

(2013) 05 P&H CK 0183
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5463 of 2011

Gram Panchayat

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 171 PLR 424 : (2013) 3 RCR(Civil) 759 : (2013) 2 RCR(Rent) 33

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : J.S. Bhandohal, for the Appellant; Kanwaljit Singh , Mr. Tarun Singh, Advocate for Respondents No. 2 and 3 and Mr. Suresh Singla, Addl. A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—Feeling aggrieved against the order dated 25.05.2010 (Annexure P-4) passed by Deputy Commissioner, Patiala, exercising the powers of Commissioner, Patiala thereby accepting the appeal of respondents No. 2 and 3, setting aside the ejectment order, the Gram Panchayat has approached this Court by way of instant writ petition under Article 226 /227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the impugned order. Brief facts of the case are that the petitioner-Gram Panchayat filed an eviction petition under Sections No. 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery), Act 1973 (for short PP Act) against respondents No. 1 and 2 which was dismissed vide order dated 22.11.1996 and its appeal was also dismissed by the appellate authority vide order dated 06.05.1998. Petitioner approached this Court by way of CWP No. 818 of 1999 challenging the above said two orders. Vide order date 16.05.2000 (Annexure P-2) a Division Bench of this Court set aside the above said orders and remanded the case back to the Collector for fresh decision. In compliance of the above said order passed by this Court, parties appeared before the Collector

who again dismissed the ejectment petition vide order dated 24.07.2001. Petitioner filed appeal No. 229 of 2001 before the Commissioner who accepted the same and remanded the case for fresh decision vide order dated 20.08.2004. This order was challenged by the respondents No. 2 and 3 before this Court by way of CWP No. 1394 of 2005 which was dismissed by this Court vide order dated 15.05.2006 directing the parties to appear before the Collector, Patiala. After hearing both the parties, Collector decided to carry out the spot inspection of the land in dispute, before deciding the case. The land was inspected on 12.08.2009 and thereafter, the Collector came to the conclusion that the petitioner was owner of the land in dispute. Respondents No. 2 and 3 were found in unauthorized possession and their eviction was ordered vide order dated 13.08.2009 (Annexure P-3). Respondents went in appeal before the Deputy Commissioner, Patiala exercising the powers of Commissioner, Patiala Division, Patiala, who accepted the appeal of the respondents and set aside the eviction order by way of impugned order dated 25.05.2010 (Annexure P4). Hence, this writ petition.

2. Learned counsel for the petitioner submits that the land comprised in Khewat/Khatauni No. 113/295, Khasra No. 439/312(3-12), 432(0-8), plot No. 2 measuring 4 Kanal 1 Marla and Khewat/Khatauni No. 113/294, Khasra No. 440(2-6) and 441(1-5), plot No. 2 measuring 4 Kanal 1 Marla, total measuring 8 Kanal 1 Marla, as recorded in the opening para of the order dated 16.05.2000 (Annexure P-2) passed by Division Bench of this Court, disposing of CWP No. 818 of 1999 (Gram Panchayat Village Rohar Jagir v. The Joint Development Commissioner and others), was the ownership of petitioner Gram Panchayat. He further submits that alleged resolution dated 11.05.1957 which was not an authenticated document, was made the basis of alleged exchange between the petitioner and respondents No. 2 and 3. He next contended that the alleged resolution dated 11.05.1957 was, as a matter of fact, a fabricated document. The exchange never took place and the same was totally baseless. In the alternative, he submits that even if the resolution is deemed to be in existence but only for the sake of argument and not admitted otherwise, still the so called exchange would be of no consequence because admittedly no prior permission of the State Government was ever sought under Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter called as 1964 Rules) and the mandatory law was flagrantly violated. To buttress his argument, learned counsel for the petitioner relies upon a Full Bench Judgment of this Court in Kesar Singh and another v. State of Punjab and another, 2012 (3) R.C.R.(Civil) 825: 2012 (3) LH (P&H) 2831 (FB). Finally, he prays for setting aside the impugned order by allowing the present writ petition.

3. Per contra, learned counsel for respondent Nos. 2 and 3 submits that the impugned order passed by the Commissioner was factually correct and legally justified. It was not suffering from any illegality. The petitioner-Gram Panchayat exchanged the land with the predecessor-in-interest of respondent Nos. 2 and 3, vide resolution dated 11.05.1957 (Annexure R2/1). The petitioner-Gram

Panchayat was not competent to file the eviction petition after a gap of 38 years because of principle of estoppel. He also relies upon the statement of Ranjit Singh (Annexure R2/2) and submits that since respondent Nos. 2 and 3 were coming into cultivating possession over the land since 1957, it was too late in the day to order their eviction at the instance of the petitioner-Gram Panchayat. He also submits that after exchange, petitioner-Gram Panchayat handed over the land of respondent Nos. 2 and 3, to the State Government who constructed the school thereon. He concluded by submitting that the writ petition was misconceived and was liable to be dismissed.

4. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned order dated 25.05.2010 (Annexure P-4) cannot be sustained and the writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

5. It has gone undisputed on the record of the case that Rule 12 of 1964 Rules was not complied with. In this view of the undisputed factual and legal position, this Court feels no hesitation to hold that the so called exchange would be void ab initio and the principle of estoppel will not be attracted against the petitioner-Gram Panchayat.

6. The next question that arises for consideration of this Court is as to whether the present case is squarely covered by the Full Bench judgment of this Court in Kesar Singh's case (supra) in favour of the petitioner-Gram Panchayat. After a close scrutiny of the facts, it has been found that on identical set of facts, the Full Bench of this Court in Kesar Singh's case (supra) held, while interpreting the scope of Rule 12 of the 1964 Rules, that if a statutory provision requires a public authority to transact its business in a particular manner, any deviation from the manner so prescribed would render such a transaction null and void and the doctrine of estoppel will not be attracted.

7. The relevant observations made by the Hon'ble Full Bench in para Nos. 15 and 18 of the judgment in Kesar Singh's case (supra), which can be gainfully followed in the present case, read as under:-

15. The doctrine of estoppel, however, admits to a significant exception, namely, that estoppel shall not be invoked to defeat a statutory provision or to enable a party to allege that though the offer is contrary to statute, the party making the offer should be held to its offer. The doctrine of estoppel cannot be invoked to legitimise an illegality and enforce an obligation that is contrary to law. A statutory provision cannot yield to the doctrine of estoppel as no one, much less a person who has altered his position, may plead that a statutory provision should be violated so as to protect the offer made to him. The principle that a plea of estoppel cannot be raised to defeat a statute is too well settled for us to discuss any further except to the extent of noticing a few judgments.

I AIR 1931 79 (Privy Council)

2 Mathra Prashad and Sons Vs. State of Punjab,

3. Rishabh Kumar and Sons Vs. State of U.P. and Others,

4. Union of India (UOI) and Another Vs. R.C. D'souza,

5. Kasinka Trading and another, etc. etc. Vs. Union of India and another,

6 Shabi Construction Company Vs. City and Industrial Development Corporation and Another,

7. State of Bihar and Others Vs. Project Uchcha Vidya, Sikshak Sangh and Others,

18. We, therefore, reiterate that the doctrine of estoppel, cannot be invoked against statute and if a statutory provision requires a public authority to transact its business in a particular manner, any deviation from the manner so prescribed would render such a transaction null and would not attract the doctrine of estoppel. The judgment in Smt. Malkhani's case (supra), has overlooked these principles while holding that the Gram Panchayat is estopped from alleging that the petitioners are unauthorised occupants.

We, therefore, answer the reference by holding that if a Gram Panchayat transfers its land without complying with provisions of Rule 12 of the 1964 Rules, the transaction shall be null and void and a Gram Panchayat shall not be estopped from alleging the illegality of such a transfer or the unauthorised possession of such a vendee.

8. Respectfully following the law laid down by the Hon''ble Full Bench and also in view of the peculiar fact situation of the present case, it is in-hesitatingly held that the present case is squarely covered by the Full Bench decision of this Court in Kesar Singh's Case (supra), against respondents and in favour of the petitioner-Gram Panchayat.

9. Since, the Deputy Commissioner, Patiala exercising the powers of Commissioner, Patiala has proceeded on mis-conceived and erroneous approach while passing the impugned order, the same cannot be sustained. He has failed to appreciate the noncompliance of Rule 12 of the 1964 Rules. Further, the impugned order clearly runs counter to the law laid down by the Hon''ble Full Bench of this Court in Kesar Singh's Case (supra) which is based on a plethora of judgments rendered by the Hon''ble Supreme Court. Thus, the impugned order is declared to be illegal.

10. As far as the alleged exchange between the petitioner- Gram Panchayat and respondents No. 2 and 3 is concerned, the same is held to be null and void. Respondents No. 2 and 3 cannot raise the principle of estoppel against the petitioner-Gram Panchayat, because Rule 12 of the 1964 Rules was violated, while not seeking prior approval of the State Government. In this view of the matter, the impugned order cannot be sustained.

11. So far as the school building is concerned, it was none of the obligation of the petitioner-Gram Panchayat to provide land for the school building, because to set up a school was the sole responsibility of the State Government. However, it shall be open to respondents No. 2 and 3 to seek appropriate compensation from the State Government for raising the school building on their land, if they are so advised.

12. No other argument was raised.

13. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned judgment cannot be sustained. It is, therefore, hereby ordered to be set aside and the order dated 13.08.2009 (Annexure P-3) passed by the Collector Sub-Division Patiala, is restored. Resultantly, the instant writ petition stands allowed.