
(2004) 01 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1173 of 1984

Smadh Bawa Maru Dass

APPELLANT

Vs

The Financial Commissioner, Appeals and Others

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Punjab Security of Land Tenures Act, 1953 — Section 18

Citation : (2004) 137 PLR 348 : (2004) 3 RCR(Civil) 236

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : M.L. Sarin and Harsh Rekha, for the Appellant; Rita Kohli, D.A.G. for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J

1. These petitions are directed against order dated 11.10.1983 passed by Financial Commissioner, Appeals, Punjab (respondent No. 1) vide which he allowed the revision petitions filed by Shri Bhagat Singh (respondent), who died during the pendency of the litigation and is represented by his legal representatives, u/s 24 of the Punjab Security of Land Tenures Act, 1953 (for short, "the Act") and declared that he is entitled to purchase the land under his tenancy.

2. The petitioner owns land in village Daulatpur, Tehsil arid District Jalandhar. Late Shri Bhagat Singh was inducted as tenant on a portion of the land measuring 46 kanals and 16 marlas comprised in khasra Nos. 155, 156, 157, 158, 162 and 163. On 13.6.1967, an application was filed on behalf of the petitioner u/s 14-A(i) read with Section 9(2) of the Punjab Security of Land Tenures Act, 1953 (for short, "the Act") for ejectment of Shri Bhagat Singh on the ground that he had failed to pay rent for the period from Kharif, 1964 to Rabi, 1967. As a counter-measure, he filed an application u/s 18 of the Act for

purchase of 51 kanals and 14 marlas of land including 46 kanals and 16 marlas belonging to the petitioner by claiming that the same was surplus and he was in cultivating possession thereof for more than six years i.e. from Rabi, 1962 to Rabi, 1968.

3. The application filed on behalf of the petitioner was allowed by Assistant Collector 1st Grade, Jalandhar (respondent No. 2) vide his order dated 20.5.1968. The appeal filed by respondent No. 3 was dismissed by Collector, Jalandhar vide his order dated 15.5.1979. However, Commissioner, Jalandhar Division, Jalandhar before whom respondent No. 3 filed revision petition, passed order dated 6.1.1970 and recommended that the ejectment order may be set aside and the eviction application as well as purchase application be deiced afresh. Respondent No. 1 accepted the recommendations made by Commissioner, Jalandhar Division, Jalandhar and vide order dated 28.10.1971, he annulled order dated 15.5.1969 passed by Collector, Jalandhar, CW.P. No.4684 of 1971 filed by the petitioner for quashing order dated 6.1.1970 was dismissed by the learned Single Judge and the Letters Patent Appeal filed against the order of the learned Single Judge was dismissed by the Division Bench.

4. In the meanwhile, respondent No. 2 suo motu set aside order dated 16.9.1969 vide which he dismissed the purchase application of respondent No. 3 in default. The appeal filed by the petitioner was dismissed by the Collector vide order dated 14.3.1972 and the revision petition filed by it was dismissed by respondent No. 1 vide order dated 24.5.1973.

5. In compliance of the direction contained in order dated 28.10.1971 passed by respondent No. 1, notices were issued by respondent No. 1 the representative of the petitioner and respondent No. 3 and after hearing them, the said respondent passed order dated 31.3.1975 (marked as Annexure P1 in C.W.P. No. 1173 of 1984). He dismissed the purchase application filed by respondent No. 3 by observing that the same does not satisfy the conditions enumerated in Section 18 of the Act. The relevant extracts of that order are reproduced below:-

"I have gone through the file carefully and the evidence adduced by both the parties and have also heard the learned counsels for the parties at length. In a nut-shell the contention of the petitioner tenant is that he is entitled to purchase the land in suit as he is cultivating this land for more than 6 years from the year 62 onward and the land in dispute is surplus area of the land owner. Whereas, the plea of the respondent land owner is that the applicant does not fulfill the conditions which would enable him to acquire proprietary rights in respect of this land. He has based his argument on a judgment reported in 1974 LPG 74 where it was held that only the following two categories of the tenants can successfully compete against the land owner of or the acquisition of proprietary rights.

Firstly a tenant desiring to acquire proprietary rights must fulfil the condition of his being a tenant on 15.4.1953 on the land proposed to be purchased by him u/s 18 of the Punjab Security of Land Tenures Act, 1953.

