

(1999) 09 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 751 of 1990 and Civil Miscellaneous 151215 of 1999

Sarup Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 18-09-1999

Acts Referred:

Punjab Land Reforms Act, 1972 — Section 10, 8, 9

Citation : (2000) 126 PLR 211 : (2000) 1 RCR(Civil) 110

Hon'ble Judges : R.S. Mongia, J

Bench : Single Bench

Advocate : P.S. Chhina, D.A.G. for the Respondent Nos. 1 to 4 and R.S. Mittal and Sudhir Mittal, for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—On July 30, 1999 only CM application No. 15215 of 1999 moved by respondent No. 5, was fixed for hearing. It was thought appropriate that instead of spending time in hearing the Misc. Application, it will be in the interest of justice to dispose of the writ petition itself. Counsel for the parties had no objection to such a course being adopted and consequently they were heard on merits in the writ petition.

2. Briefly, the facts of the case are that respondent No. 5 M/s. Bhagat Industrial Corporation Limited own some agricultural land in village Chak Mukand and Rampura. Vide order dated December 16, 1977, the then Collector, Agrarian, Amritsar, declared 13.32 hectares of the agricultural land of respondent No. 5 surplus. 7 hectares of land belonging to respondent No. 5 was declared to be permissible area. Respondent No. 5 aggrieved by the order of the Collector, Agrarian, dated December 16, 1977, filed an appeal before the Commissioner, Jalandhar Division. However, the appeal was dismissed on April 29, 1983. Even further revision to the Financial Commissioner (appeals) was also dismissed on October 4, 1983. Respondent No. 5 did not feel satisfied with the orders of the

Revenue authorities as aforesaid and agitated the matter by filing CWP No. 5034 of 1983 in this Court. The same was dismissed by a Division bench on April 18, 1984.

On September 4, 1984, the surplus land of respondent No. 5 was allotted to the petitioner by the S.D.O - cum-Collector Agrarain vide order dated September 4, 1984, copy annexure P-1. It was further mentioned that the warrant of possession be also issued and notice be issued to the persons who are in possession of the land. The detail of the land, which was allotted to the petitioner, has been given in Annexure P-1. It is further averred in the petition that some of the petitioners had even deposited the amount quo the land allotted to them on September 28, 1984 and even the receipts have been attached as Annexures P-2 and P-3. It has further been averred that respondent No. 3, i.e., S.D.O. (Sales)-cum-Collector, Agrarian, had also issued warrants of possession in favour of the petitioner but the warrants at that stage could not be executed and respondent No. 5 had filed an SLP against the decision in C.W.P. No. 5034 of 1983 and the Apex Court had stayed dispossession vide order dated October 12, 1984. It is further not in dispute that on April 21, 1988 respondent No. 5 withdrew the appeal from the Supreme Court. The copy of the order of the Apex Court has also been appended as Annexure P-6. It has further been averred that after the withdrawal of the appeal from the Apex Court, the Director, Industries, had written a letter to District Collector to take possession of the surplus land. The petitioner even filed C.W.P. No. 12853 of 1989 in this Court that the order of allotment be implemented in letter and spirit by delivery of possession to them. However, that writ petition was disposed of on November 30, 1989, with an observation that the petitioner may approach the concerned authorities for the implementation of the order of allotment dated September 4, 1984.

It is further the case of the petitioners that on December 5, 1989, they submitted a joint representation to the official respondents, which was duly received by them on December?, 1989, but they had not taken any further action to implement the order of allotment and delivery of possession.

In the aforesaid circumstances, the present writ petition was filed on January 17, 1990.

3. The official respondents herein have not chosen to file any reply, most probably they have no defence to offer. However, respondent No. 5 has filed the reply and in para 6 of the written statement it has been averred as under:

"6. Para 6 of the petition is admitted to the extent that the order of allotment dated 4.9.1984 was made. It, is however, submitted that the order of allotment was without jurisdiction and null and void, because after the determination of the surplus area u/s 7 of the Act, the Collector has to first of all call upon the landowner to deliver possession of the surplus area and in case the landowner does not comply with that order, u/s 9 of the Act the Collector may take possession of the land in dispute, at any time. The Collector has neither given

notice nor taken possession so far. The land in dispute has, therefore, not vested in the State government u/s 8 of the Act, because u/s 8 of the Act, the surplus land vests in the State Government only on the date on which possession thereof is taken by the Collector, on behalf of the State Government."

Section 11 of the Act reads as under:

"11 Disposal of surplus area-(1) The surplus area, which has vested in the State Government u/s 8, shall be at the disposal of the State Government.

(2) The State government may, by notification in the official Gazette frame a scheme for utilising the surplus area under the Punjab Law, the Pepsu Law or this Act by:

(a) conferment of rights of ownership on tenants in respect of such land as is comprised in the surplus area of the landowner or such a tenant; and

(b) allotment to tenants, members of Scheduled Castes and backward Classes and landless agricultural workers, of an area not exceeding two hectares of the first quality land or equivalent area, provided that the total area held or owned by any such allottee, after the allotment, shall not exceed two hectares of the first quality land therefore, the same could not have been utilised by passing an order of allotment in favour of the petitioner."

