Swarn Singh and Another

Vs

State of Punjab and Others

Civil Appeal No. 888 of 1968

(R. S. Sarkaria, A. C. Gupta JJ)

19.11.1975

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against a judgment of the Punjab and Haryana High Court summarily dismissing the Letters Patent appeal filed by the present appellants.

2. Mahant Gurnarain, respondent No. 5, owned 182 standard acres and 11-1/4 units of land in several villages in the districts of Ambala, Hoshiarpur and Jallundur. The Special Collector, Chandigarh, respondent No. 4 herein, by an order dated March 3, 1961, declared an area of 132 standard acres, 11 1/2 units, out of the aforesaid land, as surplus area of the mahant under the Punjab Security of Land Tenures Act, 1953 (to be hereafter called the Act). Out of this surplus area, land admeasuring 13 standard acres and 1 1/2 units situate in the revenue estate of Dosanjh Kalan tehsil Phillaur was allotted by the Circle Revenue Officer to the appellants and respondent No. 7, and possession thereof was given to the on June 15, 1961 in accordance with Rule 20 of the Punjab Security of Land Tenures Rules, 1956 (hereinafter called the Rules).

3. On September 18, 1961, the Special Collector excluded the entire area of respondent No. 5 in the revenue estate of village Dosanjh Kalan from the surplus pool. This excluded area included the aforesaid 13 standard acres and 11 1/2 units that had been allotted to the appellants. The Collector allowed this area to Jagga (respondent No. 6) and his brother, Meet Singh, as their permissible area on the ground that they were tenants of this land on April 15, 1953.

4. Aggrieved, the appellants carried an appeal to the Commissioner (respondent No. 3), contending inter alia that Jagga and Meet Singh were not tenants of this land on the crucial date i.e. April 15, 1953. The Commissioner dismissed this appeal. A revision preferred by the appellants before the Financial Commissioner met the same fate on January 25, 1963. To impugn these orders of the Special Collector, the Commissioner and the Financial Commissioner, the appellants filed a writ petition (No. 173 of 1963) in the High Court. The petition was accepted by a learned Judge (Shamsher Bahadur, J.) who set aside those orders and remanded the case to the Special Collector with the direction that he should proceed afresh to determine the question after giving an opportunity of hearing to the writ-petitioners. Against that order of the learned Judge, Jagga preferred an appeal before a Division Bench of the High Court. The Bench dismissed the appeal.

5. After the remand, the Special Collector reheard the parties and gave them opportunity to adduce further evidence on the point at issue, Jagga's contention was that in the agricultural year 1952-53, he and his brother, Meet Singh, sons of Rattan Singh, were in possession of this land as tenants

under the landowner, and consequently this area could not be included in the surplus area of the landowner. The contention was accepted by the Special Collector, in these terms.

In support of this, oral as well documentary evidence has been produced by Jagga, claiming to be an old tenant. In oral evidence, two witnesses have been examined. One is Shanti Sarup, Lambardar of village Dosanjh Kalan where the land in dispute is situated. The other is Karam Sigh, who is one of the new tenants resettled on the land already declared surplus with Mahant Gurnarain (landowner). In documentary evidence, certified copies of khasra girdawaries, Exhibits PB and PC, certified copies of pedigree table, Exhibit PD and receipt showing payment of lease money to Mahant Gurnarain and land revenue paid to Lambardar by Rattan Singh, the father of Jagga, Exhibits PI, PII, PIII, PIV, PV, PVI, PVII, PVIII, PIX, PX and PXI, have been produced. From the perusal of the entries in the certified copies of khasra girdawaries it appears that from 1948 to 1952 the cultivation of Rattan Singh son of Ishar Singh i.e. Jagga's father is entered. In 1952-53, however the cultivation of Rattan Singh son of Dalip Singh is entered. Thereafter, again in 1953-54, Meet and Jagga sons of Rattan Singh, are entered upto 1961. It seems that the mistake made in the parentage of Rattan Singh, recording him as son of Dalip Singh in 1952-53 in khasra girdawari is nothing but a clerical error. Because further these entries find full support from the oral as well as other documentary evidence mentioned above, the continuance of tenancy of a son after the father is a solid proof which can safely be relied upon. I have, therefore, no hesitation in accepting the plea that Jagga is an old tenant and his area, therefore, should not be included in the surplus pool.

6. In the result the Special Collector by his order dated May 11, 1965, rejected the pleas taken by the appellants and excluded the area in dispute, admeasuring 13 standard acres and 1 1/2 units, from the surplus area of the landowner and held it as permissible area of respondent No. 6 (Jagga) and his brother, Meet Singh.

7. Against this order of the Special Collector, the appellants appealed to the Commissioner who by an order, dated May 25, 1965, dismissed the same and affirmed the order of the Special Collector. The appellants moved the Financial Commissioner in revision under Section 24 of the Act. The Financial Commissioner dismissed the revision on October 31, 1966 and affirmed the orders of the Special Collector and the Commissioner. A review petition filed by the appellants was also rejected by the Financial Commissioner on November 25, 1966.

