

(2016) 08 P&H CK 0107
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8604 of 1993

Tarlok Singh

APPELLANT

Vs

Chief Settlement Commissioner, Haryana

RESPONDENT

Date of Decision : 27-08-2016

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : (2017) 2 PLR 204

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Mr. C.B. Goel, Advocate, for the Petitioners; Mr. Sandeep Singh Mann, Sr. DAG, Haryana, for the Respondent no. 1

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.(Oral)—Present writ petition is directed against the orders dated 11.06.1993 (Annexure P-3) and dated 22.06.1993 (Annexure P-4) passed by the respondent authorities, whereby the allotment made in favour of Arjan Singh, vendor of the petitioners, was cancelled after a period of more than 40 years.

2. Notice of motion was issued and dispossession of the petitioners was stayed vide order dated 21.07.1993 passed by a Division Bench of this Court. Written statement was filed on behalf of the contesting respondents No.1 and 2. Since nobody put appearance on behalf of respondents No.3 and 3A despite service, they were proceeded against ex-parte vide order dated 07.12.1993 passed by a Division Bench of this Court. Thereafter, the writ petition was admitted for regular hearing and stay was ordered to continue vide order dated 17.05.1994 passed by a Division Bench of this Court. That is how, this Court is seized of the matter.

3. Heard learned counsel for the parties.

4. It seems that vide order dated 11.01.2015, fresh notice was issued to

respondents No.3 and 3A without noticing the above said order dated 07.12.1993, whereby these very two respondents were proceeded against ex parte. Further, learned counsel for the petitioners have clarified that since father of respondents No.3 and 3A had sold the land in favour of the petitioners way back in the year 1960, they were not interested nor they would be the contesting parties.

5. Undisputed facts of the case are that late Sh. Arjan Singh son of Jiwan Singh was allotted 12-9⁷ standard acres of land in Village Balluana, Tehsil Fazilka, District Ferozepur, in lieu of the land left by him in Chak No.4- R, Hadbast No.103, Tehsil and District Montgomery, now in Pakistan. Arjan Singh was also allotted land measuring 4.10 standard acres in Village Nigdhu, Tehsil and District Karnal. As a consequence of the above said allotment, proprietary rights were also conferred on the allottee-Arjan Singh vide a Sanad (Deed) allotment dated 15.11.1955, whereas the land was allotted to him vide order dated 29.11.1952, as recorded by the Chief Settlement Commissioner, Haryana in the impugned order dated 11.06.1993 (Annexure P-3) at page 22 of the paper book.

6. Petitioners purchased the land measuring 30 kanal 2 marla situated in Village Nigdhu, Tehsil and District Karnal, from the original allottee Arjan Singh, vide registered sale deed No.1792 dated 06.12.1960, for due consideration. Original allottee Arjan Singh had also sold his land, allotted to him in Village Balluana, Tehsil Fazilka, District Ferozepur, in favour of Sarvshri Hakam Rai, Bhagwan Dass and Chamba Ram. Later on, it transpired that Arjan Singh was not entitled for 12-9⁷ acres of land in Village Balluana. Proceedings for cancellation of allotment were initiated against him by the competent authority of Rehabilitation Department of State of Punjab. Since Hakam Rai etc. were found to be bona fide purchasers, proceedings against them were dropped. However, a reference was made to the State of Haryana about the land allotted to Arjan Singh in Village Nigdhu, District Karnal. This reference was made by the Tehsildar-cum-Managing Officer, Rehabilitation Department, Punjab, vide order dated 07.08.1987 (Annexure P-1).

