

(2014) 05 P&H CK 0472

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12801 of 1989 (O & M) and COCP No. 2672 of 2011 (O & M)

Surjit Singh (deceased) through his L.Rs.

APPELLANT

Vs

The Financial Commissioner, Punjab, Chandigarh and
Secretary to Government of Punjab and Others

Swaran Singh Vs Devinder Singh and Others

RESPONDENT

Date of Decision : 28-05-2014

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 2(e), 6
East Punjab Refugees (Registration of Land Claims) Act, 1948 — Section 10

Citation : (2015) 4 RCR(Civil) 508

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : J.R. Mittal, Senior Advocate, Mr. Surinder Garg, Mr. Kashish Garg, Advocates in COCP No. 2672 of 2011 and Mr. H.S. Saini, Advocate for the Appellant; J.R. Mittal, Senior Advocate, Mr. Surinder Garg and Mr. Kashish Garg, Advocates for Respondent No. 2 in CWP No. 12801 of 1989, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.

I. Civil Writ Petition No. 12801 of 1989

1. The pangs of partition of India and the displacement of people from the place now in Pakistan have still not died down, if this case is any illustration. The litigative history of this case is another example of how even the property rights have not yet subsided and come to definitude. The petitioner is pitched against the second respondent-Dera Pang Garain, represented through Managing In charge. The property in dispute is situate in Village Khera, Tehsil Malout, District Muktsar. What started as a rehabilitation initiative soon after partition in 1947 has gone through several vicissitudes through litigative maneuvers between

parties. The Dera Mehma Sar was favoured an allotment purportedly in a measure of rehabilitation to a Dera in Village Laliani, Tehsil Kasur, District Lahore that had to forsake its holding on account of partition and secured fresh allotment of 7 acres 12 1/2 units of land at Village Farid Khera, Tehsil Muktsar, District Faridkot, through a person by name Tarlok Singh. 7 1/2 unit was found to be originally granted in excess and still later, the whole of the property was stated to be wrongly given. The cancellation that was made for the first time in respect of whole of the property on 15.11.1965 gave place to a fresh allotment to the petitioner on 25.11.1965. The Indo-Pakistan war ended in September 1965 and began the disputes between the petitioner and the 3rd respondent in November 1965. The culmination of several tiers of litigation in the first round, which are not necessary to reproduce here, was through a disposal of the Civil Writ Petition No. 1860 of 1967 by this court between the petitioner and the Dera Mehma Sar with the Chief Settlement Commissioner and Assistant Settlement Commissioner being parties as persons whose orders were subject of judicial appraisal. The court found that an allotment which was made to the petitioner in November 1965 could not have been cancelled and allotted again to the Dera without involving the petitioner to show cause against such cancellation. The petitioner was interested in contending that the original allotment in favour of Dera itself was incompetent and, therefore, a cancellation of allotment made in his favour could not be undertaken by trying to revive some rights in favour of Dera. The High Court passed its order on 03.08.1969 setting aside the cancellation of allotment made in favour of the petitioner and directed fresh consideration. This order was confirmed by a Division Bench.

2. The whole focus of the rights moved on whether any Dera existed to merit consideration for allotment as a displaced person. The reliance was on some press notes and also declared by the State that only those institutions which had established themselves in Punjab by 01.02.1959 would be allowed to retain the land allotted to them. Any other allotment was liable for cancellation. The attempt of the authorities was, therefore, to unearth data of whether there existed the 2nd respondent Dera before 1959. The authorities were truly setting out a difficult task for themselves for collecting not any information that existed at the time of enquiry, but exhuming data of what had existed two decades earlier. They came by a small building made subsequent to the allotment after the partition which was claimed by the Dera Manager as proof of the existence of Dera. The authorities were not impressed. They found after collecting local evidence that no activities existed after the partition or dissemination of any charitable or religious activities. This was crucial, for, the Chief Settlement Commissioner and the Managing Officer at various levels had to satisfy themselves that there was continuity of activities of Dera which had ceased to exist at the time of partition and the displacement from the place now in Pakistan was bound to be rewarded with a grant if the continuance of activities in any part of India had been proved. There had been some factual disputes raised by the petitioner that the Dera Mehma Sar that existed in Village Laliani was managed

by Mahant Lachhman Singh. He had died before the partition of the country and at the time of partition, one Trilok Singh was the Mahant of another institution situate in Village Panj Garain, Tehsil and District Faridkot. The contention was that Trilok Singh had no connection at all to Dera Mehma Sar but he obtained the allotment by false representation. It has not become possible for the authorities to even verify whether Trilok Singh had himself any direct connection to Dera Mehma Sar at Village Laliani. I will not, therefore, reopen the issue and only consider whether it is possible to secure the allotment for a Dera under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, the 1954 Act). It is through this Act that the respective parties laid that claim.