8. The appellants then on December 13, 1966, filed a writ petition under Articles 226/227 of the Constitution for the issuance of an appropriate writ, order or direction, quashing the orders of respondents Nos. 2 to 4. A learned Single Judge (Tek Chand, J.) by his judgment, dated September 14, 1967, dismissed the petition and upheld the orders passed by respondents Nos. 2 to 4. A Letters Patent appeal filed by the appellants was also dismissed by a Bench of the High Court on October 31, 1967. It is against this order that the appellants have come in appeal before us.

9. The main contentions of Shri R. K. Garg, learned Counsel for the appellants are that in first appeal, the Commissioner wholly misconceived the points for determination; that he never applied his mind to the contentions advanced by the appellants; that the referred with approval to the previous orders of the Commissioner and the Financial Commissioner which had been quashed by Shamsher Bahadur, J. that the Special Collector totally misread the entries in the khasra girdawari and failed to note that there was no diagonal line in the relevant column of the khasra girdawari for the year 1952-53 which indicted that the tenant who was cultivating this land in the preceding crop, had ceased to do so in the succeeding crop. The point pressed into service is that according to khasra girdawari for Rabi 1952-53, the land was in the cultivation of Rattan Singh s/o Dalip Singh, and that

there was no evidence or basis for the Special Collector's finding that the parentage of this Rattan Singh had been wrongly record as 'Dalip Singh', instead of 'Isher Singh', due to a clerical error. It is submitted that there is a report in the patwari's roznamcha showing that in the year 1952-53, Rattna Singh s/o Isher Singh had ceased to be in cultivation of this land, and in his place Rattna Singh s/o Dalip Singh became its cultivator, and that this report also did not receive the attention of the Special Commissioner or the higher authorities. Another error, according to Counsel, committed by the Special Collector, was that after he had reserved the final orders in the case, he allowed respondent No. 5 to furnish a copy of the khatauni ishtemal at the back of the appellants, and examined the patwari, also. This procedure, contends Mr. Garg, was manifestly illegal and unfair. It is urged that the Commissioner went off at a tangent and did not apply his mind to the real points in controversy and that the order of the Financial Commissioner was equally perfunctory. It is stressed that the Commissioner and the Financial Commissioner wrongly assumed that the appellants were claiming as protected tenants; whereas they were claiming as allottees of surplus area, and that Jagga and Meet Singh were not entitled to this land because there was no evidence to show that on April 15, 1953 they were tenants of this land.

10. On the other hand, Shri Hardy, learned Counsel for the respondents submits that in proceedings under Articles 226/227, the High Court has no jurisdiction to interfere even with an erroneous finding of fact, however grave the error may be. The Collector's order, it is maintained, does not suffer even from an error of fact; that there was ample evidence on the record to show that on April 15, 1953, Jagga's father Rattna Singh was a tenant of this land. Counsel contends that the mere reference to some irrelevant matters by the Commissioner, did not affect the result of the appeal before him because he had, in the penultimate paragraph of his order, considered the appellants' contention that Jagga was not an old tenant, and as such, the area under his tenancy could not be left out of the surplus pool. This contention, it is emphasised was negatived by the Commissioner after examining the record. It is further submitted that the Financial Commissioner considered the point in issue and after going through the evidence, fully affirmed the finding of the Special Collector that in the year 1952-53, Rattna Singh son of Isher Singh who was the father of Jagga and Meet Singh, cultivated the land in dispute as a tenant, and that the entry in the khasra girdawari showing Dalip Singh as the father of Rattan Singh was a clerical error. Our attention has also been invited to the fact that the learned Judge (Tek Chand, J.), also, referred to the evidence in writ proceedings to satisfy himself that the Special Collector's finding was not erroneous but was based on a proper appreciation of evidence. It is argued that the reference made by the Commissioner to irrelevant matters had not resulted in a wrong decision, nor in a miscarriage of justice. Learned Counsel has further pointed out that there was no evidence on the record to show that the patwari made any report in his roznamcha showing that instead of Rattan Singh son of Isher Singh, Rattna Singh son of Dalip Singh had come in cultivation of the land in question in the year 1952-53. On the contrary, says the Counsel, the evidence on the record, oral and documentary, relied upon by the Collector, showed that Rattan Singh son of Isher Singh was a longstanding tenant of this land since the year 1948-49; that the entries in the khasra girdawari for four years preceding the year 1952-53 continuously stand in his name and those for the succeeding 7 or 8 years also stand in the name of his sons Jagga and Meet, he having died in the meantime. According to the pedigree table and other evidence on the record, it is contended, Dalip Singh was the real brother of Isher Singh father of Rattan Singh. Counsel concludes, that in these circumstances, the finding of the Collector that the entry in the khasra girdawari for the year 1952-53 showing 'Dalip Singh' instead of 'Isher Singh', as the father of the tenant Rattan Singh was due to a clerical error, was not incorrect; and even if it was erroneous, it could not be interfered with in writ proceedings. Reference has been made to this Court's decision in Syed Yakoob v. K. S. Radhakrishnan ((1964) 5 SCR 64 : AIR 1964 SC 477) and

State of Maharashtra v. B. K. Takkamore ((1967) 2 SCR 583 : AIR 1967 SC 1353).

