

Kishan Singh

Vs

Financial Commissioner, Haryana and Others

Civil Appeal No. 2258(N) of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

23.01.1979

JUDGMENT

SARKARIA, J. –

1. This appeal by certificate is directed against an order dated September 2, 1968, of the High Court of Punjab and Haryana dismissing in limine a writ petition filed by the appellant, to impugn certain orders of the Collector, the Commissioner and the Financial Commissioner passed in proceedings under the Punjab Security of Land Tenures Act (hereinafter called the Act).

2. The facts are as follows :

2-A. The appellant owns land in Village Desu Malkana, Tehsil Sirsa, District Hissar in the State of Haryana.

3. In proceedings under the Punjab Security of Land Tenures Act (hereinafter referred to as the Act), the Collector Surplus Area, Sirsa, on February 21, 1961, held that since the total holding of the appellant did not exceed 30 standard acres, there was no surplus area with him.

4. Subsequently, it came to the notice of the Collector that the appellant was, in fact, holding much more than the ceiling of 60 ordinary acres fixed under Section 2(2) of the Act. He, therefore, issued notice to the appellant, why the order be nor reviewed. According to the recital in the Collector's order, this notice was served on him. The appellant did not appear and on June 5, 1962, the Collector proceeding ex parte against the appellant, reviewed his earlier order and declared 30.80 ordinary acres equivalent to 11.37 standard acres as surplus area with the appellant.

5. About 4 or 5 years thereafter, the appellant filed an application before the Collector, for review of his order dated June 5, 1962. The Collector rejected the same by a summary order dated January 27, 1967.

6. Against that order, the appellant went in Revision before the Commissioner, who rejected the same by an order dated November 15, 1967.

7. The appellant's further Revision before the Financial Commissioner met the same fate on April 22, 1968.

8. On August 18, 1968, the appellant filed a writ petition under Articles 226 and 227 of the Constitution, praying for quashing the aforesaid orders dated June 5, 1962/January 27, 1967, November 15, 1967 and April 22, 1968, of the Collector, the Commissioner and the Financial

Commissioner, respectively. The challenge was based on these grounds :

(i) The order dated June 5, 1962 was illegal and against the principles of natural justice, as the same was passed ex parte without giving any opportunity to the writ petitioner to be heard in the matter.

(ii) An area of more than 20 bighas of Banjar Qadim and Gair Mumkin quality, which did not fall within the definition of "land" in the Act, was illegally taken into account in determining the "surplus area".

(iii) There are old tenants in continuous cultivating possession over a part of the total holding of the petitioner since before the coming into force of the Act, and the area under such tenants had to be excluded from the purview of surplus proceedings.

(iv) In any case, under the Act, the petitioner is entitled to a minimum "permissible area" of 30 standard acres.

9. No copy of the petition, which is said to have been filed by the appellant before the Collector requesting for review of his order dated June 5, 1962, was filed before the High Court. An uncertified copy dated November 4, 1965 has now been placed before us at the time of arguments by the learned counsel for the appellant.

10. The learned counsel for the respondent-State has expressed doubts about the authenticity of the copy. It is pointed out that this copy of the petition is dated November 4, 1965, while the Commissioner's order states that the Review Petition was filed before the Collector by the appellant in 1967. However, a copy of the Collector's order dated June 5, 1962 is on the file. It is recited therein by the Collector that Kishan Singh was duly served; he failed to attend; and therefore ex parte proceedings were taken against him. There is no reason to doubt the correctness of this recital.

11. The definition in Section 2(2) of the Act states that "permissible area" in relation to a land-owner or a tenant, means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres.

12. Presumably, the Collector's order dated August 21, 1961, whereby he held that there was no surplus area with the appellant, was passed under the mistaken impression that the limit of the "permissible area" fixed by the Act in 30 standard acres; while such limit was 60 ordinary acres. The review was entertained by the Collector to correct this mistake. On such review, it was found that the area with the appellant was 93.80 ordinary acres, which was 33.80 acres in excess of the permissible limit. Since the order was passed after service of notice on the appellant, it cannot be said by any stretch of imagination, that there was a violation of the principles of natural justice.

