

(2017) 06 SHI CK 0055
In the High Court Of Himachal Pradesh
Case No : 337 of 2006

ANAND KUMAR AND OTHERS

APPELLANT

Vs

STATE OF H P , DEPUTY COMMISSIONER

RESPONDENT

Date of Decision : 21-06-2017

Acts Referred:

Citation : (2017) 06 SHI CK 0055

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : G D Verma, B C Verma, Ravinder Thakur

Final Decision : Dismissed

Judgement

1. The plaintiff instituted a suit against the defendants, claiming therein a decree for declaration to the effect that the plaintiffs are lessees(s) in possession and for setting aside the orders of the Deputy Commissioner, Bilaspur and Divisional Commissioner, Mandi dated 15.06.1990 and 16.06.1992 respectively vide which the allotment of the suit land has been cancelled as also for permanent prohibitory injunction. The suit of the plaintiff stood dismissed by the learned trial Court. In an appeal carried therefrom by the plaintiffs/appellants before the learned First Appellate Court, the latter Court dismissed the appeal, whereupon, it concurred with the verdict recorded by the learned trial Court. In sequel thereto, the plaintiffs/appellants herein, are driven to institute the instant appeal herebefore.

2. Briefly stated the facts of the case are that the plaintiffs filed a suit against the defendant seeking declaration to the effect that the plaintiffs are lessee in possession of the suit land comprised in Khata/Khatoni No.31/488, khasra No.1298/394, measuring 31.54 sq. decimeters, situated in UP Muhal, Main Market, Bilaspur, District Bilaspur, H.P. and for setting aside the orders of the Deputy Commissioner, Bilaspur and Divisional Commissioner, Mandi of 15.06.1990 and 17.06.1992, respectively, vide which the allotment of the suit

land has been cancelled and further decree for permanent injunction restraining the defendant from changing the entry in the revenue record and from interfering in any manner whatsoever. It has been averred in the plaint that father of plaintiff No.4 and husband of plaintiff No.5 late Shri Sita Ram son of Kapura was allotted a commercial site against the award of old town, Bilaspur in Sector 6 of the main market under the scheme formulated for the purpose of the resettlement and rehabilitation of the Bhakra Dam Oustees and a lease deed was accordingly executed and Sita Ram has become its lessee and defendant has become lessor. It has been further averred that pursuant to the allotment of the land, the possession of the allotted land was handed over to the predecessor-in-interest of the plaintiffs and mutation thereof has already been sanctioned vide mutation No.162 of 19.6.1989. The Deputy Commissioner has wrongly⁸ and illegally cancelled the above said allotment vide order dated 15.06.1990 which was challenged before the Divisional Commissioner but the same was also dismissed as having been not maintainable. Sit Ram, the above allottee died on 1.1.1996 and the plaintiffs have succeeded to his estate being the son of the widow. The defendant is stated to have no right, title or interest in the suit land and the plaintiffs are stated to be in possession of the suit land. The cause of action is stated to have arisen to the plaintiffs on 1.9.1998 when the defendant has express his inability to undone the cancellation of allotment. Thus, it has been prayed by the plaintiffs that the orders passed by the Deputy Commissioner and Divisional Commissioner may be declared null and void and they be declared lessee in possession of the suit land and defendant be restrained permanently from changing the nature of the suit land or interfering in the suit land through its agents and servants.

3. The defendant contested the suit and filed written statement. It has been pleaded that Kapura Ram father of Sita Ram was allotted plot No.210-B at Main Market, Bilaspur being Bhakra Dam oustee and he gifted this allotted plot to his son Sita Ram and in the year 1989, Sita Ram applied for exchange of his plot No.210-B with the suit land. However, it is further pleaded that said plot was not allotted as a commercial plot. It was only sanctioned in favour of Sita Ram in exchange but subsequently, the said exchange was cancelled by the Deputy Commissioner. The plaintiffs preferred an appeal against that order before the Divisional Commissioner, Mandi and the same was also dismissed. The orders of the Deputy Commissioner and the Divisional Commissioner are stated to be legal and valid. It is further averred that joint inspection of the site was carried out by the Assistant Town Planner, Mandi, Secretary, Municipal Committee, Bilaspur and Assistant Engineer, PWD, Bilaspur and it was observed by them that it was not feasible to allot any plot in the suit land since the site is abutting the National Highway No.21 and the proposed activities in the shop would invite a trouble for vehicles as well as pedestrians and there was likelihood of choking of nallah during heavy rains and may endanger the adjacent construction. It is also averred that the suit land is not a created plot as per the allotment rules of the plots. As such, the suit land could not have been allotted without creation of the

plots. The defendant is stated to have every right to cancel the said exchange and the same was accordingly cancelled after giving opportunity to the plaintiffs by the competent authority and the order of cancellation passed by the Deputy Commissioner and affirmed by the Divisional Commissioner are stated to be legal and binding on the plaintiffs.