7. On the basis of above said order dated 07.08.1987 (Annexure P-1), Assistant Registrar, Haryana, Rehabilitation Department, took up the matter and referred the case to Chief Settlement Commissioner, Haryana, for cancellation of allotment of the land measuring 4.10 standard acres and also qua proprietary rights of the land situated in Village Nigdhu, Tehsil and District Karnal, vide order dated 17/18.08.1988. It has been so recorded by the Chief Settlement Commissioner-respondent No.1, in para 2 of his impugned order dated 11.06.1993 (Annexure P-3), at page 18 of the paper book. After hearing the parties, respondent No.1 passed the impugned order dated 11.06.1993 (Annexure P-3), setting aside the allotment as well as proprietary rights of Arjan Singh. As a consequence of impugned order dated 11.06.1993 (Annexure P-3), respondent No.2 passed the impugned order dated 22.06.1993 (Annexure P-4) for necessary correction in the relevant revenue record. Hence this writ petition.

8. A bare reading of the impugned order (Annexure P-3) passed by respondent No.1 would show that the Chief Settlement Commissioner failed to appreciate true facts of the case as well as the law laid down by the Hon''ble Supreme Court and this Court, on exercise of suo motu powers. Heading of the impugned order (Annexure P-3) at page 16 of the paper book, would show that respondent No.1 was intending to exercise his suo motu powers for cancellation of allotment of land and also the proprietary rights.

9. As noticed herein above, the land was allotted in favour of Arjan Singh as far back as on 29.11.1952 and thereafter vide deed dated 15.11.1955, proprietary rights were also granted in favour of the allottee Arjan Singh. In fact, two basic issues were to be considered and decided by the Chief Settlement Commissioner-respondent No.1 namely; whether he could have exercised his suo motu powers after a period of more than 40 years and whether the sale in favour of the petitioners was protected under Section 41 of the Transfer of Property Act, 1882 (for short "Act of 1882"), they being bona fide purchasers. However, respondent No.1 has failed to consider and appreciate both the above said issues in the correct perspective, while passing the impugned order, because of which the impugned order cannot be sustained.

10. This very issue fell for consideration of the Hon''ble Supreme Court in Loku Ram v. State of Haryana and others, 1999 (1) PLJ 1. The relevant observations made by the Hon''ble Supreme Court in Loku Ram's case (supra), which can be gainfully followed in the present case, read as under: -

"The order of the Financial Commissioner was challenged before the High Court in a writ petition but the High Court refused to interfere with the same. The present appeal before us is against that order of the High Court.

Section 18(6) of the Act reads thus :-

"Section 18(6). - Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit."

No doubt, the section uses the expression "at any time" but it cannot be indefinite. The power has to be exercised within a reasonable time. While construing the expression "at any time", this court in State of Gujarat v. P. Raghav, AIR 1969 Supreme Court 1297. has stated the law thus :-

"11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

Section 18(2) of the Act prescribed a period of 15 days for filing an appeal and Section 18(4) prescribes a period of 30 days for filing a revision before the Commissioner. When the two Sub- Sections prescribed a very short period of 15 and 30 days respectively, it will be unreasonable to hold that the Financial Commissioner has unlimited power to entertain a revision after a lapse of several years.

The test prescribed by this Court in Raghav's case has been ignored by the Financial Commissioner in the present case. His order does not disclose any reason to hold that a period of nearly seven years is reasonable on the facts of the case. Nor has the High Court gone into the question and decided whether the power has been exercised on the facts and circumstances within a reasonable period. Hence we allow the appeal and set aside the order of the High Court. The order of the Financial Commissioner is also set aside. The order of the Collector dated 18.6.1982 is restored."

11. The above said judgment of the Hon''ble Supreme Court came to be followed by a Division Bench of this Court in Diwan Hira Lal Kapoor and others v. The State of Haryana and others, 2002 (1) PLJ 28. This Court further followed the law laid down by the Hon''ble Supreme Court in Loku Ram's case (supra), as well as by the Division Bench of this Court in Diwan Hira Lal Kapoor's case (supra), in its recent judgment dated 13.01.2016 passed in CWP No.2369 of 1994 (Nasib Singh and others v. State of Haryana and others).

