

(2010) 05 P&H CK 0250

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Dalip Singh

APPELLANT

Vs

Financial
Commissioner
(Appeals) and Others

RESPONDENT

Date of Decision: May 11, 2010

Acts Referred:

- Administration of Evacuee Property Act, 1950 - Section 7, 7A
- Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Section 32
- Displaced Persons (Compensation and Rehabilitation) Rules, 1955 - Rule 66(2)
- Punjab Package Deal Properties (Disposal) Act, 1976 - Section 15, 2(1A), 4, 7
- Punjab Village Common Lands (Regulation) Act, 1961 - Section 11

Citation: (2010) 159 PLR 526 : (2011) 4 RCR(Civil) 305

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Alok Singh, J.

Present petition is filed assailing the orders dated 9.1.1986 (Annexure P-2) and 23.8.1990 (Annexure P-3) passed by Deputy Commissioner-cum-Chief Sales Commissioner and Financial Commissioner (Appeals), Punjab respectively.

2. Brief facts of the present case are that petitioner applied to the Sales Commissioner under the Punjab Package Deal Properties (Disposal) Act, 1976 for the allotment of the plot measuring 17 marlas 65 sq. feet situated in village Lohian Khas, Tehsil Nakodar, District Jalandhar; Sales Commissioner, Nakodar vide order dated 21.10.1982 directed to transfer the land in dispute in favour of the petitioner on payment of Rs. 299/-towards the value, Rs. 54/- towards the rent charges and Rs. 150/- towards the late fee, total comes to Rs. 503/-; Order of the Sales Commissioner

was challenged before the Deputy Commissioner-cum-Chief Sales Commissioner Jalandhar; In a revision, the revisional authority vide order dated 9.1.1986 allowed the revision by observing that property was never declared evacuee property, hence, under the provisions of Package Deal Properties (Disposal) Act, 1976, no allotment/transfer could be made in favour of the petitioner herein; Order of the Deputy Commissioner-cum-Chief Sales Commissioner/Revisional Authority was challenged u/s 15 of the Act, 1976 before the Financial Commissioner (Appeals) Punjab, Chandigarh; Learned Financial Commissioner (Appeals) Punjab vide order dated 23.8.1990 dismissed the petition having observed that after 7.4.1954 no property could be declared as evacuee property and this property was never declared as evacuee property; Hence, Sales Commissioner has no jurisdiction to transfer the land in favour of the present petitioner.

3.I have heard Learned Counsel for the parties and perused the records.

4. Mr. A.K. Chopra, Sr. Advocate assisted by Mr. Harminder Singh, Advocate vehemently argued that once order was passed by the Sales Commissioner under the Act 1976, allotting/transferring the property in dispute in favour of the petitioner, the question as to whether property belongs to Evacuee department being evacuee property could have been decided only by Custodian u/s 7 of the Act and authorities i.e. respondents No. 1 and 2 herein had absolutely no jurisdiction to observe that property was never declared as evacuee property. Mr. Chopra further argued that not only this, the question as to whether the property was shamlat deh/panchayat property, could only be decided by the authorities under provisions of Section 11 of the Punjab Village Common Lands Act, 1961 and not by respondents No. and 2 herein.

5. To appreciate the arguments advanced by Mr. Chopra, I feel it necessary to reproduce Section 7 and Section 7-A of the Administration of Evacuee Property Act, 1950 which are being reproduced here as under:

7. Notification of evacuee property.- (1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.

[(1-A) Where during the pendency of any proceeding under Sub-section (1) for declaring any property to be evacuee property any person interested in the property dies, the proceeding shall, unless the Custodian otherwise directs, be continued and disposed of as if such person were alive.]

(2) Where a notice has been issued under subsection

(1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being

transferred or charged in any way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(3) The Custodian shall, from time to time, notify, either by publication in the Official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under Sub-section (1).

[7A. Property not be declared evacuee property on or after 7th May, 1954. Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954:

Provided that nothing contained in this section shall apply to:

(a) any property in respect of which proceedings are pending on the 7th day of May, 1954 for declaring such property to be evacuee property; and

(b) the property of any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954, was resident in Pakistan:

Provided further that no notice u/s 7 for declaring any property to be evacuee property with reference to Clause (b) of the preceding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954).

Explanation I.- A person shall be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of Clause (b) of the first proviso, if he was ordinarily residing in Pakistan before that date, notwithstanding that he was temporarily absent from Pakistan on that date.

Explanation II.- A person who had left India for Pakistan before the 7th day of May, 1954, on the authority of a passport or any other valid travel document issued by any competent authority in India, and who was temporarily residing in Pakistan on that date, shall not be deemed to have been resident in Pakistan on that date within the meaning of Clause (b) of the first proviso.

