

(2012) 07 P&H CK 0064
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 19712 of 2003 (O and M)

Sarabjeet Singh Purewal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 4 RCR(Civil) 258

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : R.S. Mittal, with Mr. Ankit Aggarwal, for the Appellant; Sandeep S. Mann, Senior DAG, Haryana and Mr. K.L. Suneja, Advocate and Mr. J.C. Malik, Advocate for the Respondent No. 4 to 7, for the Respondent

Final Decision : Allowed

Judgement

Paramjeet Singh, J.—The present writ petition has been filed under Articles 226/227 of the Constitution of India for quashing of order dated 13.06.2003 (Annexure P-14) passed by Commissioner and Secretary to Govt. of Haryana, Rehabilitation Department-respondent No. 1. This case has a chequered history of litigation and illustrates the consequences of entrusting judicial work to those who had no judicial training and background.

2. Brief facts of the case are that the grandfather of the petitioner was displaced person from Pakistan and was allotted land in Parti Taraf Insar, Panipat in lieu of the land abandoned in Pakistan. As per the averments in the writ petition, after the death of the grandfather of the petitioner, his father and thereafter, after his father's death, petitioner is in possession of the allotted land along with some other adjacent land to the allotted land. The said possession as per the revenue record is since 1952-53. The khasra numbers 1656(4B-1B) and 1657(8B-1 IB) were unallotted evacuee agricultural land which was allegedly sold in open auction by the Rehabilitation Department according to the government policy. The petitioner has averred in the writ petition for the first time that Khasra No.

1657 (8B-1 IB) was sold in open auction at Panipat which was purchased by petitioner through his representative Darshan Singh being highest bidder for a consideration of Rs. 12,000/-The said bid was accepted by the Settlement Officer (Sales) on 24.09.1970 and Rs. 3000/-being 25% of the auction money was deposited. However, the said auction sale was set aside by the Tehsildar (Sales) vide order dated 28.10.1970 (Annexure P-1) holding that the highest bid is less than the reserve price of Rs. 17,688/-and ordered the re-auction of the property by starting bid from Rs. 12,000/-. In pursuance to that, it was again auctioned but bid did not exceeded Rs. 12000/-and was accepted in favour of the petitioner through his representative. Ishar Singh and Khazan Singh filed objections that the land is not unallotted evacuee property, therefore, it cannot be put to auction. The objections were dismissed by the Assistant Settlement Commissioner vide order dated 19.01.1971 (Annexure P-2). Appeal and revision were preferred. Ultimately matter was sent to the Chief Settlement Commissioner by the Financial Commissioner, Revenue vide order dated 06.05.1998 with the following directions :

a) To ascertain the authenticity of the two Sanad Taqseems produced before him pertaining to allotment of land in Chogati, District Jalandhar (Punjab).

b) To procure and examine the old record pertaining to allotment of land at Panipat and to ascertain whether Gopal Singh and Sohan Singh were involved in the proceedings of allotment of land in Panipat and the delivery of possession, and the factual position as to how possession was given to the alleged mortgages.

3. The Chief Settlement Commissioner sent a report dated 10.11.1998 to the Commissioner and Secretary to the Govt. Thereafter, Commissioner and Secretary decided the revision petition of the petitioner vide order dated 21.08.2001 (Annexure P-3). Heirs of Sh. Darshan Singh filed a CWP No. 13158 of 1998 which was dismissed. Petitioner by way of CWP No. 15636 of 2001 challenged the latter part of the order dated 21.08.2001 (Annexure P-3) whereby it was directed that the possession from all the unauthorized occupants should be taken by the Govt. of Haryana immediately and the sale procedure to Sarabjeet Singh Purewal should be completed, after he vacates the land to the Govt. of Haryana of his unauthorized possession. The Division Bench of this Court vide order dated 16.09.2002 (Annexure P-4) set aside the latter part of order dated 21.08.2001 and directed to issue sale certificate. In the said writ petition, Review Application No. 22 of 2002 was filed by the State Government. In the said review application, the Division Bench passed order dated 28.02.2003 (Annexure P-5) in following terms :

...There does not appear to be any mistake in our order dated 16.09.2002 that may necessitate review. However, if a wrong finding of fact has been recorded by the learned Financial Commissioner with regard to Khasra No. 1657, it is always open to the State to make an application for review before the said authority.

We are not issuing notice in this review application to the petitioner on the

premise that if the order of Financial Commissioner is to be varied on the application filed by the State, surely, petitioner shall be issued notice by the learned Financial Commissioner.

With the observations made above, this application is disposed of accordingly.

After the order dated 28.02.2003, the State Government filed a review application before the Commissioner & Secretary which has been allowed vide impugned order 13.06.2003 (Annexure P-14). Hence, the instant writ petition.

4. Notice of motion was issued. Respondents filed their respective separate replies and the writ was admitted.

5. I have heard learned counsel for the parties and perused the record.

6. Learned Senior counsel for the petitioner vehemently argued that review petition is not maintainable as there is no provision in the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (in short the "Act") and the Rules framed thereunder.

