(2013) 08 P&H CK 0712

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No"s. 5668 and 11357 of 1991

Pirthi Raj Singh and Others		APPELLANT
	Vs	
The Financial Commissioner (Appeal) and Others		RESPONDENT

Date of Decision: Aug. 8, 2013

Acts Referred:

- Transfer of Property Act, 1882 - Section 41

Citation: (2013) 08 P&H CK 0712

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: B.D. Sharma and Mr. Onkar Rai, for the Appellant; Amit Jain, Advocate for Respondent No. 3 and Mr. M.L. Saini, Advocate for Respondent Nos. 5 to 8, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.

The twin writ petitions challenge the order passed by the authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The claim to the properties is made by the representatives of three brothers Thakar Singh, Lakha Singh and Mal Singh. They were originally residents in the Sindh Province Pakistan and were reported to have left large extent of properties in several villages now part of Sindh Province. They had been originally allotted with 252 standard acres 15 3/4 units as properties that they were entitled to, having regard to their holding in Sindh Province but the allotment had been cancelled in extent of 170 standard acres on a reverification by the authorities. There were two instances that gave rise to a scope for reverification. One, the properties held by the brothers had been reckoned on the basis of holdings in the name of Thakar Singh. The first contentious issue was whether the allotment could be made to treat the holdings

in the hand of Thakar Singh as belonging to him absolutely or he represented his two other brothers as well. Two, there were some properties standing in the names of Mohd. Sadiq in which Thakar Singh staked a claim on the plea that Mohd. Sadiq and himself were partners and acquisitions had been made in one or the other names but all the properties were to be treated as properties held equally between them. The holdings of Mohd. Sadiq must have also been properly reckoned to determine the entitlement for allotment referable to the share of Thakar Singh representing himself and other members of the family. There had been several round of litigations with reference to the determination of extent of allotment and in the last round that had culminated in proceedings upto this Court in LPA No. 647 of 1970, the contest was as regards the claims of properties after cancellation of allotment made to the brother. The rival contention brought at the instance of the Khalsa College was on account of cancellation of allotment to the extent of 170 standard acres out of which a substantial extent of 113 standard acres 3 1/2 units had been allotted to Khalsa College. In the first writ petition filed before this Court in C.W.P. No. 1960 of 1962, a direction had been given by Mr. Justice Kapoor on 31.03.1964 that the allotment should be in favour of all the three brothers and the order passed by the Financial Commissioner directing the allotment to be made only to Thakar Singh was not justified. In the manner of reckoning of the entitlement to the three brothers, there was also a computation regarding the cut to be imposed by apportionment of the share which Mohd. Sadiq referred to above was entitled to. When the Single Bench of this Court, therefore, directed that the entitlement of the three brothers were to be considered and not merely that only one of them was entitled, it was taken in appeal before the Division Bench against this judgment in LPA No. 329 of 1964. It resulted in a direction for remand of the case with no modification of the Single Bench''s order for calculating the actual extent of properties which the three brothers were entitled. The remand secured on a fresh consideration a benefit for the three brothers in providing for allotment additionally for two other members and instead of cancellation of 170 standard acres as originally determined from over the entire properties allotted, the cancellation was reduced to 133 standard acres 3 1/2 units. All the remaining allotment had been made permanent by the order dated 25.03.1965. A fresh round of litigation to all the quasi-judicial tiers was carried out till the case arrived before this Court yet again in C.W.P. No. 2833 of 1967. All the orders passed by the authorities were set aside by the judgment of this Court in the above writ petition and there was a direction for recalculation of the extent that the brothers were entitled to. A recalculation made a further modification in the orders already made only to the extent of reducing an extent allotted 3 standard acres 7 1/2 units to Khalsa College and to others after cancellation of allotment made in favour of the brothers. To the extent to which the properties allotted to the substantial allottees had been reduced, it was directed to be re-allotted to the three brothers.

