

(2016) 07 P&H CK 0217
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 2133 of 2013 (O&M).

Piara Singh and Others - Appellants @HASH State of Punjab and Others

Date of Decision : 28-07-2016

Acts Referred:

Punjab Package Deal Properties (Disposal) Act, 1976 — Section 4

Citation : (2017) 1 PLJ 234 : (2017) 1 RCRCivil 272

Hon'ble Judges : Mahesh Grover and Shekher Dhawan, JJ.

Bench : Division Bench

Advocate : M.L. Sagar, Senior Advocate with Navdeep Singh Gill, Advocate, for the Appellant; P.S. Bajwa, Addl. A.G. Punjab, for the Respondent; R.D. Bawa, Advocate, for the Applicant in CM No. 4177 of 2014

Final Decision : Disposed Off

Judgement

Mahesh Grover, J. - This order will dispose of this Letters Patent Appeal No.2133 of 2013.

2. We would briefly refer to the facts; the appellants claimed themselves to be in possession of land measuring 40 Kanals 01 Marla comprised in Khasra No.39//16, 25, 40//12min, 40//10, 11 and 40//1/2/1, situated at Village Hambran, Tehsil Ludhiana West, District Ludhiana, under the Punjab Package Deal Properties (Disposal) Act, 1976 (hereinafter referred to as the "Act") and the policy framed thereunder dated 26.09.2007. The petitioners had filed a claim on the basis of said policy, which was rejected by the competent authority vide order dated 01.11.2013 on the ground that application was received in the office beyond the stipulated date, leading to the filing of the petition bearing No.25219 of 2013. The writ petition was also dismissed as no error was detected in the impugned order dated 01.11.2013.

3. This led to the filing of the letters patent appeal which was also dismissed. The petitioner then preferred SLP and the Hon'ble Supreme Court remanded the matter back for decision afresh as it was observed that provisions of Section 4 of the Act read with Rules 3 and 4 of the Punjab Package Deal Properties (Disposal) Rules, 1976 were not applied to the case of the appellants.

4. We have considered the matter and heard the learned counsel for the parties.
5. On a prior occasion, the Hon"ble Supreme Court had the occasion to comment on the policy of the Government of Punjab dated 26.09.2007, which formed the basis of the claim of the petitioner as well. We may extract it for ready reference as under:
13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/ money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village.
14. The Letter dated 26-9-2007 of the Government of Punjab permitting regularisation of possession of these unauthorised occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularised. We cannot allow the common interest of the villagers to suffer merely because the unauthorised occupation has subsisted for many years.
6. Evidently, the letter/Policy dated 26.09.2007 did not find favour with the Hon"ble Supreme Court as it conferred benefits on unauthorized occupants entitling them to land belonging to the Gram Panchayats.
7. The Tehsildar had noticed this fact and also the fact that the application was received beyond the stipulated date to negate the claim of the appellants.
8. We notice that the appellants have now been agitating their claim pursuant to another Letter/Policy dated 03.02.2010 which was never pressed into service by the appellants at any point of time. Even before the Hon"ble Supreme Court which resulted in the order of remand, the claim was on the basis of 2007 Policy/ Letter. A mention was also made to the letter of the State Government dated 03.02.2010 before the Hon"ble Supreme Court and in fact we feel that the issue was somewhat projected distortedly before the said Court.
- Since at no point of time the appellants had raised any plea of allotment under the policy dated 03.02.2010, that is why possibly, there is no order by the competent authority to redress the claim of the appellants on its basis.
9. Insofar as the policy dated 26.09.2007 is concerned which did not find favour with the Hon"ble Supreme Court the claim was rightly rejected.
10. We also find no reason to deviate from the findings recorded by the Division Bench of this Court dated 20.01.2014.
11. Section 4 of the Act and Rules 3 and 4 of the rules may be extracted here

below :

Section 4 of the Act:

4. Power to transfer package deal property (i) Subject to any rules that may be made under this Act, the Tehsildar (Sales) or Naib-Tehsildar (Sales) may transfer any package deal property.