Secondly those tenants who are ejected but resettled surplus land, but otherwise fulfil all the statutory conditions as contemplated u/s 18 of the Punjab Security of Land Tenures Act, 1953.

A careful perusal of the evidence advanced by the petitioner would go to prove that he does not fall in any of the two categories of eligible tenants mentioned above. From the disposition of Smt. Paul Assistant Officer Kanungo it is evident that the petitioner was not a tenant on the suit land in the year 1953 and further in his cross-examination Bhagat Singh has clearly admitted that he is not ejected and resettled tenant. Under the circumstances I am of the firm view that the claim of the petitioner suffers from an incurable infirmity as his claim is not sustainable for the aforesaid reasons. Accordingly I come to the conclusion that the petitioner claim for the purchase of suit land fails and, therefore, his application is dismissed. I may refer here that the question whether the suit land is a surplus area or not of a land owner is a point which does not require any detailed probe as there is not sufficient evidence on record to prove permissible/reserved as well as the surplus area of the land owner. Moreover, I also do not deem it necessary to go into the details of the matter mainly for the reason that the petitioners' claim for purchase stands defeated on the ground of his being not a eligible tenant for the acquisition of proprietary rights in respect of the suit land on the basis of judicial pronouncement referred to above."

6. By another order of the same date (marked as Annexure P2 in C.W.P. No. 1173 of 1984), respondent No. 2 allowed the application filed on behalf of the petitioner and directed that respondent No. 3 be evicted w.e.f. 1.5.1975. The appeals filed by respondent No. 3 were dismissed by Collector, Jalandhar vide order dated 29.9.1975/13.1.1976 (marked as Annexure P3 in C.W.P. No.1173 of 1984). Revision petitions filed by him were dismissed by Commissioner, Jalandhar Division, Jalandhar vide order dated 26.12.1978 (marked as Annexure P4 in C.W.P No.1173 of 1984). However, respondent No. 1 allowed the revision petitions filed by respondent No. 3 u/s 24 of the Act by observing that the pendency of the eviction petition could not be made a ground for rejecting the purchase application filed u/s 18. He held that it was not necessary for the tenant to show that he was in possession w.e.f. 15.4.1953 and it was sufficient that he was in possession for a period of six years or more before the date of filing the purchase application. For the sake of reference, paragraph 4 of the impugned order which contains reasons for allowing the revision petitions filed by respondent No. 3 is reproduced below:-

"I have heard the learned counsel for the parties and gone through the record. In this case, tenant's application for purchase of land u/s 18 of the Punjab Security of Land Tenures Act, 1953 and landowner's application for ejectment of tenant have been rightly combined. It is a settled law that the grounds of ejectment in an ejectment application do not constitute a bar to the grant of proprietary rights to a tenant. In this case, the tenant is in continuous possession of land for the requisite period of six years or more. His valuable right to purchase the land in

tenancy cannot be denied due to this failure to pay the rent or the fact that the rent payable by him is in arrears. The land owner, to recover the rent in such a situation, can go to a civil Court but the tenant cannot be denied his right to purchase the land on which he has been for more than six years. It is not necessary to establish the possession of a tenant from 15.4.1953 to consider him to purchase the land under his tenancy. What is material is that the tenant should have been in possession of land for a period of six years or more before the date of filing the purchase application: and this condition has been fulfilled by the tenant in the present case. Under the circumstances, I accept both the revision petitions in this case. Since the facts, law and parties involved are the same, this single order will dispose of both these revision petitions. A copy thereof may be placed on each of the files."

7. Shri M.L. Sarin argued that the impugned order should be quashed because it is cryptic to the core and does not satisfy the requirement of a speaking order. He referred to the averments contained in paragraph 15 of the writ petition and argued that the direction given by respondent No. 1 for entertaining the purchase application made by respondent No. 3 is vitiated by an error of law because the same did not satisfy the conditions enumerated in Section 18 of the Act. Shri Sarin submitted that the purchase application could be entertained only if the land possessed by respondent No. 3 was surplus and value thereof had been determined in terms of Sub-section (2) of Section 18 of the Act, but without even advertng to these requirements, respondent No. 1 ordered the acceptance of the purchase application. In the end, he argued that the revision petitions filed by respondent No. 3 u/s 24 of the Act were liable to be dismissed because the orders passed by respondent No. 2, Collector, Jalandhar and Commissioner, Jalandhar Division, Jalandhar did not suffer from any jurisdictional infirmity or error in law warranting interference by respondent No. 1. In support of his arguments, Shri Sarin relied on the judgments in Jot Ram v. The Financial Commissioner and Ors. 1966 P.L.J. 252: Dhaunkal v. Man Kauri and Anr., 1970 P.L.J. 402: Jeet Ram and others v. Gobind and Ors. (1971) 73 P.L.R. 896: State of Punjab (now Haryana) and Ors. v. Amar Singh and Anr. 1974 P.L.J. 74 and Remeshwar and Ors. v. Jot Ram and Anr. 1975 P.L.J. 454.

