

(2012) 01 SHI CK 0155
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 346 of 2011

Chet Ram and Others

APPELLANT

Vs

M/s. Jai Parkash Associates Ltd. and District Bilaspur Land
Losers

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115
Constitution of India, 1950 — Article 226, 227
Himachal Pradesh Co-operative Societies Act, 1968 — Section 76
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118
Specific Relief Act, 1963 — Section 41

Citation : (2012) 01 SHI CK 0155

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—The petitioners have preferred the present petition under Article 227 of the Constitution of India, to set aside the judgment dated 30.7.2011, passed by the learned District Judge, Bilaspur, in Civil Misc. Appeal No. 4 of 2011, and to restore the order passed by the learned Civil Judge (Junior Division), in CMA No. 54/6 of 2011, under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

2. The first respondent has set up a cement plant in village Baga, Tehsil Arki, District Solan. Petitioners No. 1, 2 and 5, namely Chet Ram, Kaili Devi and Jamna Devi, respectively, are the owners of the land situated in village Dhar Tatoh, Tehsil Sadar, District Bilaspur. They entered into an agreement with the first respondent-Company for the sale of their lands situated at Dhar Tatoh, subject to the permission obtained by the said respondent u/s 118 of the HP Tenancy and Land reforms Act, 1972.

3. The petitioners alleged that the possession of the land under sale was to be delivered to the respondent-Company at the time of execution of the sale deeds, but they forcibly took the possession and raised construction. Whereas, the

respondent-Company disputed this fact and alleged that the possession was handed over by the petitioners aforesaid at the time of execution of agreements of sale on having received about 72% of the consideration amount. It is alleged that the Company was required to obtain permission, but according to the respondent-Company, they obtained the permission thrice, but the petitioners started dilly-dallying for executing the sale deeds. As such suit for specific performance against petitioners No. 1, 2 and 5 was filed in the Court of learned District Judge, Bilaspur, which is still pending. The respondent-Company also denied that the petitioners were residing in Dhar Tatoh. According to them, they are in fact the residents of village Sai, Bharmana but they illegally got their names transferred to Panchayat, Dhar Tatoh with a fraudulent motive to secure the benefits under the Rehabilitation and Resettlement Scheme.

4. The petitioners in their suit against the respondents have sought the relief of permanent prohibitory injunction restraining them from causing any interference in the smooth transportation work of the plaintiffs' truck attached with defendant No. 2-Society. The petitioners claim themselves to be oustees because of the above facts and the members of District Bilaspur Land Losers Cooperative Society and according to them, the first respondent started unfair tactics to harass and cause unnecessary financial loss to them on account of pending civil litigation. Their trucks which were attached with the second defendant, were delisted/detached, whereas the respondent-Company is under obligation to give transportation work under the scheme formulated for the rehabilitation and resettlement of the oustees of the Japee Himachal Cement Project, but on 10.1.2011 first respondent issued a letter to second respondent to stop the transportation work of the plaintiffs' trucks attached with the second respondent and in the alternative suit for mandatory injunction directing them to reengage their trucks.

5. The petitioners alongwith suit also moved an application under Order 39 Rules 1 and 2 of the CPC for ad-interim injunction restraining the respondents from interfering in the peaceful and smooth transportation work of the trucks during the pendency of the suit and restore the position ante.

6. The suit was resisted and contested by the respondents. They questioned the maintainability of the suit, jurisdiction vis-à-vis cause of action by taking preliminary objections and further submitted that petitioners No. 1, 2 and 5 caused the breach of agreement with respect to the sale of land aforesaid and did not execute the sale-deed in their favour despite obtaining permission as required under the law and repeated requests, which compelled them to file suit for specific performance against them. Since they did not fall within the definition of 'oustees', they were delisted and debarred from transportation work. On the same lines they resisted the interim application.

7. The learned trial Court vide order dated 25.4.2011 Annexure P3 while allowing the application under Order 39 Rules 1 and 2 of the CPC filed by the petitioners observed that letter dated 10.1.2011 was not legal, thus directed the respondent-

Company to restore the transportation work of the petitioners. The learned District Judge in appeal set aside the order of the learned trial Court precisely on the grounds that the plaintiffs have no prima facie case, balance of convenience and no irreparable loss or injury would be caused to them in case the application for injunction is disallowed because they can adequately be compensated in terms of money.

