(1969) 02 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 2868 of 1967

Balwant Rai and another		APPELLANT
	Vs	
Jagmal and others		RESPONDENT

Date of Decision: Feb. 21, 1969

Acts Referred:

- Punjab Security of Land Tenures Act, 1953 - Section 18

Hon'ble Judges: Balraj Tuli, J

Bench: Single Bench

Advocate: N.L. Dhingra and S.K. Aggarwal, for the Appellant; P.N. Aggarwal, for the Respondent

Final Decision: Allowed

Judgement

B.R. Tuli, J.

Amin Lal, Respondent 2 and Ram Narain, his nephew, Respondent 3, jointly held land which was partitioned between them in 1957. As a result of the partition, the land in dispute came to the share of Amin Lal. The land in dispute measures 20 bighas and 17 bighas comprised in khasra numbers 324 and 909/195, situate in village Bazidpur Katianwali, Tahsil Fazilka, District Ferozepur. This land was being cultivated by Jagmal Singh Respondent 1 under Respondents 2 and 3 in 1956. On 9th July, 1958, the petitioners and his three, brothers sons of Amin Lal filed a suit against, their father Amin Lal for declaration that the plaintiffs were the owners and in possession of the respective lands mentioned in the plaint. This suit was decreed on 14th July, 1958, in view of the statement made by Amin Lal. It is thus evident that it was a consent decree. By means of this decree, field No. 324 measuring 13 bighas and 15 biswas fell to the share of Balwant Rai Petitioner No. 1 and field No. 909/195 fell to the share of Amar Singh Petitioner No. 2.

2. As a result of consolidation proceedings, in lieu of field Nos. 324 and 909/195, which were being cultivated by Respondent No. 1, he was allotted 99 kanals and 6

marlas of land comprised in various killa numbers mentioned in paragraph 3 of the petition. On 2nd July, 1965, the tenant Jagmal Singh, Respondent No. 1, made an application for the purchase of the said land u/s 18 of the Punjab Security of Land Tenures Act, 1953, hereinafter called the Act, to the Assistant Collector 1st Grade, Fazilka, Respondents 2 and 3 were made respondents to that application as the land was enterted in their names in the revenue records. At that time, Ram Narain, Respondent 3, was a minor and was studying in a College. No guardian ad litem was appointed for him in the purchase application. In the written statement filed by Respondent 2, it was stated that he had transferred the land to the petitioners and they should be impleaded as respondents and that Ram Narain, Respondent 3 was a minor, but in spite of that statement, neither the petitioners were impleaded as parties, nor was any guardian appointed for Ram Narain. On 28th May, 1966, Balwant Rai made an application through Shri Gokal Chand Advocate that the petitioners along with their brother Ram Partap were necessary parties for the effective adjudication of the case as the property stood in their names. On this application, the following order was passed by the Assistant Collector 1st Grade, Ferozepur, Camp at Fazilka, on 2nd June, 1966 :

Presented by Shri Gokal Chand Advocate for Balwant Rai. Also present Shri Subhash Chand counsel for the tenant. Arguments heard. I observe from Fard Jamabandi, Exhibit P.5, that in the column of ownership Amin Lal and Ram Narain are the only recorded co-sharers. The learned counsel for Balwant Rai has not adduced any evidence in support of his claim for impleading Balwant Rai as necessary party. I, therefore, reject this application.

It has been pointed out by learned counsel for the petitioners that the evidence of the tenant had been concluded on 6th May, 1966, and the case was adjourned for evidence of the respondents to 2nd June, 1966. On 2nd June, 1966, Respondents 2 and 3 did not produce any evidence and the case was adjourned to 8th July, 1966, on payment of Rs. 25/- as costs. The application of Balwant Rai was summarily dismissed on 2nd June, 1966, when it came for hearing before the learned Assistant Collector for the first time. No opportunity was given to Balwant Rai to produce copy of the decree and to prove that the land had fallen to his share and that of his brothers. On 8th July, 1966, Respondents 2 and 3 produced no evidence and the learned Assistant Collector passed an order accepting the application of Jagmal Singh respondent allowing him to purchase the land for Rs. 779.76 per acre. The price of the land was determined on the basis of ten years'' average price of similar land which had been worked out by the Patwari and it came to Rs. 1039.84 per acre. Respondent 1 was required to pay three-fourth of that price according to section 18 of the Act.