8. Ms. Rita Kohli, learned Deputy Advocate General, Punjab fairly conceded that the impugned order does not satisfy the test of a speaking order. She, however, argued that the direction given by respondent No. 1 may not be set aside only on account of lack of reasons because the land held by respondent No. 3 was, in fact, part of surplus area of the petitioner and he was in continuous possession for six years as on the date of application. Ms. Kohli referred to the averments contained in para 15(i) of the written statement filed by respondent No. 2 and the contents of Annexure P6 to show that the surplus area case of the petitioner had been decided on 18.6.1960 and submitted that the omission on the part of respondent No. 1 to mention that the land possessed by respondent No. 3 was surplus should not be made a ground to nullify the direction contained in the impugned order.

9. I have thoughtfully considered the respective arguments. Section 18 of the Act, which deals with the rights of certain tenants to purchase land, reads as under:-

"18. Rights of certain tenants to purchase land.- (1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of land-owner other than a small land-owner-

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or,

(ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amounts to six years or more, or

(iii) who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment.

shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within Clause (i) or Clause (ii) at any time, and in the case of any tenant falling within Clause (iii) within a period of one year from the date of the commencement of this Act:

Provided that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect of the land or any portion thereof if he had sublet the land or the portion, as the case may be, to any other person during any period of his continuous occupation unless during that period the tenant was suffering from a legal disability or physical infirmity, or, if a woman, was a widow or was unmarried:

Provided further that if the land intended to be purchased is held by another tenant who is entitled to pre-empt the sale under the next preceding section, and who is not accepted by the purchasing tenant, the tenant in actual occupation shall have the right to pre-empt the sale.

(2) A tenant desirous of purchasing land under Sub-section (1) shall make an application in writing to an Assistant Collector of First Grade having jurisdiction over the land concerned and the Assistant Collector after giving notice to the land-owner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall determine the value of the land which shall be the average of the prices obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made.

(3) The purchased price shall be three-fourths of the value of land as so determined.

(4)(a) The tenant shall be competent to pay the purchase price either in a lump sum or in six monthly instalments not exceeding ten in the manner prescribed.

(b) On the purchased price or the first instalment thereof, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall, where the tenant is not already in possession, and subject to the provisions of the Punjab Tenancy Act (XVI of 1887) put him in possession thereof.

(c) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall, on application by the person entitled to receive it, be recoverable as arrears of land revenue.

(5) If the land is subject to a mortgage at the time of the purchase, the land shall pass to the tenant unencumbered by the mortgage, but the mortgage debt shall be a charge on the purchase money.

(6) If there is no such charge as aforesaid the Assistant Collector shall, subject to any directions which he may receive from any court, pay the purchase money to the land-owner.

(7) If there is such a charge, the Assistant Collector shall, subject as aforesaid, apply in the discharge of the mortgage debt so much of the purchase money as is required for that purpose and pay the balance, if any, to the land-owner, or retain the purchase money pending the decision of a Civil Court as the person or persons entitled thereto."

10. An analysis of the provisions reproduced above shows that notwithstanding anything to the contrary contained in any law, usage or contract, a tenant can apply for purchase of land if he proves that (a) he has been in possession of the land under his tenancy for a continuous period of six years on the date of application, (b) his landlord is not a small land-owner, and (c) the land sought to be purchased by him is not included in the reserve area of the land-owner. If the application of the tenant satisfies the aforementioned conditions, then the concerned Assistant Collector, 1st Grade is required to determine value of the land which shall be the average of the price obtaining for similar land in the locality during 10 years immediately preceding the date of application. He is required to give notice to the land-owner and all other persons interested in the land.