4. The plaintiffs/appellants herein filed replication to the written statement of the defendant/respondent, wherein, they denied the contents of the written statement and re-affirmed and re-asserted the averments, made in the plaint.

5. On the pleadings of the parties, the learned trial Court struck the following issues inter-se the parties at contest:- 1. Whether the plaintiffs are in exclusive possession of the suit land, as alleged?OPP 2. Whether the order dated 15.6.1990 passed by Deputy Commissioner, Bilaspur and order dated 17.06.1992 passed by Divisional Commissioner, Mandi are illegal, null and void?OPP 3. Whether this Court has no jurisdiction to hear and decide the suit?OPP 4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD 5. Whether the plaintiffs are estopped to file the suit by their own act and conduct?OPD

6. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for?OPP.

7. Relief. 6. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court dismissed the suit of the plaintiffs/ appellants herein. In an appeal, preferred therefrom by the plaintiffs/appellants before the learned First Appellate Court, the latter Court dismissed the appeal and affirmed the findings recorded by the learned trial Court. 7. Now the plaintiffs/appellants herein, has instituted the instant Regular Second Appeal before this Court, wherein they assail the findings recorded in its impugned judgment and decree, by the learned first Appellate Court. When the appeal came up for admission, on 7.11.2006, this Court, admitted the appeal instituted by the appellants against the judgment and decree, rendered by the learned first Appellate Court, on the hereinafter extracted substantial question of law:- 1. whether the order of Deputy Commissioner canceling the lease grated vide deed Ex.P-1, is illegal and in violation of the terms and conditions stated in the lease deed? Substantial question of Law No.1:

8. Under Ex. D-2, exhibit whereof comprises a perpetual lease deed executed inter se the predecessor-in-interest of deceased Sita Ram, namely, one Kapura Ram, with the lessor concerned, plot bearing No. 210-B, situated in Section 6, New Bilaspur Township stood allotted to the lessee, for construction of a shop/residence thereon. Subsequently, under Ex. P-1, exhibit whereof also comprises a perpetual lease deed executed inter se the predecessor-in-interest of the plaintiffs, namely, one Sita Ram with the lesser concerned, bestowment of rights as a perpetual lessee with respect to khasra No. 394/1 stood conferred upon the aforesaid deceased Sita Ram. Ex. P-1 stood executed on May 29, 1989. However,

as visible from a perusal of Ex. P-13, the allotment of plot borne on khasra No. 394/1 vis-a-vis Sita Ram, the predecessor-in-interest of the plaintiffs, in pursuance whereof perpetual lease deed comprised in Ex. P-1, stood executed inter se him and the lessor concerned, was sequelled by the authority concerned ordering for its exchange with plot No.210-B, in respect whereof, as manifest from Ex. D-2, a perpetual lease deed stood prior thereto executed inter se the predecessor-in-interest of deceased Sita Ram, with the lessee concerned, namely, one Kapura Ram. The plaintiffs did not contest the fact that the allotment of khasra No.394/1 under Ex.P-13, to their predecessor-ininterest one Sita Ram being sequelled by the hitherto allotment of plot No. 210-B to one Kapura Ram, the predecessor-in-interest of deceased Sita Ram, standing exchanged therewith also, they did not contest the cancellation of allotment of plot No.210-B vis-a-vis one Kapura Ram. Subsequently, on the apposite objections preferred by the objectors concerned before the learned Deputy Commissioner, Bilaspur, the latter under his orders comprised in Ex. P-3, proceeded to cancel the allotment of khasra No.394/1 vis-a-vis the predecessor-ininterest of the plaintiffs, namely, one Sita Ram, also, he cancelled the perpetual lease deed executed inter se the lessee concerned with the lessor concerned, lease deed whereof is comprised in Ex. P-1. The order(s) recorded by the learned Deputy Commissioner under Ex.P-4, stood affirmed by the learned Divisional Commissioner, Mandi.

