
(2011) 02 P&H CK 0334

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19222 of 1991

Sukhwant Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 11, 117

Citation : (2011) 02 P&H CK 0334

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—Tersenessly, the facts, which require to be noticed for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, are that one Mehnga Singh (deceased), father of the Petitioners, was a displaced person. The land measuring 22 Standard Acres and 71/2 units, situated in village Tharwa Majra, was initially allotted to him, in lieu of the land abandoned by him in Pakistan, in view of the provisions of The Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Rules 1955 (hereinafter to be referred as "the Act and the Rules") (since repealed). Subsequently, on verification, the land measuring 41/2 Standard Acres, out of total allotted land, was found to be in excess of his share, which was cancelled by the Chief Settlement Commissioner (for brevity "the CSC"), vide order dated 8.11.1967. The review application filed by Mehnga Singh allottee, was accepted by the CSC, by virtue of order dated 5.2.1968 and the matter was remanded to Tehsildar (Sales) for fresh verification/decision.

2. Thereafter, the Tehsildar (Sales) made a reference and the CSC cancelled the allotment of excess land to the tune of 41/2 Standard Acres, by means of order dated 30.3.1968. The review application filed by the allottee was rejected by the

CSC, by way of order dated 29.12.1970.

3. Dis-satisfied with the order dated 29.12.1970 of the CSC, the allottee moved a petition u/s 33 of the Act before the Secretary, Rehabilitation, Haryana, exercising the powers of Central Government. The petition was partly accepted. Consequently, the land in question measuring 2.15 Standard Acres (instead of 41/2 Standard Acres) was declared excess to the share of the allottee. However, he was allowed to purchase the excess land at the rate fixed by the Department, vide order dated 26.8.1971 (Annexure P1) of Secretary Rehabilitation.

4. In pursuance of the order (Annexure P1), the delegatee of the Central Government permitted the allottee to purchase the excess land in question measuring 2.15 Standard Acres at the fixed rate. Neither the allottee complied with the directions nor deposited the amount/price of the excess area, at fixed rate in view of indicated order (Annexure P1). He slept over the matter for more than 20 years therefrom.

5. Thereafter, Tehsildar (Sales) (Respondent No. 3) issued notice (Annexure P3) to the allottee indicating therein that since he had not paid the instalment, so, the auction has been cancelled and the land was proposed to be re-auctioned on 26.9.1989.

6. Feeling aggrieved from the notice/order (Annexure P3), the Petitioners filed the revision petition under Rule 11 of the relevant Rules, which was dismissed as well, by the Joint Secretary, Rehabilitation-cum-CSC, Haryana, Chandigarh, by virtue of order dated 14.10.1991 (Annexure P6).

7. The Petitioners still did not feel satisfied and filed the instant writ petition, challenging the impugned order (Annexure P6), invoking the provisions of Articles 226 and 227 of the Constitution of India in this context.

8. The case set up by the Petitioners, in brief in so far as relevant, was that they did not receive any notice for the payment of amount/price of the excess land although it remained in their possession. They presumed that their father had already paid the entire amount of the excess land. Some of the amount was stated to have been paid by them (which was found to be false) and the remaining amount could be recovered as arrears of land revenue, but the land could not be resumed. It was claimed that no notice was issued to the Petitioners, prior to the cancellation of allotment of the land except the notice (Annexure P3) in this regard.

9. Levelling a variety of allegations and narrating the sequence of events, in all, according to the Petitioners that the impugned order (Annexure P6) is illegal, arbitrary, against the statutory provisions of the Act and the Rules made thereunder. On the basis of aforesaid allegations, they sought the quashment of the impugned order in the manner depicted hereinabove.

