
(2001) 11 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8666 of 2000

Surja Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 18

Citation : (2002) 4 RCR(Civil) 18

Hon'ble Judges : N.K. Sodhi, J;Jasbir Singh, J

Bench : Division Bench

Advocate : L.N. Verma, for the Appellant; Anmol Rattan Singh, for Respondent Nos. 1 to 5 and Mukand Gupta, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—Petitioners have filed the present writ petition challenging the order dated April 30, 1998 (Annexure P-4) passed by

respondent No.4 and order dated March 22, 2000 (Annexure P-5) passed by respondent No.5.

2. This case has a long history and going on since the year 1979. Petitioners, who are the tenants of one Shri Gurdial Singh, a big landowner,

were ordered to be ejected from their tenancy u/s 9 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Punjab Act)

subject to their resettlement on surplus area. Thereafter the competent authority took up their case for allotment of land to them on January 21,

1979, and keeping in view the criteria laid down under the Haryana Utilisation of Surplus and Other Areas Scheme, 1976 (hereinafter referred to

as the 1976 Scheme) allotted land to them as per their entitlement, against which one complaint was filed by respondent No.6 Mani Ram and the

allotment was cancelled vide order dated June 18, 1982 by the allotment authority by holding that the petitioners were not eligible for any allotment of land. Appeal filed by the petitioners was partly accepted by the Collector, Sirsa, on November 23, 1982, who modified the order of allotment dated January 31, 1979, in their favour. Respondent No.6-Mani Ram then filed two revision petitions before the Commissioner, Hisar, who vide his order dated July 25, 1985. Set aside the order passed by the Collector. The petitioners then filed two revision petitions before the Financial Commissioner-State of Haryana, which were allowed vide order dated December 30, 1992, upholding entitlement of the petitioner to get the land allotted. The case was remanded to the allotment authority to decide their cases afresh after making necessary calculation. It was also ordered that since the petitioners have concealed certain facts while moving the application for allotment, necessary action be initiated against them as per law.

Relevant portion of the order dated December 30, 1992, reads as under:-

12. In view of the foregoing discussion I remit the matter to the Allotment Authority with the direction to examine carefully whether the petitioners are entitled to allotment of any surplus area in terms of the criteria laid down in Schedule "C" referred to in Rule 18 of the 1956 Rules and if so, determine the extent of the surplus area that is required to be allotted so as to raise the other area held by each of them to 5 standard acres, and then pass a fresh order in the matter after hearing the parties. Any surplus area that becomes available as a result of the fresh order be allotted to other persons eligible under the 1976 Scheme. The orders dated 31.1.1979 and 18.6.1982 passed by the Allotment Authority in so far as they relate to the petitioners, the order dated 23.11.1982 of the Collector and the order dated 27.5.1985 of the Commissioner are set aside.

13. I also find that the petitioners have indeed concealed the material fact of the other land held by them while seeking allotment of the surplus area.

In the application for allotment of land filed by them in Form US-2 it has been stated that they do not held any other land. The application of Surja

Ram is available at page 49 and that of Mahla Ram at page 221 in the case file of the Prescribed Authority, Dabwali. It is on the basis of their false

statement that surplus land to a certain extent was allotted to them vide order dated 31.1.1979. For this concealment of material facts by hem I

direct that proceedings be initiated against them in terms of Sections 15(7) and 21(2) of the Act.

3. After remand the matter was again taken up by the allotment authority, which after making necessary calculations as per the directions given by

the Financial Commissioner as mentioned above, made certain modifications in the original order of allotment dated January 31, 1979 and allotted

land to the petitioners vide order dated March 27, 1995 (Annexure P-2) which is the subject matter of the present dispute. Relevant portion of the

order Annexure P2 reads as under:-

3. After hearing the arguments and perusing the record available on the file and reading the Report of the Tehsildar, Dabwali, I have arrived at the

conclusion that there is 14 Kanals and 10 Marias of area in his ownership and 35 Kanals and 16 Marias of area under tenancy with Surja Ram,

respondent No. 1 and 18 Kanals and 13 Marias of land has been allotted from the surplus pool and being as ejected tenant he is entitled to retain

an area of 5 Standard Acres i.e., 128 Kanals of "C" category area and he has 136 Kanals and 2 Marias of "C" category area. Thus he has an

excess Nehri area of 2 Kanals and 14 Marias which being a small piece, cannot be allotted to any person and this area is, therefore, ignored. Mala

Ram, respondent No.2, has 14 Kanals and 10 Marias of area in his ownership, 14 Kanals and 7 Marias being 1/5 share of 71 Kanals and Marias,

under his tenancy and 30 Kanals and 4 Marias of allotted area and thus, he has 142 Kanals and 5 Marias of "C" category area whereas, he is

entitled to retain 128 Kanals of "C" category area. Thus, he has 4 Kanals and 15 Marias of excess Nehri area or 14 Kanals and 5 marlas of "C"

category excess area. The allotment of 4 Kanals and 15 of Nehri area comprised in Reel. No.52, Killa No.4 is cancelled and the allotment of the

remaining area 31.1.1979 is upheld. The allotment of the remaining surplus area would be made later on. As regards the directions of the Id.

Financial Commissioner and Secretary, Government of Haryana for taking action u/s 15(7) of the Haryana Ceiling Act, 1972, both these allottees

have approximately 5 standards acres of ownership and tenancy area with them. The area already allotted has itself been allotted to them and there

is, therefore, no need of taking proceedings u/s 15(7). So far as the question of taking action u/s 21(2) of the Haryana Ceiling Act is concerned,

the allottees had submitted Forms US-2 on 5.2.79 and as per revenue record both the allottees were the owners of 14 Kanals and 10 Marias of area at the time of submitting the forms and consequently, necessary action be taken against the allottees for concealing the real facts at the time of submitting Form US-2.

