

Before Deepak Sibal, J.

TARA CHAND—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 14556 of 2001

February 25, 2015

Constitution of India, 1950 - Art. 226 - Punjab Security of Land Tenures Act, 1953 - S.5 - Haryana Utilisation of Surplus and Other Areas Scheme, 1976 - Cl.8-A - Allotment of surplus land - Petitioner, a poor landless Harijan filed application for allotment - Allotment made to the petitioner under the 1976 Scheme - Admittedly Certificate of Allotment in Form US 3 was not prepared, as is stipulated in Cl. 8-A of the Scheme - There was no question of having sent a copy of the certificate to the allottee or to the concerned Tehsildar - Tehsildar undertook no proceedings to deliver possession of the allotted land to the petitioner - Years later, when petitioner came to know of the allotment, he sought possession of the land - Allotment Authority denied possession and cancelled allotment - Commissioner exercising revisional jurisdiction set aside the impugned order and directed the prescribed authority to take further proceedings by issuing Form US 3 to the petitioner - State did not challenge that order - Financial Commissioner accepted revision petition filed by the private respondents after holding petitioner guilty of delay in seeking possession - In writ jurisdiction, High Court held it proper to overlook the delay on the part of the petitioner though with a rider - Findings by Commissioner that State authorities miserably failed in its duties to follow the procedure with regard to informing the petitioner of the allotment order, as also non initiation of proceedings to deliver possession had been accepted by the State - Statute does not confer any power upon the allotment authority to review its own order - Neither State nor private respondents ever questioned the allotment made in favour of the petitioner - There was no material to show any prejudice caused to the State or private respondents - Authorities directed to now proceed in accordance with law to hand over possession of the allotted land to the petitioner - Due

to laxity on the part of the petitioner in approaching the authorities, allotment be made at the prevalent rate fixed by the Collector as on the date when petitioner had applied for seeking possession of allotted land.

Held, that after the allotment of the land, the allotment authority is required to issue a certificate in Form US-3 to the allottee and is also to send a copy thereof to the concerned Tehsildar so that the Tehsildar can deliver the possession of the allotted land to the allottee.

It is the admitted position that as required under Rule 8-A of the Scheme, no certificate in Form US-3 was ever prepared and once no such form was prepared, there was no question of having sent a copy of the same to the allottee *i.e.* the petitioner or to the concerned Tehsildar. Consequently, the Tehsildar undertook no proceedings to deliver possession of the allotted land to the petitioner. In this regard, I may further refer to the order dated 24-8-1999 (Annexure P-4) passed by the Commissioner, Ambala Division wherein the Commissioner has, after perusing the record, returned categorical findings that no Form US-3 was prepared and therefore, there was no question of sending the same either to the petitioner or the concerned Tehsildar.

The record further reveals that there were as many as 408 applications received by the Allotment Authority for the allotment of the 470 kanals 3 marlas of land. It is possible that the petitioner thought that his application had been rejected. Even otherwise, the petitioner, who is stated to be a poor landless Harijan, way back in the year 1976, could reasonably have expected that on consideration of his application, he has not been allotted any land and therefore while resting his oars made no further enquiries. Still further nothing has been brought to my notice by either the State or the private respondents to show that the petitioner was in the knowledge of the order allotting land to him at any prior point of time so that delay could be attributed to him.

(Paras 6, 7 and 8)

Further held, that once the above order wherein it has been held that the State authorities miserably failed in its duties to follow the procedure with regard to informing the petitioner about the allotment order as also with regard to non initiation of proceedings to deliver

possession to him has been accepted by the State and the private respondents have neither pleaded nor shown any prejudice caused to them, I consider it proper to overlook the delay on the part of the petitioner.

(Para 10)

Further held, that the Act does not confer any power upon the allotment authority to review its own order. That being so, the order passed by the Allotment Authority cancelling the allotment of the petitioner suffers from this legal flaw as well. It may further be noticed that neither the State nor the private respondents had ever questioned the allotment made in favour of the petitioner.

