

PETITIONER:
PIARA SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB & OTHERS

DATE OF JUDGMENT: 10/07/2000

BENCH:
A.P. MISRA, J. & M.B. SHAH. J.

JUDGMENT:

Shah, J.

This appeal is filed against the judgment and order dated 21st August, 1989 passed by the High Court of Punjab and Haryana in C.W.P.No. 4692 of 1989 whereby the High Court dismissed the same summarily by upholding the order dated 6.9.1988 passed by the Financial Commissioner Revenue (Respondent No.1), who rejected the Misc. Reh. No.42 of 1987-88 filed by the appellant under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act).

The dispute in the present appeal pertains to land admeasuring 2 Kanals 12 Marlas out of Khasra No.28//23, 24/2 which admeasures 5 Kanals 12 Marlas situated in village Khokhar, tehsil Dasuya, district Hoshiarpur, Punjab. It has been contended that the said land was low-lying land and was classified as gair mumkin toba i.e. pond or tank land, which was not cultivated for more than 10 years. That land was evacuee property within the meaning of Section 2 (c) of the Act. It is the contention of respondent No.2 that on 8.12.1959 the Tehsildar (Sales) put up for auction a parcel of land stated to be brick kiln property No.25, total admeasuring 13 Kanals 10 Marlas, which was gair mumkin bhatta. According to the appellant, what was auctioned was gair mumkin bhatta land and not the land in dispute which was known as gair mumkin toba. In the said auction, land was purchased by respondent No.2. On 21st March, 1964 a sale certificate was issued by the H.O. (Sales), Jalandhar of the Rehabilitation Department, Government of India. By some error the name of the village was inaccurately mentioned and the schedule in the sale certificate read property No.25 brick kiln situated in village Cholong, district Hoshiarpur. No khasra numbers were given in the original sale certificate to identify the property. It is also admitted position that because of acquisition of the land by the Railways out of the auctioned property, respondent no.2 was entitled to only a total area admeasuring 7 Kanals and 6 Marlas. On 17.4.1964 part of this property being Khasra No.28/17/1 admeasuring 7 Kanals 18 Marlas was mutated in the name of respondent No.2 for a period of 14 years. Respondent No.2 remained satisfied with the mutation and took no steps. However, on 22.5.1978 he filed an application for issuance of a corrigendum and the concerned Managing Officer issued corrigendum to the effect that auction land comprised Khasra No.R/28/17 total admeasuring 4 Kanals and 14 Marlas in village

Khokhar. This corrigendum was issued after a site report from the Tehsildar (Sales), Hoshiarpur.

It is the contention of the appellant that the land in dispute Khasra

No.R-28//23, 24/2 was also evacuee land and in 1978-79 the appellant was inducted as a tenant. At the time of grant of such land to the appellant, it has been recorded as low-lying waste land (pond land) which appellant levelled, fertilised and irrigated to make it fit for growing green fodder and thereafter in 1985 onwards the appellant was growing sugarcane thereon.

After grant of land to the appellant as tenant respondent No.2 filed an application on 25.8.1982 for issue of further corrigendum for including the land which was granted to the appellant by stating that it was also sold to him by the auction held in 1959. That application was rejected by the Tehsildar (Sales) by order dated 9.2.1983 (Annexure H) by holding that the Assistant Settlement Officer (Sales) after having examined the case papers of the Tehsildar, Hoshiarpur had issued corrigendum on 22.5.1978 and had issued fresh sale certificate mentioning Khasra No.28//17/2 and 18, admeasuring 4 Kanals 14 Marlas of village Khokhar, district Hoshiarpur. The request of respondent No.2 for further correction in the sale certificate was not acceded to as the corrigendum was issued after proper verification and after obtaining report from Tehsildar.

Meanwhile, the land held by appellant-tenant was put to auction on 30.12.1982 and the appellant was the highest bidder for purchase of the said land. However, the Tehsildar (Sales) by order dated 30.1.1985 rejected the said auction by holding that there was defective proclamation (Annexure- I).

Against the order dated 9.2.1983 passed by the Tehsildar, respondent No.2 preferred appeal under Section 22 of the Act before the Settlement Commissioner, Mohali, Punjab without joining the appellant as party- respondent. That appeal was allowed by order dated 01.12.1983 with a direction to the Tehsildar (Sales) to examine the relevant revenue record and issue a fresh corrigendum after hearing the respondent. In the said order, it was observed that the land purchased at the time of auction was described as gair mumkin bhatta and because of the clerical omission lesser area was mentioned in the corrigendum issued without comparing the pre- consolidation khasra numbers with the post consolidation killa numbers. He observed that the clerical mistakes can be rectified at any time. On the basis of the said order without considering anything a corrigendum for sale certificate was issued on 6.2.1985 including the land which was in possession of the appellant.

Against that order, appellant preferred appeal/revision before the Deputy Commissioner, Hoshiarpur (The Chief Settlement Commissioner under the Act) wherein it was pointed out that corrigendum was issued without hearing the appellant and it can only be issued if there is any clerical or authentic omission but it cannot be issued for giving alternative area.

Meanwhile, the appellant filed Civil Suit No.168 of 1986

before Sub Judge, Dasuya for permanent injunction restraining respondent No.2 not to interfere in any manner in the peaceful possession of the land measuring 2 Kanals 12 Marlas situated in village Khokhar, tehsil Dasuya. That suit was decreed restraining respondent No.2 from interfering in any manner in peaceful possession of the land in dispute except by following due course of law. Against that Civil Appeal No.64 of 1986 filed before the District Court was dismissed on 6.10.1986 by the Addl. District Judge, Hoshiarpur.

Thereafter, appeal/revision filed against the order dated 1.12.1983 was heard by the Chief Settlement Commissioner, Hoshiarpur, which was dismissed on the ground that the appellant did not have any locus standi to file the said appeal or revision as auction in his favour had been cancelled by the Settlement Commissioner. He also observed that under the rules there is no bar on issuing of second or more corrigendum if only arithmetic error is sought to be corrected.

That order was challenged before the Financial Commissioner (Revenue) under Section 33 of the Act. After hearing the parties and recording the contentions raised by them in detail, the Financial Commissioner held that the appellant was not entitled to any prior notice of hearing before rejection of his bid because Rule 90 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 gives discretion to the Settlement Commissioner to accept or reject appeals without assigning any reasons. He also held that transfer of additional land in favour of respondent no.2 was well considered and justified and, therefore, the revision was dismissed. Against that order writ petition was filed which was summarily dismissed. That order is challenged in this appeal.

Dr. Roxna Swami, learned counsel appearing for the appellant vehemently submitted that order passed by the authorities below issuing so-called corrigendum is, on the face of it, arbitrary, illegal and is passed to favour respondent no.2. It has been pointed out that auction sale took place in 1959. Respondent no.2 remained in possession of the property purchased by him since then and he never raised any objection that the possession of the auctioned property was not handed over to him or lesser area was given to him, for more than 23 years. It is also submitted that even in 1978 when respondent no.2 requested for mentioning of correct name of the village, at that time also he had not submitted that the area of land which was given to him was less than what was auctioned. She further pointed out that Tehsildar rightly first rejected the said application by order dated 9.2.1983 yet in appeal without verification of any record and without issuing notice to the appellant who was in possession of the property as a tenant the order was set aside and matter was remanded to the Tehsildar for fresh decision by the Settlement Commissioner. Surprisingly, without holding any enquiry, on the basis of the said order a corrigendum was issued on 6.2.1985. This indicates that the corrigendum dated 6.2.1985 is without any basis and totally arbitrary. She also submitted that the authorities below erred in holding that the appellant was not having any locus standi without considering the fact that the possession of the land was handed over to the appellant in 1978-79; that he made it cultivable and thereafter purchased the same in an auction which took place on 30.12.1982. That auction was set aside arbitrarily without issuing any notice to the appellant by order

dated 30.1.1985 on the ground that there was defective proclamation for sale. On the basis of the aforesaid submission, learned counsel submitted that the High Court materially erred in not exercising its jurisdiction and in rejecting the writ petition summarily. As against this, learned counsel for respondent no.2 submitted that the order passed by the authorities was based on record of auction held in 1959 and, therefore, authorities were having jurisdiction to issue corrigendum in the year 1982. He further vehemently submitted that the order passed by the authorities is based upon finding of fact and, therefore, the High Court rightly refused to entertain the writ petition and hence this appeal should be dismissed.

From the facts stated above and from the record, it is apparent that order issuing so called corrigendum for giving possession of additional land is grossly arbitrary because:

(a) Auction of the land stated to be the property No.25 was sold in the year 1959 and the possession of the said land was handed over to respondent no.2 on 8.12.1959. The authorities issued the sale certificate on 21.3.1964 for the land purchased at the time of auction. At that time, respondent no.2 never raised an objection that he was not given possession of the entire area of the land auctioned and sold in his favour.

