

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.209

CWP-5473-2017 (O&M)

Rakesh Kumar and others

..... Petitioners

VERSUS

Financial Commissioner and others

..... Respondents

2.

CWP-11100-2017 (O&M)

Ishant Goyal and others

..... Petitioners

VERSUS

Financial Commissioner, Appeals, Punjab and others

..... Respondents

Date of decision: 13.12.2022

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rajesh Garg, Sr. Advocate with
Ms. Supriya Garg, Advocate, for the petitioners
in CWP-5473-2017.

Mr. Ashish Bansal, Advocate, for the petitioners
in CWP-11100-2017.

Mr. Gurvinder Singh, AAG, Punjab

SUDHIR MITTAL, J. (Oral)

This order shall dispose of aforementioned two writ petitions as common questions of fact and law are involved therein. For decision of the petitions, facts are being extracted from CWP-5473-2017.

One Bhavkaran Singh was in possession of land measuring 48 bighas and 09 biswas since 15.12.1981. The said land was declared surplus subsequently i.e. on 20.1.1984. Vide order dated 10.4.2006, Collector (Agrarian) allotted the said land in favour of said Bhavkaran Singh under the Punjab Utilization of Surplus Area Scheme, 1973 (hereinafter referred to as the Scheme) treating him to be a sitting tenant. However, a condition was imposed in terms of Para 10 (e) of the Scheme that he would not be competent to

alienate the same before expiry of 15 years from the date of allotment. Aggrieved by the imposition of this condition, Bhavkaran Singh filed a revision petition before the Divisional Commissioner. The same was allowed vide order dated 13.1.2011 holding that the bar under Para 10 (e) was not attracted as Bhavkaran Singh had been in possession for more than 15 years, date of possession being prior to 20.1.1984. The bar is till acquisition of title or till a period of 15 years have expired since possession, whichever is later. This order has become final and has not been challenged any further by the State. Part of the land owned by said Bhavkaran Singh was sold to the petitioners in the year 2011 itself and mutation was entered in their favour on the basis of said sale deeds. The mutation was challenged by one Makhan Singh (respondent No.5) by way of appeal which was allowed vide order dated 15.11.2011. This order was reversed by the Financial Commissioner vide order dated 1.3.2012 in revision filed before him. Review filed by the State was accepted vide order dated 7.12.2016 and thus, the present writ petition has been filed.

Learned senior counsel for the petitioners has argued that review jurisdiction could not have been exercised by the Financial Commissioner as there was no error apparent on the face of the record nor was any new fact brought on the record which could not have been brought on record earlier despite exercise of due diligence. Even on merits, the order is erroneous as Bhavkaran Singh has admittedly been in possession prior to 1984. He acquired title in the year 2006 through allotment and 15 years from the date of possession expired in the year 1999. Thus, under Para 10 (e) of the Scheme, the petitioners could alienate the land on the date of acquisition of title as the said date was later in point of time.

Learned State counsel submits that bar contained in Para 10 (e) of the Scheme is attracted in the facts and circumstances of the present case. Thus, the impugned order is legal and valid.

Para 10 (e) of the Scheme is reproduced below:-

‘10. Conditions of allotment:- The allotment shall be subject to the following terms and conditions:-

- (a) xxxxxx
- (b) xxxxxx
- (c) xxxxxx
- (d) xxxxxx
- (e) The allottee shall not be competent to transfer his rights in the land allotted to him to any person till he becomes the owners or before the expiry of a period of 15 years of the date of possession, whichever is later.

Provided that the allottee may transfer the land by way of mortgage without possession in favour of a Land Mortgage Bank, the State or Central Cooperative Bank or any other Bank for the purpose of raising loan for development of such land.’

The aforementioned provision is clear in its language. An allottee cannot transfer the rights in the land allotted to him till he becomes owner thereof or till a period of 15 years has expired from the date of possession which is later. In the instant case, the Collector (Agrarian) has found as a fact that Bhavkaran Singh had been in possession prior to 20.1.1984. This finding has not been reversed nor has it been found to be perverse by the Financial

Commissioner while reviewing the order dated 1.3.2012. Pursuant to allotment made vide order dated 10.4.2006, sale certificate was issued on 12.10.2006 which shows that consideration for the allotment had been paid. Thus, the title stood transferred with effect from the date of issuance of the sale certificate. This being later than 15 years from the date of the possession, the bar under Para 10 (e) aforementioned was not attracted. Thus, the impugned order cannot stand scrutiny of law. Neither any of the conditions for exercise of review jurisdiction existed nor was there any error on merits.

For the foregoing reasons, the writ petition is allowed. Impugned order dated 7.12.2016 (Annexure P-11) is set aside.

A photocopy of this order be placed on the file(s) of the other connected case(s).

(SUDHIR MITTAL)
JUDGE

13.12.2022
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No