9. The learned counsel appearing for the plaintiffs/appellants has contended with much vigour, that with a perpetual lease deed with respect to khasra No.394/1 standing executed inter se the predecessor-ininterest of the plaintiffs, namely, one Sita Ram with the competent executing lessor concerned, hence, disabled the learned Deputy Commissioner to order for its cancellation, especially when no recital exists in Ex. P-1 with respect to operation thereon or sway of clout thereon of rules 11 to 16 and 20 of the Rules appertaining to allotment of plots in the New Bilaspur Township. Consequently, he submits that the vigour of Ex.P-1, constituting the perpetual lease deed executed with respect to khasra No.394/1 inter se the predecessorin- interest of the plaintiffs, namely, one Sita Ram, with the competent executing lessor concerned, "was unamenable" to dilution of its binding effect or force, by his purportedly invoking the play thereon of rules 11 to 16 and 20, of the Rules appertaining to allotment of plots in the New Bilaspur Township nor also any bar contemplated in the apposite rules against the exchange of the hitherto allotted plot No.210-B under Ex. D-2 to the predecessor-in-interest of deceased Sita Ram, "could dilute" the effect of Ex. P-1, especially when no recital is embodied therein with respect to play thereon of the aforesaid rules. However, the aforesaid submission addressed by the learned counsel appearing for the plaintiffs/appellants, cannot be accepted, as non communication, if any, of the aforesaid rules in Ex. P-1 would not per se deprive them from theirs holding there clout thereon, imperatively also when the letter of allotment comprised in Ex.P-13, makes a vivid display in paragraph No.6 thereof, with respect to rules 11 to 16 and 20 of the Rules appertaining to allotment of

plots in the New Bilaspur Township, warranting their incorporation in the apposite deed of conveyance executed inter se the executants, in respect thereof. Since, the incorporation of the apposite rules in the apposite deed of conveyance executed with respect to khasra No.394/1 was a sine qua non or a condition precedent for the allotment of the aforesaid khasra number hence taking a legal effect, in sequel, even if, the aforesaid rules remained not incorporated in Ex. P-1, thereupon, no argument can be addressed by the learned counsel for the appellant that hence there was ouster of play thereon of the aforesaid rules nor can he espouse that given the perpetuity or longevity of the relevant deed of conveyance executed inter se deceased Sita Ram, the predecessor-in-interest of the plaintiffs, with the competent executing lessor, qua nowat the play thereon of the aforesaid rules standing ousted. Predominantly, also with the allotment of khasra No.394/1 made under Ex. P-1 vis-a-vis one Sita Ram, the predecessor-in-interest of the plaintiffs, standing anvilled upon the rules appertaining to allotment of plots in New Bilaspur Township, corollary whereof is that the operation and clout of the apposite rules embodied in the Rules drafted/framed for allotment of plots in New Bilaspur Township "cannot" obviously be whittled down, merely, on the anvil of theirs not finding, their incorporation in Ex.P-1. Obviously, thereupon, also it is imperative for this Court to ascertain, on a reading of the aforesaid rules, as stand evaluated by the learned District Judge, that whether they contemplate a bar against exchange besides contemplate a bar against allotment of undeveloped or uncreated plots. The learned District Judge had in the impugned judgment and decree, concluded that in the apposite rules drafted for allotment of plots in the New Bilaspur, Township, a bar exists against the allotment of plot(s) by way of exchange with the hitherto allotted plot(s) to the predecessor-in-interest of the plaintiffs, one Kapura Ram also it had made an allusion to the bar contemplated in the apposite rules against the allotment of undeveloped plots or uncreated plots. The learned counsel appearing for the appellant has been unable to make any vigorous display before this Court, that the rules as stand alluded to by the learned District Judge "not" holding the aforesaid contemplation nor he has been able to erode the vigour of the findings recorded by the Deputy Commissioner, Bialspur in Ex. P- 3, that khasra No.394/1 was unamenable for allotment, it being an undeveloped plot, hence, infringing the mandate of the apposite rules wherein there exists a bar against allotment of an undeveloped or an uncreated plot, conspicuously, when no evidence in rebuttal thereof stands adduced. It appears that one Sita Ram "despite" a perpetual lease deed standing executed inter se his predecessor-in-interest one Kapura Ram with the lessor concerned has concerted to blunt the vigour of the aforesaid prior perpetual lease deed, by his in gross derogation of the relevant rules, obtaining allotment of the suit property, corollary whereof is that his untenable act "cannot" be validated by this Court.

10. The above discussion unfolds the fact that the conclusions as arrived by the learned first Appellate Court as also by the learned trial Court are based upon a proper and mature appreciation of evidence on record. While rendering the

findings, the learned first Appellate Court as well as the learned trial Court have not excluded germane and apposite material from consideration. Accordingly, the substantial question of law are answered, in favour of the respondent and against the appellants.

11. In view of above discussion, the present Regular Second Appeal is dismissed. In sequel, the judgments and decrees rendered by both the learned Courts below are maintained and affirmed. However, it is made clear that the appellants/ plaintiffs shall not be evicted from the suit land except in due course of law. The respondent concerned is also directed to, if now permissible, re-allot and put the plaintiffs in possession of the earlier plot bearing No. 210-B. All pending applications also stand disposed of. No order as to costs.