

CWP No.27551 of 2017

[1]

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

**CWP No.27551 of 2017
Date of decision:25.01.2018**

Joginder Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Girish Agnihotri, Senior Advocate, with
Mr. Vinod S. Bhardwaj, Advocate, for the petitioners.

Rakesh Kumar Jain, J.

The petitioners have challenged the order dated 09.02.2015 passed by the District Collector, Kapurthala, order dated 26.09.2016 passed by the Commissioner, Jalandhar Division, Jalandhar, order dated 13.09.2017 passed by the Financial Commissioner (Revenue), Punjab and have prayed for restoration of the order dated 14.10.1966 passed by the Assistant Collector, Kapurthala and for the issuance of the transfer certificate in their favour of the land in question in terms of the Nazool Lands (Transfer) Rules, 1956 (hereinafter referred to as the "Rules").

In brief, the petitioners have alleged that vide order dated 14.10.1966, the Assistant Collector, Kapurthala had allotted *nazool* land to the petitioners in village Jhal Tikriwala, District Kapurthala. Since they were not issued the transfer certificate under Rule 11 of the Rules despite the fact that their application dated 12.12.2012 was already pending with the Collector,

Kapurthala, therefore, they had to file CWP No.22172 of 2014 titled as “Joginder Singh and another vs. State of Punjab and others”, which was disposed of by this Court on 14.01.2015 in the following manner:-

“The learned senior counsel appearing on behalf of the petitioners would submit that there is a request made to the Collector for transfer of the property and issue a certificate therefor under the Nazool Land (Transfer) Rules, 1956 on the basis of alleged allotment said to have been made in favour of the grandfather in the year 1966. The order of the Commissioner under the PP Act confirms the position that a transfer is possible only by the Collector and an Assistant Collector will not be competent. The counsel states that the petitioners' representation to the Collector for consideration of transfer has still not been considered. The representation said to have been given under Annexure P9 shall be considered and an appropriate order passed within a period of 4 weeks from the date of receipt of copy of this order. The order under PP Act will abide by the decision of whether the petitioners are entitled to transfer of the property, for, that would also consequently conclude the issue of whether the petitioners' possession of the property could be justified or not.

2. The writ petition is disposed of as above.”

Pursuant to the aforesaid order, the Collector dealt with the matter for deciding the representation of the petitioners dated 12.12.2012 and dismissed the same on the ground that the right of allotment under the Rules is vested with the District Collector and not with the Assistant Collector. In the jamabandi for the year 2009-2010, the land in dispute has been recorded in the ownership of “Provincial Government” and the petitioners have been recorded as “*Mujara Gair Marusi*”. The order dated 09.02.2015, by which the District Collector had dismissed the representation/claim of the petitioners was challenged by them by way of an appeal filed before the Commissioner, Jalandhar Division, Jalandhar, who had also dismissed the same by order dated

26.09.2016 with the following observations:-

“.....Firstly, the present petition is time barred without any reasonable and cogent explanation. Secondly, under the Nazool Lands (Transfer) Rules, 1956, the transfer of Nazool land is to be ordered by the Collector Rule 10(4) and the Collector is further required to grant certificate of Transfer of Nazool Land (Rule 11). In the present case, neither the Collector has ordered the transfer of Nazool land in favour of the petitioner nor Transfer Certificate has been issued in favour of the petitioner by the Collector, Kapurthala. Assistant Collector, Kapurthala was thus not competent to transfer the land in dispute. Therefore, the District Collector, Kapurthala has rightly set aside the order dated 14.10.1966 of the Assistant Collector, Kapurthala, as incompetent.”

Still aggrieved, two revision petitions were filed by the petitioners bearing ROR No.1005/2016 titled as “Joginder Singh vs. State of Punjab and others” and ROR No.1006/2016 titled as “Mohinder Singh vs. State of Punjab and others” and both were dismissed by the Financial Commissioner vide order dated 13.09.2017.

Learned counsel for the petitioners has submitted that the impugned orders are patently illegal because the cancellation order has been passed after a long delay. It is also submitted that the land in question has now been allotted for the Open Air Jail, Kapurthala, who has not raised any objection. The land was allotted to them by the Assistant Collector, Kapurthala after having been satisfied with the eligibility of the petitioners in terms of the provisions of the Rules as the petitioners belongs to the Scheduled Caste community and were found in possession of the land in question.

I have heard learned counsel for the petitioners and after perusal of record, am of the considered opinion that there is no merit in this petition in

view of the fact that the order passed by the Assistant Collector was without jurisdiction. Rules 10 and 11 of the Rules are relevant in this regard, which are reproduced as under:-

“10. Application for transfer.- (1) A Co-operative Society/individual member eligible under these rules for obtaining Nazool land shall apply, in form 'A' appended to these rules, to the Collector of the District in which the Nazool land to be transferred is situated.

(2) On receipt of an application under sub-rule (1), the Collector may make or cause to be made such enquiries as he may deem fit for the purpose of verifying the claim of the Co-operative Society/individual member.

(3) If the Collector is satisfied as to the genuineness of the claim of the Co-operative Society/individual member he shall record an order to that effect and thereafter he shall take further steps for transferring the land in favour of the society in accordance with these rules.

(4) An order of transfer shall be issued by the Collector in favour of the Co-operative Society/individual member.

11. Certificate of transfer.- (1) As soon as the last instalment of price has been paid by the Co-operative Society/individual member in whose favour the transfer has been made under these rules, the Collector shall grant to the society under his signature and seal a certificate of transfer in form 'B' appended to these rules.

(1A) In respect of land which is sold in restricted auction vide rule 3(d) and sale has been confirmed by the authority competent to sanction sale, the District Collector shall put the person declared to be purchaser into possession of the property sold after payment of first instalment of the bid amount. The sale certificate conferring the proprietary rights in this case shall be issued on completion of the payment of all instalments and any other dues in respect of this land by the Collector under his signatures and seal in the form 'B-1' appended to these rules.

(2) A copy of the certificate of transfer duly signed by the Collector shall be retained on the file.”

Accordingly, the power is vested with the Collector of the District and not with the Assistant Collector to pass the order of allotment of *nazool* land. The concurrent findings of all the authorities under the Rules is against the petitioners in this regard to which no law to the contrary has been cited. Moreover, the land has already allotted for the Open Air Jail at Kapurthala.

Consequently, the present writ petition is hereby dismissed in limine being denuded of any merit, though without any order as to costs.

January 25, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No