
(1985) 01 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1509 of 1976

Punjab State

APPELLANT

Vs

Hakam Singh

RESPONDENT

Date of Decision : 15-01-1985

Acts Referred:

Citation : (1985) ILR (P&H) 86 : (1985) PLJ 94 : (1985) RRR 395

Hon'ble Judges : R.N.Mittal, J

Advocate : Vinod Kataria, Advocate., Advocates for appearing Parties

Judgement

R.N. Mittal, J. (Oral)

1. This appeal has been filed by the State of Punjab against the judgment and decree of the Additional District Judge, Barnala dated 27th April, 1976.
2. The case of the plaintiff is that he was a small landowner and was in possession of less than 30 standard acres of land. His surplus area case was taken up by Collector who vide order dated 10th April, 1961, held that he was a small landowner and there was no surplus land in his possession. It is further averred that vide order dated 1st September, 1967, he reviewed the earlier order and held that 13 Kanals 19 Marlas were surplus with the plaintiff. The said land was allotted by him vide order dated 7th March, 1969 to defendant No. 2. He has challenged the order of the Collector dated 1st September, 1967 inter alia on the ground that he had no jurisdiction to review the order dated 10th April, 1961.
3. The suit was resisted by the State which inter alia pleaded that the Collector had rightly declared 13 Kanals 19 Marlas of land as surplus vide order dated 1st September, 1967 and in view of the order of the Commissioner authorising him to re view the order, he could review the order dated 10th April 1961. Several other pleas were also taken but they do not survive in the second appeal.
4. The trial Court held that the order of the Collector dated 1st September, 1967 was illegal and void. Consequently, it decreed the suit of the plaintiff. The State

went up in appeal before the Additional District Judge who affirmed the judgment and decree of the trial Court and dismissed the same. It has come up in second appeal to this Court.

5. The only question that arises for determination is whether the Collector could review the order dated 10th April, 1961. The learned counsel for the appellant has vehemently argued that the Collector had been authorised by the Commissioner to review his order and, therefore, the order dated 1st September, 1967 cannot be said to be illegal and void.

6. I have duly considered the argument but regret my inability to accept it. Subsection (4) of section 32D of the Pepsu Tenancy and Agricultural Lands Act, 1955 empowers the State Government to revise any order passed by the authorities concerned. The subsection reads as under :

"Without prejudice to any action under subsection (3), the State Government may of its own motion call for the record relating to the draft statement at any time and, after affording the person concerned an opportunity of being heard, pass such order as it may deem fit."

7. From a reading of the subsection, it is clear that it is the State Government or its delegatee who can take action under subsection (4). A notification was issued on 11th October, 1972 in which the Financial Commissioner and the Commissioners were given powers under the aforesaid sub section. Thus the Commissioner could exercise the power as delegate of the State Government. In the present case, an application was moved before the Commissioner to the effect that the order of the Collector was illegal and that application was sent by the Commissioner to the Collector with the direction that he should review his predecessor's order after giving due notice of the case of Hakam Singh as well as transfers, if any, to Hakam Singh . It is evident from the abovesaid order that the Commissioner did not review of the order himself but asked the Collector to review the order of his predecessor after giving notice to the interested persons. That he could not do under subsection (4) of section 32D. Therefore, the order of the Collector passed in pursuance of that order of the Commissioner is illegal and void. In my opinion, the finding of the Courts below in this regard is correct and consequently I affirm the same. If the Collector's order is void, the Civil Court has the jurisdiction to give a declaration sought for by the plaintiff.

8. For the aforesaid reasons, I do not find any merit in the appeal and dismiss the same with costs.