
(2019) 12 RAJ CK 0040
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 1033 Of 2015

Jarin Huma And Ors

APPELLANT

Vs

Anil Purohit And Ors

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 340
Land Revenue Act, 1956 — Section 90B

Citation : (2019) 12 RAJ CK 0040

Hon'ble Judges : Sangeet Lodha, J;Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : B.S. Sandhu, M.S. Champawat, Tarun Joshi, Khet Singh

Final Decision : Dismissed

Judgement

Sangeet Lodha, J

1. This intra court appeal is directed against order dated 7.10.15 passed by the learned Single Judge of this court, whereby an application preferred by the appellants-writ petitioner for withdrawal of the writ petition and to initiate the criminal proceedings under Section 340 Cr.P.C. against Mr. Anil Purohit, the respondents no.1, has been partly allowed. The appellants have been permitted to withdraw the writ petition, however, their prayer for initiating criminal proceedings against the respondent no.1 herein for perjury, has been declined.

2. The facts relevant are that a writ petition questioning the legality of land acquisition proceedings initiated and the award passed therein in respect of the agriculture land comprising khasra no.2202 to 2246 measuring 7.3600 hectare situated at Bhuvana, Tehsil Girwa, District Udaipur, was filed before the learned Single Judge of this court inter alia on behalf of the appellants herein. The writ petition filed was supported by an affidavit of Shri Anil Purohit, the respondent no.1 herein. It was averred by the deponent in the affidavit that he is one of the petitioner in the matter, whereas, he was not one of the petitioners in the case.

In the petition filed, it was averred by the deponent that he has been authorised by the petitioners to file the writ petition. Besides the appellants, the respondent no.5 to 12 were also impleaded as petitioners in the petition. Alongwith the petition, a power of attorney dated 5.1.02 was filed, however, none of the petitioners were signatory to the said power of attorney. Accordingly, in the application filed, appellants claimed that the respondent no.1-Anil Purohit has played a fraud with the Court and having committed perjury, is liable to be prosecuted under Section 340 Cr.P.C. The appellants also alleged that for the purpose of filing the writ petition, Anil Purohit has prepared a forged document (Annex.1) dated 20.5.2000, which was never signed by the appellants herein or other co-petitioners. The document was fraudulently prepared by using blank stamp papers signed by khatedars. It was claimed that ½ share of the land in question was sold by khatedar Mohd. Hussain, Mohd. Hanif, Yunus Mohd. Hussain Fatta and Sakina Bai in favour of the appellants for consideration of Rs.42,60,000/- and the possession was also handed over to them.

3. A reply to the application was filed by respondent no.1-Anil Purohit, raising preliminary objection that the application has been filed after more than 11 years of the filing of the writ petition and the appellants enjoyed the fruits of the interim order all these years and even participated in proceedings for regularisation under Section 90B of the Land Revenue Act, 1956 (for short "the Act of 1956"). The first respondent claimed that land was purchased by him jointly with all the petitioners named in the writ petition vide agreement to sell dated 20.5.2000, which was sought to be acquired under the Land Acquisition Act, 1894 (for short "the Act of 1894") and therefore, all the co-purchasers decided to take appropriate proceedings to protect the land from being acquired and they authorised the first respondent to file the writ petition wherein order impugned is passed, as well as yet another writ petition being No.2262/01. It was averred that the name of the first respondent being co-purchaser was required to be included in the array of the petitioners, however, inadvertently, while name of his brother was included in the cause title, his name was left out due to clerical error. The first respondent obtained affidavits of all the petitioners except the appellants and a vakalatnama was also signed by them. The first respondent claimed that he had signed the writ petition under bona fide belief that his name is indicated in the petition as petitioner and accordingly, he sworned the affidavit in support of the writ petition and the stay petition and also authorised the counsel to file the petition. It was also claimed that the vakalatnama signed by other petitioners is missing from the record and there is only one vakalatnama signed by the first respondent was on record. According to the first respondent, the dispute is raised by the appellants after the competent authority granting patta in his favour pursuant to proceedings under Section 90B of the Act of 1956 with the ulterior motives to grab the entire land.

4. On 2.12.14, the learned counsel appearing for the first respondent herein submitted that when the petition was initially filed before the court, the vakalatnama was filed on behalf of all the petitioners. Noticing the fact that no

such vakalatnama alleged to have been filed is on record, the Court directed the office to make complete report in this regard. Pursuant to the directions issued as aforesaid, the Dy.Registrar (Judicial) of this court after perusal of the record submitted the report as under:

"In compliance of directions passed by Hon'ble Court, a reply was sought from the concerned Stamp Reporter who checked & passed the petition on 18.01.2002 as to whether initially when the petition was filed the Vakalatnama was filed on behalf of all the petitioners or not? Smt. Pushpa Hans, Court Master has submitted in her reply that on 18.1.2002 when she was working as Stamp Reporter, two writ petitions viz; 267/2002 & 268/2002 were filed. Both petitions were not having Vakalatnama's on behalf of petitioners. Counsel for petitioner presented the copy of Power of Attorney given by all the petitioners in favour of Shri Anil Purohit and presented the Vakalatnama of Shri Anil Purohit. On this basis she passed the SB Civil Writ Petition No.268/2002. Since both writ petitions have having permissions for listing granted by Hon'ble Court, she passed both the writ petitions no.268/2002 & 267/2002 treating as similar writ petitions and passed the Writ Petition No.267/2002 mistakenly. She has assured not to repeat such mistake in future."

