
(2014) 05 P&H CK 0306
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 2043 of 2013

Sher Singh

APPELLANT

Vs

Financial Commissioner

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 12, 15, 15(5), 16

Citation : (2014) 3 RCR(Civil) 434

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : S.K. Chauhan and R.M. Singh, Advocate for the Appellant; P.S. Poonia, Addl. AG and Ashish Verma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The present appeal under Clause X of the Letters Patent is directed against an order passed by the learned Single Judge of this Court on 17.09.2013, whereby the writ petition filed by the appellant-petitioner, challenging the order of the Financial Commissioner maintaining the cancellation of allotment of land to the petitioner, was dismissed. Land measuring 8 Kanals 13 Marlas situated in revenue estate of Hodal was allotted to the appellant on 25.10.1999. Prior thereto, such land was allotted to Puran, predecessor-in-interest of respondent Nos. 5 to 8, on 08.07.1964, but was re-allotted on 11.01.1977. Puran has deposited one installment of Rs. 290/-. Respondent Nos. 5 to 8 filed an application before the Sub Divisional Officer-cum-Prescribed Authority for cancellation of allotment made to Sher Singh - the present appellant, which was allowed on 07.08.2007. Such order has been maintained by the Collector in its order dated 25.03.2008; by the Commissioner 03.11.2010 and by the Financial Commissioner on 12.09.2012.

2. A perusal of the record shows that the land was allotted to Puran, predecessor-in-interest of respondent Nos. 5 to 8, on 08.07.1964 and also the fact that the jamabandies from the year 1966 to 1972 record the possession of Puran, but the

Government by mistake reflected Puran as Gair Marusi and not as an allottee. After the commencement of the Haryana Ceiling on Land Holdings Act, 1972 (for short "the Act") and after enforcement of Land Utilization Scheme, the disputed land was again allotted to Puran on 11.01.1977. But without cancellation of land allotted to Puran, the land has been allotted to the present appellant. In view of the fact that since the land stood allotted to Puran, the same was not available for allotment to the present appellant, therefore, the allotment in his favour was cancelled.

3. The learned Single Bench has dismissed the writ petition holding that the land was re-allotted to Puran on 11.01.1977 for a sum of Rs. 2697.69 out of which one installment of Rs. 290.16 was paid on 13.07.1977. Thus, in terms of Section 15(5) of the Act, he has become owner of the land in dispute on payment of the first installment. It has been noticed that the appellant has failed to prove that the allotment to Puran was cancelled or set aside and, thus, the land was not available for allotment in his favour in the year 1999.

4. In the present appeal, learned counsel for the appellant has argued that Puran or his legal heirs are failed to comply with the conditions of allotment i.e. failed to deposit the remaining instalments, therefore, the allottee will not be deemed to be owner. Thus, the land was available for allotment to the appellant. He referred to Clauses 9 & 10 of the Haryana Utilization of Surplus and other Areas Scheme, 1976 (for short "the Scheme").

5. After the land was declared surplus, it vests with the State in terms of Section 12 of the Act. Section 15 of the Act deals with the disposal of land declared surplus vesting in the State Government u/s 12. Section 15(5) of the Act contemplates that either on payment of full price or the first instalment thereof, the allottee shall be put in possession, however, he will become owner of the land on payment of the full price. The relevant Section 15(5) of the Act reads as under:

"15. Disposal of surplus area - (1) The surplus area acquired or vested u/s 12 shall be at the disposal of the State Government.

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(5) On payment of full price or the first instalment thereof, as the case may be, the allottee shall be deemed to have become the owner of the land and the prescribed authority, where the allottee is not already in possession, shall put him in possession thereof."

On the other hand, relevant Clauses 9, 10 & 11 of the Scheme, referred to by the learned counsel for the appellant, are as under:

"9. Mode of payment - The purchase price of the allotted land including the amount payable in respect of the building, structure, tubewell, watercourse including its subsidiary works or crop thereon, determined in accordance with the provisions of sub-section (4) of Section 15 read with Section 16 of the Act

together with interest at the rate of five per cent per annum shall be payable by the allottee in ten equated annual instalments. The first instalment shall be deposited by the allottee within thirty days from the date of delivery of possession.

Provided that the allottee may at any time make payment of the purchase price of balance thereof together with interest, if any, thereon in lump sum.

10. Issue of certificate and delivery of possession - (1) Omitted vide 2nd amendment, 1979.

(2) The allottee shall be issued a certificate in form U.S. 4 when he has made full payment of the purchase price together with interest, if any.

(3) Every allottee shall be bound to take possession of the land allotted to him within a period of seven days of the date when the same is offered to him by the allotment authority. The allottee shall further be bound to deposit the first instalment of the purchase price of the land within thirty days from the date of taking possession of the allotted land. If he fails to take possession of the allotted land or fails to deposit the first instalment within the specified period, the allotment shall be cancelled.

11. Recovery of instalments - (1) It shall be the responsibility of the tehsildar concerned to collect the instalments from the allottees. A separate account shall be maintained in form U.S. 4 for every individual allottee.

(2) In case any instalment is not paid within a period of thirty days from the due date, the amount thereof shall become recoverable as arrears of land revenue together with interest thereon from the due date to the date of payment at the rate of ten per cent per annum."

6. A perusal of the aforesaid Clauses shows that the purchase price can be paid in instalments and that on payment of complete purchase price, the certificate will be issued to the allottee in terms of Clause 10(2) of the Scheme. However, Clause 11 fixes the responsibility of the Tehsildar to collect the instalments from the allottees. Sub-clause (2) of Clause 11 contemplates that in case any instalment is not paid within a period of thirty days from the due date, the amount thereof shall become recoverable as arrears of land revenue together with interest thereon from the due date to the date of payment at the rate of ten per cent per annum. Thus, it is apparent that non-payment of the balance instalments does not deprive an allottee of its ownership rights. Only certificate of title of purchase can be issued on payment of full price. The unpaid price is to be recovered as arrears of land revenue. In the present case, since Puran, predecessor-in-interest of respondent Nos. 5 to 8, has deposited the first instalment, he is entitled to possession of the same in terms of sub-section (5) of Section 15 of the Act read with Clause 9 of the Scheme. The unpaid allotment price can be recovered as arrears of land revenue, but the allotment or the possession cannot be taken from the person, who has been allotted land and

who has been delivered possession.

In view of the above, we do not find any patent illegality or irregularity in the order passed by the learned Single Judge, which may warrant any interference by this Court in appeal. Consequently, the present appeal is dismissed.