(a) by sale by public auction;

(b) by sale by auction restricted to socially and educationally backward classes of citizens notified by the State Government from time to time or to the members of the Scheduled Castes;

(c) by sale to such class of occupants and at such price as the State Government may be general or special order specify;

(d) by sale to any co-operative society, Government company or local authority or to any corporate body for a public purpose;

(e) by lease on such terms and conditions as may be prescribed; or

(f) in such other manner as may be prescribed;

Provided that, except in the case of a sale under clause (d), the maximum area that may be transferred to any person, including the area if any, already owned by him; shall not exceed five standard areas or ten ordinary acres, whichever may be less:

Provided further that no transfer shall be made Benami.

(2) For the purposes of transferring any package deal property under sub-section (1), the Tehsildar (Sales) or Naib Tehsildar (Sales) may transfer the same to any person individually or jointly with any other person or persons.

(3) Every Tehsildar (Sales) or Naib-Tehsildar (Sales) selling any package deal property by public auction or otherwise under sub-section (1) shall be deemed to be a Revenue Officer within the meaning of sub-section (4) of section 89 of the Registration Act, 1908 (XVI of 1908).

Rules 3 and 4

Rule 3

3. Transfer of land in rural area-(1) Persons entitled to make applications for the transfer of land, on the basis of possession.-

An application for the transfer of land which is rural property, as and when invited by Government, may be made by a person whose own holding is less than ten ordinary acres and who is an occupant of such property, or who is a landless agriculturist or who is such other landless occupant or belongs to such class of occupants, as may be notified by the Government from time to time:-

Provided that the applicant -

(i) is head of the family;

(ii) is a self-tiller;

Explanation:- A widow who is occupant and is getting the land cultivated by her son(s) or by employing servant(s); or otherwise shall be considered as self-tiller.

(iii) is in continuous and undisputed cultivating possession of the land from the crop that may be prescribed by the State Government from time to time; and

(iv) has applied for the transfer of the land occupied by him on or before the date, as may be prescribed by the State Government, from time to time.

(2) Persons not entitled to make applications for the transfer of land:- An occupant shall not be entitled to apply if -

(i) he is a minor, provided he is not a legal heir of an occupant who has died after making an application by the prescribed data;

(ii) he is an allottee or vendee of land, the allotment or transfer whereof has been cancelled on the grounds of fraud, misrepresentation of facts or otherwise;

(iii) she is a woman, whose husband is alive but is not disabled or incapacitated;

(iv) he has already purchased surplus rural evacuee agriculture land on the basis of possession or in restricted auction and has disposed of the same, or has ceased to be entitled to hold the land by reasons of default in the terms and conditions of the transfer or sale;

(v) he is an employee of the State Government or is a member of the family of such an employee, except with the prior permission of the [State Government in case of gazetted Government employee and of Deputy Commissioner of the district in which the property is situated in the case of Government employee]

substituted vide Notification No.GSR/83/PA-21/76S18/Amd(9)/94 dated 28-11-1994

(3) Determination of eligibility.- (1) On receipt of the application for the transfer of the land, the Tehsildar (Sales) or Naib-Tehsildar (Sales) shall scrutinise the same under these rules and determine the eligibility of each applicant.

(ii) In determining the eligibility of an occupant, the Tehsildar (Sales) or Naib-Tehsildar (Sales) shall ensure that applicant's possession is established to be continuous and undisputed from the prescribed crop to the date of scrutiny of his case, from the entries made in the Revenue Records :

Provided that in a case where the entries of revenue record are found to be doubtful or have been tempered with or where any entry in the Revenue Record is found to have been corrected after the date as may be prescribed by the State Government from time to time, the Tehsildar (Sales) or Naib-Tehsildar (Sales)

may reject the same :

Provided further that where, in a case, the Tehsildar (Sales) or Naib-Tehsildar (Sales) is satisfied that certain entry or entries made in the Revenue Record have been tempered with mala fide to harm the interest of an eligible occupant, he shall not reject the same, but shall refer it to the Sales Commissioner, for decision, who may decide it after holding such enquiry as he may deem fit.

