
(2013) 07 P&H CK 0902
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15802 of 2013

Smadh Baba Bhai Sangtian	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 172 PLR 112 : (2013) 4 RCR(Civil) 366

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Harbhagwan Singh and Mr. Tarunveer Vashist, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner is aggrieved against order dated 20.3.1963 by which land measuring 15 standard acre 5 units has been allotted to Mukand Ram @ Mukand Singh (father of respondent Nos. 4 to 8) by treating him tenant under the Pepsu Tenancy & Agricultural Land Act, 1955 [for short "the Act"]. The case set up by the petitioner is that land measuring 384 bighas 4 biswas was gifted by King of Patiala to Baba Sangtian and Dera which came into existence in the name of "Smadh Baba Bhai Sangtian" situated in Village Pun nawal, District Sangrur. The Dera was succeeded through Chelas namely Budh Dass, Chela Ram Dass, Chela Nand Ram, Chela Bhajan Dass and Chela Deputy Swaroop. It is averred that after the death of Nand Ram, Bhajan Singh (father of the petitioner) was appointed as Mohtamim of the Dera namely, "Smadh Baba Bhai Sangtian" and jamabandi was accordingly made in the name of Dera through Bhajan Dass Chela Nand Ram. It is further averred that Deputy Swaroop was appointed as Mohtamim by Bheikh and Gaddi was given to Chela Deputy Swaroop on 12.3.2008. In the year 1962, Mukand Ram @ Mukand Singh son of Budh Ram filed an application u/s 22 of the Act before the Assistant Collector 1st Grade, Malerkotla, who vide his order dated 20.3.1963 treating him qualified tenant u/s 20 of the Act and granted proprietary rights for land measuring 18 standard acre 5 units of land in spite of the fact that land belongs

to Dera and no individual was owner in possession over it.

2. The present writ petition is directed against the said order dated 20.3.1963, inter alia, on the ground that "Smadh Baba Bhai Sangtian" was not a party and half of its land has been wrongly allotted to Mukand Ram @ Mukand Singh predecessor-in-interest of respondent Nos. 4 to 7 despite the fact that there is a bar u/s 51 of the Act which says that the provisions of the Act would not apply to the land belonging to any religious or charitable institution but not to a Mahant, Mohtamim or Manager. The Charitable institution has also been explained as any other religious place of a public nature. It is submitted that still the mutation was entered in the name of Mukand Ram @ Mukand Singh vide Inteqal No. 3116 on the basis of order dated 20.3.1963 and later on entries were made in Jamabandi for the year 1962-63.

3. The petitioner has, thus, challenged the impugned order dated 20.3.1963 as illegal in view of the provision of Section 51(C) of the Act.

4. I have heard learned counsel for the petitioner and perused the record.

5. It has not been explained anywhere in the writ petition as to why this petition has been filed after such an inordinate delay despite the fact that entry in the jamabandi for the year 1962-63 has been reflected in favour of the predecessor-in-interest of respondents Nos. 4 to 7 on the basis of mutation which was sanctioned in terms of the impugned order. Moreover, in para 7 of the writ petition, it is mentioned that there is no remedy of appeal or revision against impugned notice/action available to the petitioner under any rule except to file the present petition under Article 226/227 of the Constitution of India but the said averment which has been verified to be true and correct and an affidavit has also been filed by the petitioner in support of the writ petition, is patently wrong in view of Section 39 of the Act, which categorically provides for an appeal. Section 39 of the Act reads as under:-

(1) Any person aggrieved by any decision or order of the [prescribed authority or the Assistant Collector of the First Grade] may, within thirty days from the date of the decision or order excluding the time spent in obtaining the copies of such decision or order, prefer an appeal to the Collector in such form and manner as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by any decision or order of [the Collector, (whether acting as prescribed authority or not)], not being a decision or order made in an appeal under sub-section (1), may, within thirty days from the date of the decision or order excluding the time spent in obtaining the copies of such decision or order, prefer an appeal to the Commissioner in such form and manner as may be prescribed:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) with respect to all matters dealt with under this act the Financial Commissioner shall have the same power to call for, examine and revise the proceedings of the prescribed authority or [the Assistant Collector of the First Grade or the Collector] or the Commissioner as is provided in section 84 of the Punjab Tenancy Act, 1887 (Punjab Act XVI of 1887).

6. According to the aforesaid provision, appeal is maintainable against the order of Assistant Collector Ist Grade before the Collector but that has to be filed within 30 days but the appeal can be entertained after the expiry of the said period of limitation if the Appellate Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. In this view of the matter, the petitioner has got an alternate remedy of appeal under the Statute. The petitioner may, if so advised, avail the said remedy but in the presence of alternate remedy, the writ petition under Article 226/227 of the Constitution of India, is not maintainable. Hence, the same is hereby dismissed.