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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4160-2021
Date of decision : 03.04.2024

Mohinder Singh **.....Petitioner**

versus

Financial Commissioner (Revenue) Punjab and others
..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ
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Present :- Mr. G.S. Nagra, Advocate
for the petitioner.

Mr. Ankit Grewal, DAG, Punjab.

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RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 26.11.2020 (Annexure P-15) and order dated 15.01.2019 (Annexure P-10) passed by respondents No.1 and 2 or any other appropriate writ, order or direction as may deem fit and proper in the circumstances of the case favourable to the petitioner.

Adumbrated facts of the case are that the land measuring 5 standard acres 1 $^{3/4}$ units was allotted to Thakur Singh in Village Bhungarni, Tehsil and District Hoshiarpur in lieu of the land, abandoned in Pakistan. Mohinder Singh (petitioner) son and General Attorney of Thakur Singh filed an application before the Tehsildar(Sales)-cum-Managing Officer, Hoshiarpur for allotment of alternative land as some khasra numbers allotted to his father belonged to the local landowners and thus, this land could not be allotted to him. The Managing Officer vide his order dated 20.09.1982 rejected the application on the ground that he was not competent to deal with such cases after three decades. Being aggrieved, the appeal was filed before the Settlement Commissioner, Punjab who dismissed the same vide order dated 31.01.1983. Petitioner's father thereafter filed the revision petition before the Chief Settlement Commissioner, Punjab on the ground that the case was not hit by the provisions of Rule 67-A of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 because the land was allotted to him after 1963. However, the revision petition was dismissed by the Chief Settlement Commissioner vide order dated 27.01.1984. It was further assailed by the petitioner by way of filing the revision petition before the learned Financial Commissioner (Revenue) who decided the same vide his order dated 17.05.1988 and remanded the case to the Managing Officer for consideration observing therein that the land of local owners were wrongly included in the parchi allotment of the petitioner. Thereafter, the petitioner filed the petition before the Commissioner under the Punjab Package Deal Properties (Disposal) Act, 1976 (for short 'the Act'). However, the same was dismissed by learned Commissioner vide order dated 15.01.2019. Being aggrieved, petitioner filed the appeal under Section 4-E of the Act before the learned Financial Commissioner. However, this appeal was also dismissed by the learned Financial Commissioner vide impugned order dated 26.11.2020. Hence, aggrieved the petitioner has approached this Court by way of filing the present petition.

It has been contended by counsel for the petitioner that the case has a chequered history and as evident from the order passed by the learned Financial Commissioner dated 17.05.1988, the case was remanded to the Managing Officer, Hoshiarpur for decision afresh with the observation that due to the mistake of the department, property of the locals was treated as evacuee property and the same was wrongly allotted. He has submitted that the matter was pending with the Punjab Government when the Displaced Persons (Compensation and Rehabilitation) Act was repealed and as such, this case was covered by the Act No.5 of 2009. He has submitted that the case remained pending from 2009 to 15.01.2019 with the Court of respondent No.2. He has submitted that CWP-5178-1988 of the entire land of Village Bhungarni was pending regarding the consolidation scheme and the Hon'ble High Court granted the stay in this petition. This writ petition was decided on 28.10.2009. He has submitted that the petitioner has submitted an application to Tehsildar (Sales), Hoshiarpur on 01.08.2004 contending therein that as per the order passed by the Financial Commissioner, Revenue, Punjab dated 17.05.1988, the alternate land may be allotted to the petitioner. He submits that the petitioner also filed an application to the Claim Commissioner, Punjab for granting the alternate land in pursuance to the order dated 17.05.1988 passed by learned Financial Commissioner. He submits that the Tehsildar Mahal-cum-Sales, Hoshiarpur had also written a letter No.58 dated 28.04.2010 to the petitioner stating therein that the petitioner should submit the certified copy of the order dated 17.05.1988 so that the record might be sent to the Claim Commissioner, Punjab. It has been submitted that the matter remained pending with the Rehabilitation Department and no land was allotted to the father of the petitioner due to the pendency of CWP-5178-1988 decided on 28.10.2009. It is submitted that his father Thakur Singh also died on 25.11.1997. It is submitted that the matter came up for hearing before the Claim Commissioner, Punjab wherein the petitioner placed on record the copy of the order dated 17.05.1988 passed by the learned Financial Commissioner (Revenue), order dated 31.01.1983 passed by the Settlement Officer and order dated 20.09.1982 passed by the Tehsildar-cum-Managing Officer, Hoshiarpur. However, ignoring the same, learned Claim Commissioner rejected the petition filed by the petitioner vide impugned order dated 15.01.2019 by passing a non-speaking order which is totally unsustainable in the eyes of law. Aggrieved, petitioner filed the appeal under Section 4-E of the Act. He submits that written arguments were also filed. It is submitted that the case came up for hearing during the ongoing pandemic at that time. The entry of the public was banned in the Civil Secretariat and thus, the record also could not be inspected. It is submitted that as per the General Clause Act, Section 6(a) provides that the matter already pending would not be effected by the repealment of the Act. However, learned Financial Commissioner miserably failed to appreciate the same and thus, illegally rejected the appeal filed by the petitioner by passing a cryptic order primarily on the ground of delay and latches. He has submitted that due to the restrictions of the pandemic, neither the petitioner could inspect the record nor the State which is the custodial of the whole record produced the relevant record and thus, the appeal filed by the petitioner was dismissed without adverting to the relevant record. He has submitted that from the overwhelming evidence on record, it is apparent that at the time of amendment, the case was already pending. The claim filed by the petitioner was also pending consideration and thus, the petitioner was fully eligible for the allotment of the land in view of the Amended Act as well. He has submitted that from the order dated 17.05.1988 passed by the Financial Commissioner, it is crystal clear that the private persons were wrongly included in the parchi allotment and thus, the petitioner was also entitled for the allotment of the land which could not be allotted to him. It is submitted that from the report of the Deputy Commissioner dated 24.06.2020 and the report of Tehsildar(Sales), Hoshiarpur dated 03.06.2020, the claim of the petitioner is fully substantiated however, the same was never referred by the learned Courts below. He submits that the Courts below failed to appreciate the same and thus, dismissed the claim of the petitioner by virtue of passing the impugned orders which are totally without referring to the relevant record which the State itself did not produce before the learned Financial Commissioner. He has submitted that in view of the submissions made, the impugned orders being unsustainable in the eyes of law, deserves to be set aside.

