

Parveen Kumar and anr. Vs. State of Punjab and ors.

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Court : Punjab and Haryana

Decided On : Jan-11-2004

Reported in : (2004)137PLR432

Judge : M.M. Kumar, J.

Acts : Benami Transactions (Prohibition) Act, 1988 - Sections 3 and 4; Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 19(2); Displaced Persons (Compensation and Rehabilitation) Rules, 1955 - Rule 102

Appeal No. : Civil Writ Petition No. 4140 of 1983

Appellant : Parveen Kumar and anr.

Respondent : State of Punjab and ors.

Advocate for Def. : D.S. Bishnoi, Addl. A.G.

Advocate for Pet/Ap. : Baldev Kapoor, Adv.

Judgement :

M.M. Kumar, J.

1. This petition filed under Article 226 of the Constitution of India prays for issuance of a writ in the nature of certiorari for quashing the order dated 22.6.1976 passed by Collector, Land Reforms, Kapurthala (Annexure P4), the appellate

order dated 22.12.1976 passed by the Commissioner, Jalandhar Division, Jalandhar (Annexure P5) and the revisional order dated 6.7.1983 passed by the Financial Commissioner (Revenue), Punjab. The claim of the petitioner that the disputed land could not have been declared surplus and re-allotted to the original tenant has been rejected by all the authorities.

2. Brief facts of the case are the Sant Singh, respondent No. 4, was a big land owner who held 8/72 hectares of land in village Khiranwali, 6.21 hectares in village Subhanpur, and 1.07 hectares in village Chak Gopipur. The landowner and his view also held land as tenant in village Desal and Nand Sabak Desal as depicted in girdwari of Rabi and Kharif 1972. It was 1.45 hectare of first quality land. Thus, the total holding of Sant Singh after excluding the area of 0.27 hectares being the evacuee property worked out to 34.18 hectares of first quality land. The landowner had two adult sons on the appointed day and was entitled to retain 21 hectares of land as permissible area and the remaining area measuring 13.18 hectares in village Dasal and Nand Sabak Desal were declared surplus by the Collector Agrarian, Kapurthala vide order dated 9.6.1976.

3. The surplus area of Sant Singh was to be allotted to the eligible persons and landless agricultural workers. A list of eligible and landless agricultural workers was forwarded by the Tehsildar Kapurthala to the Collector Agrarian, Kapurthala. After proclamation in the village to this effect, the land was allotted on 22.6.1976. One Kushi Ram filed an appeal against the order dated 22.6.1976 passed by the Collector Agrarian, Kapurthala claiming that he was a Harijan and small land owner. It was further claimed that he had purchased 5 acres of evacuee property in the year 1967 which was leased out by him to Sant Singh without executing any lease deed in his favour. Reliance was placed on the entries made in khasra girdawaris where Sant Singh was shown as a tenant and he did not include this land in his permissible area nor in the declaration form 'A'. The Commissioner came to the conclusion that Sant Singh, big land owner purchased land benami in the name of afore-mentioned Khushi Ram and infact paid the instalments himself on their behalf. He further concluded that Sant Singh himself continued to cultivate the land by showing his own name in the girdawari. The appeal was therefore dismissed on 22.12.1976 by the Commissioner, Jalandhar Division Jalandhar by

observing as under:-

'I have heard, the counsel for the parties and also the State representatives. A report about the possession of land under appeal has also been obtained from Sub Divisional Officer (Civil) Kapurthala.

According to this the appellants purchased the land in 1967 but since then the land is in possession of Shri Sant Singh. Even now the land is reported to be in possession of Sant Singh. It has been reported by the Sub Divisional Officer (Civil) that the appellants have no residential houses/Jhuggis in village and their names are not borne in the voters list and that they are not in possession of the land. The representative of the State cited P.L.J. 1971 page 266 wherein it has been held that entries in khasra girdawari do not carry presumption of truth. He also cited P.L.J. 1972 page 127 where it was contended that the revenue authorities under the Punjab Security of Land ' Tenures Act were bound to accept the correctness of the revenue entries and that they had no jurisdiction to go into the correctness of these entries, as that could only be done in appropriate proceedings by the appropriate authority under the Punjab Land Revenue Act. It was, however, held by the Punjab and Haryana High Court that it does not sound to reason that the revenue authorities are incompetent to go into the question of the genuineness of the entries before declaring the surplus area of a landowner. If this contention is accepted then it is bound to lead to disastrous results because in a given name a person, may, in collusion with the patwari, get the entries forged and then at the time of the declaration of the surplus area, take a plea that the revenue authorities were debarred from going into the question of genuineness of the entries and get benefit of his own fraud. The revenue authorities, under the Punjab Security of Land Tenures Act are competent to go into the question of genuineness of the revenue entries and in coming to the conclusion regarding genuineness of the entries.

