IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.4748 of 1995
Date of Decision: May 04, 2017

Gurbax Singh & another

...Petitioners

Versus

Financial Commissioner (Appeals), Punjab, Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.K.S.Sidhu, Senior Advocate with
Mr.A.S.Sandhu, Advocate,
for the petitioner.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Mr.T.S.Sidhu, Advocate for
Mr.Vikas Singh, Advocate,
for respondent No.5.

Mr.Karan Gupta, Advocate,
for L.Rs of respondent No.8.

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AMIT RAWAL, J. (Oral)

The grievance of the petitioners, who are successors-in-interest of Baru Ram, who was stated to be a tenant of a big landlord in respect of land measuring 15 kanals 13 marlas, has been that the Financial Commissioner vide impugned order dated 20.7.1993 (Annexure P-8), while deciding the revision petition of Kirpal Singh-respondent No.5, has not taken into consideration the appointed date of 1956 strictly as per the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955 (for short "1955 Act").

Mr.K.S.Sidhu, learned Senior Counsel assisted by Mr.A.S.Sandhu, Advocate, representing the petitioners submits that the father of the petitioners Baru Ram was a tenant of a big landlord in 1959. Kirpal Singh-respondent No.5 without impleading the petitioners, who were in continuous possession of Khasra Nos.73, 74, 75, 97, 98 and 103, filed an application for acquisition of proprietory rights. The said application had been decided by the Assistant Collector at the back of the petitioners vide order dated 24.7.1962 (Annexure P-1) and upheld by the Financial Commissioner on 10.8.1964. However, Baru Ram submitted an application for entitlement of the allotment being a tenant on the basis of the revenue entries consistently showing him to be in possession as tenant up to date, but the same has not been decided.

Order dated 24.7.1962 was challenged by the petitioners in an appeal, which was dismissed by the Collector in view of the order passed by the Financial Commissioner in revision, but with liberty to seek remedy. It is in this backdrop of the matter, an application under Section 22 of 1955 Act for acquisition of the proprietory rights was moved in the year 1969 and vide order dated 14.8.1969 (Annexure P-3), the petitioners were held entitled to allotment of Khasra Nos.69 and 72, but with regard to Khasra Nos.73, 74 and 75, the same was rejected. Appeal preferred against the aforementioned denial of allotment qua Khasra Nos.73, 74 and 75, had been allowed by the Collector vide order dated 19.8.1974 (Annexure P-4) and the matter was remanded back. Respondent No.5 Kirpal Singh preferred an appeal against the order of remand, which was dismissed vide order dated 20.4.1981 (Annexure P-5). However, in pursuance to the remand order, the Prescribed Authority, vide order dated 26.3.1984 (Annexure P-6), allotted the proprietary rights with regard to Khasra Nos.73, 74 and 75.

Respondent No.5 preferred an appeal against the aforementioned order, which was dismissed vide order dated 20.3.1986 (Annexure P-7). However, the Financial Commissioner, vide impugned order 20.7.1993 (Annexure P-8) without noticing the factum of appointed date and taking into consideration the orders of the Assistant Collector dated 24.7.1962 and the Financial Commissioner dated 10.8.1964, accepted the revision petition. In fact, Kirpal Singh was not able to establish his long and continuous possession as a tenant before the appointed date except by placing on record two stray entries in the khasra girdawaries for the year 1959-60 and 1960-61 and that could not have been a basis for acceptance of the revision and, thus, urges this Court for setting aside the order and allowing the writ petition by upholding the orders Annexures P-6 and P-7.

Per contra, Mr.T.S.Sidhu, learned counsel for respondent No.5 submits that in the absence of challenge to the order dated 24.7.1962 and having attained finality on 10.8.1964, the petitioners cannot re-agitate the claim, in essence those have become final. Even in the application submitted by Kirpal Singh-respondent No.5 in the year 1959, there was no necessity of impleading the petitioners as they were not proper and necessary party and the aforementioned findings have attained finality as per the order of the Collector and, therefore, the application under Section 22 of 1955 Act in the year 1969 was not maintainable and, thus, urges this Court for dismissal of the writ petition.

I have heard the learned counsel for the parties and appraised the paper book.