3. Respondents 2 and 3 filed an appeal against that order in the Court of the Collector on 12th August, 1966, which was dismissed on 7th October, 1966. The petitioners filed the present writ petition on 15th December, 1967, in which a prayer

has been made for the quashing of the orders of the Assistant Collector dated 8th July, 1966, and the order of the Collector dated 7th October, 1966.

4. The return to the writ petition has been filed by Respondent 1 who has contested the petition. In the return, a preliminary objection has been taken that the writ petition is belated as it has been filed after an expiry of about 14 months of the impugned order dated 7th October, 1966, and no explanation of delay has been given. The second objection raised is that alternative remedies under the Act have not been exhausted. I do not find any force in these preliminary objections. The petitioners were not parties to those proceedings and they could ignore the same, but as the respondents are acting upon those orders, necessity has arisen for them to get that order quashed. The petitioners had no right to pursue any remedies under the Act as they were not parties to the application. Therefore, the objection with regard to exhaustion of alternative remedies cannot prevail against them.

5. On merits, it has been pleaded that the petitioners are the sons of Respondent 2 to whose share the land in dispate had fallen as a result of partition between him and Respondent 8. The petitioners are his sons and have been put up by Respondents 2 and 3. They have no genuine grievance. Balwant Rai petitioner did not pursue any remedy against the order dated 2nd June, 1966, refusing to implead him and his brothers as a party to the application u/s 18 of the Act. It is further pleaded that Respondent 3 had no interest in the land in suit as it had fallen to the share of Respondent 2, and therefore, the omission to appoint guardian ad litem for him is of no consequence. Respondent 2 was resisting the application of the tenant Jagmal Singh and it is because he was not able to produce any evidence that the present writ petition has been filed.

6. The first point argued by the learned counsel for the petitioners is that according to section 18(2) of the Act, notice of an application u/s 18 has to be given to the landowner and to all other persons interested in the land. It was brought to the notice of the Assistant Collector and the tenant that the land belonged to the petitioners and that they were necessary parties. But, in spite of this assertion, the petitioners were not made parties to the application. It is true that under sections 6 and 16 of the Act, the transfer of the land by means of the decree in favour of the petitioners cannot affect the rights of the tenant on the land under the Act, which means that the tenant''s right to purchase the land u/s 18 of the Act remained in tact in spite of the ownership having changed from Amin Lal to the petitioners, but between Amin Lai and his sons the transfer was good. The petitioners submit that their father Amin Lal did not diligently defend the application as a result of which, proper price was not fixed. A grave injustice has thus been done to them which is clear from the observations of the Collector, Ferozepur, regarding the point of valuation. This is what the learned Collector has stated :

Regarding the second point only those deeds have not been taken into consideration which could not so for been registered and similar is the case with the

mutations. So naturally unless deeds were registered and the mutations were finally decided, these could not be taken into consideration. Mere entry of a mutation or mere writing of a deed could not under the rules be included for taking into consideration for assessment of average price. So these mutations and deeds have rightly been ignored.

7. This approach of the learned Collector is entirely wrong and contrary to the provisions of section 18(2) of the Act, according to which the valuation of the land has to be taken on the basis of the average of the price obtaining for similar lands in the locality during 10 years immediately preceding the date on which the application is made. It was, therefore, not permissible to the Assistant Collector or the Collector to confine the determination of the price to the sanctioned mutations only, The other transactions with regard to the sale or purchase of similar lands in the locality had to be taken into consideration. The impugned orders are, therefore, unjust to the petitioners.