11. In the light of the above, I shall now deal with the question as to whether the impugned order satisfies the conditions of a speaking order.

12. It is settled law that every quasi-judicial authority is duty-bound to record reasons for its decision and communicate the same to the affected person. The requirement of recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The administrative authorities charged with

the duty to act judicially cannot decide the matters on considerations of policy or expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimises arbitrariness in the decisions making process. Another reason which makes it imperative for the quasi-judicial authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filing statutory appeal and revision but also by filing writ petition under article 226 of the Constitution. Such decisions can also be challenged by way of appeal under Article 136 of the Constitution of India. The High Courts have the power to issue writ of certiorari to quash the orders passed by a quasi judicial authority/Tribunal. Likewise, in appeal the Apex Court can nullify such order/decision. This power of judicial review can be effectively exercised by the Superior Courts only if the order under challenge contains reasons. If such order is cryptic and devoid of reasons, the Courts cannot effectively exercise the power of judicial review and we cannot countenance a situation in which the administrative authorities vested with the power to decide the rights of the parties may stultify the powers of the Court simply by not recording reasons in support of their decisions or by the refraining from communicating such reasons to the affected person. This is the reason why the Courts have insisted on rigorous compliance of the requirement of recording of reasons and communication thereof by every quasi-judicial authority. *Harinagar Sugar Mills Limited v. Shyam Sunder Jhunhunwala* AIR 1961 S.C. 1969 ; *Bharat Raja Vs. The Union of India (UOI) and Others*, ; *Travancore Rayon Ltd. Vs. Union of India (UOI)*, ; *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, ; *Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another*, ; *Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others*, ; *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, ; *S.N. Mukherjee Vs. Union of India*, ; *Shanti Prasad Agarwalla and others Vs. Union of India and others*, ; *Krishna Swami Vs. Union of India and another*, ; and *M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others*, .

13. In *S.N. Mukherjee v. Union of India* (supra), a Constitution Bench of the Supreme Court discussed the development of law on this subject in India. Australia, Canada, England and United States of America and after making reference to a large number of judicial precedents, their Lordships culled out the following propositions:-

"The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court, for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decisions, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution" as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable

this Court and the High Court to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority: (ii) introduce clarity in the decisions: and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.

Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decisions are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

14. In *Testeels Ltd. Vs. N.M. Desai and Another*, a Full Bench of the Gujarat High Court has made an extremely lucid enunciation of law on the subject and we can do no better than to extract some of the observations made in that decision. The same are:-

"The necessity of giving "reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set-up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to

factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or at any rate, minimises arbitrariness in the decision-making process.

Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution. These Courts have the power under the said provisions to quash by certiorari a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then, they will be subject to judicial scrutiny and correction."

15. If the impugned order is examined in the light of the above analysis of Section 18 of the Act and the requirement of passing a speaking order, I have no hesitation to hold that the same is not only devoid of reasons and does not satisfy the requirement of a speaking order which respondent No. 1 was duty-bound to pass, but is also ultra vires to Section 18(1) and (2) of the Act. Respondent No. 2, Collector, Jalandhar and Commissioner, Jalandhar Division, Jalandhar had recorded detailed reasons for rejecting the application filed by respondent No. 3 and dismissed the appeals and revision petitions filed by him, but without even recording a finding that the reasons assigned by them were legally unsustainable or the orders passed by them were vitiated by any jurisdictional error or legal infirmity, respondent No. 1 allowed the application of respondent No. 3 by a cryptic order. Not only this respondent No. 1 did not advert to the conditions which are required to be satisfied by a tenant seeking to purchase land u/s 18 of the Act. The impugned order nowhere mentions that the land sought to be purchased by respondent No. 3 was part of surplus area of the petitioner. The value of the land had also not been determined as per the requirement of Section 18(2) of the Act. Thus, I have no hesitation to hold that the impugned order suffers from an error of law apparent on the face of the record.

16. In the result, the writ petitions are allowed. Order dated 11.10.1983 passed by respondent No. 1 is quashed with the direction that he shall decide the revision petitions filed by respondent No. 3 (who, as mentioned above is now represented by his legal representatives) afresh after hearing the parties and by passing a speaking order keeping in view the requirements of Section 18 and other provisions of the Act.