2. I have noticed the manner of reckoning and the entitlement of the brothers that after the total holdings in the properties now situate in Sindh were calculated, the authorities imposed a cut of 50% on the assumption that yet another 50% belonged to Mohd. Sadiq. This was on an assumed basis that while verifying the properties held by the brothers in

the places now in Pakistan, they found that the entries were marked in red, which by convention understood as the holdings which were disputed while confirmed holdings were marked in plain blue or black. These were again cancelled by order of this Court in C.W.P. No. 2833 of 1967. The order of the Single Judge in C.W.P. No. 2833 of 1967 was confirmed in LPA No. 647 of 1970. The brothers had contended that 50% cut which was imposed failed to actually take note of the fact that the bulk of the consideration for the purchases at Pakistan had been contributed only by the family of the brothers to the extent of 70 to 80% and they were entitled to be owners of 70 to 80% and not 50% as determined by the authorities. An additional grievance was that the properties held in a particular village Patar in the Sindh Province had not been accounted for at all. The issue whether the brothers were entitled to a larger extent than 50% and whether the red entries were to be understood as disputed claim to properties in Pakistan are surely matters of facts which will be impossible for this Court to examine again. The actual extent of ownership of the properties of the brothers in Pakistan and the extent of interest that the brothers had, have literally held on as long as the partition of India from the year 1947. At every stage when a decision had been taken by the authorities in the manner of allotment, there have been challenges at every successive tiers and brought before this Court and exhausted in both forums before a Single Bench and Division Bench. The Financial Commissioner has observed in his order, which is impugned before this Court that Chief Settlement Commissioner, Punjab by his order dated 31.03.1977 examined the jamabandies received from Pakistan for this area and the red ink entries denote that ownership of the party concerned was subject to some liability and encumbrances and the title was incomplete. The Financial Commissioner has observed in his order several opportunities have been granted to the three brothers to produce proof of full title to the property. The difficulties in securing such proof after parties were dislocated from Pakistan could be very well imagined and therefore, the authorities could have passed orders only on the basis of records which were available and which they could secure from their counterparts in the place down in Pakistan. To this extent at least the reassessment could never have been fail-safe or foolproof. Consequently, the directions that have been made by this Court in two different times, first time after the disposal of the writ petition in C.W.P. No. 1960 of 1962 and the second time after the disposal of the writ petition in C.W.P. No. 2833 of 1967, were giving primacy to consideration of the actual entitlements to be assessed by the authorities by reference to the documents that they had immediate access to. If the Chief Settlement Commissioner had, therefore, assigned a particular meaning to the red entries and was making an assessment on the basis of entries found in the jamabandies, which subsequently commented about by the Financial Commissioner as having been made by a due appraisal after affording to the parties a good lot of opportunities to produce proof of their entitlement of ownership in the properties now in Pakistan, it must obtain a full-fledged approbation by this Court and they cannot be reopened again. The adventurism that the brothers are clamoring for is literally an attempt to dig for an unknown treasure. If the Financial Commissioner was, therefore, finding that the entitlement to ownership of the property in Pakistan had not been established in respect of the whole property and therefore, they were making a 50%

cut on the total holdings shown to have been at Pakistan but which were still disputed, it is not possible for me to make a reappraisal and find that the decision of the Financial Commissioner was wrong. I must point out that the petitioners are attempting to reopen every issue that was concluded in previous rounds before the authorities. The petitioners are again trying to open issues which were concluded by the earlier decisions of this court. In fact, a dilemma was expressed by this Court in an earlier litigation in LPA No. 329 of 1964 about how to reckon the actual holdings of the properties at Pakistan and what meaning was to be drawn to the red entries in the jamabandies. The Division Bench had observed, which the Financial Commissioner has extracted in his order as follows:-

Another point raised was that in respect of certain land claimed by the petitioners a cut of 50% had been imposed because the entries in the revenue records received from Pakistan regarding that particular land were made in red ink, which was treated as an indication that the price of the and had not bet been fully paid. A reference to the orders of the Settlement Commissioner showed that this point was never agitated before them and so it was rightly held that it could not be raised in the writ petition.