11. Counsel further discounts the contention of his learned friend opposite that the evidence of the patwari was recorded by the Collector at the back of the appellant. It is asserted that the patwari was, in fact, examined in the presence of the parties and was cross-examined on behalf of the appellants.

12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the High Court in writ proceedings under Article 226. It is well-settled that certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra),

this limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence, at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.

14. Now in the case before us, as will be apparent from the passage extracted earlier from the order of the Special Collector, the finding in question was a finding of fact arrived at by him after an appraisal of the oral and documentary evidence on record. His finding that for the year 1952-53, Rattan Singh s/o Dalip Singh entered in the khasra girdawari as a tenant of the land was a misdescription of 'Rattan Singh son of Isher Singh' could not be said to be patently wrong. According to the Collector, the tenancy of Rattan Singh son of Isher Singh continued without a break from 1948 to 1961, although after his death, from 1953-54 onwards the tenancy was in the name of his sons, Jagga and Meet. The Collector found that for the year 1952-53, due to a clerical error, in the khasra girdawari, the name of Rattan Singh's father was shown as 'Dalip Singh', instead of Isher Singh. This mistake, according to the Special Collector, occurred because 'Dalip Singh' was, according to the pedigree table on record, the real brother of Isher Singh, the father of Rattna Singh.

15. Before the Collector, it was contended on behalf of the appellants that for the year 1952-53, the land in dispute was, in fact, cultivated by Rattan Singh s/o Gulzar Singh. This Gulzar Singh, though alive, was not examined. In any case, it was common ground that the parentage of Rattan Singh as entered in the khasra girdawari for the year 1952-53, was erroneous. This being the case, even on facts, the finding of the Special Collector that on April 15, 1953, Rattan Singh son of Isher Singh, the father of Jagga and Meet respondents, was in occupation of this land as a tenant, could not be said to be patently wrong, much less could it be a finding based on no evidence or on inadmissible evidence.

16. According to the scheme of the Act, the Collector has to fix separately the permissible areas of the landowner as well as the tenants as on April 15, 1953. Accordingly, the Collector put the land in dispute in the 'permissible area' of the tenant, Rattan Singh s/o Isher Singh, and excluded it from the surplus area of the landowner. Thus, the order of the Collector did not suffer from any error of law or of jurisdiction.

17. The contention that some evidence was allowed to be tendered at the back of the appellant, does not appear to be tenable. According to Mr. Garg, the evidence which was let in this manner, was a copy of the khatauni, and the examination of the patwari after the case had been heard and reserved for orders. There is no reference to this khatauni in the order of the Special Collector which is not based on it. The patwari was obviously examined in the presence of the parties or their Counsel. Indeed, he is said to have been cross-examined by the parties including the appellants. This belated examination of the patwari did not prejudice the appellants or any other party.

18. It is true that the Commissioner at the outset misconceived the real point in issue and wrongly assumed that the appellants were claiming as protected tenants. But from a reading of his order as a whole, it appears that he did examine the evidence on record and towards the end of his order in the penultimate paragraph, did advert though briefly to the real point for determination and concurred with the Collector, that Jagga was an old tenant and as such the areas under his tenancy had to be excluded from the surplus area of the landowner. In any case, the Financial Commissioner in revision discussed the matter in controversy with sufficient reference to the documentary and oral evidence on record, and came to a well-considered conclusion that the finding of the Collector as to the father of Jagga and Meet being an old tenant in occupation of the land in the crucial year 1952-53, was correct. He found no reason to disturb that concurrent finding of fact.

19. In view of this, the deficiency or reference to some irrelevant matters in the order of the Commissioner, had not prejudiced the decision of the case on merits either at the appellate or revisional stage. There is authority for the proposition that where the order of a domestic tribunal makes reference to several grounds, some relevant and existent, and others irrelevant and non-existent, the order will be sustained if the Court is satisfied that the authority would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant or non-existing grounds could not have affected the ultimate decision [see State of Maharashtra v. B. K. Takkamore (supra); State of Orissa v. Bidyabhushan Mohapatra (1963 Supp 1 SCR 648 : AIR 1963 SC 779 : (1963) 1 LLJ 239)].

20. For the foregoing reasons, we are of opinion that the High Court was right in holding that there was no justification for interference with the impugned orders in the exercise of certiorari jurisdiction. Accordingly, we dismiss, this appeal but without any order as to costs.

21. Before we part with this judgment, we would like to observe that if the appellants are landless tillers and one of them is an ex-serviceman, then their claims for allotment of land from the surplus pool in this revenue estate or elsewhere should be given due consideration and priority by the authorities concerned under any scheme relating to the allotment of surplus area framed in pursuance of the Act, Rules or any other law.

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