(Para 12)

Further held, that the respondents revenue authorities are directed to now proceed in accordance with law to hand over possession of the allotted land to the petitioner. Due to the laxity on the part of the petitioner in approaching the authorities for seeking possession of the allotted land, in the peculiar facts of the case, I deem it proper to direct that the petitioner be now allotted the land as per the allotment order dated 13.9.1976 (Annexure P-1) but at the prevalent rate fixed by the Collector as on the date when he had applied for seeking possession of the allotted land.

(Para 14)

Bhag Singh, Advocate *for the petitioner*.

Lokesh Sinhal, Addl. A.G. Haryana.

Ashok Kumar, Advocate for Arvind Singh, Advocate for respondents No.5 to 7.

DEEPAK SIBAL, J.

(1) Nathu Ram son of Lutar was a big land owner whose land measuring 470 Kanal 3 marlas situated in village Bhilpura, Tehsil Chhachhrauli, District Yamuna Nagar was declared surplus under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as “the Act”). After declaration of the land to be surplus, the same vested in the State of Haryana and vide order dated 13.9.1976, a part of the land was allotted to the petitioner under the Haryana Utilisation of Surplus

and Other Areas Scheme, 1976 (hereinafter referred to as “the Scheme”). Though the allotment order dated 13.9.1976, specifically directed the authorities to inform the petitioner regarding such allotment, no such information was sent. It is the case of the petitioner that when respondents No.5 to 7 encroached upon the land in question, he made enquiries and came to know of the allotment of the land to him through order dated 13.9.1976 (Annexure P-1). On having come to know of the allotment order, he immediately approached the Sub-Divisional Officer (Civil)-cum-Allotment Authority, Jagadhari seeking possession of the land in question. His application was considered by the Sub-Divisional Officer (Civil)-cum-Allotment Authority, Jagadhari, who vide order dated 23.1.1996 (Annexure P-2) not only declined delivery of possession of the allotted land to the petitioner but went a step further and cancelled his very allotment. The order passed by the Sub-Divisional Officer (Civil)-cum-Allotment Authority, Jagadhari, was challenged by the petitioner by way of an appeal before the Collector, Yamunanagar. The Collector, Yamunanagar, found no merit in the submissions made by the petitioner and vide order dated 20.5.1997 (Annexure P-3) dismissed his appeal. Aggrieved by the order of the Collector, the petitioner preferred a revision petition before the Commissioner, Ambala Division, who vide order dated 24.8.1999 (Annexure P-4) accepted the revision petition filed by him and directed the Prescribed Authority, Jagadhari to deliver possession of the allotted land to the petitioner. The State of Haryana did not challenge the order dated 24.8.1999 passed in favour of the petitioner by the Commissioner, Ambala Division. However, the private respondents challenged the same by preferring a revision petition before the Financial Commissioner. The matter was considered by the Financial Commissioner who after holding the petitioner guilty of delay in seeking possession of the allotted land, allowed the revision petition filed by the private respondents. The order passed by the Financial Commissioner is challenged by the petitioner through the present petition.

(2) I have heard the learned counsel for the parties and perused the case file with their able assistance.

(3) The core issue which arises for consideration is whether the petitioner can be non-suited on the ground of having approached the authorities belatedly to seek possession of the land allotted to him.

(4) It is the admitted case between the parties that though the petitioner was allotted land through order of allotment dated 13.9.1976 but no formal intimation was ever sent to him informing him regarding such allotment.

(5) Before I proceed further with the matter, it would be appropriate to refer to Rule 8A of the Scheme. The same is reproduced below for ready reference:

“8A. Delivery of Possession.—After the allotment of the land, the allotment authority shall issue a certificate in Form U.S.3 to the allottee and send a copy thereof to the Tehsildar who shall deliver possession of the land to the allottee, if such land is not already in the possession.”

(6) A perusal of the above quoted rule makes it clear that after the allotment of the land, the allotment authority is required to issue a certificate in Form US-3 to the allottee and is also to send a copy thereof to the concerned Tehsildar so that the Tehsildar can deliver the possession of the allotted land to the allottee.

