
(2014) 09 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9185 of 2014

Jagir Singh and Ors

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 177 PLR 691 : (2015) 1 RCR(Civil) 154

Hon'ble Judges : Surya Kant, J;Jaspal Singh, J

Bench : Division Bench

Advocate : Naresh Kaushal, Advocates for the Appellant

Judgement

Surya Kant, J.—This order shall dispose of Civil Writ Petition Nos. 9185, 9309, 10420, 10421 and 10447 of 2014 as common questions of law and facts are involved in these cases. For brevity, the facts are being extracted from Civil Writ Petition No. 9185 of 2014.

2. The petitioners have laid challenge to the orders dated 17.02.2010 and 16.11.2012 passed by the Director, Rural Development and Panchayats, Punjab, exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act"). Vide the first order dated 17.02.2010, the above-named Authority condoned the delay of 4832 days in filing of appeal by the Gram Panchayat of village Chachao Majra, Tehsil Kharar, District SAS Nagar, Mohali and vide the subsequent order dated 16.11.2012, the said appeal filed by the Gram Panchayat has been allowed and consequently the suit instituted by the petitioners under Section 11 of the 1961 Act to declare them owners in possession of the suit land, has been dismissed.

3. The 1961 Act whereunder jurisdiction of the Civil Court is expressly barred, enables an inhabitant of the village to institute a declaratory petition under Section 11 to claim ownership rights over the land in his possession which the Gram Panchayat claims to have vested in it being shamlat Deh. In the absence of

declaration of title, Section 7 of the 1961 Act contemplates summary eviction proceedings at the instance of the Gram Panchayat and the person found in unauthorized possession can be evicted and possession restored in favour of the Gram Panchayat.

4. The petitioners claiming themselves to be owners in possession of the land in dispute, filed declaratory suit/petition under Section 11 of the 1961 Act against the Gram Panchayat of their village. They claimed possession of the suit land prior to the cut off date of 26.01.1950 and based upon their continuous possession are said to have acquired ownership rights qua the subject-land.

5. It is undeniable that the then Sarpanch of the Gram Panchayat filed written statement "admitting possession" of the petitioners over the suit land. The said admission was the primary and principal piece of evidence relied upon by the Collector to decree the petitioners' suit vide order dated 11.12.1998. The Collector specifically observed that "the Sarpanch, Gram Panchayat, Chahco Majra has also admitted the possession of the petitioners over the suit land in her statement and has stated that the petitioners have been cultivating the suit land from the time of their fore-fathers..."

6. The Gram Panchayat chose to file appeal against the above-stated order of the Collector on 04.05.2009 only. An application for condonation of delay of 4832 days was also moved. It was specifically alleged in the application that the order dated 11.12.1998 was kept secret with mala fide intention by the successive Sarpanches and that "public property worth crores of rupees is involved in the case....."

7. The petitioners contested the above-stated application but the Appellate Authority vide its order dated 17.2.2010 condoned the delay observing that the decree was obtained from the Court of Collector in connivance and collusion and that the value of the property involved runs into crores of rupees.

8. The petitioners did not opt to challenge the abovestated order before any superior forum and took chance of decision of the main appeal on merits. As the Director, Rural Development and Panchayats Department, Punjab, has allowed the appeal of Gram Panchayat, both the orders have been challenged in this writ petition.

9. It may be mentioned at this stage that the land in dispute was meanwhile acquired by the State of Punjab vide Award dated 16.04.2010 for the regulated urbanization of SAS Nagar, Mohali, adjoining Chandigarh. The obvious fight between the petitioners and the Gram Panchayat now revolves around the compensation amount.

10. The question as to whether the petitioners, on the basis of their alleged continuous possession, have acquired ownership right rests upon the nature and status of their possession on the cut off date of 26.01.1950. They were the plaintiffs in the suit and onus was on them to prove their un-interpreted

continuous possession before and after 26.01.1950. The petitioners relied upon revenue record comprising jamabandies for the years 1946-47, 1956-57, 1965-66, 1970-71 and 1990-91 (Annexure P-1 Colly.). The aforesaid revenue record of 1947 unveils that in column No. 4 of "ownership", "Shamlat Deh Arazi Khewat" is recorded as its owner and in column No. 5, "Makbuja Malkan" is recorded in cultivating possession. The names of petitioners or their fore-fathers nowhere figure in that jamabandi. The next jamabandi pertains to the year 1956-57, i.e., post cut off date of 26.01.1950, wherein the Gram Panchayat is recorded as the "owner" in column No. 4 and according to column No. 5 the persons who are in its cultivating possession are in the capacity of Gair Marashi, namely, tenants at Will and not as right-holders of the village. These very entries are continuously reflected in the subsequent jamabandies as well.

11. The revenue entries thus do not establish the possession of petitioners over the suit land as on 26.01.1950. No declaration with regard to their ownership could thus be given by the Collector on the basis of these entries.

12. Having ignored the above-stated evidence, what was left with the Collector to rely upon was only the admission made by the then Sarpanch of Gram Panchayat. The Appellate Authority has thus rightly inferred that the then Sarpanch was in collusion with the petitioners. The admission made by the then Sarpanch accepting possession of petitioners or their fore-fathers over the suit land was contrary to the entries made in the revenue record. The Sarpanch made a false statement detrimental to the interest of the Gram Panchayat. She could not have said so but for the collusion and connivance or may be that she or the subsequent Sarpanches themselves were the beneficiaries of the order passed by the Collector.

13. In such peculiar circumstances, was the Appellate Authority not justified in condoning the delay?

14. It is well settled that fraud vitiates all actions. Hon''ble Supreme Court in Commissioner of Customs, Kandla Vs. Essar Oil Limited and Others, has held that "fraud is well known vitiates every solemn act. Fraud and justice never dwell together. An act of fraud on court is always viewed seriously; a collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and Collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence".

15. The institution of the suit, the manner in which the Sarpanch admitted the claim coupled with the fact that the decree was kept under carpet and no appeal was filed even when the land, due to its geographical location was highly valuable, are suggestive of the fact that the members/Sarpanches as well as the alleged proprietors of the village were mutual beneficiaries of the declaratory order which they obtained through a friendly match.

16. The Gram Panchayat being an impersonal character was unable to wriggle out the fraud played on it by its own Trustees. It was only when the new

Sarpanch took charge in the year 2009 that he detected the well-knit fraud and took the steps to file appeal. It may be true that on expiry of period of limitation, the opposite party acquires an invaluable right and ordinarily the Court will not unsettle the settled position. However, in a case of collusion and connivance, injustice cannot be allowed to perpetuate and it becomes the duty of the Court to reach deep into its roots and uproot it completely.

17. Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , holds that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in in-justice being done because of a non-deliberate delay. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so". In G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , the Apex Court ruled that: "the law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter when Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross purposes with it." Again in State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others, , it has been held that the "expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice - Where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it, the same should not be excluded while deciding what constitutes sufficient cause".

18. The decision taken by the Appellate Authority in the peculiar facts and circumstance of this case, is fully guided by the briefly noticed legal and equitable considerations. It calls for no interference by a Writ Court in exercise of its discretionary jurisdiction. For the reasons afore-stated, we do not find any merit in these writ petitions which are accordingly dismissed.