3. The petitioner's objections to the order passed by the Financial Commissioner purporting to exercise his revisional jurisdiction contained under the Act and cancelling the allotment in favour of the petitioner and restoring the allotment already made in favour of the Dera, but later cancelled in the year 1965 are:-

(i) The Financial Commissioner was interfering with issues on facts relating to the existence of the Dera on the relevant date, namely, before 01.02.1959 and the Financial Commissioner did not have such a power;

(ii) The allotment under the Act under the relevant rules could be made only after a verified claim made and a Dera or a religious institution was not entitled to make such a verified claim;

(iii) The source of entitlement for the whole was purported to be in consideration of Land Resettlement Manual. Para 34, Chapter IV that admitted of a consideration for allotment if it could prove that a religious or cultural institution had moved from West Punjab to East Punjab. Apart from the fact that there was no such proof of transit, the Manual itself was contrary to the express provisions of the Act and the Rules and hence, inoperative as a source of entitlement for the Dera.

4. The learned senior counsel appearing on behalf of the respondent would state that it was admitted at the time when the Chief Settlement Officer carried out inspection after the disposal of the writ petition in the year 1967 that Dera existed and that was itself proof of the existence of Dera to be favoured with allotment. I have already observed that it was truly difficult to find out the existence of a Dera more than two decades earlier and a mere building could not be taken as proof of existence of Dera. Religious institutions are established to evoke a sense of oneness with a higher being and preach ethical and moral codes for human conduct. They are bound to save the society of the evils of avarice that a normal person is susceptible to. Where desire for accumulation of physical assets exist, there is also a depletion of spiritual quest. From the days of Buddha, renunciation and sacrifice have always been perceived to be the hallmarks of spiritual advancement. The Dhammapada reminds us of what we shall not do:

Harassed by craving, people scurry about like a hunted. Bound by clinging and

attachment, they experience pain again and again for a long time.

A mutt or a Dera that accumulates properties or a dera mahant who accumulates wealth and exercises power and pelf, does acts that are antithetical to the tenets that legitimize mutt or Dera. However that has come to be a reality. Should succession to mutts be like fought for succession for authority and political power? It is for abnegation of power that a mutt or Dera must be established. Should Dera be clamouring for acquisition of properties? It is in denudation of wealth that it could render a lesson to lesser mortals to lead a different life free from craving for wealth and bringing unto ourselves greater misery. Should a Dera be wallowing on temporal issues of establishing a physical edifice in the heart of the town where people throng? It should be like a hermit in forest that is least ostentatious. On the other hand, mutts and deras have become power centres that make vulgar display of wealth. The existence of Dera in this case could not have been merely by showing that a room existed. The existence of Dera must be with reference to the continuity of spiritual teachings and charitable works that were done. They should have been with reference to the continuum of dissemination of spiritual knowledge from the day when the Dera was displaced at Village Laliani and established in the Village Farid Khera. There seems to exist nothing as any activity at Dera and that was how the Chief Settlement Commissioner had found. I am not able to however gather any consistent findings as regards the existence of Dera. There have been fluctuating time right from the year 1959 when the cancellation of portion of allotment was made on the ground that about 7 1/2 units had been held by Dera in surplus. Various spot inspections have revealed various responses. I cannot, therefore, find a virtue about one finding or to the other, for, at all times, the existence of Dera was sought to be gathered by existence of a building and no attempt was made to find any religious or charitable activity connected with Dera. I, therefore, will make no pronouncement on whether there existed a Dera or not and whether the person who claimed to be a Manager at the time when the first allotment was made was actually a person who was a successor of Mahant Lachhman Singh.

5. The second point which is urged by the petitioner is that the initial allotment made in favour of Dera itself was incompetent, for, an institution was incapable of making a verified claim. The argument is that the 1954 Act that provided for allotment to a displaced person required a verified claim to be recorded before assessing the entitlement. Section 2(e) of the 1954 Act defines a verified claim as under:-

"Verified claim" means any claim registered under the Displaced Persons (Claims) Act, 1950 (XLV of 1950) in respect of which a final order has been passed under that Act or under the Displaced Persons (Claims)

Supplementary Act, 1954 (12 of 1954), (and include any claim registered on or before the 31st day of May, 1953 under the East Punjab Refugees (Registration of Land) (Claims) Act, 1948 (East Punjab Act, XII of 1948) or under the Patiala

Refugee (Registration of Land (Claims) Ordinance, 2004 (Order 10 of 2004 Bk) and verified by any authority appointed for the purpose by the Government of Punjab, the Government of Patiala and the Government of Patiala and East Punjab States Union, as the case may be, which has not been satisfied wholly or partially by the allotment of any evacuee land under the relevant notification specified in section 10 of this Act, but does not include.

i) any such claim registered in respect of property held in trust for a public purpose of a religious or charitable nature;

ii) except in the case of a banking company for the purpose of sub-clause (i) of clause (b) of sub-section (3) of section 6 only-

a) any such claim made by or on behalf of any company or association, whether incorporated or not;

b) any such claim made by a mortgage or other person holding a charge or lien on immovable property belonging to a displaced person in West Pakistan.

