
(1982) 07 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1110 of 1974

Sita Gir

APPELLANT

Vs

Punjab State and others .

RESPONDENT

Date of Decision : 19-07-1982

Acts Referred:

Citation : (1982) CurLJ 722 : (1982) ILR (P&H) 455 : (1982) PLJ 404 : (1984) RRR 545

Hon'ble Judges : J.M.Tandon, J

Advocate : Mr. H.L. Mittal, Advocate., Advocates for appearing Parties

Judgement

J.M. Tandon, J. (Oral)

1. Todu Ram deceased was allotted rural land in village Budhlada, Tehsil Mansa, District Bhatinda, in lieu of the land abandoned by him in Pakistan. Sanjha Ram, Kishan Chand, Smt. Udho Devi and Smt. Hemi Bai (respondents No. 6 to 9) are the legal heirs of Todu Ram. On 28th February, 1967 Sanjha Ram respondent applied to Tahsildar (Sales)cum Managing Officer, Bhatinda, for the allotment of a rural house in village Budhlada as apartment to land allotment. The Managing Officers, Bhatinda, allotted evacuee house No. 404 in villages Budhlada in favour of Todu Ram. Sita Gir petitioner filed an appeal against the order of the Managing Officer allotting the house in favour of Todu Ram, alleging that he was a Harijan refugee from Pakistan and was in occupation of the same for the last 20 years and further the allotment thereof in favour of Todu Ram had been made without any notice to him. The Additional Settlement Commissioner, Bhatinda, dismissed the appeal vide order dated 2221968. The petitioner then filed a revision which was accepted by the Chief Settlement Commissioner vide order dated 511970 (Annexure P.I.). The Chief Settlement Commissioner observed that the petitioner had applied for the transfer of this house on 2881961 but still no notice was issued to him when the house was allotted in the name of Todu Ram. It was also observed that this house should have been given to the petitioner because other rural evacuee houses in Budhlada in occupation of nonHarijans were available.

The Chief Settlement Commissioner, however, desired the Managing Officer to decide the matter afresh after hearing the parties. The case was again decided by the Naib Tahsildar (Sales) Managing Officer, Bhatinda, vide order dated 1741970 (Annexure P.2). The Naib Tahsildar (Sales) held that the land allottee has got a preferential right but he cannot claim that a particular house should be allotted to him. He also held that approximately 200300 unallotted evacuee houses are available in village Budhlada. The prayer for the allotment of the house in dispute in favour of Todu Ram was declined and this house was transferred to the petitioner at the concessional rate of Rs. 30/ in spite of the fact that in the records its price was assessed at Rs. 900/. The petitioner was allowed to purchase the house at concessional rate because he was treated as a Harijan. Sanjha Ram, respondent No. 6, feeling aggrieved by the order of the Managing Officer dated 1741970 (Annexure P.2), filed an appeal which was accepted by the Additional Settlement Commissioner vide order dated 761971 (Annexure P.3). The Additional Settlement Commissioner remarked that according to Sanjha Ram there was no other house available in village Budhlada except the house in dispute inasmuch as the other houses were lying demolished. He further observed that he gathered from the arguments that the petitioner was interested in the sale of the house after it was allotted to him. The Additional Settlement Commissioner, consequently, directed that the house be allotted in the name of Todu Ram. Sita Gir petitioner feeling dissatisfied with the order (Annexure P.3) filed a revision which was accepted by the Chief Settlement Commissioner vide order dated 991971 (Annexure P.4). The order of the Additional Settlement Commissioner (Annexure P.3) was set aside and that of the Managing Officer (Annexure P.2) restored with the modification that the petitioner was to be transferred the house in dispute on payment of normal price along with rent or penalty etc. Sanjha Ram and others, respondents Nos. 6 to 9, then filed a petition under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (here after "the Act"), which was accepted by the Financial Commissioner, Taxation, vide order dated 2211974 (Annexure P.5). The order of the Chief Settlement Commissioner (Annexure P.4) was set aside and that of the Additional Settlement Commissioner (Annexure P.3) was revived. Sita Gir petitioner has assailed the order of the Financial Commissioner, Taxation (Annexure P.5) in the present writ.

2. The learned counsel for the petitioner has argued that the order dated 1741970 (Annexure P.2) had been passed by the Naib Tahsildar (Sales) in dual capacity. He acted as an officer of the State Government exercising the powers with respect to Package Deal Property while disposing of the prayer of the petitioner for the transfer of the house and further he acted as Managing Officer under the provisions of the Act while determining the eligibility of Todu Ram for the allotment thereof. The argument proceeds that the order of the Naib Tahsildar (Sales) (Annexure P.2) has not been assailed by the respondents under the provisions relating to package deal properties with the result that it has assumed finality. The order of the Financial Commissioner, Taxation (Annexure

P.5) is therefore liable to be quashed, being ultra vires. The contention is without merit.

