

PUNJAB AND HARYANA HIGH COURT

Jiwan Singh

Vs

State of Punjab

(Dayak Kishan Mahajan, C.J.)

23.02.1971

JUDGEMENT

Dayak Kishan Mahajan, C.J.

- (1.) THE Collector, Amritsar, declared 22 standard acres and 91/2 Units of land belonging to the petitioner as surplus on October 10, 1962. Against that order, the petitioner filed an appeal before the Commissioner on October 22, 1964, that is, after 742 days. This appeal was dismissed by the learned Additional Commissioner on February 18, 1965, on the ground that it was barred by time. Against that order, the petitioner filed a revision before the Financial Commissioner. The revision petition was dismissed on April 5, 1966. The present petition is directed against that order to which a written statement has been filed on behalf of respondent 1, in which the impugned order has been justified.

(2.) IT has been vehemently argued by the learned counsel for the petitioner that land measuring 4 standard acres and 93/4 Units was Banjar Qadim and land measuring 11 ordinary acres and 4 Kanals was ghair mumkin and these pieces of land did not fall within the definition of 'land' as defined in Section 4 (1) of the punjab Tenancy Act, which definition has been adopted in Section 2 (8) of the punjab Security of Land Tenures Act. The second contention of the learned counsel is that Killa No. 14 of Rectangle no. 45 is shown in the holding of the old tenants and the same killa number is shown in the reserved area of the petitioner, with the result that, if that killa number is excluded, the reserved area of the petitioner amounts to only 29 standard acres and not 30 standard acres, to which he is entitled. His third objection is that the petitioner's brother Hazara Singh filed a revision petition on the ground that his Banjar Qadim land had been included in his holding while declaring his surplus area and the Financial Commissioner in that case remanded the case for fresh decision to the Collector, whereas the same relief to the petitioner has been refused. With regard to the first point, it has been strenuously urged by the learned senior Deputy Advocate-General for the respondents that the appeal of the petitioner before the Commissioner was hopelessly barred by time and no fault can be found with the order of the Commissioner rejecting his appeal on the ground of limitation. The learned Financial

Commissioner has observed in his order that the appeal before the Commissioner was barred by 676 days after excluding the time allowed for filing the appeal and the time taken for obtaining certified copies of the orders appealed against. I am in agreement with the view expressed by the learned Financial Commissioner that the order of the Commissioner rejecting the appeal on the ground of limitation was perfectly legal and valid and no fault can be found with that order. Along with the memorandum of appeal an application for extension of time for filing the appeal was made. The reason stated was that the order was passed by the Collector, Amritsar, on October 11, 1962 in the absence of the petitioner and was never communicated to him through any source. Even Form 'f' was not issued to the appellant and that he came to know of the order for the first time on September 2, 1964, and applied for a certified copy thereof on the same day. The copy was supplied to him on September 29, 1964, and after deducting that period the appeal was within time. The Commissioner observed in his order that the collector had decided the case in the presence of the counsel of the petitioner and that the appeal had been filed after about two years and was obviously barred by time. In his revision to the Financial Commissioner, the petitioner did not take up any ground that the Commissioner had wrongly and illegally dismissed his appeal as barred by time and the only grievance made was that if the appeal before the commissioner was barred by time, it should have been treated as revision petition. The order of the Commissioner was, therefore, correct in law. The question, however, arises whether the Financial Commissioner was right in not allowing the necessary relief to the petitioner when he entertained his revision petition. It is true that it was not pleaded before the Collector that the land described as Banjar Qadim and Ghair Mumkin was not to be taken into consideration while determining the surplus area of the petitioner and this point was for the first time taken up in the grounds of appeal filed before the commissioner. This point was then agitated before the Financial Commissioner and the Financial Commissioner noticed that 4 standard acres and $93/4$ Units of his land were Banjar Qadim and 11 ordinary acres and 4 Kanals were ghair mumkin. He further observed that the Commissioner in a previous appeal had determined that 76 standard acres of land comprised the holding of the petitioner at the commencement of the Punjab Security of Land Tenures Act. Out of this land, the Collector had declared 23 standard acres and $93/4$ Units as the land in possession of the old tenants, and after deducting 30 standard acres, to which the petitioner was entitled as permissible area, 22 standard acres and $91/2$ Units of his land were declared as surplus. The learned Financial Commissioner at the end of the order observed- "if the area that was banjar qadim and ghair mumkin on 15-4-53 were to be deducted, the balance would still be in excess of 30 S. As. I do not, therefore, see how and why the petitioner has a grievance. there is thus no ground for interference. " the learned Senior Deputy Advocate-General has brought to my notice a judgment of a Division Bench of this Court in *Mansa v. Financial Commr. , Harayana, 1970 rev LR 779 (Punj)*, in which it has been held that if the point was raised before the collector that the Banjar Qadim land could not be included in the holding while declaring the surplus area of a land-owner and had not been entertain by the financial Commissioner in revision, the learned Single Judge had correctly declined to interfere with that order of the Financial Commissioner refusing to entertain a fresh point in revision. On the basis of this judgment it is submitted that since the point was not taken before the Collector that there

