

(2016) 09 P&H CK 0199
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 17912 of 2005.

**Darshan Kumar and another - Petitioners @HASH Commissioner and
Secretary to Government, Haryana and Others**

Date of Decision : 30-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2017) 1 PLJ 225 : (2017) 1 RCRCivil 261

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : S.S. Dinarpur, Advocate, for the Petitioner; Sandeep S. Mann, Sr. DAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J. (Oral)—Instant writ petition is directed against the order dated 12.10.2001 (Annexure P-6) passed by the Commissioner and Secretary to Government of Haryana, Rehabilitation Department, whereby sale qua land measuring 3758 sq. yards in favour of the petitioners, duly approved by Chief Settlement Commissioner on 9.12.1992, was cancelled after a period of about nine years.

2. Notice of motion was issued and dispossession of the petitioners was stayed by an order dated 25.11.2005 passed by a Division Bench of this Court. Respondents No. 1, 2 and 6 filed their written statement. However, no reply was filed by respondents No. 3 to 5.

3. The writ petition was admitted for regular hearing vide order dated 30.10.2006 passed by a Division Bench of this Court and dispossession of the petitioners was stayed. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

4. Facts are hardly in dispute. Land measuring 3758 sq. yards was purchased by the petitioners. Proceedings containing relevant office orders including order dated 9.12.1992 passed by Chief Settlement Commissioner (Sales), Haryana,

granting approval for sale in favour of the petitioners, are at Annexure P-1. Consequently, sale-deed was executed in favour of the petitioners vide Annexure P-2 dated 22.1.1993, by Tehsildar Sales-cum-Managing Officer, Ambala. However, when the Divisional Forest Officer, Divisional Forest Office, Yamuna Nagar, was putting his claim qua the title of the land in question, petitioners filed their civil suit before the learned court of competent jurisdiction at Jagadhri. This suit for declaration was against Divisional Forest Officer, Yamauna Nagar, State of Haryana through its Secretary Forests Department, as well as Collector, Yamuna Nagar. After full trial, the suit filed by the petitioners came to be decreed by the learned Civil Court, vide its judgment and decree dated 2.9.1998 (Annexure P-3).

5. Feeling aggrieved against the judgment and decree passed by the learned Civil Court at Annexure P-3, defendants in the civil suit filed their first appeal, which was dismissed by the learned Additional District Judge, Jagadhri, vide judgment dated 19.4.2000 (Annexure P-4). Dissatisfied, State of Haryana filed RSA No.1868 of 2001 before this Court, which also came to be dismissed by this Court vide order dated 4.9.2002 (Annexure P-5).

6. The relevant part of the order dated 4.9.2002 passed by this Court, while dismissing the above-said RSA filed by the State, which deserves to be noticed here, reads as under:-

"Respondents Darshan Kumar and Hans Raj filed a suit for declaration with a prayer that they were exclusive owners in possession of land measuring 3758 square yards bearing Khasra No. 26, situated in village Munda Majra, Tehsil Jagadhri. It was also prayed that defendants-appellants be restrained from interfering in their possession and dispossessing them illegally or forcibly. That suit was decreed. Defendants went in appeal, which was dismissed. Hence this Regular Second Appeal.

Arguments addressed by counsel and a reading of paper book reveal that respondents-plaintiffs purchased land in dispute in an open auction and thereafter sale deed was also registered on January 22, 1993, for Rs. 3,75,000/-. It is also apparent that they were already in possession of the property in dispute as tenants since 1979. Both the courts below have held them to be bona fide purchasers. Evidence led by plaintiffs went un rebutted as no evidence was led by defendants-appellants despite getting several opportunities. Under these circumstances, there was no option left with the trial Court except to decree the suit filed by plaintiffs-respondents. Opinion arrived at by both the courts below is perfectly justified and is based upon documentary as well as oral evidence on record. Counsel for appellants has failed to put up any substantial question of law which may necessitate any interference by this Court in Regular Second Appeal.

Dismissed."