(7) It is the admitted position that as required under Rule 8A of the Scheme, no certificate in Form US-3 was ever prepared and once no such form was prepared, there was no question of having sent a copy of the same to the allottee i.e. the petitioner or to the concerned Tehsildar. Consequently, the Tehsildar undertook no proceedings to deliver possession of the allotted land to the petitioner. In this regard, I may further refer to the order dated 24.8.1999 (Annexure P-4) passed by the Commissioner, Ambala Division wherein the Commissioner has, after perusing the record, returned categorical findings that no Form US-3 was prepared and therefore, there was no question of sending the same either to the petitioner or the concerned Tehsildar. Relevant portion of the order is reproduced below for ready reference:

“For verification of these facts the original allotment file was also summoned. From the perusal of the original allotment file, it is clear that on dated 13.09.1976 the petitioner and other allottees were allotted the land in village Bhilpura. In this order, it has also been written that the allotted be informed. From further perusal of the file it becomes clear that after than

whichever proceeding was is to be done by the prescribed authority, that was not done. Neither any Form US-3 was prepared nor was ever sent to the petitioner and one copy of that is also to be sent to the Tehsildar Halqa, that has also not sent."

(8) The record further reveals that there were as many as 408 applications received by the Allotment Authority for the allotment of the 470 kanals 3 marlas of land. It is possible that the petitioner thought that his application had been rejected. Even otherwise, the petitioner, who is stated to be a poor landless Harijan, way back in the year 1976, could reasonably have expected that on consideration of his application, he has not been allotted any land and therefore while resting his oars made no further enquiries. Still further nothing has been brought to my notice by either the State or the private respondents to show that the petitioner was in the knowledge of the order allotting land to him at any prior point of time so that delay could be attributed to him.

(9) Now what is required to be seen is whether the belated application filed by the petitioner has acted to anyone's prejudice. The private respondents have neither filed a written statement to the present petitioner nor have uttered a single word before me to show prejudice caused to them on account of the delay on the part of the petitioner in approaching the authorities seeking possession of the land allotted to him. The State of Haryana also is unable to point out any prejudice caused to the State on account of the delay on the part of the petitioner in approaching the authorities for seeking possession of the land allotted to him. It is further admitted by the learned counsel appearing on behalf of the State of Haryana that the land in question has not been allotted to any other person. Still further, the order dated 24.8.1999 passed by the Commissioner, Ambala Division which was in favour of the petitioner was not challenged by the State of Haryana. The order, thus, became final so far as the State of Haryana is concerned. In this order which became final qua the State of Haryana, the Commissioner had observed as under:

"From further perusal of the file, it becomes clear that after than whichever proceeding was is to be done by the prescribed authority, that was not done. Neither any form US-3 was prepared nor was ever sent to the petitioner and one copy of that is also to

be sent to the Tehsildar Halqa, that has also not sent. In this way, from the perusal of record, this contention of counsel for the petitioner is proved that his client was never offered to take the possession nor any direction was sent to him that how much amount and on which date he is to deposit. Even otherwise also according to the scheme the instalment is to be deposited within 30 days after getting the possession by the allottee. When the petitioner was not offered to take possession then there is no effect on the case by not depositing the instalment by him and the allotment can only be cancelled if the allottee did not take the possession within 7 days after the offer, which has not been done in this case. Besides this, I also agree with this contention of the ld. Counsel for the petitioner that the allotment authority has no power to cancel the allotment, as mentioned in 1990 PL J page 585. So far the argument of the counsel for the respondents that the land in dispute has been notified under section 4 of the Indian Forest Act, there is no effect of the same on the allotment nor due to it the allotment to be cancelled because there is no effect on the rights of the Department of Forest because they have to plan trees for a fixed term, whosoever may be the owner and after the expiry of the term they leave it. Besides this it is clear from the perusal of the file that in this case there is no fault of the petitioner and the legal proceedings which was to be done by the prescribed authority, those were not done by them. So, due to the non-making any proceedings the interest of the petitioner cannot be effected. I also found no force in this contention of the Id. Counsel for the respondent that the appeal of the petitioner was time barred because the Collector has not given his decision on the point of limitation and nor any such contention was raised before him and the Collector has decided this case on the basis of merits and demerits. In these circumstances, I by agreeing with the contentions of the ld. Counsel for the petitioner, except the revision and set aside the order under revision and send this case to the prescribed authority Jagadhri with this direction to take further proceedings by issuing the Form US-3 in favour of the petitioner as per Law.”