3. The High Court was, therefore, rejecting a claim of the petitioners to contend that the red entries could not have been considered as though their holdings were doubted that had virtually concluded already before the authorities. A bench of this Court had showed the door for the petitioners against reopening the issue regarding the imposition of cut and the assessment of doubtful claims with reference to the whole of the properties in Pakistan. It was in that context that the Financial Commissioner observed that the authorities were justified in finding that if at all, the three brothers were entitled to an additional extent of 3 standard acres and 7 1/2 units from out of the total extent of 177 standard acres, which was cancelled, the obvious fall out of an additional entitlement was that the properties that had been allotted afresh after a cancellation had to suffer the burden of retrieval by the State for handing it back to the original allottees. The Khalsa College was contending for a position that such a retrieval ought not to be made from their holding since their own allotment was only to the extent of 113 standard acres and if at all, the retrieval should be done from the subsequent allottees, as they were bound to wholly take the burden of the readjustment that was required to be done by the fresh allotment to the three brothers. This contention was accepted by the authorities and the Financial Commissioner also upheld such a contention. A claim made by the Managing Committee, Khalsa College that their own allotment ought not to be interfered with was, therefore, upheld.

4. When it, therefore, became essential to look to the holdings of the subsequent allottees for imposition of a cut in their allotments and for a retrieval, they contended that there had been subsequent alienations and they were bona fide purchasers. A consideration of whether bona fides of purchase could be set up by alienees from original allottees when such allotments were themselves cancelled came for a consideration before the Full Bench in Niranjan Kaur and Others Vs. The Financial Commissioner, Revenue and Secretary to Government and Others, . The Full Bench held that Section 41 of the

Transfer of Property Act was not applicable to the benefit of the purchasers from the allottees and if a cancellation is made to the original allotment, the Government could not be understood as aiding the transfer or supporting the title of the original allottees to protect the benefit of a subsequent purchase from such allottees. None of the extents of the subsequent purchasers was, therefore, required to be upheld and to the extent to which 3 standard acres and 7 1/2 units fell out of total consideration and which extent was liable to be made good to the three brothers out of their extent of 177 standard acres which was cancelled, it was bound to make good from out of the subsequent allotments in such a way that no part of allotment of Khalsa College was in any way affected. The Financial Commissioner while passing, therefore, the order allowed for retention of the properties as subsequent purchase as though they were bona fide purchasers and they were entitled to benefit of Section 41 of the Transfer of Property Act. This holding is not in conformity with the decision of the Full Bench and the only modification of the order passed by the Financial Commissioner that could fall for intervention in this writ petition is to direct that the 3 standard acres 7 1/2 units that fell short out of the total entitlement of the brothers where cancellation of allotment had been made to 177 acres ought to come from the extent of properties that were allotted to the subsequent allottees after the cancellation of allotment to the three brothers. At this point of time there is surely some difficulty to be expressed for retrieval of 3 standard acres and 7 1/2 units from the original allottees which have gone to other hands. The Financial Commissioner took notice of the difficulty particularly in view of the fact that subsequent purchasers had not been before the authorities to join the adjudication. He, therefore, ordered that extent of 3 standard acres and 7 1/2 units to be located and restored to the petitioners only for the purpose of finding the equivalent of the value of the properties referable to the properties that were originally included in that 3 standard acres and 7 1/2 units. The Financial Commissioner, therefore, observed that they could be allotted the properties from the unallotted evacuee agricultural lands as per their option in any village at their corresponding rate. I find that the direction was absolutely equitable and the petitioners would not have had any tenable objection against this order as well. The challenge contained through this writ petition is wholly vexatious. The petitioners have been needlessly contending for rights which simply did not exist and they have been engaging in frivolous litigations right from the year 1965 when the High Court concluded the issue and had directed the consideration of only the allotment for the benefit of all three brothers. The petitioners were trying to make use of orders of remand to reopen issues which were all concluded. Both the writ petitions are, therefore, dismissed with costs assessed at Rs. 25,000/- each payable in separate sets against each of the contesting respondents represented through counsel including the State.