13. Section 24 of the Act lays down that the provision in regard to Appeal, Review and Revision under this Act shall, so far as may be, be the same as provided in Sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887.

14. Section 82 of the Punjab Tenancy Act, relates to Review. It prescribes a period of 90 days' limitation from the passing of the order for making a Review Application. This period can be enlarged if the applicant satisfies the Collector that he had sufficient cause for not making the application within that period. Even if the date on the copy of the application for review, now furnished by the appellant is taken as a true copy of the original, then also, this application for

review was made about three and a half years after the passing of that order. There is nothing said in this application as to why it was not made within the prescribed period of 90 days. It was thus prima facie time-barred.

15. It was contended by the learned counsel for the appellant that the Collector had no power in view of the proviso to Section 82(1) of the Punjab Tenancy Act, which is applicable to such a case to review the earlier order of 1961 which, probably, was passed by his predecessor-in-office.

16. The contention must be repelled. It is nowhere alleged in the writ petition or even in the grounds of appeal before this Court, that the earlier order dated August 21, 1961 was not passed by the same person, who has passed the later order dated June 5, 1962, sought to be reviewed.

17. Learned counsel further contended that the impugned order dated June 5, 1962 passed by the Collector suffers from an error of law inasmuch as it has calculated the appellant's permissible area after including about 20 bighas of banjar and ghair mumkin area in the holding of appellant. Such a plea, in general terms, was taken before the Commissioner, also.

18. The order dated November 15, 1967, passed by the Commissioner, (copy of which is on the file) on the Revision application filed by the appellant against the Collector's order dated January 27, 1967, whereby the latter refused to review his order dated August 21, 1961, mentions that the review was sought on the ground that certain area which was banjar jadid or banjar qadim in 1953, was not excluded from his holding in computing his surplus area. The Commissioner, however, dismissed this contention with the observation that, according to the ruling of the Financial Commissioner in R.O.R. 900, 1965-66, *Jiwan Singh v. Amrik Singh*, the rule laid down by the High Court in *Nemi Chand v. State*, "had to be given effect, prospectively, and that cases already decided should not be reopened" in the light of the interpretation of law given in the Financial Commissioner's ruling. The Commissioner also noted that the Collector had refused to review because the application in this respect was "belated". We have already noticed that it was time-barred, and the Revision could be rejected on this score alone.

19. Be that as it may, it seems that even in Revision before the Commissioner, the petitioner did not give the survey numbers or particulars of the land which was alleged to be banjar qadim and ghair mumkin rasta. He simply said that more than 20 acres was banjar qadim and ghair mumkin rasta and, as such, it did not come within the definition of 'land' and should have been excluded from calculation. Even in this writ petition, he did not give particulars of the area alleged to be banjar and ghair mumkin. No extract from the Jamabandi or Khasra Girdawari relating to the year 1953 was filed. The uncertified copy now furnished by the appellant, which purports to be of the Collector's order dated January 27, 1967, does not show that any copy of the Khasra Girdawari or Jamabandi was produced before him even at this stage.

20. In the absence of any evidence on the record, learned counsel for the State does not concede that any banjar and ghair mumkin area (beyond 8 biswas) was included in the holding of the appellant for computing the surplus area. At best, it remains a disputed question of fact whether any banjar qadim and ghair mumkin area, has been included in the permissible area of the appellant.

21. In the absence of any authentic proof, such as copies of the Jamabandi and Khasra Girdawari of the relevant year, the High Court rightly dismissed the writ petition in limine.

22. For reasons aforesaid, the appeal fails and is dismissed. In the circumstances of the case, we

leave the parties to pay and bear their own costs.

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