8. Now, the petitioners herein felt aggrieved filed the present petition assailing the judgment of the learned District Judge on jurisdictional ground and erroneous findings.

9. Shri Sanjeev Bhushan, learned Counsel for the petitioners vehemently argued that the District Judge has committed a grave error by not appreciating the facts and circumstances of the case in its entirety and wrongly observed that the loss can be compensated in terms of money. He also submitted that the learned District Judge failed to appreciate that the petitioners are already in transportation work and earning their livelihood by doing this business from it and are under heavy liability on account of loans obtained from financial institutions like banks and private companies to purchase their trucks. It is also argued that the second respondent is a Land Loser Cooperative Society only concerned as to who are the affected persons who are required to be enrolled in the transportation work, thus it did not fall within the purview of the respondent-Company to take arbitrary decision to their prejudice and the role of the first respondent is alleged to be actuated with malafides.

10. Shri R.L. Sood, learned Senior Advocate duly assisted by Shri Arjun Lal, Advocate, at the very outset questioned the maintainability of the petition under Article 227 of the Constitution of India. He forcefully argued that the petitioners have suppressed material facts. While referring to the judgments passed by this Court in CWP No. 472 of 2011, CWP No. 473 of 2011, CWP No. 474 of 2011 and CWP No. 475 of 2011, he submitted that the petitioners have concealed the facts and deserve no discretionary relief. It is also argued that the petitioners failed to execute the sale deeds in favour of the respondent-Company as aforesaid, ultimately the respondent-Company had to knock the door of the Court to seek the relief of specific performance. It is submitted that petitioners do not fall within the definition of the 'oustees', as per the Rehabilitation and Resettlement Scheme and that the petitioners' trucks stood already disengaged before filing of the suit in the learned trial Court, therefore, the impugned order restoring the transportation work to them is beyond the scope of Order 39 Rules 1 and 2 of the CPC and thus they can also not seek the mandatory injunction by interim relief, which is otherwise not permissible even in a final decree. The learned Counsel also pointed out that the second respondent is a Cooperative Society and suit against them by the petitioners is barred by virtue of Section 76 of the Cooperative Societies Act. While referring to the minutes Annexure P5 dated 1.7.2010, the learned Counsel submitted that these are unilateral decisions, in absence of any representative from the respondent-Company. The

representatives of the Government and the oustees convened this meeting to maintain discipline, and maintain law and order. The learned Counsel also brought to my notice the entries of the Pariwar register Annexures R3/F and G and pointed out that the petitioners were residents of Gram Panchayat ?Sai Kharsi? and not of ?Dhar Tatoh?. He further submitted that the name of petitioner Chet Ram is found mentioned in the record of Gram Panchayat ?Sai Kharsi?, but on his application on 6.6.2007 as per the remarks column, his name alongwith the name of his wife Sheela Devi and that of Subhash Chand on his application dated 16.3.2008 alongwith his grandmother were transferred to Gram Panchayat, ?Dhar Tatoh?. Similarly, on the application of Kaili Devi dated 22.5.2007 her name was also transferred to the said Panchayat only with a malafide intention to wrongly get the benefits under the Rehabilitation Scheme.

11. I have examined the rival contentions of the parties and have gone through the record carefully.

12. First of all, I shall like to deal with the scope of Article 227 of the Constitution of India in the light of the principle of law laid down by the Apex Court.

13. The Supreme Court in *Radhey Shyam and Another Vs. Chhabi Nath and Others*, , while taking note of its various decisions including the Constitution Bench, laid down that the High Court does not issue a writ of certiorari. Rather, Article 227 vests the High Court with a power of superintendence which is very sparingly exercised to keep Tribunals and Courts within the bounds of their authority. Under this Article orders of both civil and criminal Courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law. If there is no jurisdictional error and the issue involved is not a pure question of law, but required recoding of evidence even in those cases the High Court would be reluctant to interfere under this Article.

