
(2013) 02 P&H CK 0256
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 23589 of 2011

Budha

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 02 P&H CK 0256

Hon'ble Judges : Rekha Mittal, J;Rajive Bhalla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—The petitioners pray for issuance of a writ of certiorari, quashing mutations No. 7731 and 7732 both dated 03.01.2005, Annexures P-11 and P-12. respectively and other mutations recorded pursuant to sale deeds executed by Kavish Gupta, respondent No. 5, in favour of respondents No. 6 to 28, whereby land belonging to the Gram Panchayat/Municipal Committee, Hathin, has been recorded as ownership of private respondents. Counsel for the petitioners submits that the land, in dispute, measuring 54 kanals and 12 marlas, situated within the revenue estate of Gram Panchayat Hathin was owned by the Gram Panchayat and, therefore, recorded as Panchayat Deh. The entry continued as such upto 1989-90 and was even changed to Shamilat Deh, vide Mutation No. 5291 dated 15.10.1990. As village Hathin became a Municipal Committee in 1999-2000, the land, in dispute, was recorded as ownership of Municipal Committee, Hathin but after abolition of the Municipal Committee, the Gram Panchayat was re-established and land was once again recorded as Panchayat Deh, as per jamabandi for the year 2004-05. However, as village Hathin has once again been declared a Municipal Committee, the land, in dispute, vests in Municipal Committee, Hathin. Jawala Singh and others, who were merely recorded in possession of the land, in dispute, sold the land to Kavish Gupta and Narinder Kumar and thereafter obtained a collusive civil court decree to conceal their fraud. Kavish Gupta got mutations of ownership

sanctioned in his name and thereafter sold the land to other private respondents. The fraud played by Jawala Singh and Kavish Gupta and his co-sharers is writ large on the facts of the present case. The mutations sanctioned in the name of Jawala Singh etc. and thereafter in the names of Kavish Gupta, on the basis of a sale deed, a civil court judgment and decree are null and void. In order to conceal his fraud, Kavish Gupta filed a writ petition which was disposed of in terms of the judgment in "Jai Singh and others v. the State of Haryana and others". The judgment in Jai Singh's case (supra) does not apply in the present case as the land, in dispute, is Shamilat Deh and not Jumla Mushtarka Malkan. It is prayed that a detailed inquiry may be ordered into this fraud and officials and the private respondents should be brought to book for misappropriating Panchayat property.

2. Counsel for respondents No. 6 to 18 submits that the land, in dispute, is excluded from Shamilat Deh and, therefore, does not vest in the Gram Panchayat or in the Municipal Committee as it was recorded as "Shamilat Deh Hasab Hissas Arazi Makbuja" in jamabandi for the year 1912. 13. The jamabandi also records the possession of proprietors. The sale deed executed by Jawala Singh etc. in favour of respondent No. 5 as proprietor and the subsequent sale deeds executed by respondent No. 5 and others, in favour of private respondents are legal and valid. The respondents are bonafide purchasers for valuable consideration. It is further submitted that building plans were submitted by private respondents to the Municipal Committee, Hathin after depositing requisite charges, vide receipts dated 13.10.2010 and 23.11.2011, thereby clearly proving that the land, in dispute, does not belong to the Gram Panchayat or the Municipal Committee. It is also pointed out, by reference to the report, Annexure R-7, prepared by Director, Urban and Local Bodies, that the revenue record is correct and there is no illegality. The judgment in Jai Singh's case (supra) is fully applicable to the facts of the present case. The writ petition should, therefore, be dismissed with costs. Counsel for the private respondents further submits that they are the bonafide purchasers, who have purchased the land after perusal of the revenue record which reflects the ownership of Kavish Gupta and others. It is further submitted that in case the land is held to be Shamilat Deh, the right of the private respondents as bonafide purchasers may be protected.

The State of Haryana and respondents No. 1 and 2 have filed an affidavit dated 19.11.2012, through Suresh Kumar Chahal, Sub Divisional Officer (Civil), Hathin, admitting that the land, in dispute, belonged to Gram Panchayat, Hathin and after notification of Municipal Committee, Hathin, vests in Municipal Committee, Hathin. Counsel for the State of Haryana submits that judgment in Jai Singh's case (supra) does not apply to the land, in dispute. Jawala Singh etc. had no right to sell the land and, therefore, the sale deed executed in favour of Kavish Gupta, decree passed in his favour, mutations sanctioned thereon, mutations sanctioned on the basis of Jai Singh's case (supra), and sale deeds executed in favour of other respondents, are illegal and void. Counsel for the official respondents has, by reference to the above affidavit, chartered out, in detail, the

manner, in which a fraud was perpetuated and land, in dispute, was misappropriated, Counsel for the official respondents submits that all necessary steps shall be taken to retrieve the property and to cancel sale deeds and mutations which are even otherwise, illegal and void.

