

(1999) 05 P&H CK 0131

High Court Of Punjab And Haryana At Chandigarh

Case No: Miscellaneous Reh. No. 10 of 1997-98

Gurpritpal Singh

APPELLANT

Vs

Mohinder Singh

RESPONDENT

Date of Decision: May 25, 1999

Citation: (2002) 2 LLR 32 : (2001) 2 PLJ 312

Hon'ble Judges: Shyama Mann;FC, J

Advocate: Mr. M.I. Singh, Advocate, Mr. C.S. Jammu, Advocate., Advocates for appearing Parties

Judgement

Shyama Mann, FC.

1. This is a petition under Section 15(1) of the Punjab Package Deal Properties (Disposal) Act, 1976 against the order of the Commissioner, Jalandhar Division, Jalandhar dated 19.8.1997 vide which he has upheld the order of the Chief Sales Commissioner, Jalandhar dated 1.7.1993 cancelling the allotment of the petitioner in respect of Taur No. 109 village Ramuwal, Tehsil Nakodar, district Jalandhar. The total area of the taur is 1 kanal 14 marlas and the area under dispute is 1 kanal 02 marlas.

2. The case of the petitioner is that he was allotted 1 kanal 02 marlas area of the said taur on the basis of continuous possession of 9/10 years. The entire money including previous rent was paid up and the transfer was made to him on 8.4.1982 and the sale was confirmed by the Sales Commissioner on 7.6.1982 and a conveyance deed also drawn up. The case of his allotment was opened up on the complaint of Mohinder Singh who is not an eligible person and has to locus standi. He was major on the date of allotment and was the head of his own family. The allegation that he does not reside in India is also incorrect as his wife and children reside in India. Moreover, the requirement of being a major and head of the family is only applicable in case of rural agricultural package deal lands and not in case of rural evictee property comprising nonagricultural land.

3. I have heard the counsel for the parties and also gone through the record. The allotment file shows that when Gurpritpal Singh applied for allotment he did so on the basis of continuous possession over 910 years. He filed an undated application before the tehsildar which was pending from the date of purchase of stamps, received on 1.3.1982. The Tehsildar, Nakodar sought report from the patwari regarding possession and also wanted a naqsha of the area. On 2.3.1982, Harjinder Singh, Patwari promptly reported the possession of Gurpritpal Singh on a portion of the taur measuring 1 kanals 02 marlas for 9 10 years and also prepared a "Tatima" showing the measurement. This was checked by Kanungo Isher Singh on 1.4.82. Thereafter four further formalities were completed the same day. The statement of Gurpritpal Singh was taken on 1.4.82 itself on a typed proforma on which he was only required to fill up the details of the property and append his signatures. So much was the hurry that he did not cross out the portions not applicable to him. Thereafter a joint statement of some witnesses was also obtained on a typed proforma. They were also required to merely append their signatures in a similar manner. The Patwari and Kanungo once again verified the possession of the applicant and indicated the price of taur, again a typed proforma. Whereafter the order of allotment was passed by the Tehsildar Sales the same day. So much was the hurry that even the Patwari, Kanungo and Tehsildar forgot to delete those portions of the respective proforma which were not applicable to the case. The sale price was fixed at a princely sum of Rs. 617/ inclusive of rent and penalty and the entire money was deposited in the treasury on 8.4.82.

4. It appears that Tehsildar Sales was aware of the flaws in this case, because on 31.8.82 (after completing all formalities, in relation to allotment and deposit of money) when the case was put up to him for issuing a conveyance deed he recorded as under :

"Gur Samrat Singh son of Gurdial Singh has also been allotted Plot No. 111. Please report whether the present applicant and Gursamrat Singh are majors and constituted separate families. Also put up instructions and Chhajra Sikni."

