Natha Singh and Others

Vs

The Financial Commissioner, Taxation, Punjab and Others

Civil Appeal No. 1308 of 1968

(A. C. Gupta, Jaswant Singh JJ)

11.03.1976

JUDGMENT

JASWANT SINGH J. –

1. This appeal by certificate under Article 133(1)(a) of the Constitution of India granted by the High Court of Punjab and Haryana at Chandigarh is directed against its order dated May 1, 1967, dismissing in limine the writ petition filed by the appellants herein.

2. The facts giving rise to this appeal are : Natha Singh, appellant No. 1 herein, was recorded in revenue records as landowner in respect of 39 standard acres and 9 3/4 units of land in village Malout, 53 standard acres and 5 units in village Kanamgarh and 4 standard acres and 2 units in village Bhagwanpur. By his order dated July 5, 1959, the then Collector, Ferozepore, acting under the provisions of the Punjab Security of Land Tenures Act, 1953, hereinafter referred to as 'the Act' declared an area of 63 standard acres and 1 1/4 units out of the aforesaid land aggregating 93 standard acres and 1 1/4 units as surplus in the hands of Natha Singh. Rajinder Singh and Jarnail Singh, appellants Nos. 2 and 3 herein, who are the sons of appellant No. 1, went up in appeal against the said order of the Collector to the Commissioner, Jullundur Division, who vide his order dated July 20, 1965 allowed the appeal, set aside the aforesaid order of the Collector and remanded the case for fresh determination of the "surplus area". After re-examination of the case on remand, the Collector, Ferozepore, vide his order date December 20, 1965, overruled the plea raised by appellants Nos. 2 and 3 that the area comprised in Khasra Nos. 296, 297, 517, 519, 285, 293 and 206 which was in their cultivating possession as tenants under appellant No. 1 before the commencement of the Act should be treated as 'Tenants Permissible Area' and excluded from the surplus pool and held that the entries in khasra girdawaries on which the claim of the said appellants was grounded could not be relied upon as they had been tempered with. The Collector further held that even taking the entries at their face value, appellants Nos. 2 and 3 could not be treated as tenants as contemplated by the Punjab Tenancy Act, 1887 (Act XVI of 1887) as they were not paying any rent to appellant No. 1. The Collector also overruled the plea raised by appellant No. 1 that there was some "banjar" land which had to be excluded while reckoning the permissible area. Dissatisfied with this order, the appellants preferred an appeal to the Commissioner, Jullundur Division, who by his order dated November 7, 1966 dismissed the same and upheld the aforesaid order of the Collector, Ferozepore. Aggrieved by these orders, the appellants took the matter in revision to the Financial Commissioner, Taxation, Punjab, who also by his order dated March 3, 1967, affirmed the aforesaid orders of the Collector, Ferozepore, and Commissioner, Jullundur Division. All these orders were challenged by the appellants before the High Court of Punjab and Haryana by means of a petition under Article 226 of the Constitution but the same as already stated, was dismissed in limine. The High Court, however, granted a certificate to the appellants under

Article 133(1)(a) of the Constitution.

3. Appearing in support of the appeal, Mr. Hardayal Hardy has contended that writ petition filed by the appellants could not, in the facts and circumstances of the case, be dismissed in limine by the High Court. Elaborating his submission, the learned Counsel has urged that the orders passed by the revenue authorities could not be sustained as they did not, while computing the 'surplus area', leave out the permissible area, which even according to the khasra girdawaries and roznamcha waqaiti which is maintained for the purpose of recording changes in cultivation was being cultivated by appellants Nos. 2 and 3, as tenants of appellant No. 1 since 1951-52, that 30 bighas of land which was recorded as 'banjar' at the time of the commencement of the Act and did not fall within the definition of land as contained in Section 2(8) of the Act had not been taken into account while evaluating and assessing the "surplus area" and that appellants Nos. 2 and 3 were not afforded proper and adequate opportunity by the Collector to prove the claim put forth by them.

4. Mr. Hardayal Hardy has, in conclusion, drawn our attention to the application made by the appellants for permission to adduce additional documentary evidence in the form of khasra girdawaries for the years 1952 to 1960, the grounds of revision filed by them before the Financial Commissioner, the grounds of revision filed by them before the Financial Commissioner, the depositions of appellant No. 1 and Gurcharan Singh, patwari, and forms A, D, E and F, and its inclusion in the record and has emphasized that the aforesaid documents which are relevant and necessary for disposal of the appeal should be allowed to be produced.