Reference was made to section 8,9, and 10 of the Punjab Land Reforms Act, 1972, in this regard. Section 11 pertaining to the disposal of surplus area has already been quoted above while noticing paragraph 6 of the written statement filed on behalf of respondent No. 5. Section 8,9, and 10 read as under.

"8. Vesting of unutilised surplus area in the State Government - Notwithstanding anything contained in any law, custom or usage for the time being enforce, but subject to the provisions of Section 15, the surplus area declared as such under the Punjab Law or the Pepsu Law, which has not been utilised till the commencement of this Act and the surplus area declared as such under this Act, shall, on the date on which possession thereof is taken by or on behalf of the State government, vest in the State Government free from all encumbrances and in the case of surplus area of a tenant, which is included within the permissible area of the landowner, the right and interest of the tenant in such area shall stand terminated on the aforesaid date:

Provided that where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government.

9. Power to take possession of surplus area-(1) The Collector may by an order in writing, after an area has become surplus under the Punjab Law or the Pepsu Law or becomes surplus under this Act, direct the landowner or tenant or any other person in possession of such area to deliver possession thereof, within ten days of the service of the order on him, to such person as may be specified in the order.

(2) If the landowner or tenant or any other person in possession of such area refuses or fails without reasonable cause to comply with the order made under sub-section (1), the collector may take possession of that area and may for that purpose use such force as may be necessary.

10. Amount payable for the surplus area-(1) The Collector or the officer authorised by the State Government in this behalf shall determine the amount to be paid for the land which has vested in the State Government, u/s 8, in accordance with the principles hereinafter set out, that is to say-

(i) for the first three hectares of land, twelve times the fair rent, subject to a maximum of five thousand rupees per hectare;

(ii) for the next three hectares of land, nine times the fair rent, subject to a maximum of three thousand seven hundred and fifty rupees per hectare; and

(iii) for the remaining land, six times the fair rent, subject to a maximum of two thousand and five hundred rupees per hectare.

Explanation-For the purpose of this sub-section, fair rent shall mean the value of one-fifth of the gross produce of the land determined in the prescribed manner by the Collector or the officer authorised in this behalf by the State Government.

(2) For the purposes of sub-section(1), the Collector or the officer authorised by the State Government shall prepare a statement in such form and manner as may be prescribed and shall, after following the prescribed procedure, apportion the amount amongst the persons including tenants, having interest in the land.

(3) Where in the surplus area of any person mortgagee rights have vested in the State Government, the amount payable to the mortgagee shall be the mortgage money due to the mortgagee, or the amount payable under this section, whichever is less.

(4)The amount shall be payable either in lump sum or in half-yearly instalments not exceeding fifteen in the manner prescribed:

Provided that the amount shall be applied firstly to discharge Government dues, secondly to meet the claims of secured creditors and then to pay the dues of other claimants."

On the basis of the aforesaid sections the argument proceeded that respondent No. 5 cannot be asked to deliver the possession to the petitioners as the allotment order could only be passed after the surplus land had vested in the Government after delivery of possession by respondent No. 5 to the State Government as envisaged by Sections 8 to 11. It was also faintly argued that the surplus area of respondent No. 5 had not been correctly declared and, therefore, question of allotting the same to the petitioners did not arise.

4. After hearing the learned counsel for the parties, I am of the view that the writ petition is liable to succeed. It does not lie in the mouth of respondent No. 5

now to agitate the point that the surplus area had not been correctly declared. As observed above in the foregoing paragraphs that respondent No. 5 had challenged the order of declaration of the surplus area upto the Apex Court and did not succeed. Consequently, respondent No. 5 cannot be allowed to urge that the surplus area had not been correctly declared.

5. So far as the question of allotting the surplus land to the petitioners is concerned, suffice it to say that not only that the petitioner had deposited the amounts asked for by the official respondents regarding the allotted land, I find nothing wrong in the order as far as allotment is concerned. Once the area had been declared surplus, it is the duty of the official-respondents to get the possession of area declared surplus from the persons whose land had been declared surplus in accordance with the procedure as envisaged by Sections 9 and 10, quoted above. Certainly, the petitioners will not get the land till the procedure as envisaged by the aforesaid sections regarding dispossessing of respondent No. 5 is followed and that is precisely the prayer of the petitioners that after following the procedure for dispossessing respondent No, 5 the area allotted to them may be delivered. Simply because the order of allotment had been passed prior to taking the possession from respondent No. 5 in my view, will not make the order of allotment illegal. The only thing would be that such an order would become effective only after respondent No. 5 is dispossessed in accordance with law as envisaged by the provisions of the Punjab Land Reforms Act, 1972, quoted above. The surplus area having been validly declared, it is not understood as to how a landlord whose area is declared surplus can hold on to the land.

6. For the foregoing reasons, this writ petition is allowed and the official respondents are directed that after following the procedure as envisaged by the Punjab Land Reforms Act, 1972 for dispossessing respondent No. 5 from the surplus land the possession of the same be given to the petitioners as per the letter of allotment. Those directions be carried out expeditiously preferably within six months of the receipt of a copy of this order either from this Court or a certified copy thereof, from the petitioners, whichever is earlier.