10. The Respondents contested the claim of the Petitioners. Respondent Nos. 1 to 3 filed their joint written statement, inter-alia pleading certain preliminary

objections of, maintainability of the petition, locus standi and cause of action of the Petitioners. The Respondents claimed that Petitioners wanted the implementation of the order (Annexure P1) of the functionaries of the Central Government u/s 33 of the Act, after a long period of 30 years. Such order cannot be implemented at this belated stage, as they (Petitioners) have no legal/vested right for transfer of excess area cancelled from their allotment, in view of the law laid down by the Hon''ble Apex Court in case Chief Settlement Commissioner (Rural) Punjab and Another Vs. Ram Singh and Others, and of this Court in case Jagmohan Singh v. Union of India and Ors. ILR 1965 (I) Pb. 148 . They have neither applied before the Tehsildar (Sales), nor deposited the price of excess land. According to the Respondents that after the cancellation of excess allotment, the land became a part of Rural Package Deal, 1961 and the functionaries and delegatee of the Central Government had no jurisdiction to allow the allottee to purchase the excess land, as held by the Hon''ble Supreme Court in case Pala Singh (Deceased) by Lrs Vs. Union of India (UOI) and Others, . The Petitioners could only be allowed to purchase the excess land in view of the Government instructions and the State Rules, 1962 and not otherwise. The allottee, father of the Petitioners, neither made any application for transfer of the land in dispute nor deposited any amount of its price.

11. The case of the contesting Respondents further proceeds that in the year 1985, the Government again extended the concession to such persons, who could not get the land transferred earlier and allowed them to get it transferred, by applying within 90 days, by means of Haryana Government letter dated 2.2.1985 (Annexure R2). The Petitioners again did not avail the opportunity extended by the Government and kept silent just to grab the Government land without depositing its price. In all, the Respondents claimed that neither the Petitioners are entitled to re-allotment as they have waived their right even in spite of government instructions (Annexure R2), nor have any locus standi to claim the ownership of the land in any manner. It will not be out of place to mention here that the Respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal. That is how I am seized of the matter.

12. Assailing the impugned order (Annexure P6), the learned Counsel for Petitioners contended with some amount of vehemence that as no notice was issued by the authority, directing the allottee to deposit the amount/price of the excess land under Rule 117 of the Rules, therefore, the impugned order is illegal. In support of his contention, he has placed reliance on the judgment of this Court in case Subedar Banwari Lal v. The Financial Commissioner, Taxation, Punjab and Ors. 1985(1) All India Land Laws Reporter 334.

13. On the contrary, hailing the impugned order, the learned Counsel for the Respondents urged that no notice directing the allottee to deposit the amount/price of the excess land, was legally required and it was for the allottee to deposit the same in pursuance of order (Annexure P1). The argument is that

Petitioners slept over the matter for more than 30 years. As they neither deposited the amount/price of excess land nor moved any such application before the Tehsildar (Sales) nor took any steps to get the excess land transferred in their name, therefore, the authorities under the Act have rightly cancelled and put the excess land in dispute to auction and no interference is warranted in the impugned order in this regard.

14. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant writ petition.

15. As is evident from the record, that in view of acceptance of review petition of the allottee, the matter was remanded by CSC, by means of order dated 5.2.1968. Thereafter, on verification and in pursuance of reference of Tehsildar (Sales), the CSC cancelled the allotment of excess land, vide order dated 30.3.1968. The second review application filed by the allottee was rejected by the CSC, by way of order dated 29.12.1970. However, in the wake of petition u/s 33 of the Act, the Secretary Rehabilitation, Haryana, exercising the powers of Central Government, allowed the allottee to purchase the excess land measuring 2.15 standard acres at the rate fixed by the Department, by means of order (Annexure P1). Neither the allottee nor his L Rs moved any application before the Tehsildar (Sales) for purchasing the excess land nor deposited any amount of its price nor took any steps to get the same transferred in their name. They slept over the matter for more than 30 years.

16. Ex facie, the cosmetic argument of learned Counsel that since no notice under Rule 117 of the Rules was issued by the authority before cancellation of the allotment, so, the impugned order is illegal and arbitrary, is not only devoid of merit but misplaced as well.

17. As indicated hereinabove, on the reference made by the Tehsildar (Sales), the allotment of excess land was cancelled by the CSC, vide order dated 30.3.1968. The review application filed by the allottee was dismissed as well, by the CSC, by virtue of order dated 29.12.1970. The same was affirmed in regard to excess land measuring 2.15 standard acres by the Secretary Rehabilitation, Haryana, through the medium of order (Annexure P1). However, the allottee was allowed to purchase the excess land at the rate fixed by the department. In that eventuality, it cannot possibly be said that the allotment of excess land was cancelled, without issuing any notice, as urged on behalf of the Petitioners. On the other hand, it was the allottee, who had waived his right of purchase of land in pursuance of order (Annexure P1).