3. We have heard counsel for the parties, perused the paper book, particularly, the affidavit filed by Mr. Suresh Kumar Chahal, Sub Divisional Officer (Civil), Hathin.

4. The case, in hand, demonstrates the ease with which unscrupulous elements, connive with revenue" officers, weave a web of fraudulent sale deeds, decrees and revenue entries to deprive Municipal Committees/Gram Panchayats of their properties. The brazen manner, in which officers tasked with an obligation to protect public property, collude and connive in perpetuating a fraud, leaves one to wonder whether any public property is safe.

5. Before recording any conclusion, it would be appropriate to narrate the facts.

6. Admittedly, the land, in dispute, measuring 54 kanals and 12 marlas, was situated within the revenue estate of village Hathin and recorded as "Shamilat Deh Hasab Hissas Arazi Makbuja". After enactment of the Punjab Village Common Lands (Regulation) Act, 1953, this land came to vest in Gram Panchayat, Hathin. The land was, therefore, recorded as Panchayat Deh. After enactment of the Punjab Village Common Lands (Regulation) Act, 1961, the land continued to vest in the Gram Panchayat. The erstwhile proprietors did not seek or obtain a declaration that the land, in dispute, is not included in Shamilat Deh. The jamabandi for the year 1960-61, records the cultivating possession of Jawala Singh etc. but the land is recorded as the ownership of "Panchayat Deh". The entry of "Panchayat Deh" was altered, vide mutation No. 5291, dated 15.10.1990 to "Shamilat Deh" thus, leaving no ambiguity as to its nature and ownership. The sabha area of Gram Panchayat of village Hathin was declared a Municipal Committee. The land, in dispute, was thereafter recorded as ownership of the Municipal Committee, in jamabandi for the year 1999-2000, but somehow continued to be recorded in possession of Jawala Singh etc. as marusiyan (i.e., a person in possession). The same entry is repeated in jamabandi for the year 2004-05.

7. Jawala Singh and others, who are merely recorded in possession, of the land, in dispute, however, managed to sell 30 kanals and 16 marlas of this land to Kavish Gupta, respondent No. 5, who has chosen not to put in appearance despite service, and Narender Kumar (since deceased), vide sale deed dated 09.06.1989. The Sub Registrar, surprisingly, did not call for or peruse the revenue record while registering the sale deed. Kavish Gupta, who was apparently aware that the land belongs to the Municipal Committee and the sale deed is a nullity, devised an ingenious plan to legitimise the sale deed.

8. The land, in dispute, had been sold jointly to Kavish Gupta and Narender Kumar, who had passed away. Raj Bala and others, legal heirs of Narinder Kumar,

filed a civil suit before the Additional Senior Sub Judge, Palwal, for a declaration that Kavish Gupta is absolute owner in possession of 2/3rd share of this land. Kavish Gupta conceded the suit and became owner of 2/3rd share of the land, in dispute, vide decree dated 03.12.1990. Armed with the decree, Kavish Gupta approached the Assistant Collector IInd Grade, Hathin promptly sanctioned Mutations No. 7731 and 7732 both dated 03.01.2005, in accordance with the decree passed by the Additional Senior Sub Judge, Palwal, recording that Kavish Gupta is owner of 2/3rd share of the land, in dispute.

9. The Gram Panchayat, Hathin, through the then Sarpanch Yoginder Singh, filed an appeal before the Collector, Mewat, Nuh. The appeal was allowed on 26.10.2006, by directing the Assistant Collector IInd Grade, Hathin, to decide Mutations No. 7731 and 7732, afresh.

10. In the meanwhile, the land was sold to other respondents by registered sale deeds and Mutations No. 8032, 8033, 8034, 8035 dated 11.05.2005, 8256 dated 03.01.2006, 8336, 8376, 8404, 8405, 8406, 8406/1, 8407, 8408, 8433, 8434, 8435 dated 12.05.2006, 8791 dated 16.01.2007, 8855 dated 12.05.2007, 9872 dated 26.06.2007, 8886, 9018, 9019 dated 11.09.2007, 9039 dated 27.09.2007, 9099 dated 18.12.2007, 9389 dated 25.11.2008, 9549 dated 30.01.2009 and 9716 to 9723 dated 07.01.2010 were sanctioned in favour of respondents No. 6 to 28. On appearance before the Assistant Collector Hnd Grade, Hathin, Yoginder Singh, the then Sarpanch, surprisingly, made a statement that Killa numbers entered in Mutations No. 7731 and 7732 are in possession of Shamir Ahmad son of Mumtaj Ahmad and he accepts the decision of the Punjab & Haryana High Court, as correct.