(iii) In a case, where an occupant of the land has died after making the application by the date prescribed by the State Government from time to time, the Tehsildar (Sales) or Naib-Tehsildar (Sales) shall proceed with the determination of the eligibility as if the legal heirs of the deceased were the occupants.

(iv) In the case of a legal heir, his own holding shall have the same meaning as that of the occupant's own holding and while determining the eligibility for the transfer of the land this holding shall be taken into account.

Provided that in the event of plurality of heirs of a deceased occupant, no individual heir shall be entitled to the transfer of the land exceeding his proportionate share in the land occupied by the deceased occupant.

(v) The occupant, who is a member of a registered society engaged in the cultivation of the land, shall be eligible for the transfer of land, notwithstanding, the fact that the entries in the Khasra Girdawari are in the name of the said society, provided he is, a self tilling member and fulfils other conditions, prescribed for the purpose.

(4) Determination of own holding, data for:- The determining date for an occupant's own holding shall be the date on which his application for the transfer of the land is decided by the Tehsildar (Sales) or Naib-Tehsildar (Sales). A part or whole of the holding, if transferred by an occupant, his wife or his dependent children to any one in any source on or after the date as may be prescribed by the State Government from time to time, and before the decision of his application by the Tehsildar (Sales) or Naib-Tehsildar (Sales) shall be deemed to be a part or whole of his holding.

(5) Price of the land- The price of the land transferred shall be determined at such rates as the State Government may prescribe from time to time.

(6) Scrutiny of applications- (i) On receipt of an application for the transfer of land, the Tehsildar (Sales) or Naib Tehsildar (Sales) shall scrutinise and dispose it of [within four months from the date of receipt by him of the application for transfer of the land under these rules].

(ii) Where the Tehsildar (Sales) or Naib-Tehsildar (Sales) is satisfied that the occupant is eligible for the transfer of land in his or her possession, he shall send the case to the Sales Commissioner for approval, after recovery of the first instalment equivalent to an amount as may be specified by the Government from

time to time and the arrears of rent/lease or damages, if any. These arrears shall be paid in lumpsum or in such number of instalments as may be fixed by the Sales Commissioner by a specified order, keeping in view the circumstances of each case and the number of instalments so fixed shall not exceed the number of instalments in which price of land is to be recovered.

(iii) The Sales Commissioner may, after scrutiny of the case referred to him under sub-rule(2), either confirm or reject or modify the recommendations of the Tehsildar (Sales) or Naib-Tehsildar (Sales) [within two months from the date of receipt of the case by him] :

Provided where a transferee is a woman or a minor, the Sales Commissioner shall send the case to the Chief Sales Commissioner, with his specific recommendations.

(7) Mode of recovery of price of land- Where any land has been transferred to an occupant under these rules, the price of such land shall be payable in instalments, the number of such instalments and amount of each instalment shall be such as may be specified by the State Government from time to time.

(8) Interest on instalments- Where any land is transferred on instalment basis, the transferee shall be liable to pay interest at the rate, as may be specified by general or special order by the State Government from time to time.

(9) Default in the payment of instalment- In the event of default on the part of transferee of land in the payment of any instalment by the stipulated date, Tehsildar (Sales) or the Naib-Tehsildar (Sales) may recover the amount of the defaulted instalment with interest at the rate of fifteen per cent per annum as arrears of land revenue and in the event of three successive defaults by the transferee, the transfer of the land shall be liable to be cancelled.

(10) Refusal to accept the transfer of land- Where an occupant refuses to accept the transfer of the land transferred to him, it shall be disposed of in auction or in any other manner prescribed under these rules.