3. Todu Ram is a land allottee in village Budhlada. Under the scheme of allotment he is entitled to the allotment of a rural house appurtenant to land allotment. It was under these circumstances that Sanjha Ram respondent approached the Managing Officer for the allotment of the house in dispute, which is admittedly a rural evacuee house in Budhlada. The petitioner is not a land allottee. He claimed to be in occupation of the house in dispute and sought its transfer. It is not disputed that the house in dispute is a package deal property. The Naib Tahsildar (Sales)cum Managing Officer considered the claims of the petitioner and of Todu Ram allottee in village Budhlada with respect to the house in dispute vide his order Annexure P.2.

4. It has been held in Bishan Singh and others v. Chief Settlement Commissioner and others, 1973 P.L.J. 183:

" When there is a right of an unsatisfied claimant to receive compensation out of the property which has been transferred to the State Government and there is also a right of a sitting person to have the property transferred to him in terms of the Pressnote (s) issued by the State Government, the Authorities concerned must so deal with matter as to ensure that the rights of either of them are not prejudiced. The first step should be to dispose of the application of the sitting person. If the applicant has no right under the Pressnote, the matter ends there. Thereafter, the Authority under the Rehabilitation Act, who may possibly be the same person, can proceed to transfer that very property in accordance with the Rehabilitation Act and the Rules made thereunder, to satisfy the unsatisfied claimants. If, however, the applicant is eligible to get the transfer under the Pressnote, the Authorities under the Rehabilitation Act has to see whether the unsatisfied claimants can possibly be satisfied from the other property available. The claimants have no right to ask for allotment of a particular piece of land and, therefore, as far as possible, effort has to be made to satisfy such unsatisfied claimants in such a manner that they do not impinge on the right of the sitting persons who are covered by the Pressnote."

It is clear from the observations reproduced above that before transferring a package deal property to an eligible person (like the petitioner) the concerned Authority has to determine whether the unsatisfied claimant (like Todu Ram) can possibly be satisfied from the other property available. It means that if the concerned Authority comes to the conclusion that no property other than the one in dispute is available to satisfy the claim of an unsatisfied claimant, then the property in dispute will not be transferred under the Pressnote but will be allotted to the unsatisfied claimant. The Financial Commissioner, Taxation has made a reference of Bishan Singh's case (supra) in his impugned order (Annexure P.5) but has failed to record any finding in terms of the observations made therein and reproduced above. It may be added that the Naib Tahsildar (Sales)cum Managing Officer in his order (Annexure P.2) has held that about

200300 other rural evacuee houses are available for allotment in village Budhlada. The plea of the respondents before the Additional Settlement Commissioner was that the other houses are lying demolished. The Additional Settlement Commissioner in his order (Annexure P.3) took notice to this plea but did not record any finding thereon. This point has again not been touched by the Financial Commissioner, Taxation in the impugned order (Annexure P.5). It was obligatory for the Financial Commissioner, Taxation, to record a finding whether any other rural evacuee house is available for allotment to satisfy the claim of Todu Ram or not. In the event the Financial Commissioner, Taxation, came to the conclusion that no other rural evacuee house was available to satisfy the claim of Todu Ram, he would have been justified in directing the allotment of the house in dispute in his name. In view of the fact that the impugned order of the Financial Commissioner (Annexure P.5) is silent on this point, it cannot be sustained.

5. The Naib Tahsildar (sales)cumManaging Officer acted in dual capacity while passing the order Annexure P.2 on 1741970. The eligibility of Todu Ram for the allotment of a house could be examined and determined by a functionary under the Act and not by an officer dealing with package deal properties under the Pressnote. After the Naib Tahsildar (Sales)cum Managing Officer had declined allotment of the house in dispute in the name of Todu Ram, it was futile for his legal representatives to file an appeal or revision against it under the Pressnote. The effective relief could be given to them by the functionaries under the Act. The Naib Tahsildar (sales)cumManaging Officer could allow the transfer of the house in dispute as a package deal property to the petitioner, after holding that Todu Ram could not justifiably claim its allotment. Under these circumstances, if the appellate and /or revisional authority under the Act reverse the finding of the Naib Tahsildar (Sales)cumManaging Officer on the point of allotment of the house in dispute in favour of Todu Ram, the house in dispute will cease to be available for disposal as package deal property under the Pressnote. I, therefore, feel inclined to agree with the contention of the learned counsel for the respondents that the acceptance of appeal or revision of the legal representatives of Todu Ram by the functionaries under the Act would as well have the effect of setting aside the order of the Naib Tahsildar (Sales)cum Managing Officer (Annexure P.2), relating to the transfer of the house in dispute in favour of the petitioner as a package deal property under the Pressnote.

6. In view of the discussion above, the writ is accepted and the impugned order of the Financial Commissioner, Taxation, shall decide the petition filed by Sanjha Ram and others (respondents) under section 33 of the Act afresh in the light of the observations made above. No order as to costs.