7. The contention of Shri R.S. Mittal, learned Senior counsel for the petitioner is that Commissioner-cum-Secretary has no authority or jurisdiction to reopen or review its own order, as neither the Act nor the Rules framed thereunder confer any such power on the said Authority. For this he has relied on the Judgment of this Court in the case of Harbans Singh v. Union of India, 1983(1) LLR 364 to contend that no power of review vests in the Financial Commissioner exercising the powers u/s 25(2) of the Act. Only the clerical errors or arithmetical mistakes can be rectified and the review is only permissible where no appeal is allowed u/s 22 of the Act. The applicant-state cannot file review petition u/s 25(2) of the Act. Learned counsel for the petitioner further relied upon judgment in the case of Harbhajan Singh Vs. Financial Commissioner (Taxation) Punjab and another, and in the case of Patel N. Thakershi v. Pradyumansinghi, AIR 1970 Supreme Court 1273.

8. The learned Senior Counsel for the petitioner has argued that application for review has been moved u/s 25(2) of the Act and such an application for review of the order passed u/s 33 of the Act is not maintainable. To support his contention learned Senior Counsel has made reference to the Judgment of Division Bench of this Court in the case of Harbhajan Singh Vs. Financial Commissioner (Taxation) Punjab and another, , wherein the power under Sections 24 and 25 of the Act has been interpreted. Learned Senior counsel has further made a reference to the judgment of Full Bench of this Court in the case of Deep Chand and Others Vs. Addl. Director, Consolidation of Holdings and Another, . In the case of Patel N. Thakershi (supra) wherein the issue arose out of the Saurashtra Land Reforms Act under which no power to review was conferred, the Hon'ble Supreme Court held as under:

It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in

the Act was brought to our notice from which it could be gathered that the Government had power to review its order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.

The State counsel relied upon the judgment Mohinder Singh and Others Vs. Union of India (UOI) to contend that the Secretary has power of review.

9. Before I deal with the contentions, it would be appropriate to reproduce the provisions of Sections 25 and 33 of the Act, which reads as under:

25. Review and amendment of orders (1) Any person aggrieved by an order of the Settlement Officer u/s 5 from which no appeal is allowed u/s 22 may, within thirty days from the date of the order, make an application in such form and manner as may be prescribed to the Settlement Officer for review of his order and the decision of the Settlement Officer on such an application shall, subject to the provisions of Section 24 and Section 33, be final.

2) Clerical or arithmetical mistakes in order passed by an officer or authority under this Act or errors arising thereto from any accidental slip or omission may, at any time be corrected by such officer or authority or the successor-in-office of such officer or authority.

33. Certain residuary powers of Central Government- The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder.

A reading of the Section 25 makes it clear that no power has been vested in the Financial Commissioner. Neither there is any inherent power to review order passed by the Commissioner-cum-Secretary under the provisions of the Act. Review can only be heard when such power has been specifically conferred by the Act. Section 25 deals with the review of order of the Settlement Officer passed u/s 5 of the Act from which no appeal is allowed u/s 22 of the Act. In the provisions of the Act, limited power of review is given to the Settlement Officer who can review the orders under the circumscribed limits, no such power can be exercised by any other officer/authority. This issue has been settled by the Full Bench of this Court in the case of Deep Chand and another (supra), which reads as under:

To concede such a wide power of review would, in my opinion, introduce into judicial and quasi judicial decisions, disconcerting element of permanent, uncertainty and unpredictability tending to give an impression of quasi judicial lawlessness, which I cannot persuade myself to uphold. If Courts do not possess such a wide and sweeping power, it is difficult to accede such a wide power in statutory judicial or quasi judicial tribunals.

10. The order Annexure P-3 was passed u/s 33 by the Commissioner-cum-

Secretary to the Government and the review application has been filed u/s 25(2) of the Act. As such no power vests in the Commissioner-cum-Secretary, Department of Rehabilitation to review the order dated 21.08.2001 (Annexure P-3). So the order dated 13.06.2003 (Annexure P-14) is not sustainable in the eyes of law and the same is hereby set aside.

11. The other contentions raised by learned Senior counsel for the petitioner are not relevant to be decided in this case because only the order dated 13.06.2003 (Annexure P-14) is impugned. The other orders have already become final.

12. Learned counsel for the respondents vehemently argued that the power to file review has been given by this Court while rejecting their review application filed in CWP No. 15636 of 2001 which is placed on record as Annexure P-1.

13. This contention of the learned counsel for the respondents has been opposed by learned Senior counsel for the petitioner who vehemently contended that power of review flows from the statute. Mere reference in the order that parties can file review before the Financial Commissioner does not create any right in favour of the State Government to entertain the review. The power exercised by the Commissioner-cum-Secretary reviewing the order dated 21.08.2001 (Annexure P-3) is without jurisdiction and even such an application was misconceived. This Court had not given power to file review, rather it is advisory in nature.

14. I have considered the contention of learned Senior counsel for the petitioner and the State counsel. In view of the decisions rendered by the Division Bench in Harbhajan Singh (supra); Full Bench in the case of Deep Chand (supra) as well as judgment of Hon'ble Supreme Court of India in the case of Patel N. Thakershi v. Pradyumansinghji, (supra), it is settled that power of review flows from statute. So I am of the view, merely an opinion expressed to file review cannot either override the statutory provisions of the Act or affect the legal force thereof. It is well settled that power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act has been brought to my notice that Financial Commissioner can review the order passed u/s 33 of the Act. The jurisdiction or power to review cannot be assumed or imported in absence of any specific provisions in the Act.

After considering the above issue in totality in the context of undisputed facts and circumstances and for the reasons, hereinabove, I have no hesitation in holding that impugned order dated 13.06.2003 (Annexure P-14), is clearly without jurisdiction and must be quashed. Ordered accordingly.

I allow the writ petition.

No costs.