14. In *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, the Supreme Court while dealing with the scope of Articles 227 and 226 in extenso, on the analysis of the decisions rendered by it earlier, following principles of law were formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a

Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar Vs. Union of India* and others, and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the CPC by the CPC (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of

justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

15. Taking note of the above principles of law laid down by the Apex Court the discretionary powers under this Article have to be exercised sparingly only in an appropriate case. Thus, the powers conferred under this Article involve a duty on the High Court to keep the inferior Courts and Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

16. In nutshell, the Court while exercising the powers under Article 227 of the Constitution of India, is not expected to correct all the errors of the Courts below. The powers of superintendence under this Article are to be exercised where either a wrong principle of law is applied or there is an error of jurisdiction.

17. Thus the scope of Article 227 is very limited to the above extent and the case of the petitioners is required to be examined on the above legal parameters.

18. Annexure P/1 is the Scheme for Rehabilitation and Resettlement of the Oustees of the JAY PEE Himachal Cement Project (a unit of Jai Prakash Associates Limited). In the Scheme, the 'oustee' means a land owner who has been deprived of his house or land or both on account of acquisition proceedings/private negotiations in connection with the construction of 'Jay Pee Himachal Cement Project' and entitled to compensation in lieu thereof and includes his or her successors-in-interest.

19. In CWP No. 1294 of 2010, titled Ram Lok Thakur and others v. State of HP

and others, decided on 12.11.2010, this Court taking note of Rehabilitation and Resettlement Scheme held that the aforesaid Scheme is meant for persons and families whose lands have been acquired in connection with the aforesaid Project and not for the persons who, though may be residents of that area, but whose lands have not been acquired.

20. Admittedly, there was an agreement to sell inter se the plaintiffs and the first respondent and part payment was made, balance payment was to be paid on the execution of the sale deeds on getting permission by the first respondent. Both the parties are blaming each other for non-performance of their part of the agreement. Respondent-Company is stated to have obtained thrice, the permission to purchase u/s 118 of the HP Tenancy and Land Reforms Act. Ultimately they landed upto civil litigation, separately filed by the first respondent for specific performance.

21. Now, the basic question which falls for consideration is whether the plaintiffs are 'oustees', within the meaning to Rehabilitation Scheme and whether they are residents of Gram Panchayat, Dhar Tatoh and also the effect of deletion of their names on their request from Sai Kharsi Panchayat to Dhar Tatoh Panchayat. All these questions are highly disputed, which require determination on facts. It is also an admitted fact that at the time of filing the suit the plaintiffs' trucks stood already delisted/disengaged on the ground as they were not 'oustees'. The second respondent though admits that the plaintiffs are their members, but they did not say anything about their eligibility criteria to be enrolled as the members of the Society. The suit against them is without complying with the provisions of Section 76 of the HP Cooperative Societies Act. The case filed by the plaintiffs definitely requires determination on the disputed issues by leading evidence by both the parties.

22. Further, petitioners themselves have alleged in the suit that they have suffered financial loss, which was quantified by them in their legal notice served upon the respondent-Company. Petitioners are also not debarred to engage their trucks for carriage anywhere else.

23. A remedy by injunction though useful is at the same time a strong remedy and is not ordinarily granted when any other remedy is fairly open to the applicant. In other words the Legislature has expressed its view in the matter in Section 41 of the Specific Relief Act, which is one of those dealing specifically with injunctions and among the conditions there laid down, it is stated that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding and where the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court.

24. Admittedly, this is a business dispute and the loss caused to any of the parties can be compensated in terms of money. The last non-contested status of the petitioners cannot be resorted at this stage to establish their right, which

otherwise is required to be established at the trial, in absence of irreparable harm or serious injury to them.

25. In the totality of the circumstances, I do not find it a case of jurisdictional error or misapplication of principle of law by learned District Judge so as to necessitate this Court to interfere with the order of the learned District Judge under Article 227 of the Constitution of India on the above settled principles of law. Accordingly, the petition is dismissed, so also pending application, if any. It is made clear that any observation made hereinabove while deciding this petition shall not affect the merits of the case.