In this case, the Sub Divisional Officer (Civil) actually visited the spot before allotting the surplus land to eligible persons and he was of the opinion that none of the respondents was a genuine land holder. This is a case which brings forth a peculiar situation where a big landowner is a tenant of small Harijan landowner.

Sant Singh, a big land owner it is obvious purchased evacuee land in the name of these Harijans and also paid the instalments on their behalf. He has been cultivating the land and also got the girdwaris entered in his name. This lent support by the facts that no document for leasing out the land to Sant Singh was executed by any of these alleged small Harijan landowners. This made up situation stands solved by the spot inspection of a Senior Revenue officer and also subsequent report of Sub Divisional Officer (Civil) which is dated 1st October, 1976. The big landowner Sant Singh is depending on khasra Girdawari entries which have been entered in his name as a tenant but the genuineness thereof is to be determined by the Revenue Officer through an appropriate enquiry. In this case it has been so done by a Revenue Officer of suitable status. His finding about the genuineness of the existence of alleged small Harijan landowners cannot be ignored.'

Against the afore-mentioned order of the Commissioner, Jalandhar Division, Jalandhar, the petitioner preferred a revision petition under Section 84 of the Punjab Tenancy Act, 1987 being ROR No. 452 of 1978-79. The Financial Commissioner after noticing the facts in detail rejected the claim of the petitioner by holding that the proclamation was made in village by the Collector Agrarian before making the allotment of surplus land in village Desal. Kushi Ram, the predecessor-in-interest of the petitioner did not come forward to raise any objection. He was present before the Commissioner when the impugned order was passed but he did not challenge it because he had sold the land to the petitioner three years later and there was no justification for entertaining any objection from Khusi Ram or the petitioner who are successor-in-interest at this stage.

4. The case of the petitioner as pleaded in the instant petition is that the predecessor-in-interest of the petitioners namely Khushi Ram purchased the land in dispute which was an evacuee property in a restricted auction open only for members of the scheduled caste on 23.3.1967. The sale was confirmed on 6.5.1967. As the file was missing, the same could not be confirmed. However, on reconstruction of the file the Sale Commissioner issued sale certificate dated 1.2.1979 (Annexure P2) declaring him owner w.e.f. 6.5.1967. The possession of

the land had already been delivered to Khushi Ram. He transferred the disputed land to the petitioner on 20.3.1979.

5. Shri Baldev Kapoor, learned counsel for the petitioner has argued that before allotting the land in dispute to any eligible landless worker, the auction held in favour of Khushi Ram predecessor-in-interest of the petitioner was required to be cancelled in accordance with Section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for brevity 'the Act'). He has also pointed out that Rule 102 of the Displaced Persons (compensation and Rehabilitation) Rules, 1955 is also to the same effect that no auction should be held unless the auction already held has been varied or cancelled by the managing officer. He has placed reliance on a judgment of the Supreme Court in the case of Jog Ram v: State of Haryana, (1996)3 R.C.R. (Civil) 521 to argue that unless the sale was duly set aside no allotment could be made nor any declaration of surplus could be issued.

6. Shri D.S.Bishnoi, learned State Counsel has pointed out that on facts it has been found that Sant Singh, respondent No. 4 is merely a benamidar who has used the name of Khushi Ram in order to keep the land and to avoid any declaration of surplus area. The learned counsel has further argued that the tenancy of Sant Singh under Khushi Ram was merely a camouflage in order to grab the surplus area and to circumvent the provisions of Section 7 of the Punjab Land Reforms Act 1972.