11. A reference to the decision of the Punjab & Haryana High Court, in this order is another chapter in this web of deceit and fraud which would require a pointed reference.

12. The State of Haryana enacted Act No. 9 of 1992 to amend the 1961 Act by incorporating Section 2(g)(6) to provide that land created during consolidation, referred to as "Jumla Mushtarka Malkan" shall be included in Shamilat Deh. The land, in dispute, is Shamilat Deh and not Jumla Mushtarka Malkan. Taking advantage of the pendency of a bunch of writ petitions, challenging the vires of Section 2(g)(6) of the 1961 Act (which relates to Jumla Mushtarka Malkan) and though, fully conscious of the fact that the land, in dispute, is "Shamilat Deh" and not "Jumla Mushtarka Malkan", Kavish Gupta filed CWP No. 5266 of 1994 and got it tagged with the bunch of petitions. The writ petition was disposed of in terms of order dated 13.03.2003, passed in "Jai Singh and others v. State of Haryana and others". It would be necessary to point out that the judgment in Jai Singh's case (supra) relates to land created during consolidation, i.e., Jumla Mushtarka Malkan and not to Shamilat Deh. Kavish Gupta presented the order passed in his writ petition, before revenue officers, who promptly obliged him by recording a mutation and changed the ownership from Panchayat Deh, initially to

Jawala Singh etc. and thereafter from Jawala Singh etc. to the name of Kavish Gupta, thus, assisting or conniving in this conspiracy to misappropriate Gram Panchayat/Municipal property. In order to place our conclusions in their correct factual perspective, lest our order be said to suffer from any ambiguity, it would be necessary to reproduce an extract from affidavit dated 19.11.2012, filed by Mr. Suresh Kumar Chahal, Sub Divisional Officer (Civil), Hathin, setting out in detail the manner in which sale deeds were executed, mutations were sanctioned, and land belonging to the Gram Panchayat/Municipal Committee, was misappropriated.

5. That the Joint Sub Registrar, Hathin after perusal of the record sent the following comments:-

A. That as per the revenue record for the year 2004-05 Gram Panchayat Hathin was the owner of the land bearing rectangle No. 116, killa No. 4 (2-7), 7(7-10), 14(8-0), 15(3-8), 17(8-0), 24(8-0), rectangle No. 134, killa No. 12/3(1-9), 19/1(4-2), rectangle No. 125, killa No. 4(8-0), khasra No. 274(0-19), 275(0-19), 279(0-19), 280(0-19) total land measuring 54 kanals 12 marlas, situated in the revenue estate of Hathin, Tehsil Hathin, Distt. Palwal, previously Tehsil Nuh, District Gurgaon and Jawala Singh & others were the Gair Morushiyan. The copy of the jamabandi for the year 2004-05 is attached as Annexure R-1.

B. That the mutation No. 7731 for the land bearing Rectangle No. 116, killa No. 4(2-7), 7(7-10), 14(8-0), 15(3-8), 17(3-8), 24(8-0), rectangle No. 125, killa No. 4(8-0), rectangle No. 134, killa No. 12/3(1-9), 19/1(4-2) total measuring 46 kanals 4 marlas was sanctioned vide which Sh. Jawala Singh & others were shown as Morushiyan as per the above said mutation, the copy of the same is attached as annexure R-II. Thereafter farad badar was entered and sanctioned regarding the land bearing rectangle No. 116, killa No. 17(4-12) the copy of the said Farad Badar is attached as annexure R-III.

C. That after the sanction of mutation No. 7731, 1-Sh. Jawala Singh, 2-Ram Chand, 3- Jai Chand, 4-Prabhu, 5-Hapua, 6-Shri Chand, 7-Sh. Manohar Singh, 8-Sh. Prabhu Singh, 9-Sh. Puran Singh, 10-Sh. Leela Singh, 11-Sh. Rajender Singh, 12-Sh. Atar Singh, 13-Sh. Karan Singh, 14-Sh. Rajbir Singh, 15-Sh. Leela Singh, 16-Sh. Anand Pal, 17-Sh. Prashadi, 18-Sh. Puran son of Sh. Nanua, Sh. Gyashi (deceased) through LRs (19-Sh. Babu, 20-Sh. Murli and 21-Sh. Girraj Singh), 22-Sh. Bagh Singh, 23-Sh. Mangal Singh, 24- Smt. Gopi, 25-Smt. Prakash Wati sold their share measuring 30 kanals 16 marlas land out of 46 kanals 4 marlas being 2/3rd share to Sh. Kavish Gupta son of Sh. Desh Bandhu & Sh. Narender Kumar son of Sh. Ratan Singh in equal share. The mutation No. 7732 was sanctioned after the execution of the sale deed. Thereafter, the legal heirs of Sh. Narender Kumar (since deceased) give their share 1/3rd share out of above said land to Sh. Kavish Gupta through Court decree and mutation No. 7741 was sanctioned. The copy of mutation No. 7732 & 7741 are attached as annexure R-IV and R-V.