(Emphasis supplied by me)

(10) Once the above order wherein it has been held that the State authorities miserably failed in its duties to follow the procedure with regard to informing the petitioner about the allotment order as also with regard to non-initiation of proceedings to deliver possession to him has been accepted by the State and the private respondents have neither pleaded nor shown any prejudice caused to them, I consider it proper to overlook the delay on the part of the petitioner though with a rider which I will refer to in the later part of this judgment.

(11) There is yet another issue raised by the petitioner which merits acceptance. It has been argued on behalf of the petitioner that he had moved an application before the Allotment Authority claiming possession of the land allotted to him. While deciding such application, the Allotment Authority not only denied possession of the allotted land to the petitioner but went on to cancel his very allotment. It was argued that the cancellation of the allotment by the Allotment Authority amounted to review of the earlier order of allotment which could not have been done as there was no power of review with the Allotment Authority.

(12) It is settled law that the power of review can be exercised by an Authority only where a statute provides for the same. In the case in hand, the Act does not confer any power upon the allotment authority to review its own order. That being so, the order passed by the Allotment Authority cancelling the allotment of the petitioner suffers from this legal flaw as well. It may further be noticed that neither the State nor the private respondents had ever questioned the allotment made in favour of the petitioner.

(13) Learned counsel appearing on behalf of the State has brought to my notice that a part of the land allotted to the petitioner was notified under Sections 3 and 4 of the Punjab Land Preservation Act, 1900 (hereinafter referred to as "the PLPA Act") for 15 years and it was, thus, submitted that now this land could not be allotted to the petitioner. On a question raised by me, I was informed that the notification under Sections 3 and 4 of the PLPA Act was dated 16.9.1990 and as observed above was for a period of only 15 years. The period of 15 years having come to an end on 16.9.2005 and no notification extending the period having been shown to me, I consider and reject this objection raised by the State.

(14) In view of the above, orders dated 8.8.2000 (Annexure P-5), 20.5.1997 (Annexure P-3) and 23.1.1996 (Annexure P-2) are hereby quashed. The respondents revenue authorities are directed to now proceed in accordance with law to hand over possession of the allotted land to the petitioner. Due to the laxity on the part of the petitioner in approaching the authorities for seeking possession of the allotted land, in the peculiar facts of the case, I deem it proper to direct that the petitioner be now allotted the land as per the allotment order dated 13.9.1976 (Annexure P-1) but at the prevalent rate fixed by the Collector as on the date when he had applied for seeking possession of the allotted land.

(15) The writ petition stands allowed in the above terms.

(16) No costs.

P.S. Bajwa/V. Suri

Before Paramjeet Singh, J.

SMT. SURESH DEVI AND OTHERS—Petitioners

versus

JASBIR SINGH AND OTHERS—Respondents

CR No. 2846 of 2011

September 9, 2013

Code of Civil Procedure, 1908 - O.23 Rl. 1 - Motor Vehicles Act, 1988 - Ss. 166 and 169 - Second claim petition - Maintainability - First claim petition before MACT Ambala dismissed as withdrawn - Second claim petition before MACT Mohali dismissed on the ground that no liberty was sought to file fresh petition when the earlier one was withdrawn - Would provisions of O. 23 Rl. 1, CPC operate as bar to second claim petition - Judicial approach - Liberal in regard to prosecution of claim petitions - Dismissal of claim petition otherwise than on merits, has not been held to be a bar to fresh petition whether earlier petition was dismissed as withdrawn or dismissed in default - Claim petition if otherwise maintainable, should not have been dismissed on technical grounds - Claimant has the right to file fresh petition and also choose the forum wherein such petition may be filed.