4. Against the order Annexure P-2, respondent No.6 Mani Ram filed an appeal before the Collector, which was dismissed vide order dated December 20, 1995 (Annexure P-3). Respondent No.6 feeling aggrieved filed a revision petition before the Commissioner, Hissar. The same was allowed by him vide order dated April 30, 1998 (Annexure P-4) setting aside the allotment made in favour of the petitioners. Then the petitioners filed a revision petition before the Financial Commissioner-respondent No.5, against the order Annexure P-4 which was dismissed by respondent No.4 Annexure P-4 which was dismissed by respondent No.5 vide order dated March 22, 2000 (Annexure P-5). Hence the present writ petition has been filed by the petitioners to challenge the orders Annexures P-4 and P-5 passed by the Commissioner and the Financial Commissioner respectively.

5. On notice respondents put up their appearance and filed different written statements controverting all the averments made by the petitioners. It has been contended that since the order of allotment was passed in favour of the petitioners without any justification the same has rightly been set aside by the Commissioner and the order has been affirmed by the Financial Commissioner. Respondents prayed that the writ petition having no substance be dismissed.

6. Heard Counsel for the parties.

7. Shri L.N. Verma, Advocate, appearing on behalf of the petitioners have vehemently contended that the eligibility of the petitioners to get the land allotted being ejected tenants, has been established throughout. Order Annexure P-I dated December 30, 1992, has become final between the parties. He further contended that respondent No.6 is not an aggrieved person and he is fighting the present litigation only because of the party-faction in the village. Allotment order was never challenged by the State at any stage and the allotment made cannot be cancelled at the instance of respondent No.6. It was further stated that the order Annexure P-2 has been

passed by the allotment authority fully in compliance with the directions given by the Financial Commissioner vide order Annexure P-I dated December 30, 1992. He further argued that the orders Annexures P-4 and P-5 have been passed without any application of mind. The order passed by the allotment authority has been set aside without any justification. He prayed that both these orders be quashed.

8. Shri Mukand Gupta appearing on behalf of respondent No.6, contended that respondent No.6 is a necessary party. He is fighting the present litigation so that undue benefit may not be given to the petitioners who are not entitled to any allotment of land being ineligible. He further stated that the orders Annexures P-4 and P-5 are perfectly justified because at the time of making allotment to the petitioners. The allotment authority has committed an error by not examining the eligibility of the persons, keeping in view the date when ejectment application was filed against them i.e., before the year 1979.

9. After hearing counsel for the parties, this Court is of the opinion that the orders Annexure P-4 and P-5 have been passed by the Commissioner and the Financial Commissioner without looking into the facts of the present case. Eligibility of the petitioners for allotment of the land has been upheld by the Financial Commissioner by passing the order dated December 30, 1992 (Annexure P-I). This order has become final between the parties since it was never challenged before this Court either by respondent No.6 or by the State. After remand the matter was again taken up by the allotment authority, which passed the order Annexure P-2 dated March 27, 1995. A bare reading of this order clearly shows that it has been passed keeping in view the directions given vide order Annexure P-I, area which was the ownership of the petitioners, and their eligibility for allotment has been discussed and taken note of and only thereafter the land has been allotted to them. This fact is very apparent from a relevant portion of the order passed by the allotment authority reproduced in the preceding paragraph of this judgment. Allotment authority has also taken note of as to why action is not required to be taken against the petitioners under the provisions of Section 15 Sub-section (7) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the Haryana Act). The authority has been directed that the action be taken against

the petitioners under Sub-section (2) of Section 21 of the Haryana Act. While making allotment to the petitioners, the allotment authority after

making necessary calculations had made only amendments in the order passed by it on January 31, 1979, which means that the position as it

existed in the year 1979 has been taken note of and no new calculations have been made. The authority has only upheld the order dated January,

31, 1979, after making necessary modification which this Court feels is a sufficient compliance with the orders passed by the Financial

Commissioner on December 30, 1992 (Annexure P-I). Respondents No. 4 and 5 by passing the orders Annexures P-4 and P-5 have failed to

look into the orders passed by the allotment authority. They without appreciating that order and facts of the case, remanded the matter simply by

saying that the relevant date for determining the eligibility of the petitioners has not been taken note of by the allotment authority. A reading of the

order Annexure P-2 clearly shows that this finding is not correct and as such both these orders Annexures P-4 and P-5 cannot be sustained.

10. It is also very interesting to note that the allotment was made by the competent authority out of the surplus land which in a way belongs to the

State of Haryana but at no stage the State agitated the matter of allotment to the petitioners before any competent authority. Under these

circumstances it is to be seen whether any interference at the instance of respondent No. 6 is justified, which this Court feels is not. Respondent

No.6 even agitated the matter before the Civil Court and challenged the order dated January 31, 1979, vide which allotment was made in favour

of the petitioners but he failed. His appeal was dismissed. This fact was also not noticed by respondents No.4 and 5 respectively. Litigation

requires to be put to an end at some stage. Once the eligibility of the petitioners is not in doubt and this matter has become final upto the Financial

Commissioner vide order Annexure P-1 passed on December 30, 1992, this is the right stage at which this litigation can be stopped.

11. In view of the reasoning given above, the writ petition is allowed, order dated April 30, 1988, (Annexure P-4) passed by the Commissioner,

Hisar, and order dated March 22, 2000, (Annexure P-5) passed by the Financial Commissioner Haryana are set aside and that of the allotment

authority dated March 27, 1995 (Annexure P-2) is restored. No order as to costs.