(1981) 07 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 319 of 1969

Mattu Singh alias Matoo Ram alias Matia Singh		APPELLANT
	Vs	
The State of Punjab and Others		RESPONDENT

Date of Decision: July 15, 1981

Acts Referred:

- Pepsu Government Revenue Department Rules - Rule 14
- Pepsu Nazool Lands (Transfer) Rules, 1956 - Rule 3

Citation: (1981) 3 ILR (P&H) 535

Hon'ble Judges: D.S. Tewatia, J

Bench: Single Bench

Advocate: J.R. Mittal, for the Appellant; S.K. Sayal, A.A.G., for the Respondent

Final Decision: Dismissed

Judgement

D.S. Tewatia, J.

The Petitioner has impugned the agreement, annexure "A", signed by Respondent No. 4 end the Governor of Punjab, whereby Nazool land measuring Kanals and 18 Marlas Comprised in Khasra Nos. 749/4--3 and 751/7--15 situated in Village Thara, Tehsil Faridkot, district Bhatinda, was allotted to Respondent No 4, on the ground that the land in question had been in cultivating possession of the Petitioner and not that of Respondent No. 4 and according to Rule 3(b) of the Pepsu Nazool Lands (Transfer) Rules, 1956--hereinafter referred to as the (sic)956 rules--only a person in cultivating possession was entitled to the allotment and none else.

2. While Respondent No. 4 did not file any return to the petition, the State Government has done so. However, in the return, it did not challenge the claim of the Petitioner that Respondent No. 4 was never in possession of the land in question.

3. The Petitioner had approached the Commissioner to make a reference to the Financial Commissioner. The Commissioner passed the following criptic order:

According to the counsel of the Appellant (Shri Jewan Parkash Passay), the petition before me is under Rule 14 of the Pepsu Government Revenue Department Rules, regarding the transfer of Government Nazool land as notified on the 28th of May, 1956.

Rule 14 does not indicate that the Commissioner has anything to do with making of reference to the Financial Commissioner. The petition is, therefore, rejected.

A revision petition to the Financial Commissioner was also dismissed on the ground that no such power of revision lay with the Financial Commissioner. It is then that the Petitioner filed the present petition.

Rule 3 of ''1956 rules'' is in the following terms:

3. The Nazool land in each village shall be transferred to cooperative societies formed by the heads of scheduled caste families in accordance with these rules.

This rule was substituted by the Punjab Government vide notification No. JS/57/1835 dated the 8th May, 1957 and the amended Rule 3 reads as under:

3(a) In each village, containing Nazul area of 10 acres or above, the schedule castes landowning Co-operative Societies may be formed by the heads of scheduled castes families in accordance with these rules and Nazul Land shall be allotted to them.

(b) In any village, where the available Nazul land is less than 10 acres or the land being over 10 acres the schedule castes land-owing, Co-operative Society has not yet been formed, the land may continue to be leased out by the Collector or under his directions by the Sub-Divisional Officer or the Tahsildar to individual members of the schedule castes on cash rent as heretofore.

This rule was further substituted by the Punjab Government vide publication in the Government Gazette dated February 19,1960 (pages 321--22) and the amended rule reads as under:

3(a) In a village where Nazul land available is less than 10 acres and is being leased to members of scheduled cashes, it may be allotted to the present lessees individually upto the limit of a unit of Nazool land, provided they do not own any land of their own. Those who own some land, they may be allowed such area as would make up the unit of Nazool land as defined in the rules, when added to their own land and the rest may be allotted to others.

(b) In the villages where Nazool land available is 10 acres or more, the scheduled castes land owning Co-operative Societies may be formed by the heads of scheduled castes

families in accordance with these rules i.e. members of scheduled castes individually upto the unit of Nazool land as defined in the rules provided they do not own any land of their own. Those who own some land, they may be allowed such area as would make up the unit of Nazool land when added to their own area and the rest may be allotted to other members of scheduled castes.

(c) Nazool land already under self-cultivation of landless persons of backward classes may be allotted to them, like member of scheduled castes in the manner prescribed at (a) and (b) above.

Sub-rule (b) of Rule 3 underwent an amendment in the year 1967, published in the Punjab Government Gazette dated August 25, 1967, at page 808 and it reads thus:

3(b) In the villages where Nazool land available is 10 acres or more, the scheduled castes land-owning Co-operative Societies may be formed by the heads of scheduled castes families in accordance with these rules and the Nazool land may be, allotted to them. In a village where no Co-operative Societies of the members of the scheduled castes had been formed by the 16th May, 1964, the land should be allotted to individual Harijans instead of Harijan Co-operative Societies, according to these rules. For this purpose, members of scheduled castes who are already cultivating such lands are to be preferred. In case there is more than one claiment for the same piece of land, the allotment will be made by drawing lots.

It is the substitued Rule 3(b) that held the field when the impugned agreement was executed between Respondent No. 4 and the Governor of Punjab.

4. A perusal of this rule would show that the allottee need not be in cultivating possession of the Nazool land before being entitled to its allotment. The rule provides, however, that a member of the scheduled castes in cultivating possession would be entitled to be preferred over a scheduled caste person not in possession.

5. In the present case, the Petitioner never applied for the allotment of the land, with the result that the question of exercising preference never arose. Since Respondent No. 4 was entitled to the allotment, even though he was not in cultivating possession of the land, so the agreement between him and the Governor of Punjab was valid.

6. Apparently, the Petitioner and his counsel were not aware of the amendments in the ''1956 rules'' and it was for that reason that the impugned agreement was challenged on the ground that Respondent No. 4 not being in cultivating possession of the Nazool land in question was not entitled to the allotment and so the agreement was invalid and by virtue of the said agreement, Respondent No. 4 was not entitled to dispossess the Petitioner.

7. In view of the application of the amended rules, the ground of attack was, in fact, not available to the Petitioner.

8. For the reasons afore-mentioned, there is no merit in this petition and the same is dismissed, but with no order as to costs.