
(1984) 04 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : R.O.R. No. 133 of 1982-83

Natha Ram

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 16-04-1984

Acts Referred:

Citation : (1985) PLJ 415 : (1985) RRR 516

Hon'ble Judges : B.B.Mahajan, F.C.

Advocate : Mr. Harjit Singh, Naib Tehsildar Agrarian Patiala., Mr. A.K. Chopra, Advocate along, Mr. Jagdev Singh, Advocates., Mr. Sarjit Singh, Advocates for appearing Parties

Judgement

B.B. Mahajan, F.C.

1. This revision has been filed by Natha Ram s/o Narpatt Ram of village Sauja, tehsil Nabha, District Patiala, under Section 18 of the Punjab Land Reforms Act, read with Section 39 of the Pepsu Tenancy and Agricultural Lands Act, against the order dated the 10th February, 1976, whereby he accepted the appeal of Guljar Singh etc.

2. The facts of the case, in brief, are that Naib Tehsildar, Agrarian (Prescribed Authority), Patiala allotted land measuring 38 Bighas 8 Biswas, comprised in Khasra Nos. 32, 33, 34, 35 and 36 min, situate in village Sauja, tehsil Nabha which comprised surplus area to Natha Ram s/o Narpatt Ram, vide his order dated the 18th August, 1973. Aggrieved, Guljar Singh etc. preferred an appeal on 29th January, 1976 before the Commissioner, Patiala Division, Patiala on the grounds that they were not heard by the Naib Tehsildar Agrarian, before passing the above order of transfer, though they are the owners of the land in dispute, as vendees in possession of the land and mutation was sanctioned in their favour and that they were not even heard when the land was declared surplus. The Commissioner, Patiala Division, Patiala after hearing the counsel for Guljar Singh etc. remanded the case to Prescribed Authority (Collector, Patiala) for its fresh decision, vide his order dated the 10th February, 1976 which order has now been

impugned by Natha Ram before me.

3. I have heard the counsel for the parties. The counsel for the respondents has raised the preliminary objection that no revision in this case lies against the order of the Commissioner passed under Section 32D(3) of the Pepsu Tenancy and Agricultural Lands Act, 1955. He has referred to the judgment of the Full Bench of the Punjab and Haryana High Court reported in 1979 PLJ 393 in which it was held that if against the order of the Collector an appeal is decided under subsection (3) of Section 32D of the Act, no further revision would lie under subsection (4) and finality attaches to order under Section 32D(3) by virtue of subsection (5) as the order under subsection (3) would be deemed to be passed by the State Government even if passed by officer authorised by State Government in this behalf. This ruling has been subsequently followed by the High Court in 1983 C.L.J. (Civil and Criminal) 594. The counsel for the petitioners has, however, pointed out that appeal in this case was not against an order by the Collector under Section 32D(2) of the Pepsu Tenancy and Agricultural Lands Act declaring the surplus area but against order dated the 18th August, 1973 of the Prescribed Authority relating to allotment of surplus area. The appeal was thus not under sub section (3) of Section 32D of the Act but under Section 39 of the Act which provides for appeal against any decision or order of the Prescribed Authority. The Financial Commissioner has power of revision under subsection (3) of Section 39 of the Act in regard to appeals filed under Section 39. The position mentioned by the counsel for the petitioners is evidently the correct one. In fact the appeal had been preferred by the respondents themselves only under Section 39 of the Act. The rulings cited by the counsel for the respondents have thus no applicability in the present case. The preliminary objection is, therefore, rejected.

4. The counsel for the petitioners has pointed out that under Section 39(1) of the Pepsu Tenancy and Agricultural Lands Act, 1955 an appeal against the order of the Prescribed Authority would lie to the Collector. The appeal against the order before the Commissioner was thus not competent. Moreover the impugned order has been passed by the Commissioner without issuing any notice to either the petitioner in whose favour the land had been allotted by the order of the Prescribed Authority dated the 18th August, 1973 or to the State. The counsel for the respondent No. 3 to 5 has not been able to rebut this contention or to show how the appeal was competent before the Commissioner. I accordingly accept the petition and set aside the order dated the 10th February, 1976 passed by the Commissioner, Patiala Division, Patiala as being without jurisdiction. The respondents will be free to file an appeal against the order dated the 18th August, 1973 of the Prescribed Authority before the Collector if they so choose. The question of limitation would, of course, have to be decided by the Collector if and when an appeal is presented to him.

Announced.