

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.763 of 2014
Date of decision : 16.01.2017

Shavinder Kaur Johal and others

...Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. R.B.S. Chahal, Advocate for the petitioners.

Mr. Yatinder Sharma, Addl. A.G. Punjab

AMIT RAWAL, J. (Oral)

Grievance of the petitioners in the present writ petition is to the order (Annexure P-12) dated 01.10.2013.

Mr. R.B.S. Chahal, learned counsel appearing on behalf of the petitioners submits that predecessor-in-interest of the petitioners namely Sardar Sunder Singh and his brother S. Roda Singh prior to the year 1947 were landlords in District Bahawalpur (now in Pakistan). Owing to partition, they became displaced persons as per provisions of Sub Section b of Section 2 of the Displaced Persons (Compensation and Rehabilitation), Act, 1954. The petitioners are successors-in-interest of aforementioned persons. The aforementioned persons held two sets of property one urban and another agricultural. Their claims were settled and they were found eligible for rehabilitation of two sets of land i.e. agriculture and urban. Vide

Annexure P-1 dated 17.07.1961, evacuee property, evaluated at the rate of ₹9358/-, was allotted. Resultantly, conveyance deed dated 04.06.1965 (Annexure P-2) was executed but the possession was not delivered. The petitioners ran from pillar to post for seeking vindication of the grievance. In 1995, they made representation to Deputy Commissioner Ferozepur. However, in the year 1997, vide Annexure P-7, the petitioners were allotted urban land measuring 31 kanals 4 marlas. Possession of the same was also handed over to them vide Annexure P-8. However, one Boshworth Smith Recreation Club, Fazilka, District Ferozepur instead of availing civil remedy under the civil law, filed revision petition, against the order of allotment before the Financial Commissioner, Appeals-I, Punjab, Chandigarh, invoking provisions of Section 15(1) and 5 of the Punjab Package Deal Properties (Disposal) Act, 1976. The FCR Appeals-I accepted the revision and held that allotment could not be made in favour of the petitioners. He has drawn the attention of this Court to the order dated 18.12.1998, which reads thus:-

“The impugned orders state that the land in dispute is shown to be under the ownership of the Central Government in the Revenue Records, and was leased out to the petitioner society by the municipal committee in 1931 for a period of 30+30 years which has since expired. Prima facie, it is not package deal property as defined in Section 2 (1-A) of the Punjab Package Deal Properties (Disposal) Act, 1976. Senior State Counsel is unable to assert categorically that the land in dispute is package deal property. Accordingly, all proceedings by the lower Revenue Officers in respect of the land purporting to have been taken under the provisions of the ibid are hereby

quashed.”

The aforementioned order was challenged by the petitioners vide case No.9/FZR/2009-CC, but the same vide order dated 23.07.2010 was also rejected. However, the matter was taken up by Financial Commissioner, Revenue, Punjab, Chandigarh in Miscellaneous Revision No.41 of 2010 and vide order dated 29.05.2012, FCR accepted the same and set aside the order dated 23.07.2010 (Annexure P-10) and Tehsildar-Cum-Claims Officer, Fazilka was directed to take necessary action for allotment of the land to the Successor-in-interest.

He further submits that aforementioned order had attained finality but the order (Annexure P-12) dated 01.10.2013 primarily based upon the letter dated 08.01.1988 (Annexure P-13) whereby it has been held that petitioner cannot be granted urban land but has been ordered to be given the land measuring 31 kanals 4 marlas in the agriculture sector (i.e. agricultural land).

He further submits that order (Annexure P-12) is not in consonance with the letter (Annexure P-13) as it postulates that no urban or sub-urban land for satisfying claim of rural agriculture land would be allotted. In other words he submits that there was no claim for agricultural land. Claim as noticed above was for the urban area and this fact has attained finality as per the order dated 29.05.2012. Under Secretary had no power to interpret the order of FCR in the manner and mode indicated above and thus urges this Court for quashing of the Annexure P-12 while allowing the writ petition with exemplary costs as order is not only capricious, but fallacious, and also suffers from arbitrariness.