was any Banjar land which could not be included in the holding of the petitioner, the petitioner should not be allowed the relief in this petition particularly when the Financial Commissioner had refused to grant him that relief. The facts of that case are distinguishable. The Financial Commissioner had refused to entertain that point on the ground that it was a fresh point. In the present case, the Financial Commissioner did not refuse to entertain the fresh point but went into it and after stating that 4 standard acres $93/4$ Units were Banjar Qadim and 11 ordinary acres and 4 Kanals were Ghair Mumkin, he went on to observe that, even if the Banjar Qadim and Ghair Mumkin land had been deducted, balance would still be in excess of 30 standard acres and he did not understand what the grievance of the petitioner was. Evidently the grievance of the petitioner was that his land should have been evaluated for the purpose of surplus area after excluding the Banjar Qadim and Ghair Mumkin land. If that had been done, the petitioner would have retained in his possession 4 standard acres $93/4$ Units and 11 ordinary acres and 4 Kanals in addition to his permissible area of 30 standard acres. That was the grievance that the petitioner had made before the Financial commissioner and I am at a loss to understand why the learned Financial commissioner did not understand the grievance of the petitioner in that light. It was not at all difficult to understand that grievance.

(3.) RELIANCE has then been placed by the learned Senior Deputy Advocate-General on the judgment of their Lordships of the Supreme Court in Amar Surjit Singh v. The State of Punjab, 1968 Punj LJ 297 (SC). The facts of that case are again distinguishable. In that case the Collector had gone into the matter and found that the land claimed to be Banjar Qadim and Banjar Jadid was really of not that category. His conclusion was that those lands fell within the scope of Section 2 (8) of the Punjab Security of Land Tenures Act. In any case their Lordships refused to interfere with the judgment of this Court on the ground that the question whether the disputed land was Banjar Qadim or not, was a question of fact which had to be decided by the Collector. In the present case the Collector has not decided that point and once the revision petition was entertained by the Financial Commissioner and the new point was allowed to be urged, he ought to have granted the relief to the petitioner to which he was entitled on that basis. This course was particularly desirable when another Financial Commissioner had granted relief to the petitioner's brother in similar circumstances. A reference to the order of the Collector shows that Killa No. 14 of rectangle No. 45 is found in the reserved area of the petitioner as well as in the area in the possession as well as in the area in possession of the old tenants. The learned senior Deputy Advocate-General has explained that this does not require any rectification because the area in the possession of the tenants can be included by a land-owner in his permissible area and that there is nothing wrong in it. I, therefore, find no merit in this point raised by the petitioner. The third point urged by the learned counsel for the petitioner has already been adverted to while discussing the first point. ;