6. The counsel appearing on behalf of the petitioners refers me to the fact that a claim which has not been satisfied wholly or partly by allotment of an evacuee land shall be a claim by a person other than (i) a trust of religious or charitable nature; (ii) banking company, other than the claim was made by a company or association or by a mortgagee holding a charge or lien on immovable property. Clause (ii) of Section 2(e) of the Act contains an exception within exceptions that makes possible a claim by a company or association or by a mortgagee. It would seem a religious or charitable institution, such a Dera is excluded from the class of persons who could make a verified claim through any human agency. It is not very clear as to how it became possible for entertaining a claim at the instance of Dera and it is in this context that the claim made by Dera could be examined alongside an objection taken by the petitioner that the right claimed by Dera through some rights guaranteed under a Manual cannot be entertained which conflicts with the provisions of the 1954 Act. I have seen that para 34 Chapter IV of the Land Resettlement Manual have provided for allotment to displaced institutions as well. The expressions in the manual are as follows:-

Allotment to displaced institutions and allotment of land held by evacuee institution presented special problems. Some of these institutions were managed by trusts. The subject of trusts was discussed at the Inter-Dominion level and its legal aspects were to be considered by a Committee. These discussions have not proceeded so far to any conclusion. In the circumstances the following decisions were taken:-

(1) All land belonging to Muslim educational, religious and cultural institutions in East Punjab should be excluded from quasi-permanent allotment;

(2) Institutions which can prove legally that they have moved from West Punjab to East Punjab should be allotted land in East Punjab. In other words if the body in whose name the property stands has moved to the Indian Union and is legally

capable of so moving, land may be allotted to it; and

(3) Allotment to all institutions should be subject to the scheme of graded cuts, but where a registered society has a number of institutions affiliated to it and plots of land has a number of institutions affiliated to it and plots of land were held by these institutions separately the latter should be considered as a unit for the purpose of application of graded cut.

7. I see that the allotment which the Resettlement Manual contemplates in favour of the institution cannot be reconciled with securing allotment of the land on the basis of a verified claim. There are probably several institutions which have come by benefit through this Manual and nothing of what I state here finding a conflict ought to have the repercussion to claims accommodated in favour of religious or charitable institution and reopen matters for any person to challenge such entitlement. I confine this observation between the Act or the Manual to use only in this case, for, an objection is specifically brought forth but that has been left unaddressed by the authorities.

8. The learned senior counsel appearing on behalf of the respondent, however, would state that Dera's allotment has not come under the 1954 Act to look for a verified claim. The counsel would state that the property was granted in sanad under notification dated 08.07.1949. The restriction contained in the Act to make the allotments only after verified claim was not applicable to sanads which had been issued soon after the partition. The sanad itself must be taken as recognition of the right of the Dera as a lawful institution to whom such allotment was possible under the notification. I find this to be a potent defence.

9. The reality is that from November 25, 1965, for 49 years, the petitioner has held the benefit of allotment as displaced person. The Dera's claim has been only by virtue of fact that it had gained an earlier allotment but it was cancelled before the allotment in favour of the petitioner. Between the private individual who was a displaced person, who had been favoured with allotment and the Dera, the existence of which is admitted to be shown no more than with the existence of a building in one portion, I would let the right of the private allottee to solidify. I take this to be what is ethical that there shall be curtains down when a Dera will have greater philosophical approaches to settle with and not engage in a claim to property that is held in the hands of a person who was an allottee from the State. The petitioner is no usurper. On the other hand, he was found to be a deserving party for resettlement after partition. That ought to itself conclude the issue for his benefit. The order passed by the Financial Commissioner allowing for the restoration of the property to the Dera was not justified. I quash the same and grant the benefit to the petitioner. It shall be open to the second respondent-Dera to apply to the State for any special consideration under that prevailing law. I notice that the Act of 1954 itself has been now repealed and we are examining it only for the purpose of the correctness of the order passed under the Act when it was still current and before it was repealed. The writ petition is allowed.

II. COCP No. 2672 of 2011

10. COCP No. 2672 of 2011 is at the instance of Mohtamim of the Dera through the power of attorney to make out a case of contempt on a plea that the petitioner has sold the property to one Surjit Singh and Gurbhej Singh on 08.02.2002. This sale is said to be in contempt of court. Since I have upheld the settlement in favour of the writ petitioner, the transaction of sale by him must be taken to its logical consequence of finding no legal impediment to such an action. This is all the more so that this court had never at any point of time passed a specific order against the sale of the property. The contempt petition is dismissed.