

(1997) 04 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 627 of 1983

Waso Bai

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Citation : (1997) 2 PLJ 94 : (1998) 2 RCR(Civil) 421

Hon'ble Judges : T.H.B.Chalapathi, J

Advocate : Mr. Anil Khetarpal, Advocate., Advocates for appearing Parties

Judgement

T.H.B. Chalapathi, J.

1. Challenging the order dated 31.12.1980 of the Collector, Kurukshetra on an appeal remanding the matter to the Prescribed Authority under Haryana Ceiling on Land Holdings Act, 1972 and subsequent orders of the Commissioner and Financial Commissioner confirming the same, the petitioner approached this Court by way of this writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

2. The dispute in this case relates to Khasra No. 30/2 of an extent of 7 kanals 18 marlas. According to the petitioners the said land was transferred in their favour prior to 30th July, 1958 and, therefore, the said land has to be excluded while computing the surplus area of the landowner Sobha Ram in view of the provisions contained in Section 8 of Haryana Ceiling on Land Holdings Act, 1972. They made an application before the Sub Divisional Officer cum Prescribed Authority, Thanesar on 24.8.1977. By an order dated 13.12.1977 the Sub Divisional Officer cum Prescribed Authority directed the exclusion of the said land from surplus area. Thereafter, the 3rd respondent filed an appeal before the Collector, Kurukshetra for setting aside the order of the Prescribed Authority dated 13.12.1977 on the ground that the land in dispute was allotted to him on 14.11.1961 as it was declared surplus under the Punjab Security of Land Tenures Act, 1953 and, therefore, the land cannot be excluded from the surplus area without affording an opportunity of hearing to him. The Collector by its order

dated 31.12.1980 remanded the matter to the Prescribed Authority with a direction that he should decide the case afresh after hearing the appellant, namely the 3rd respondent herein according to facts and law. The petitioners preferred a revision to the Commissioner, Ambala Division which was dismissed on 9.6.1981. A further revision to the Financial Commissioner was also unsuccessful. Therefore, the petitioners approached this Court for quashing the orders of the Collector, Kurukshetra as confirmed by the Commissioner, Ambala and the Financial Commissioner.

3. Admittedly the disputed land was part of the holding of Sobha Ram. His surplus area was determined on 2.7.1960 in accordance with the provisions of the Punjab Security of Land Tenures Act, 1953 and that the land in Khasra No. 30/2 measuring 7 kanals 18 marlas was declared surplus along with some other lands. After determination of the surplus land in the hands of Sobha Ram the same was allotted to 3rd respondent Devi Ditta by an order dated 14.11.1961. It was only in the year 1977 that wife of Sobha Ram approached the Prescribed Authority under the Haryana Ceiling on Land Holdings Act, 1972, for exclusion of the said land from the surplus area of Sobha Ram. To that application the 3rd respondent was not made a party. The Prescribed Authority without issuing any notice to the allottee passed the order on 13.12.1977. As the allottee was not given opportunity of hearing he preferred an appeal to the Collector who allowed his appeal and remanded the matter to the Prescribed Authority. The revision petitions filed by the petitioners before the Commissioner as well as the Financial Commissioner were unsuccessful. The only question to be decided in this writ petition is whether the order passed by the Prescribed Authority on 13.12.1977 without affording an opportunity of hearing to the allottee can be sustained and the order of remand by the Collector is, therefore, not legal.

4. An allottee of the land which was declared as surplus under Punjab Security of Land Tenures Act, 1953, is definitely a person interested in the land when the petitioners sought exclusion of the land from the surplus area on the ground that the land was transferred to them prior to 30th July, 1958. They should have impleaded the allottee also as a party to the application as his rights as allottee will be affected by any order passed on the application of the petitioners. In such a proceeding it will be open to the allottee to show that the transfer was not valid for whatsoever reason it may be and that the determination of the surplus area under Punjab Security of Land Tenures Act, 1953 has become final and it cannot be reopened after lapse of more than 25 years. Therefore, any order passed in his absence is not binding on him. In this view of the matter I am of the opinion that Collector, Kurukshetra rightly allowed the appeal filed by the 3rd respondent Devi Ditta and remanded the matter to the Prescribed Authority for afresh disposal in accordance with law after giving an opportunity of hearing to the allottee. In this view of the matter Commissioner and Financial Commissioner rightly rejected the revision petitions filed by the petitioners. Learned counsel for the respondents contended that the first petitioner who is the wife of landowner Sobha Ram obtained a collusive decree in her favour against her husband and it

being a consent decree does not create any right on the first petitioner and, therefore, the same cannot be acted upon. In view of the fact that the matter is remanded by the Collector to the Prescribed Authority, it is not necessary for me to go into this question. On the facts and circumstances of this case I am of the opinion that Collector rightly remanded the matter to the Prescribed Authority for afresh disposal after giving an opportunity of hearing to the allottee. It is open to the petitioners and the 3rd respondent to raise all contentions that are open to them before the Prescribed Authority. I do not, therefore, find any ground warranting interference with the orders passed by the Collector and confirmed by the Commissioner and the Financial Commissioner in revisions.

5. The writ petition, therefore, fails and is accordingly dismissed. However, there will be no order as to costs. The parties are directed to appear before the Prescribed Authority as directed by the Collector, Kurukshetra on 3.6.1997.