Explanation III.- A person who had left Pakistan for India on or after the 18th day of July, 1948, and who was in India on the 7th day of May, 1954, shall, unless he came to India under a valid permit for permanent return or for permanent resettlement, issued under the Influx from Pakistan (Control) Act, 1949 (23 of 1949), be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of Clause (b) of the first proviso.]

6. From the perusal of Section 7 and Section 7-A, I have no hesitation to hold that Custodian has to notify evacuee property u/s 7 of the Act and if no notification is ever issued then property can not be said to be evacuee property. Moreover, no

property can be declared as evacuee property except in accordance with the provisions of Section 7 and 7-A of the Act.

7. In the present matter, undisputedly no notification was ever issued u/s 7 of the Act declaring the property in dispute as evacuee property, hence, it can not be said that question as to whether the property in question is evacuee property, can only be decided u/s 7 of the Act. Even otherwise as to whether property is evacuee property or not can not be decided by Custodian after 7.5.1954 because no property can be declared evacuee property after 7.5.1954.

8. Fact remains, no notification was ever made u/s 7 of the Act declaring the property as evacuee property. Hence, present property can not be said to be evacuee property.

9. Section 2(1-A) of the Punjab Package Deal Properties (Disposal) Act, 1976 defines the package deal property which reads as under:

2. Definitions- In this Act, unless the context otherwise requires,-

(1) Commissioner means the Commissioner of a division. (1-A) "package deal property" means the surplus evacuee property taken over by the State Government and referred to in the Government of India letter:

(i) No. 3(35) Pol. II/60-Land & Rent, dated 3rd June, 1961, read with letter No. 3(64)/Pol. 11/60-L&R, dated 5th March, 1962.

(ii) No. F-18 (40)/61/prop/Comp & Prop. Dated 23rd March, 1963 and, (iii) No. F.18(40)/61-Prop-Comp & Prop, dated 29th March, 1963, reproduced in the Schedule to this Act; but excluding such property as may be required for transfer or allotment, by way of compensation to a displaced person, as defined in the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and rural agricultural land required for similar allotment to a displaced person of non-Punjabi extraction in pursuance of the Directions of the Central Government given u/s 32 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, read with Sub-rule (2) of Rule 66 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955:

(2) "Scheduled Castes" means such castes as have been specified in Part X of the Constitution (Scheduled Castes) Order, 1950 in relation to the State of Punjab;

(3) "standard acre" means a measure of land convertible with reference to yield from the quality of, the soil, into an ordinary acre according to the prescribed scale;

(4) "State Government" means the Government of the State of Punjab and

(5) "Unauthorised occupation" a person shall be deemed to be in unauthorised occupation of any package deal property:

(a) whether he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant or

(b) where he notwithstanding anything contained in para (a), has whether before or after the commencement of this Act, entered into possession thereof in pursuance of an order obtained by him by means of fraud, false representation or concealment of any material fact; or

(c) where he, being an allottee, lessee or grantee, has by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such package deal property; or

(d) where any person unauthorised to occupy, any package deal property has, whether before or after the commencement of this Act.-

(i) sublet, in contravention of the terms of allotment, lease or grant, without the permission of the State Government or of any other authority competent to permit such sub-letting the whole or any part of such package deal property, or

(ii) otherwise acted in contravention of any of the terms, express or implied under which he is authorized to occupy such package deal property.

Explanation.- For the purposes of Sub-clause (a) a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.

10. Section 4 of the Act provides the procedure of transfer the package deal property. From the perusal of Section 2(1-A) of the Punjab Package Deal Properties Act 1976, it can safely be said that only those surplus evacuee property are called as package deal property which was taken over by the State Government. As observed herein above, in the absence of any notification u/s 7 of the Evacuee Property Act, this property can not be said to be evacuee property, hence, can not be a package deal property.

11. In view of the above, property in dispute was never declared as evacuee property, hence, can not be a package deal property. If property in question is not a package deal property then learned Sales Commissioner u/s 4 of the Package Deal Properties Act had absolutely no jurisdiction to allot/transfer the property in favour of the petitioner.

12. The question as to whether this property is a shamlat deh property or a panchayat property needs not be gone into the present proceeding.

13. In view of the above, property could not be allotted/transferred in favour of the petitioners, hence, orders passed by respondents No. 1 and 2 called for no

interference.

14. Mr. Chopra argued that in the garb of impugned orders the petitioner can be dispossessed at any movement. It goes without saying that in the present proceeding question of dispossession/eviction of the petitioner is not involved. For dispossession/eviction of the petitioner, Gram Panchayat have to take legal remedy available under the law.

15. For the reasons recorded herein above, present petition is devoid of merit, hence, the same is dismissed with no order as to costs.