(10-A) Bar on the alienation of land transferred on the basis of possession- (1) Where the land has been transferred on the basis of possession, the transferee shall not be entitled to lease, transfer, sell, mortgage with possession or otherwise alienate or part with the land wholly or partially in any manner for a period of twenty years from the date of transfer:

Provided that the land transferred as aforesaid may be pledged in favour of the State Government, any Semi- Govt., Corporation, or a co-operative financing institution of the State Government and any branch of the Punjab State Co-operative Bank for securing loan for effecting improvements on the above said land. (2) If a transferee who purchased the land by transfer violate any of the conditions specified in sub-rule (1), the Tehsildar (Sales) or Naib-Tehsildar (Sales) shall be competent to cancel the transfer, forfeit the amount already paid and resume the land after giving due notice to the transferee.

(11) Deed of conveyance to be executed- Where any land is transferred to an occupant under this Chapter, and he has paid full price thereof, a Deed of Conveyance shall be executed in form specified in Appendix 'A' to these rules.

3-A. Allotment of rural land to unsatisfied displaced land holders- The rural land which is not transferred on the basis of possession may in the first instance be allotted to unsatisfied displaced land holders.

Rule 4

4(1) Allotment of land in rural area to permanently disabled soldiers killed in action - (i) Permanently disabled soldiers, widows or parents of children of the soldiers killed in the Chinese aggression of 1962 and Pakistan aggression of 1965 and widows of the personnel of the Armed Forces, Border Security Force and Punjab Armed Police killed in the Indo-Pakistan Conflict of 1971, shall be entitled to the allotment on the payment of the cultivable land as far as possible, upto the limit of ten ordinary acres inclusive of their own holdings, if any, at such rate, per standard acre as may be fixed by the State Government from time to time. For the purpose of valuation of land, ordinary acres shall be converted into standard acres, in accordance with the prescribed scale.

(ii) If any widow of a soldier killed in the Chinese aggression of 1962 or Pakistan aggression of 1965 or 1971 remarries a person other than real brother of her deceased husband before the allotment of the land, she shall lose her right to get the allotment and in that case allotment shall be made in the name of her children from the deceased soldier, and in case the widow is issueless, the allotment shall be made to the parents of the killed soldier, irrespective of the fact, whether or not, they have submitted separate applications by the prescribed date, in such, a case the application submitted by a widow, by the prescribed date, shall be deemed to have been duly submitted in time by the children or the parents of the deceased soldier, as the case may be :

Provided that in the case of the minor children of the deceased soldier, the allotment of land shall be made through their guardian.

(iii) If any allottee of land, who was a widow, remarries within a period of 10 years from the date of allotment, the land allotted to her shall be liable to be cancelled by the Tehsildar (Sales) or Naib-Tehsildar (Sales) after due notice even if full price thereof had been paid and the area thus retrieved shall be allotted to the children of the deceased soldier, if any, through their guardian or to the parents of the deceased soldier, as the case may be.

(iv) The price of land shall be recovered in 20 half-yearly interest-free instalments; the first instalment equivalent to 5 per cent of the price, payable at the time of allotment of the land by the Tehsildar (Sales) or Naib-Tehsildar (Sales). The next instalment shall be payable at the end of the first crop after the expiry of one year from the date of allotment.

(v) In the event of default in the payment of any instalment by an allottee, he

shall be liable to pay interest at the rate of seven per cent per annum for the over due period and in the event of default of two successive instalments, the Tehsildar (Sales) or the Naib-Tehsildar (Sales) shall recover the amount of defaulted instalments with interest as arrears of land revenue.

(2) Deed of conveyance to be executed.- Where any land is allotted to any person under this Chapter and full price thereof has been realised, a Deed of Conveyance shall be executed in form specified in Appendix "A" of these rules.

12. A perusal of the above would reflect that Section 4 deals with the power of the Government to transfer Package Deal Property in the mode and manner prescribed. Whether the appellants would be entitled to a claim under the 2010 policy would have first to be gone into by the competent authority. The claim of the appellants having been considered under 2007 policy would be no justification to relate it to the claim under 2010 policy under which neither the appellants made a claim nor any authority has considered it at any stage. We dispose of the appeal with liberty to the appellants to raise their claim under 2010 policy, which may be decided by the competent authority in accordance with the law. Our observations would not be construed to confer any legitimacy of the claim to the appellants and the competent authority would evidently be free to apply the policy, independent of any observation made herein.