On this the Kanungo reported that he had checked up from the respectables of the village and found that Gurpritpal Singh was married and head of the family; the khasra No. 109 which had been transferred on the basis of possession was outside the "Lal Lakir" but inside the "Phirni"; therefore, it was not possible to append the copy of Chhajra Sikni. He stated, however, that he was adding a copy of jamabandi for taur No. 109. The jamabandi for 197879 shows the ownership of Central Government in Column 4 and possession also of the Central Government in Column 5. This proves that the petitioner Gurpritpal Singh was not in continuous possession of the disputed area for 9/10 years (On the date of his application he was 20 years old). The petitioner has conceded in the present petition that the continuous possession for allotment should have been prior to 1.1.77 whereas this jamabandi shows that this was not the case. In the face of clear documentary evidence it is

proved that the report of both the Patwari and the Kanungo was false and the allotment deserves to be set aside on this ground alone. The Jamabandi was brought on record by the Kanungo Sales on 6.9.82 but the Tehsildar Sales chose to ignore it and approved the sale on 29.11.82 and issued a conveyance deed the same day.

5. The petitioner has said that his claim has been established by the Civil Court. I have read the order of the Civil Court dated 6.6.85. All that the Civil Court upheld is the possession of Gurpritpal Singh over the property on the basis of later Khasra Girdawari entries. Rather the Civil Court has not held that the petitioner is lawfully entitled to this property or that the petitioner was in continuous possession prior to 1.1.77.

6. Since it is proved that the date of birth of the petitioner is 1.1.62, the petitioner has taken pains to now argue that in case of rural plots and sites, being a minor is not a disqualification for allotment, and the said restriction is only on rural agricultural property. As on 1.1.77 i.e. the date from (which)eligibility starts, the petitioner was 15 years old and dependent. Even later he has admitted that the money for the plot was paid by his father (a serving patwari). Benami transfers are banned u/s 4 of the Punjab Package Deal Properties (Disposal) Act, 1976. Anyhow in the face of clear entries in Jamabandi 197879 falsifying the claim of the petitioner, this argument has become somewhat irrelevant.

7. From the above discussion it is evident that the allotment was obtained through fraud and in connivance with the revenue authorities. It is an undisputed fact that the father of the petitioner was a serving Patwari posted nearby. Vague queries were made to which vague answers were given. There was no reference to rules and instructions governing conditions of eligibility. More weightage was given but at Tehsildar to report of Patwari and Kanungo rather than to documentary evidence to the contrary. The Commissioner has rightly observed that the Patwari father of the petitioner has clandestinely got the allotment made in favour of his minor son and thereby defrauded the Government.

8. The petitioner has now stated that even if the previous allotment is ignored he is eligible as per later Government instructions. He states that he was major and head of his own family, but at the same time has admitted that he got married in 1989. He also states though he himself resides abroad his family is still in India. Since it is established that the allotment was the result of fraud and misrepresentation, the subsequent happening are in no way relevant to a decision in this case. Since the very basis on which this allotment was procured stands demolished, no benefit can accrue to the petitioner on the strength of "possession" recorded as a consequence thereof. The allotment is a result of misrepresentation by the petitioner in which he has been helped uninhibitedly by the members of panchayat, and lower revenue functionaries. Therefore, no concession can be allowed to the petitioner. Simply because the petitioner has held on to the allotment all these years by unnecessarily

engaging the Government in litigation does not imply that he should be rewarded for it. No such message can be allowed to be conveyed. The only regret is that if the Chief Sales Commissioner had gone through the record carefully and recorded his orders in detail the petitioner would not have dared to approach the Commissioner in revision and thereafter the Government under Section 15(1). No injustice has been caused to the petitioner by the decision of the Chief Sales Commissioner and the Commissioner, Jalandhar Division. The application under Section 15(1) of the Package Deal Act is rejected. The Commissioner shall have action initiated against the defaulting revenue officials and shall also ensure that immediate steps are taken to evict the petitioners from the disputed property.

Announced.