7. After hearing the learned counsel for the parties, I am of the considered view that this petition deserves to be allowed. Section 19 of the Act and Rule 102 of the Rules read as under;

'19. Power to carry or cancel lease or allotment of any property acquired under this Act.- (1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act. (2) Where any person,-

a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under Sub-section (1) or

b) is otherwise in unauthorised possession of any evacuee property or any other immovable property forming part of the compensation pool,

he shall, after he has been given a reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the managing officer or managing corporation or by any other person duly authorised by such officer or corporation.

xx xx xx xx"102. Cancellation of allotments and leases.- A managing officer or managing corporation may in respect of the property in the compensation pool entrusted to him or it, cancel an allotment or terminate a lease or vary the terms of any such lease or allotment if the allottee or lessee as the case may be -

a) has sublet or parted with the possession of the whole or any part of the property allotted or leased to him without the permission of a competent authority, or;

b) has used or is using property for a purpose other than that for which it was allotted or leased to him without the permission of a competent authority; or

c) has committed any act which is destructive or permanently injurious to the property, or

d) for any other sufficient reason to be recorded in writing;

Provided that no action shall be taken under this rule unless the allottee or the lessee, as the case may be, has been given a reasonable opportunity of being heard.'

A perusal of the afore-mentioned provisions makes it clear that the Managing Officer for specified reasons given in Sub-section (2) of Section 19 is entitled to cancel, lease or allot any property allotted under the Act. Similar provision has been made in Rule 102. In the absence of any determination of the allotment made which was confirmed vide Annexure P1 no further allotment could have been made. I am further of the view that no cogent reasons have been given by

the Financial Commissioner for holding to the contrary because failure of Khushi Ram at the time of making allotment of surplus land to the landless workers in village Desal by the Collector Agrarian cannot act as an estoppel against the provisions of Section 19 of the Act. It is not understandable as to how it could be said that Khushi Ram who was present before the Commissioner did not agitate against the order of the Collector Agrarian. The sale of the land by Khushi Ram to the petitioner after three years would not make any difference as the question of delay would not arise because Khushi Ram has raised an objection at the time of passing the order by the Collector Land Reforms on 22.6.1976 (Annexure P4) and the Commissioner, Jalandhar Division, Jalandhar on 22.12.1976 (Annexure P5). Therefore, the order dated 6.7.1983 passed by the Financial Commissioner, Punjab suffers from patent illegality and the same is liable to be set aside.

8. The argument of the learned State counsel is based on the views expressed by the Commissioner, Jalandhar Division, Jullundur in paras 4 and 5 of his order dated 22.12.1976 (Annexure P4). The essence of the order is that Khushi Ram was a benamidar whose name was used by Sant Singh the big land owner to avoid declaration of surplus area. However, the argument does not deserve to be accepted because at no stage Sant Singh had claimed his ownership claiming that Khushi Ram was merely a benamidar. Under Sections 3 and 4 of the Benami Transactions (Prohibition) Act, 1988 (for brevity 'the Act') there is an express prohibition from making such a claim. The aforementioned Sections read as under:

'Prohibition of benami transactions.- (1) No person shall enter into any benami transaction.

(2) Nothing in Sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

(3) Whoever enters into any benami transactions shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Section shall be non-cognizable and bailable.

4. Prohibition of the right to recover property held benami.- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a persons claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,-

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is trustee or towards whom he stands in such capacity.'

These provisions have been subject matter of interpretation by the Supreme Court in the case of R. Rajagopal Reddy v. Padmini Chandrasekharan, 1995(2) S.C.C. 630; Nand Kishore Mehra v. Sushila Mehra, 1995(4) S.C.C. 572; Rabi Devi v. Ram Dutt, 1997(1) S.C.C. 714. The observations of their Lordships in R. Rajagopal Reddy's case (supra) make it absolutely clear that Sant Singh cannot file a suit claiming that he is the real owner of the land as against Khushi Ram. The aforementioned observations read as under:-

'(1) Firstly, while Section 4(1) prohibited a plea of benami to be raised in a suit, claim or action and against Section 4(2) precluded a defence of benami in suits, claims or actions,- these two provisions did not come in the way of a decision on such pleas in matters pending as on 19.5.1988, by one party or other. This was

because such pleas which were already raised before 19.5.1988 were not intended to be affected by Act, if they were raised in suits, claims or actions pending as on 19.5.1988. The repeal provision in Section 7 repealed Section 82 of the Trust Act only in that manner to that extent.