D. That Sh. Kavish Gupta who was recorded as the owner of the above said 2/3rd share as per mutation No. 7732 & 7741, sold the entire 2/3rd to Sh. Shamir Ahmad son of Sh. Mumtaj Ahmad. Mutation No. 8256 to this effect was sanctioned. Thereafter, Sh. Shamir Ahmad sold his entire share 2/3rd share to Kansal Shoes Pvt. Ltd., Jangpura, New Delhi. Mutation No. 8376 was entered and sanctioned to this effect. The copy of mutation No. 8256 & 8376 are attached as annexure R-VI & R-VII.

E. That the Kansal Shoes Pvt. Ltd., Jangpura, New Delhi sold land measuring 0 kanals 14.5 marla out of the share his to various persons vide different sale deeds. The mutation No. 8855, 8872, 8886, 9549 were entered and sanctioned. The copy of the said mutations are attached as annexure R-VIII, R-IX, R-X and RXI.

F. That Smt. Asharfi, 2-Smt. Kashmiri, 3-Smt. Soran, 4-Smt. Ramwati, 5-Smt. Harpyari, 6- Sh. Inder, 7-Sh. Richhpal, Sh. Parshadi (deceased) through LR's (8-Sh. Suresh, 9-Ram Avtar, 10-Hem Raj, 11-Naresh Kumar, 12-Rakesh, 13-Smt. Raj Rani) 14-Siya, Smt. Kashmiri (deceased) through LR's (15-Shish Pal Singh, 16-Kanwar Pal Singh) who were the owner of the remaining land 15 kanals 7 marla which is 1/3rd of the total land (46 kanals 4 marlas) and mutation No. 7731 was entered and sanctioned in their favour. The said owners sold their shares to different persons vide different sale deeds. The mutation No. 8032, 8033, 8034, 8035, 8336, 8407, 8408, 8433, 8434 were entered and sanctioned. The copy of the said Mutations are attached as annexure R-XII, R-XIII, R-XV, RXVI, R-XVII, R-XVIII, R-XIX, R-XX.

13. A perusal of the affidavit, leaves no ambiguity, as to the fraud perpetuated by Jawala Singh etc., Kavish Gupta and the private respondents. Jawala Singh had no right, title or interest in the land, in dispute, but proceeded to sell the land. The sale deeds and mutations could not have been sanctioned without the collusion or connivance of the Sub Registrar/Registrar and other revenue officers. The land is Shamilat Deh/Panchayat Deh and, therefore, could not be sold by Jawala Singh etc., Kavish Gupta or by any one else. The sale deeds, mutations and decree etc. are, therefore, null and void.

14. The only question that remains is whether persons who have purchased property from Kavish Gupta and others are entitled to any relief on the plea that they are bonafide purchasers?

15. The mere fact that a large number of sale deeds may have been executed and the Municipal Committee has sanctioned building plans etc., are by themselves insufficient to ignore the fraud or to accept the prayer that private respondents are bonafide purchasers of the land for valuable consideration without notice of any defect in the title of their vendor. The so-called bonafide purchasers were to only have examined Mutations No. 7731 and 7732 both dated 03.01.2005, to discern that the land was Panchayat Deh and, therefore, could not have been mutated in the name of Jawala Singh etc. and thereafter in the

name of Kavish Gupta and sold to them. The private respondents, would, however, be free to establish their plea of bonafide purchasers by resort to their remedy in accordance with law.

16. The facts referred to above, in our considered opinion, disclose a blatant fraud perpetuated with the connivance of Government officers, like, the then Assistant Collector IInd Grade, the Sub-Registrars/Registrar, who have recorded mutations and registered the sale deeds.

17. As a normal course, we would have directed parties to file appeals against the mutations, as such, a procedure is envisaged by the Punjab Land Revenue Act, 1887 but in view of the peculiar facts and circumstances of the present case, particularly, the fraudulent transactions noticed hereinabove, Mutations No. 7731 and 7732, both dated 03.01.2005, are declared null and void and set aside. The writ petition is accordingly allowed.

18. The Chief Secretary to Government of Haryana, is directed to hold a detailed inquiry and take appropriate steps to retrieve Panchayat/Municipal Committee property. The Chief Secretary, Haryana, shall also ensure that proceedings i.e. civil, criminal as well as departmental, are initiated against all concerned including defaulting Government officers/officials forthwith. We hope and expect that the needful is done within six months from receipt of a certified copy of this order. Liberty is granted to the petitioners to approach this Court in case the aforestated directions are not complied with.