

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCp-2864-2022

Date of Decision : February 02, 2023

Amrinder Singh Bhamra

.....Petitioner

Vs.

Vishesh Sarangal

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S. Sudan, Advocate for the petitioner.

Mr. A.S. Natt, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

The petitioner alleges the violation of order dated 24.5.2018 passed in RSA-2488-2010.

Brief facts of the case, as per petitioner, are that Sohan Singh, father of the petitioner had an agreements to sell dated 8.2.1986 and 15.9.1993 qua 16 Kanals of land for purchase from Gurbachan Singh, whose father Takhat Singh was a displaced person and was allotted 02 standard acres of land on 3.11.1955. It is stated that there was a mistake in the revenue record regarding 16 Kanals of land. Later, one Harbans Kaur filed Civil Suit No.11 of 1988 titled as 'Harbans Kaur Vs. Sohan Singh' qua 78 Kanals 12 Marlas of land. Father of the petitioner was defendant No.1. The Civil Court partly decreed the suit on 14.12.2004 by leaving 16 Kanals of land. Thereafter, Harbans Kaur filed appeal, i.e. CA No.115 of 2002 and the Additional District Judge, Kapurthala, while allowing the appeal decreed her suit in toto, vide judgment and decree dated 20.3.2008.

The present RSA is filed by Sohan Singh challenging the aforesaid judgment and decree.

During the pendency, on 12.12.2016 the RSA Bench passed an order that in view of the grievance of both the parties, the Deputy Advocate General, Punjab be called upon and a copy of the paper book was handed over to him. Simultaneously, a direction was issued to the Deputy Commissioner, Kapurthala to look into the matter for allotment of some other piece of land measuring 16 Kanals to either of the parties.

Thereafter, vide judgment and decree dated 24.5.2018, the RSA was disposed of by passing the following order :-

"In reference to the order dated 12.12.2016, passed by this Court, vide which, the State was arrayed as party to the lis, learned counsel for the parties submit that the requisite affidavit by the Deputy Commissioner, Kapurthala, dated 02.02.2018, has since been filed and, the averments set out in para 3 and 4 thereof reads thus:-

3. "That Tehsildar, Kapurthala has replied that land comprising in khasra No.14//2/5/2/2-13, 32//12min west/3-0, 29//15/1/0-11, 16/1/2-5, 17//4min/3-10, 4min/2-10, 24/1min south/2-0, 25/1/min south/1-0, 32//11/2min east/2-0, 11/2min west/2-0, 20/2/4-0, 21/1/4-0, 22min/4-0, 37//5/2/5-16, 2 kitte 17 total land measuring 39 kanals-5 marlas situated in village Mander Bet. Dist. Kapurthala belongs to Central Govt. is available out of which 16 kanal land could be allotted to Sohan Singh.

4. That the Tehsildar has also reported that Sh. Sohan Singh, appellant has been apprised of the availability of land which can be allotted to him and directed to submit his option in this regard in writing vide letter No.527/SC dated 15.01.2018 (Copy of the letter is attached Annexure D-1) and appellant has not sent any consent in writing till date”.

In response, learned counsel for the appellant submits that the appellant is ready to accept the allotment of a land measuring 16 Kanals that is being offered by the State, and the express consent in this regard shall be furnished on behalf of the appellant to the State within a period of 4 weeks from today.

As to this, learned State counsel, upon instructions from Sukhjinder Singh, Jr. Assistant, D.C. Office, submits that upon receipt of the consent of the appellant for allotment of the proposed land, the requisite formalities shall be complied with, within a further period of four weeks. Where-after, the proposed land shall be allotted/transferred in favour of the appellant free from all encumbrances.

In conspectus of the above, nothing substantive survives in this appeal and the same is disposed of, in the above terms. **However, if still any dispute, cause of action or interest survives, the parties shall be at liberty to move an appropriate application for restoration of this appeal and its decision on merits.”**

The petitioner alleges the violation of the said judgment that the State Government has not allotted 16 Kanals of land to the petitioner.

Counsel for the petitioner submits that during pendency of the aforesaid RSA, affidavit of the Deputy Commissioner, Kapurthala was filed regarding availability of the central government land in which it was stated that 16 Kanals of land is available in village Mander Bet, District Kapurthala.

Reply by way of affidavit of Deputy Commissioner-cum-Collector, Kapurthala is on record. In reply, it is stated that Sohan Singh, father of the petitioner was given a notice on 16.8.2018 in compliance of the order passed by the RSA Bench on 24.8.2018. Thereafter, the Tehsildar, Kapurthala has sent communication dated 24.7.2018 to the Financial Commissioner (Revenue), Punjab giving the details of the issue involved in the case and seeking directions in the matter. It is found that Sohan Singh, father of the petitioner is not an allottee but is only setting up claim on the basis of agreement to sell dated 8.2.1986 with Gurcharan Singh (who was an allotted/displaced person) for the purchase of the allotted land and the dispute was between the private parties. It is also stated that State of Punjab was not impleaded as a party in the suit/civil appeal.

It is further stated that in response of the said letter, the Revenue and Rehabilitation Department communicated a letter dated 18.10.2018 to the Deputy Commissioner, Kapurthala for seeking a review of the order dated 24.5.2018 so that the RSA be decided on merits. Later on, an application for restoration of RSA is filed, which is pending as later on, lock down was imposed. It is further stated even in the order dated 24.5.2018 passed in the RSA it is observed that if any

dispute/cause of action or interest survives, the parties will be at liberty to move an application for restoration of appeal and decision on merits.

After hearing learned counsel for the parties, it is apparent that in the civil suit the State of Punjab was not a party. Therefore, neither any opportunity of filing the written statement was granted nor any right to cross-examine the witnesses was granted. Even in the appeal no application was filed for impleading the State as a party. It is only for the first time that the Deputy Advocate General, Punjab was directed to join the proceedings and the affidavit of the Deputy Commissioner, as noticed above, was taken on record in which the only communication is that some evacuee land is available in District Kapurthala.

In view of the fact that the right of the father of petitioner Sohan Singh to get allotment of the land is not settled by the Civil Court or a competent Court and only on the premises of availability of the land, to settle the dispute between two private persons, the liability is fastened on the State Government to allot 16 Kanals of land without considering an important aspect of the case that Sohan Singh, father of the petitioner was neither an allottee nor a displaced person and had only set up his case on the basis of an agreement to sell from the erstwhile allotted to the displaced person, namely, Gurcharan Singh, who himself was never allotted land. Later Harbans Kaur was allotted 16 Kanals of land, who initiated the civil litigation, therefore, the State Government is justified in filing the application for revival of the regular appeal to be decided on merits.

In view of the same, no willful disobedience is made out with regard to an order which is passed in RSA noticing an incorrect facts that State has been impleaded as a party though the State was never a party either before the civil Court or before the lower appellate

Court and was never granted any opportunity to file written statement or cross-examine the witnesses to deny or admit the claim of Harbans Kaur, who filed the civil suit or Sohan Singh who lost before both the Courts.

Needless to say that Sohan Singh was not even plaintiff before the Civil Court and, therefore, without establishing a right in accordance with law, the respondents are justified in not allotting the land in his favour.

Therefore, the present contempt petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

February 02, 2023
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO