

Mohinder Singh vs State Of Punjab & Ors on 26 July, 1977

Equivalent citations: 1977 AIR 2012, 1978 SCR (1) 177, AIR 1977 SUPREME COURT 2012, 1977 3 SCC 502, 1977 2 SCJ 428, 1978 (1) SCR 177, 1977 REV LR 556, 1978 REV LR 168

Author: N.L. Untwalia

Bench: N.L. Untwalia, Syed Murtaza Fazalali

PETITIONER:
MOHINDER SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 26/07/1977

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
FAZALALI, SYED MURTAZA

CITATION:
1977 AIR 2012 1978 SCR (1) 177
1977 SCC (3) 502

ACT:
Displaced persons (Compensation and Rehabilitation) Act.
1954-Sec. 12-33-Displaced persons (Compensation &
Rehabilitation) Rules 1955-Rules 34 C-Value of entries in
the record of rights-If conclusive-If can be rebutted.

HEADNOTE:
The appellant applied for allotment of certain urban agricultural land which was a part of the evacuee agricultural land acquired under section 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The appellant approached the authority for transfer of the land to him in accordance with rule 34C of the Rules. He claimed to be in possession of the land in question continuously from before January 1, 1956, although his name was not even recorded in the Jamabandi or the Khasra Girdawari. He examined some witnesses before the 'Settlement Officer, who

accepted their oral evidence and by his order dated 21-8-1969 held that the appellant was entitled to get transfer of the land at a price to be fixed under rule 34B of the Rules. Several years later a reference was made under section 24 of the Act by the Superintendent for setting aside the order of the Settlement Officer. The Chief Settlement Commissioner accepted the reference and set aside the order. The appellant went in revision under section 33 of the Act which was dismissed by the Financial Commissioner. The Writ Petition filed by the appellant before the High Court failed.

Allowing the appeal,

HELD : The appellant claims that he has been cultivating the land continuously from the year 1954 onwards. He filed application in 1973 for correction of the entry in the Khasra Girdawari by recording his name therein. The Naib Tahsildar directed the correction, of the Khasra Girdawari for the period 1971-72 and 7273. He could not direct the entry of the earlier period since he could not do so in accordance with the departmental instructions. The appellant filed a suit in 1974 for correction of the entry for the earlier period. The lessees were impleaded as defendants but in spite of service of summons they did not appear to contest it. The suit was decreed ex-parte and the appellant was declared as tenant of the land in dispute since 1954. The Chief Settlement Commissioner and the Financial Commissioner did not place any reliance on the testimony of the witnesses examined by the appellant in the absence of entries in the revenue record. It is not the requirement of the rule that a person claiming transfer under any part of the rule must be one whose name is found entered in the revenue records. 'The entry in the revenue record is an important piece of evidence on the question of occupation or possession but it is not conclusive of the facts to be decided under rule 34C nor is it the law that a subsequent valid order passed by a competent authority or court directing the correction of the entries cannot be taken into consideration.

The Court, therefore, set aside the judgment of the Chief Settlement Commissioner and the Financial Commissioner and remanded the matter back to the Chief Settlement Commissioner for reconsideration by taking into account the order of the Naib Tahsildar and the decree of the Civil Court subject to such objections as might be raised. [178 E-F, 179 D-H, 180 A-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 1194 of 1976. Appeal by Special Leave from the Judgment and Order dated 26-8-1975 of the Punjab and Haryana High Court in Civil Writ No.

2559 of 1975.

S. K. Bagga and (Mrs.) S. Bagga for the Appellant. A. S. Sohal, for the Respondents.

The Judgment of the Court was delivered by UNTWALIA, J.-This is an appeal by special leave. The appellant's writ application challenging the order dated April 29, 1974 of the, Chief Settlement Commissioner, Jullundur and order dated January 14, 1975 of the Financial Commissioner, Taxation, Punjab was dismissed by the High Court of Punjab & Haryana in limine on August 26, 1975. Hence this appeal.

The appellant applied for allotment of certain Urban Agricultural Land bearing various Khasra numbers measuring 14 Kanals 17 Mar las. It appears that the land indisputably is a part of the evacuee agricultural land situated in Urban areas and acquired under section 12 of the, Displaced Persons (Compensation and Rehabilitation) Act, 1954- hereinafter called the Act. Chapter V-A of The Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (for brevity, the Rules), is applicable to such lands. The appellant approached the authority for transfer of the land to him in accordance with Rule 34-C of the Rules. It is not quite clear whether he claimed to be a lessee under the main provision of the said Rule or a sub-lessee within the meaning of the proviso appended thereto. But what is clear is that the case proceeded before the various authorities on the footing that the appellant claimed to be a sub-lessee of the land.

The appellant claimed to be in possession of the land in question continuously from before January 1, 1956, although his name was not found recorded in the Jamabandi or the Khasra Girdawari. He examined some witnesses before the Settlement Officer who accepted their oral evidence and by his order dated August 21, 1969 (Annexure 1) held that the appellant was entitled to get transfer of the land at a price to be fixed under Rule 348 of the Rules. Thereupon, the Settlement Commissioner, Jullundur by his order dated October 28, 1969 (Annexure 2) fixed the price of the land at Rs. 1,000/- per kanal. Several years after, a reference was made under section 24 of the Act by the Superintendent (Urban) Rehabilitation Department, Jullundur for setting aside the order aforesaid of the Settlement Officer. The Chief Settlement Commissioner by his order dated April 29, 1974 (Annexure 4) accepted the reference and set aside the order. The appellant went in revision under section 33 of the Act which was dismissed by the financial Commissioner by his order dated January 14, 1975 (Annexure 5). As already stated the petitioner was unsuccessful in assailing the last two orders before the High Court.

It appears in or about the year 1954 the lessees of the land and cultivating it as such were Mahant Amar Nath, Smt. Shanto Bai and others-some displaced persons. The appellant ;also claims to be a displaced person. The lessees aforesaid, perhaps, ceased to cultivate the land and left Jullundur. The appellant claims that he has been cultivating the land continuously from about the year 1954 onwards. On the 1st of September, 1973 he filed an application before the Revenue authority for correction of the entry in Khasra Girdawari by recording his name therein. The Naib-Tahsildar, Jullundur by his order dated the 6th February, 1974 (Annexure 3) directed the correction of the Khasra Girdawari for the period 1971-72 to Kharif 1973. He, did not direct the correction of the entry of the earlier period as he could not do so in accordance with the departmental instructions. The

appellant filed Suit No. 185 of 1974 on the 9th of August, 1974 for correction of the entry for the earlier period. The lessees aforesaid were impleaded as defendants in the suit. In spite of service of summons, they did not appear to contest it. The suit was decreed ex-parte on the 31st March, 1975 by Shri Baldev Singh, Sub-Judge, Second Class, Jullundur. A copy of his judgment is Annexure 6. He declared the appellant as tenant of the land in dispute since 1954 and directed the correction of the Jamabandi entries.

The Chief Settlement Commissioner in his impugned order did not feel persuaded to place any reliance upon the testimony of the witnesses examined by the appellant absence of entries in the Revenue record viz. the Jamabandi or the Khasra Girdawari. The Financial Commissioner was also of the same view. Since he found the names of Amar Nath, Shanto Bai and others mentioned as cultivators, he did not feel persuaded to accept the case of the appellant. The Naib Tahsildar had corrected the entries in respect of the later period by the time the Financial Commissioner happened to pass his impugned order. But he did not attach any importance to it. Finally, the view expressed by the Financial Commissioner in his impugned order are in these terms "I have already held in several cases that transfer of Urban agricultural land is strictly to be made on the basis of entries in the revenue record and no reliance is to be placed either on oral evidence or on the corrected entries in the Khasra Girdawaris. In the circumstances, I do not find any force in the petition which is dismissed in limine." Rule 34C of the Rules reads as follows, :

"Where any land to which this Chapter applies has been leased to a displaced person and such lands consist of one or more Khasras and is valued at Rs. 10,000/- or less, the land shall be allotted to the lessee :

Provided that where any such land or any part thereof has been leased to a displaced person and the sub-lessee has been in occupation of such land or part thereof continuously from the 1st January, 1956, such land or part thereof, as the case may be, shall be allotted to such sub-lessee."

It is not the requirement of the rule that a person claiming transfer under any part, of the said rule must be one whose name is found entered in the revenue records. The requirement of the rule is that the land to which Chapter VA applies shall be allotted to the lessee if it has been leased out to him and if he was a displaced person.

The condition to be fulfilled under the proviso for a sub- lessee is his occupation of the land continuously from the 1st January, 1956. The entry in the revenue records is an important piece of evidence on the question of occupation or possession. But it is not conclusive of the factors to be decided under Rule 34C. Nor is it the law that a subsequent valid order passed by a competent authority or court directing the correction of the entries cannot be taken into consideration. Learned counsel for the State, respondent no. 1 in this appeal, submitted that neither the order of the Naib-Tahsildar nor the decree of the Civil Court was legal and valid as it was not passed in accordance With The Punjab Land Revenue Act, 1887. We have not examined the correctness of this submission made on behalf of the State as, on the facts and in the circumstances of this case we felt persuaded to send back the case to the Chief Settlement Commissioner. It will be open to the parties

to make such submissions or raise such objections as may be available to them in law before the said authority when the case goes back to it. It may be emphasised, however, that indisputably after the land became a property acquired under section 12 of the Act the lessees came on the scene. They did not contest the claim of the appellant either before the Naib Tahsildar or the Civil Court. No one seems to have claimed that the State or any of its authorities had ever come in possession of the land in question. In such a situation justice require a reconsideration of the matter and a fresh decision by the authorities concerned by taking into account the order of the Naib-Tahsildar and the decree of the Civil Court subject to such objections as may be raised apropos their validity and on reappraisal of the oral evidence adduced by the appellant before the Settlement Officer. In the result, we allow the appeal, set aside the impugned orders of the High Court, the Financial Commissioner and the Chief Settlement Commissioner and send back the case to the Chief Settlement Commissioner for a fresh disposal of the reference in the light of this judgment. There will be no order as to costs.

M.R.

Appeal. dismissed.