Mr. Yatinder Sharma, Addl. A.G. Punjab submits that Annexure P-12 has been passed in its letter and spirit of Annexure P-13. No prejudice has been caused to the petitioners as their claim has been satisfied, i.e. area already determined, has been ordered to be allotted in agricultural sector and thus urges this Court for dismissal of the writ petition.

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

The operative part of the order (Annexure P-11) reads as under:-

“7. I have considered the arguments advanced by the counsel for the appellants and State Counsel and have also gone through the record available on the file. It is an admitted fact and matter of record that the allotment of 21 properties was made to Sunder Singh predecessor-in-interest of the appellants, vide Conveyance Deed dated 4.6.1965. It is also matter of record that the possession of the properties could not be delivered to the claimants because the said properties were allotted to some other persons, and could not be identified subsequently because of change in the boundaries and the number of the properties. It is also matter of record that vide order dated 9th September, 1997 the allotment of 31 kanals 4 marlas land situated in Fazilka was made by Tehsildar Sales which was set aside by Financial Commissioner Appeals-I vide order dated 18.12.1998, although the powers under Displaced Persons (Compensation & Rehabilitation) Act vested with Financial Commissioner Revenue only.

8. The law quoted by the State Counsel in his written arguments is not applicable to the facts and circumstances of the present case. Rule 67-A ibid provides that the

unsatisfied claimants should apply on or before 31.12.1963 for satisfaction of the claim, but in the present case the claim of the appellants was never rejected rather the allotment was made in the year 1965 as discussed above, but the possession of the properties could not be delivered to the allottees, inspite of various representation made. Ultimately in the year 1997 the alternative allotment of land was made which was set aside by the Financial Commissioner Appeals-I. The order of the Claim Commissioner rejecting the claim of the appellants for allotment of land by referring to Rule 67-A ibid does not appear to be rational in view of the facts and circumstances discussed above. The claim of the appellants remained pending with the authorities for one reason or the other and the possession of the properties allotted to the displaced person was not delivered since the properties were reported to have been allotted to some other persons. There appears to be no delay on the part of the appellants in pursuing their claim and thus Rule 67-A ibid has been wrongly made applicable.

9. *In such circumstances I have no option but to accept the appeal and set aside the order passed on 23.7.2010 by Claim Commissioner by invoking Rule 67-A of Displaced Persons (Compensation & Rehabilitation) Rules, 1955.*

10. *Tehsildar-cum-Claims Officer, Fazilka is directed to take necessary action for allotment of land to the successors-in-interest of Sunder Singh. ”*

Once aforementioned order has attained finality, the Under Secretary Revenue has no jurisdiction to allot the land in agriculture sector by relying upon the communication dated 08.01.1988 (Annexure P-13) as it only deals with the non-consideration of the claim of the displaced person

for allotment of urban land in lieu of the agricultural land. In my view, impugned order (Annexure P-12), which is also reads as under:-

“In response to your application dated 31.05.2013 on above subject.

2. As per Government instruction which were conveyed to all Tehsildars vide letter No.PIV/RII (165)/Part.VII/193-238, dated 08.01.1988 and a copy of which was sent to all the Deputy Commissioners of the State, urban or semi-urban or sub-urban land cannot be allotted to displaced persons from Pakistan for satisfaction of their claims. For the satisfaction of a claim of Rs.9358/- as decided by the Court of FCR vide order dated 29.05.2012 31 kanals 4 marlas agricultural land has to be allotted and as per the order of this quasi judicial authority Tehsildar Fazilka has already been directed to make the allotment. Therefore, for allotment contact Tehsildar Fazilka.”

is most sketchy and has been passed in a mechanical manner, much less, lacks reasons, much less, applicability of the mind and is not in the letter and spirit of the order dated 29.05.2012.

Order dated 29.05.2012 has also not been challenged by the alleged person and thus it has attained finality. Since petitioners are already in possession of the land, order dated 29.05.2012 (Annexure P-11) is accordingly upheld and Annexure P-12 is hereby quashed.

Accordingly, present writ petition is allowed in aforementioned terms.

16.01.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No