Shorn of the facts noticed above and as well as the submissions, I am of the view that the order of the Financial Commissioner (Annexure P-8) has not taken into consideration the cut off date of 1956, which is the essential requirement of law for the purpose of grant of proprietary rights to the tenants under Section 22 of 1955 Act, which reads as under:-

> ***"22. Acquisition of proprietary rights by tenants.-****(1) Subject to the other provisions contained in this Act, a tenant shall be entitled to acquire from his landowner in respect of the land comprising his tenancy the right, title and interest of the landowner in such land (hereinafter referred to as the 'proprietary rights)' in the manner and subject to the conditions hereinafter provided.*
>
> *(2) Every tenant intending to acquire proprietary rights shall make an application in writing to the prescribed authority in the prescribed manner, containing the following particulars, namely:-*
>
> > *(a) the area and location of the land in respect of which the application is made;*
> >
> > *(b) the name of the landowner from whom proprietary rights are to be acquired;*
> >
> > *(c) such other particulars as may be prescribed.*
>
> *(3) The right conferred upon a tenant to acquire proprietary rights in respect of any land under this section may, if such tenant has sublet the land be,exercised by the sub-tenant to the exclusion of the tenant.*
>
> *(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), if the tenant is a company registered under the Companies Act, 1956, it shall not be entitled to acquire from its landowner in respect of the land comprising its tenancy, the proprietary rights under this section."*

The cut off date is not in dispute. The khasra girdawaries placed on record, noticed above, are also not in dispute. The question arises as to whether the order of the Financial Commissioner, without examining the other revenue record placed by the petitioners to show their continuous possession as tenants prior to the appointed date, has been noticed or not, the answer is 'No'. Thus, in my view, the order suffers from fallicity and, therefore, is not sustainable.

I deem it appropriate to extract the relevant portion of the findings rendered by the Financial Commissioner, which read as under:-

> "*5. I have considered the averments of the learned counsel, and have studied the record of the case as well as the judgements of the lower courts and I find considerable weight in the points raised on behalf of the petitioner. The impugned order of the learned Collector, Patiala, clearly indicates that he dismissed the appeal mainly on the ground that it was time-barred. On the other hand, it is clear that the petitioner was granted P.Rights on 24.7.1962. The learned Financial Commissioner, in his order dated 10.8.1964, clearly restored the orders passed by the Assistant Collector Ist Grade on 24.7.1962. This order makes it clear that the original application by Kirpal Singh under Section 22 of the Pepsu Tenancy & Agricultural Lands Act for acquisitions of P.Rights in the land comprising his tenancy under the big land owner had travelled all the way, earlier, to the Financial Commissioner, who, on a review application, remanded the case to the Assistant Collector Ist Grade for a fresh decision. It was in response to this that the Assistant Collector Ist Grade passed his order on 24.7.1962. Acknowledgedly, the present respondents were not parties to these cases, but it is clear that the petitioner Kirpal Singh had entered the field earlier and been subsequently allowed P.Rights to Khasra Nos.73, 74 & 75. This fact being clearly established, I conclude that there is sufficient weight in the revision petition which is accordingly accepted.*"

The cumulative reading of the aforementioned observations and as well as on going through the findings, it is revealed that there is no reference to the cut off date, much less revenue record in favour of the petitioners, except reference to the orders of 1962 and 1964. The Financial Commissioner had been unmindful of the fact that the order dated 24.7.1962 was assailed by the petitioners, but the same was dismissed on the ground that the matter was remanded back, but the penultimate findings of having availment of the other remedy has not taken care of. It is in this backdrop of the matter, the petitioners have availed the remedy. Thus, in my view, the matter requires to be re-considered and re-decided. Resultantly, the order dated 20.7.1993 is hereby set-aside. The matter is remitted back to the Financial Commissioner concerned.

The parties, through their counsel, are directed to appear before the Financial Commissioner on 23.5.2017.

This Court is sanguine of the fact that the Financial Commissioner would decide the matter in accordance with law as expeditiously as possible, preferably within a period of four months from the date of receipt of certified copy of this order, as the matter with regard to allotment is pending adjudication since 1993, i.e., more than two decades.

Writ petition stands allowed.

May 04, 2017 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**