7. After passing of the first appellate judgment dated 19.4.2000 (Annexure P-4) and before dismissal of the above-said RSA by this Court, impugned order dated 12.10.2001 (Annexure P-6) came to be passed by the Commissioner and

Secretary to Government of Haryana, Rehabilitation Department. It was least expected from the respondent-State, to bring the said material development and fact of passing the impugned order on 12.10.2001, to the notice of this Court at the time of passing of the above said order dated 4.9.2002 (Annexure P-5).

8. However, this material development was not brought to the notice of this Court, either by the Forest Department or by the Rehabilitation Department of the respondent State, for the reasons best known to them. It is also not in dispute that the order (Annexure P-5) passed by this Court, dismissing the second appeal of the State of Haryana, was not challenged any further and the civil court decree attained finality against the State and in favour of the petitioners.

9. The only technical plea raised by the learned counsel for the State in the present writ petition is that since Rehabilitation Department was not the true owner of the land in question, it could not have been sold by the said Department in favour of the petitioners. He further submits that true owner of the land was Forest Department.

10. After giving thoughtful consideration to the above-said plea raised by the learned counsel for the State, this Court is of the considered opinion that the said contention raised by the learned counsel for the State is wholly misplaced and is not worth acceptance. It is so said because when the Forest Department was putting its claim qua the suit land, petitioners filed their civil suit for declaration impleading the Forest Department as defendant. The suit was decreed. First as well as second appeal of the Forest Department were dismissed. In such a situation, it goes without saying that the sale in favour of the petitioners was also accepted by this Court as a valid transfer of title, while dismissing the second appeal of the respondent-State. Having said that, this Court feels no hesitation to conclude that the impugned order is an order without jurisdiction and the same cannot be sustained.

11. A bare reading of the above-said impugned order passed by respondent No. 1 would make it crystal clear that civil court decree was sought to be conveniently avoided by respondent No.1 which could not have been done. However, at this stage, learned counsel for the State sought to support the impugned order, contending that Rehabilitation Department was neither owner of the land nor was party to the civil suit and because of this reason civil court decree will not be binding against the Rehabilitation Department.

12. This would be of no consequence at all. Reason being the civil court decree between the true owner and the petitioners had attained finality. Once the civil court decree was brought to the notice of respondent No.1, it was his bounden duty either to deal with that issue. However, he failed to do so. Further, the action which was directed to be initiated against responsible official/officer(s), was also conveniently avoided, saying only this much that Tehsildar, who sold the land to the petitioners, had retired from service.

13. The respondent State is again conveniently silent in its reply to Civil Misc. Application No. 18144 of 2000 filed by the petitioners, as to why the appropriate action could not be initiated against Naib Tehsildar as well as the subordinate staff. Under these circumstances, it can be safely concluded that the respondent authorities are trying to take self-contradictory stands and the impugned order cannot be sustained, for this reason as well.

14. Another important question of law that falls for consideration before this Court is as to whether a valuable right vested in the petitioners, in pursuance to the civil court decree, can be taken away from the petitioners. After giving due consideration to this important issue, answer is and has to be in the negative. Once the civil court decree has attained finality between the parties to the lis, said vested right cannot be taken away from the petitioners. In fact, petitioners were the bona fide purchasers for due consideration. Since none of these material aspects were either considered or appreciated by respondent No.1, while passing the impugned order, the same has been found suffering from patent illegality and perversity, besides being a non-speaking order in this regard, which cannot be sustained for this reason also.

No other argument was raised.

15. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order is a patently illegal order, it cannot be upheld. In fact, in the above-said circumstances of the case in hand, the impugned order was an order without jurisdiction.

16. Accordingly, the impugned order dated 12.10.2001 (Annexure P-6) passed by Commissioner & Secretary to Government, Haryana, Rehabilitation Department, is hereby set aside. The writ petition deserves to be accepted.

17. Resultantly, with the above-said observations made, the present writ petition stands allowed, however, with no order as to costs.