12. Further, on the issue, that the petitioners, being bona fide purchasers, would be entitled to the protection of law under Section 41 of the Act of 1882, the law laid down by this Court in its order dated 03.06.2011 in CWP No.12023 of 1990 (Madan Gopal son of Sh. Mohan Dass and others v. Financial Commissioner (Revenue) and Secretary to Government, Haryana and others), would apply in favour of the petitioners. Learned counsel for the petitioners has been found well justified in placing reliance on all the above said judgments.

13. While deciding the issue of bona fide purchase, in Madan Gopal's case (supra), this Court in para 4 of the order dated 03.06.2011, held as under: -

"The issue of bonafides of purchase and the right of a purchaser to hold of to the property despite the cancellation of allotment made earlier is squarely governed by a decision of this Court in Mohinder Singh and others v. State of Punjab and others (1996) 113 PLR 225. The facts are absolutely similar except that the original allotment was made in the year 1962 and after the allottee had sold the property in the year 1968, the cancellation of the original allotment was made in the year 1976. Relying on an earlier judgment of this Court in Kali Ram and others v. Union of India (1976) 78 PLR 475, the Court held that Section 41 of the Transfer of Property Act was bound to be invoked to the persons, who had been bona fide and the impermissibility of a State to cancel after fairly a length of time. The learned Judge also referred to the Division Bench ruling in State of Haryana v. Savitri Devi and Ors. 1986 PLJ 656 and Rattan Singh and another v.

Chief Settlement Commissioner Haryana and Ors. 1978 PLJ 47 to hold that a situation like this would call for invoking Section 41 of the Transfer of Property Act, for the rights acquired by the innocent purchasers from ostensible owners cannot easily be blighted."

14. When confronted with the above said glaring fact situation of the case in hand, learned counsel for the State could not advance any meaningful argument and rightly so, it being a matter of record. When the law laid down by the Hon''ble Supreme Court in Loku Ram's case (supra) and by this Court in Madan Gopal's case (supra), is applied to the facts of the present case, the inevitable conclusion is that the impugned order is liable to be set aside and the present writ petition deserves to be allowed. It is so said because respondent No.1 exceeded his jurisdiction, while exercising suo motu powers after inordinate long period of more than 40 years. In this view of the matter, it can be safely concluded that since the impugned order runs counter to the law laid down by the Hon''ble Supreme Court in Loku Ram's case (supra), it cannot be sustained and the same is liable to be set aside, for this reason also.

15. Similarly, petitioners have duly established on record that they were bona fide purchasers and were entitled for the statutory protection under Section 41 of the Act of 1882. There is no denying the fact that when the petitioners purchased the land vide registered sale deed No.1792 dated 06.12.1960 for a due consideration, their vendor Arjan Singh who was original allottee, was absolute owner in possession of the land. His ownership and possession was also recorded in the relevant revenue record. The petitioners, after exercising of due diligence on their part, purchased the land from the true owner. Had there been any adverse entry in the relevant revenue record, the position might have been different.

16. However, it is nobody's case here that petitioners did not exercise due diligence at the time of purchasing the land from original allottee namely Arjan Singh. Under these undisputed facts and circumstances of the case, petitioners were entitled to invoke the provisions of the Act of 1882, being the bona fide purchasers. It is also pertinent to note here that authorities of the State of Punjab rightly held above said Hakam Rai and others to be the bona fide purchasers, from the same vendor Arjan Singh-original allottee. In this view of the material fact, present petitioners would be certainly entitled to be treated at par with Hakam Rai and others, because the petitioners were also bona fide purchasers for due consideration. Since respondents No.1 and 2 miserably failed to consider the above said relevant aspects of the matter, while passing their respective impugned orders, the same cannot be sustained, for this reason as well.

17. No other argument was raised.

18. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view

that since the impugned orders have been found, as the orders without jurisdiction, besides suffering from patent illegality, the same cannot be sustained. Accordingly, the impugned orders are hereby set aside. Writ petition deserves to be accepted.

19. Resultantly, with the above said observations made, present writ petition stands allowed, however, with no order as to costs.