(2) Secondly, on the express language of Section 4(1), any right inhering in the real owner in respect of any property held benami would be not enforceable once Section 4(1) operated, even if such transaction had been entered into prior to 19.5.1988. The same prohibition applied on the basis of such a plea after 19.5.1988. The Act could be said to be retrospective only to that extent. But from this it did not follow that where such a plea was already taken before 19.5.1988 to the effect that the property was held benami, such a plea got shut out merely because the proceeding in which such plea was raised before 19.5.1988 was pending on 19.5.1988.

(3) Thirdly, where a suit had been filed before 19.5.1988, and in any written statement filed on or after 19.5.1988, a plea of benami was raised then such a plea of benami could not also be gone into. If however, such a plea in defence had been raised before 19.5.1988, the Act did not preclude that question from being decided in proceedings which were pending on 19.5.1988, *Mithilesh Kumari v. Prem Behari Khare*, (1989)2 S.C.C. 95 case was wrong in holding that such a defence could not be decided after 19.5.1988 even though the plea was raised before 19.5.1988.

(4) Fourthly, if such an interpretation as stated in (1) to (3) was given, it could not be validly contended that a question of invalid discrimination arise between cases where suits were filed on or before 19.5.1988 and those filed after 19.5.1988.

(5) Fifthly, even though the word 'suit' might include appeal or further appeals, Sections 4(1) and 4(2) could not be made applicable to these subsequent stages.

(6) Sixthly, pleas by plaintiffs or appellant and defences after 19.5.1988 of real owners against benamidars were barred under Section 4(1) and Section 4(2), only to the extent indicated above.'

The afore-mentioned six principles laid down in P. Rajagopal Reddy's case (supra) were further supplemented adding other two principles as has been observed by the Supreme Court in Rebti Devi's case (supra) which read as under;-

'(7) Seventhly, if in a suit, claim or action, a plea or defence based on benami is raised even after 19.5.1988 and the purchase is in the name of a wife or unmarried daughter, such a plea of benami is permissible and R. Rajagopal Reddy case will not come in the way merely because the plea is raised after 19.5.1988. Such a plea if raised, will however, have to be decided taking into account the statutory presumption laid down in Section 2(2). This is because the Act says that if the purchase is in the name of the wife or unmarried daughter, the prohibition in Section 3(1) will not apply. Section 3(2) is enacted as an exception to the provisions in the Act and does not depend for its interpretation on the question as to what extent Sections 4(1) and 4(2) are retrospective.

(8) Eightly, if the case falls within the exception in Section 4(3)(a) i.e., where the person in whose name the property is held is coparcener in a Hindu Undivided Family and the property is held for the benefit of the coparceners in the family, or where as stated in Section 4(3)(b) the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity, then in both situations if such a plea or defence is raised in a suit filed after 19.5.1988, the same can be decided by the Court notwithstanding Section 4(1) or 4(2) and notwithstanding what is decided in R. Rajagopal Reddy case.'

9. When the facts of the present case are examined in the light of the principles laid down by Sections 3 and 4 of the Act as interpreted by the Supreme Court in the aforementioned judgments it cannot be concluded that Sant Singh can ever claim to be the owner of the land which was purchased by Khushi Ram in a restricted auction open only to the members of the Scheduled Caste merely because of the funds were provided by Sant Singh. For all intends and purposes Khushi Ram has to be considered as owner who had purchased the land in auction as depicted in order dated 30.1.1979 (Annexure P1) and Sale Certificate

(Annexure P2). Therefore, I do not find any substance in the argument of the learned State Counsel.

For the reasons recorded above, this petition is allowed and the order dated 6.7.1983 passed by the Financial Commissioner, Punjab (Annexure P7) is set aside. Consequently the order dated 22.6.1976 (Annexure P4) and order dated 22.12.1976 (Annexure P5) would also not survive. Both these orders are also set aside.

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