised orders were passed by the Special Collector after the orders Annexures P1 and P2 which have been cancelled produced by the petitioners. The orders passed by the Special Collector Punjab later on are not available in this office as these orders were passed by the Special Collector at the time of Joint Punjab and record might have been in Punjab now. According to latest form 'F' received in this office no land of big landowners was shown under the tenants, hence no notice was necessary to be issued."

6. In para 2 of the written statement, it has also been admitted that the petitioners were lessees on some of the land belonging to big landowners under the East Punjab Utilisation of Land Act, 1949 (hereinafter referred to as the 1949 Act) under Collector, Karnal.

7. In view of the stand taken by respondents No. 1 to 3 in the written statement, two things are very clear. Firstly, the petitioners were in possession of the land belonging to landowners and secondly, orders dated 29th January, 1962 and 14th March, 1962 (Annexure P1 and P2) of Special Collector were cancelled and fresh order declaring the surplus area was passed. In the revised order, tenants' permissible area was included in the surplus pool as it was found that no land of big landowners was found under the tenants. The revised order has not been placed on the record either by the petitioners or by the respondents. The official respondents, in para 3 of their written statement, have categorically stated that the revised orders passed by the Special Collector, Punjab are not available in this office as these orders were passed by the Special Collector at the time of Joint Punjab and records might have been in Punjab now. In absence of the revised order, it is not possible to give any definite finding as to whether the petitioners were in possession of the land prior to 15th April, 1953 i.e. at the time of enforcement of the 1953 Act and thus were entitled to be heard at the time of passing of the order declaring the land surplus being persons interested.

8. A Full Bench of this Court in *State of Haryana and others v. Vinod Kumar and others*, 1987 RRR 81 (P&H) : 1986 R.L.R. 331 has held that Rule 6 of the Punjab Security of Land Tenures Rules, 1956 requires that the persons interested i.e. the landowners and the tenants must be afforded opportunity of hearing by the Collector while declaring the land as surplus. Any order passed without affording opportunity of being heard to the persons interested would be a nullity. Rule 7 of the 1956 Rules also provides that a Collector or a Special Collector shall prepare a statement in Form "F" and forward immediately copy thereof to the landlord or tenant concerned under cover of endorsement prescribed in the form and it shall be served upon the landlord or the tenant as if it were a summons prescribed in Section 90 of the Punjab Tenancy Act, 1987. Thus, reading of rule 7 of the *ibid* Rules makes it clear that an imperative duty is cast on the Collector or the Special Collector preparing the statement in Form "F" to forward it immediately for service on the landlord or the tenant, as the case may be. In *Vir Singh v. The State of Punjab and others*, 1970 R.L.R. 435, it has been held by this Court that limitation to file appeal is to start from the date of communication of the decision as recorded in Form 'F'.

9. In the present case, it is evident from para 3 of the written statement that new Form "F" was issued by the Special Collector on 4th May, 1964, yet it is not clear as to whether the same was served on the petitioners or not who claim themselves to be tenants under the big landowners. In case Form "F" was not forwarded as required under Rule 7 of the aforesaid Rules to the persons interested then the limitation for filing the appeal against the order declaring the area surplus shall commence from the date the said orders come to the knowledge of the persons interested. Thus, I am of the view that the order dated 28th September, 1976 (Annexure P3) vide which the land was allotted to the private respondents, can be up held only in case order relating to the surplus area with Kanwar Sharanvir Singh and Danbir Singh was passed in accordance

with law. As noticed earlier, the said orders are not on the record of this case nor were brought to the notice of the Collector, Kurukshetra while he passed orders dated 24th August, 1982 dismissing the appeal of the petitioners against order dated 28th September, 1976 (Annexure P3). The Commissioner as well as the Financial Commissioner, in their orders dated 26th July 1983 and 18th March, 1985 have also not made any reference to the revised orders relating to the assessment of the surplus area in pursuance of which order dated 28th September, 1976 was passed allotting land to the private respondents under 1976 Scheme.

10. In view of this, I am of the view that this is a fit case where the matter should be remitted to the Special Collector, Haryana, with the following directions

(i) to reconstruct and complete the record as the same is stated to be with the Special Collector, Punjab, who passed the revised order.

(ii) to determine thereafter as to whether the order relating to the assessment of surplus area with Kanwar Sharanvir Singh and Kanwar Danbir Singh sons of Gurbachan Singh was passed in accordance with law or not ?

(iii) to determine as to whether the petitioners were in possession of the land in dispute as tenants prior to 15th April, 1953 and whether they were entitled to be given opportunity of hearing at the time the said order was passed. In case, they were entitled to be heard and no service was effected on them, then after providing an opportunity of hearing the case relating to the assessment of surplus area with Kanwar Sharanvir Singh and Kanwar Danbir Singh, be decided afresh in accordance with law.

11. In order to protect the interest of the private respondents who admittedly are resettled tenants and to whom the land was allotted as far back as in the year 1976, the Special Collector shall make special efforts to expedite the matter. In case, after following the directions of this Court, the Special Collector finds that the revised order relating to the assessment of land declaring surplus was passed in accordance with law, then the land in dispute shall be allotted to the private respondents who are resettled tenants. Otherwise, a fresh order will be passed in favour of the private respondents for their resettlement on the alternative land in accordance with their entitlement.

12. Consequently, the writ petition is allowed in the aforesaid terms and orders, Annexure P3 to P6 are quashed. Since as per stand of the State, orders Annexure P1 and P2 stand already cancelled, no order with regard thereto need be passed, Parties are left to bear their own costs.

Orders accordingly.