5. With regard to the first contention advanced on behalf of the appellants, it is sufficient to observe that it has been time and again observed by this Court that in dealing with a petition under Article 226 of the Constitution, the High Court cannot exercise the jurisdiction of an appellate Court and cannot re-examine or disturb the findings of fact arrived at by an inferior court or a tribunal in the absence of any error of law.

6. So far as the contention of the learned Counsel for the appellants based on the revenue record is concerned, it may be remarked that it has been concurrently found by the Collector and the Commissioner who examined the original khasra girdawaries that they had been tampered with by the revenue staff in collusion with the appellants. In the circumstances, it would not be safe to place any reliance on them. The reliance sought to be placed on 'roznamcha waqaiti' is also an afterthought. No authenticated copy of the 'roznamcha waqaiti' with reference to which we are invited to verify the entries in the khasra girdawaries has been included in the record. It is also significant that no reliance either before the Collector or before the Commissioner or even before the Financial Commissioner seems to have been placed upon the 'roznamcha waqaiti'. It is also to be noted that even in the application for leave to adduce additional evidence, no mention has been made of any entry in 'roznamcha waqaiti'. Even if the entries in khasra girdawaries are treated as genuine, they can be of little assistance to the appellants as they do not at all, as observed by the Collector, appear to show that any rent was being paid by the appellants Nos. 2 and 3 to appellant No. 1. In the absence of payment of rent or in the absence of material to show that there was a contract between appellant No. 1 and appellants Nos. 2 and 3 absolving the latter of the liability to pay rent, it is difficult to uphold the claim of appellants Nos. 2 and 3 that they were tenants of appellant No. 1

7. So far as the claim regarding 'banjar' land is concerned, it would suffice to say that the Collector who examined the revenue record found that there was no land which fell within that category. It cannot be disputed that a landowner who wished to claim the benefit of the exclusion of 'banjar

qadim' or 'banjar jadid' land from the purview of land has to prove that it was not at the relevant date being put to any agricultural purpose or a purpose subservient to agriculture or used for pasture. No such proof seems to have been adduced in the instant case. It is also important to note that even before the Commissioner, the appellant did not plead that any 'banjar' land was not left out of consideration while assessing the 'surplus area'. All that was urged before the Commissioner was that the land comprised in khasra No. 864 of village Malout had not been left out of account although it was banjar. The Commissioner repelled this please he found the examination of the record that the area comprised in the said khasra number was 'ghair mumkin sarak' which had not been taken into account while assessing the 'surplus area' of appellant No. 1.

8. The contention raised on behalf of the appellants that they were not allowed an opportunity of establishing their claim cannot also be countenanced. There is nothing on the record to indicate that the appellants were denied opportunity to prove their case. The Financial Commissioner has categorically found that appellants Nos. 1 and 2 had full opportunity to place on record their evidence to establish that they were cultivating the land of their father as his tenants and that they did not avail of that opportunity by placing any material on the record to show that or that there was a private partition as sought to be urged by them before him.

9. In view of the foregoing reasons we are satisfied that the orders passed by the revenue authorities did not suffer from any error of law so as to warrant interference in writ proceedings and the High Court was justified in dismissing in limine the writ petition preferred by the appellants.

10. So far as the application of the appellants for additional evidence is concerned, it cannot be allowed in view of the well settled principles of law that the discretion given to the appellate Court to receive and admit additional evidence is not an arbitrary one but is a judicial one circumscribed by the limitations specified in Order 41, Rule 27 of the Code of Civil Procedure. If the additional evidence is allowed to be adduced contrary to the principles governing the reception of such evidence, it will be a case of improper exercise of discretion and the additional evidence so brought on the record will have to be ignored. The true test to be applied in dealing with applications for additional evidence is whether the appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced (see Arjun Singh alias Puran v. Kartar Singh (1951 SCR 258 : AIR 1951 SC 193)). In the instant case, we have not been able to experience any difficulty in rendering the judgment on the material already before us. Instead we feel that the prayer for adducing additional evidence has been made merely to fill up gaps on the basis of some revenue record which has been found by the Collector and the Commissioner to be spurious.

11. We also do not find any other substantial reason to accede to the request of the appellants to allow them to adduce additional evidence. There is no inherent lacuna or obscurity which we require to be filled up or removed to be able to pronounce judgment. The application of the appellants is accordingly rejected.

12. In the result we do not find any merit in this appeal which is also hereby dismissed but in the circumstances of the case without any order as the costs.

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