Per contra, learned counsel for the State has opposed the submissions made by counsel for the petitioner. He has submitted that in view of the order passed by learned Financial Commissioner dated 17.05.1988, petitioner was directed to appear before the Tehsildar-cum-Managing Officer on 20.06.1988 but he intentionally did not appear before the State Authority. He has submitted that as the stay was granted in CWP-5178-1988 which was decided on 28.10.2009 hence, no allotment could be made by the State. It is submitted that thereafter, the petition was filed by the petitioner before the Claim Commissioner in the year 2010 which suffers from delay and latches and hence, it was rightly rejected by the learned Claim Commissioner. He has submitted that the appeal filed by the petitioner was also duly appreciated and finding no merit in the same, was rightly rejected by the learned Financial Commissioner. It is submitted that the petition being devoid of any merits deserves to be dismissed.

Heard. This Court has heard counsel for the parties and with their assistance perused the record. It is evident that, Thakur Singh, father of the petitioner filed the application before the Tehsildar(Sales)-cum-Managing Officer, Hoshiarpur for allotment of alternative land as some khasra numbers allotted to his father belonged to the local landowners and thus, this land could not be allotted to him. The Managing Officer vide his order dated 20.09.1982 rejected the application on the ground that he was not competent to deal with such cases after three decades. Being aggrieved, the appeal was filed before the Settlement Commissioner, Punjab who dismissed the same vide order dated 31.01.1983. Petitioner thereafter filed the revision petition before the Chief Settlement Commissioner, Punjab on the ground that the case was not hit by the provisions of Rule 67-A of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 because the land was allotted to him after 1963. However, the revision petition was dismissed by the Chief Settlement Commissioner vide order dated 27.01.1984. It was further assailed by the petitioner by way of filing the revision petition before the learned Financial Commissioner (Revenue) who decided the same vide his order dated 17.05.1988. It is evident from perusal of the order dated 17.05.1988 passed by the learned Financial Commissioner that the case was remanded with the observation that the land of local owners were wrongly included in the parchi allotment of the petitioner. As submitted by counsel for the petitioner, the allotment could not be made due to the pendency of the CWP-5178-1988 which was finally decided on 28.10.2009. It has been submitted by counsel for the petitioner that the letters were also written by the DCO which were brought to the notice of the learned Financial Commissioner but the same were not appreciated. Learned counsel for the petitioner submits that the written arguments were also submitted wherein the details of the grievances raised by the petitioner were duly submitted before the authorities. The provisions of Section 6(a) of the General Clauses Act were also contended that the same are relevant for the adjudication of the present case as the matter already pending would not be affected by the repealment of the Act. The Act was amended vide Amendment Act, 2009. Perusal of the impugned orders would show that primarily the case of the petitioner has been rejected on the basis of the delay and latches observing therein that the petitioner came to the Court after lapse of 20 years from the date of passing of the order dated 17.05.1988 by the learned Financial Commissioner. However, counsel for the petitioner has vehemently contended regarding his eligibility for the allotment of this land as there was ample evidence to show that the case was pending during this period. There is no denial to the fact that the learned Financial Commissioner has passed the impugned order dated 26.11.2020 when the pandemic was at its peak. The relevant record in support of the submissions made by counsel for the petitioner is not adverted by the Court of learned Financial Commissioner obviously because of the restricted conditions prevailing during that time. However, the petitioner cannot be allowed to suffer for the same. Thus, the relevant record is required to be adverted for the proper adjudication of the submissions made by counsel for the petitioner. Hence, the impugned order which is passed in the absence of the relevant record is unsustainable in the eyes of law. Hence, the same is *set aside*. The case is remanded to the learned Financial Commissioner for a decision afresh. The State would produce the relevant record of the case before the Financial Commissioner and the petitioner would also produce its evidence afresh for proper adjudication of the case.

In the overall facts and circumstances of the case, learned Financial Commissioner is directed to decide the case afresh on hearing both the sides on the basis of the relevant record to be produced expeditiously, preferably, within six months from the date of receipt of copy of this order.

Petition is allowed in above-mentioned terms.

03.04.2024 **(RAJESH BHARDWAJ)**
m. sharma **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No