18. Possibly, no one can dispute with regard to the observations of this Court in Subedar Banwari Lal's case (supra), wherein it was observed that issuance of notice under Rule 117 through registered post and acknowledgment due on the address supplied by the person, is mandatory, however, sub rule (7) of the Rules is not mandatory. The same would not come to the rescue of the Petitioners in

the instant controversy.

19. Moreover, the learned Counsel for Petitioners did not point out any provisions under the Act or Rules, which require the authorities to issue any notice, directing/compelling the allottee to deposit the amount/price of the excess land and to complete all the codal formalities in this relevant connection. That means, the Petitioners have failed to deposit the amount/price and waived their right to purchase the excess land granted by order (Annexure P1).

20. Thereafter, finding no alternative, Tehsildar (Sales) issued notice (Annexure P3) to the allottee indicating therein that since he had not paid any instalment, so, the auction has been cancelled and the land in dispute was proposed to be auctioned, by means of notice (Annexure P3).

21. Aggrieved by the notice/order (Annexure P3), the Petitioners filed the revision petition under Rule 11 of the relevant Rules, which was dismissed as well, by the Joint Secretary, Rehabilitation-cum-CSC, Haryana, Chandigarh, by virtue of order dated 14.10.1991 (Annexure P6), which in substance is as under:

Secondly in this case the excess allotment was cancelled vide order dated 30.3.1968 of the then Chief Settlement Commissioner and the review petition of the allottee was dismissed vide order dated 29.12.1970. The delegatee of the Central Government vide his order dated 26.8.1971 held that the excess allotment was 2-15 S. As and allowed the allottee to purchase the excess allotted area at the fixed rate. In spite of that the allottee failed to comply with the said order and he even did not bother to approach the Tehsildar (Sales) for getting the excess area transferred in his favour. Neither he filed any application for this purpose nor deposited any amount and he kept silent for about 28 years i.e. till a notice was sent informing that this land would be put to auction on 26.9.1989. He enjoyed the fruits of the land without paying any amount and the plea of the Counsel for the Petitioner that this land should be transferred to the Petitioners at old rate, cannot be accepted as he was very much at fault and he should have pursued the matter at proper time and at this belated stage his request cannot be accepted. Moreover, the request of the Petitioners for transfer of land at the current rate also cannot be accepted at this belated stage as he did not apply for the same at appropriate time. The allottee also has no legal vested right for the transfer of the excess area and it is the absolute discretion of the Government to transfer it or not as held in Chief Settlement Commissioner (Rural) Punjab and Another Vs. Ram Singh and Others, and ILR 1965 P&H 149. The record of the case clearly shows that the allottee or his successors were not interested in getting the land transferred in their favour and they wanted to have the land without paying anything to the Govt. The plea of the Counsel for the Petitioner that they had pursued the case and had deposited the amount is not established on record and his plea that the amount was deposited on 22.3.1971 is also not tenable as he was allowed to purchase this land vide order dated 26.8.1971 and there was (Sic no) occasion to accept the amount earlier to this order and he had merely deposited the penal rent only. The Petitioners have approached this

tribunal only when the land was proclaimed for auction and at this belated stage their request for transfer of land on current market price has no merit. Thus, from all angles, I find no merit in the petition and the same is hereby dismissed.

22. Meaning thereby, it stands proved on the record that neither the allottee nor his L Rs did not take any steps to deposit the amount/price of the excess amount. Neither they moved any application in this respect nor get the land transferred in their name. The Joint Secretary Rehabilitation has taken a legal and pragmatic view of the matter in a right perspective, correctly decided the case on merits and recorded the valid reasons in this relevant direction. Such order containing valid reasons cannot legally be interfered with, in exercise of extraordinary writ jurisdiction of this Court, unless and until, the same is perverse and without jurisdiction. As no such patent illegality or legal infirmity has been pointed out by the learned Counsel for the Petitioners, therefore, the impugned order deserves to be and is hereby maintained in the obtaining circumstances of the case.

23. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

24. In the light of the aforesaid reasons, as there is no merit, therefore, the instant writ petition is hereby dismissed as such.