8. As I have said above, according to section 18(2) of the Act, notice of the application u/s 18 to the petitioners was absolutely necessary as they were persons interested in the land and since the notice was not given to them, the order passed by the Assistant Collector dated 8th July, 1966, was without jurisdiction and null and void. It has been held by Narula, J. in Sahib Singh v. Deputy Chief Settlement Commissioner 1967 Cur. L.J. 760 that the "order of restoration of appeal was a nullity in the eye of law as it was passed without notice to the other side and that it could be ignored as having never been passed so far as the other side was concerned."

9. The learned Judge relied upon Dhian Singh v. Deputy Secretary to Government, Punjab, Rehabilitation Department (1959) 61 P.L.R. 529, Sampuran Singh v. The Chief Settlement Commissioner Delhi (1959) 61 P.L.R. 926 and Deep Chand and another v. Additonal Director Consolidation of Holdings, Punjab, Jullundur (1964) 66 P.L.R. 318. In Kesho Dass v. Financial Commissioner, Haryana 1968 P.L.J. 366, I held that the order of the Collector declaring surplus area of the landowner did not bind the tenants to whom notice had not been issued and they could ignore it in the proceedings of their application u/s 18 of the Act and could resist their ejectment as well by ignoring this order.

10. It has also been urged by the learned counsel for the petitioners that the matter is before a Full Bench for decision whether the transfers made after the commencement, of the Act and before 30th July, 1958, had to be ignored or taken into consideration, but that point does not seem to be relevant in the present case, as according to section 16 of the Act, the transfers made after 1st February, 1955, are not to affect the rights of the tenants on the land under the Act.

11. The learned counsel for the petitioners has said that the rights of Jagmal Singh respondent to purchase the land in dispute have to be safeguarded only if he was

the tenant of the land on 14th July, 1958, when the decree was passed whereunder the disputed land came to the share of the petitioners and that matter will also have to be determined. 1 do dot find any force in this argument as it has been stated in paragraph 1 of the petition that Respondent 1 was cultivating the land in dispute under Respondents 2 and 3 in 1956. It is nowhere stated that he was not a tenant of the land and was cultivating it in any other capacity.

12. The learned counsel for Respondent 1 has relied upon the observations of their Lordships of the Supreme Court in A.M. Allison Vs. B.L. Sen, to the effect that a writ of certiorari cannot be had as a matter of course. The High Court is entitled to refuse the writ if it is satisfied that there was no failure of justice. It has also been held by Narula J. in Sawan Singh v. State of Punjab (1965) 67 P.L.R. 1082, that in order to invoke extraordinary remedy under Article 226 of the Constitution the petitioner must in order to entitle himself to get any relief show that manifest injustice has resulted to him as a result of the impugned order. When nothing has been stated to show that any injustice, much less manifest injustice, has occurred to the petitioner, no relief can be granted." I am in respectful agreement with the learned Judge, but, as I have held, manifest injustice in the determination of the price of the land has been done to the petitioners. If the petitioners had been made parties to that application, they would have been at liberty to prove the proper value of the land and would have brought to the notice of the Assistant Collector various transactions of sale of similar lands which took place during the period of ten years prior to the date of the application. They were deprived of this opportunity, as a result of which their grievance is that the price assessed is much too low. Moreover, in my opinion, the order of the assessment of value of the land is illegal as all the transactions of land had not been taken into consideration as is clear from the observations of the learned Collector in his order which have been reproduced above. On that ground also, the orders of the Assistant Collector and the Collector are liable to be quashed.

13. For the reasons given above, I accept this writ petition and quash the order of the Assistant Collector and the Collector dated 8th July, 1966, and the 7th October, 1966, respectively, copies of which are Annexures ''C and ''E'' to the writ petition, and direct the Assistant Collector to decide afresh the application of respondent 1 u/s 18 of the Act after impleading the petitioners as parties to that application and giving them an opportunity to contest the same. In the circumstances of the case, the parties are left to bear their own costs.