(b) In the year 1978, possession of the land in dispute was given to the appellant as a tenant. At that time also respondent no.2 had not raised any objection that the said property was sold to him in the auction.

(c) On 22.5.1978 respondent no.2 filed an application for issuance of corrigendum and the concerned Managing Officer issued corrigendum to the effect that the auctioned land comprised in Khasra No.R/28/17 admeasuring 4 Kanals 14 Marlas in village Khokhar. This corrigendum was issued after a site report from Tehsildar (Sales), Hoshiarpur. At that time also respondent no.2 had not raised any objection that site report or the corrigendum issued by the concerned Managing Officer was incorrect.

(d) Respondent no.2 applied only on 25.9.1982 for issuing of fresh corrigendum correcting the sale certificate issued in his favour with the request to include the portion of the land which was in possession of the appellant since 1978. The said application was rightly rejected by the Tehsildar (Sales) by order dated 9.2.1983. The said order was set aside in appeal and the matter was remanded to the Tehsildar (Sales) to examine the relevant record and to issue a fresh corrigendum after hearing respondent no.2. It appears that without recording any reason and without considering anything the Tehsildar issued the corrigendum (Annexure K) on 6.2.1985 including the land which was in possession of the appellant.

(e) It is mentioned in the orders that what was sold to respondent no.2 in a public auction held in 1959 was a brick kiln property no.25, which was known as gair mumkin bhatta. As against that, the land on which the appellant was inducted as a tenant was classified as gair mumkin toba i.e. pond or tank land.

Further, it appears on the record that some portion of the land which was sold by auction to respondent no.2 was

acquired by railways and without considering this aspect the impugned order is passed. Authorities have also not considered the effect of consolidation proceedings.

In any case, in the present case it cannot be said that there is clerical or arithmetical error in mentioning khasra number or its area in the sale certificate. As such, what is contended by respondent no.2 is the possession of the land which was sold by auction in his favour in 1959 is not handed over and only a part of the land was handed over to him in 1959. This dispute he raised in 1982, that means, after lapse of 23 years. Considering the long lapse of time and the fact that there is no question of clerical or arithmetic error, the authorities ought not to have exercised jurisdiction under Section 25(2) of the Act which only empowers the authority to correct clerical or arithmetical mistakes in any order or errors arising therein from any accidental slip or omission. Under the guise of corrigendum authorities have passed an order handing over possession of additional land in favour of Respondent No.2. It is also apparent that the Chief Settlement Commissioner has not applied his mind to the facts of the case and has only observed that there is no bar on issuing the second corrigendum or more corrigendum in correcting the arithmetical error.

Further, the Chief Settlement Commissioner ought to have considered the fact that the appellant was in possession of the land as he was inducted as a tenant since 1978. Therefore, he was having locus standi to file an appeal against the so-called corrigendum granting additional land which was in his possession, to respondent no.2.

Lastly, we find much force in the contention raised by the learned counsel for the appellant that Tehsildar (Sales) erred in passing the order dated 30.1.1985 (Annexure 'I') setting aside the auction sale dated 30.12.1982 on the ground of defective proclamation without issuing any notice to the appellant. Tehsildar (Sales) ought to have heard the appellant, whose bid was highest and was accepted on 30.12.1982 before passing the impugned order after three years. In the present case, the appellant was in possession of the land as a tenant. His bid was accepted and if that bid was to be set aside, his (appellants) rights would be certainly adversely affected, therefore, he was required to be heard. Since no such opportunity was afforded to the appellant before passing such order, it requires to be quashed. [Re: Surinder Singh v. Central Government and others, (1986) 4 SCC 667].

In view of the aforesaid discussion, the impugned order passed by the High Court dismissing the writ petition, filed by the appellant, in limine is set aside. The corrigendum dated 6.2.1985 (Annexure K) issued by the Tehsildar-cum-M.O., Dasuya correcting the sale certificate by including the land held by the appellant as a tenant issued in favour of respondent no.2 is quashed and set aside. Consequently, the impugned orders passed by the Financial Commissioner Revenue and Secretary to Govt. of Punjab, Rehabilitation Department and the order passed by the Chief Settlement Commissioner, Hoshiarpur are set aside. The order (Annexure I) dated 30.1.1985 passed by the Tehsildar (Sales) setting aside the auction dated 30.12.1982 is also quashed. The appeal stands disposed of accordingly with no order as to costs.

JUDIS