5. The learned Single Judge after due consideration of the rival submissions, permitted the appellants to withdraw the writ petition qua them, however, declined to initiate the proceedings under Section 340 Cr.P.C. based on conclusions arrived at as under:

"The very fact that the petitioners other than the applicants have not disowned the filing of the present writ petition and have reiterated the contents of the writ petition and have indicated that the non-applicant was authorized to file the petitioner, it cannot be said with any amount of certainty that the non-applicant has prima facie indulged in committing perjury.

So far as the submissions made by learned counsel for the applicants regarding the filing of the forged document dated 20.05.2000 is concerned, the said aspect cannot form the subject matter of inquiry in the application filed by the applicants, it cannot be denied that the applicants and the non-applicant, who is seeking to represent several petitioners, are bitterly against each other qua the land in dispute and the said aspect pertaining to the validity of the document and/or right of respective parties would have to be determined by forum of appropriate jurisdiction.

So far as the submissions made by learned counsel for the applicants regarding filing of the three writ petitions pertaining to the similar subject matter and the same being overlapping regarding the land in question are concerned, the same by itself cannot be a ground for initiation of proceedings under Section 340 Cr.P.C., it is for the respondents in the respective writ petitions to raise issue based on the said aspect, which may have implication on the merits of the writ petitions.

Hon'ble Supreme Court in the case of Chajoo Ram (supra) held that prosecution for perjury should be sanctioned by the Courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely and in dealing with perjury prosecutions, the question of long lapse of time of more than ten years is relevant and in the case of Ashok Kumar Aggarwal (supra), the law laid down in the case of Chajoo Ram (supra) was reiterated and dismissal of application filed after four years on the basis of mere impression of the appellant was upheld. The law laid down in the judgments are applicable to the facts of the present case."

6. Learned counsel appearing for the appellants contended that the learned Single Judge has seriously erred in permitting the writ petitioners other than appellants to pursue the writ petition on the basis of post facto authorisation by them after a lapse of 12 years acknowledging the fact that they had authorised the first respondent herein to file the petition. Learned counsel submitted that the fact that the first respondent had filed three writ petitions seeking the same relief itself is sufficient to show that he has played fraud with the Court and therefore, it was a fit case for initiating proceedings under Section 340 Cr.P.C. It is submitted that the affidavit was filed by the first respondent stating that he is one of the petitioners whereas, he was not and thus, the first respondent indulging in sheer falsehood on oath, was apparent on face of record. Learned counsel submitted that from bare perusal of the record of all the three writ petitions, it is apparent that the application under Section 90B has been filed only qua the half portion of the land belonging to Chand Mohd., which is not the land in dispute. Learned counsel submitted that having arrived at the conclusion regarding callous and purposeful fraud being committed by the first respondent, the learned Single Judge has seriously erred in not initiating proceedings against him for having committed fraud and perjury. Learned counsel submitted that as a matter of fact, the first respondent had approached the court with tainted hands and therefore, the petition as such was liable to be dismissed.

7. On the other hand, the counsel appearing for the respondents submitted that the writ petitioners other than the appellants having admitted the factum of authorisation in favour of the first respondent on oath and vakalatnama having been filed, the learned Single Judge was absolutely justified in declining to initiate the proceedings under Section 340 Cr.P.C. against the first respondent at the instance of the appellants herein. Learned counsel submitted that since non inclusion of the first respondent as the writ petitioner was an inadvertent error, the first respondent could not have been prosecuted for perjury as alleged. Learned counsel submitted that the appellants having withdrawn the writ petition, cannot be permitted to prosecute the application preferred under Section 340 Cr.P.C. and as a matter of fact, the same was liable to be dismissed for this reason alone. Learned counsel submitted that the appellants herein having withdrawn the writ petition, cannot be permitted to maintain the present appeal against the order passed by the learned Single Judge of this court declining the prayer made for initiating proceedings under Section 340 Cr.P.C.

Thus, viewed from any angle, the order impugned passed cannot be faulted with.

8. We have considered the rival submissions and perused the material on record.

9. Indisputably, the writ petition inter alia on behalf of the appellants was filed by the first respondent herein supported by his own affidavit claiming himself to be one of the petitioners but as a matter of fact, his name was not included in the array of the petitioners. The vakalatnama filed along with the writ petition bears the signature of the first respondent alone. The photo stat copy of the power of attorney executed in favour of the first respondent placed on record is also not executed by any of the writ petitioners. Apparently, as on the date the petition was filed, there was no document on record indicating that the first respondent was authorized to file the petition on behalf of the writ petitioners. Thus, as noticed by the learned Single Judge, the lapses on the part of Registry in passing the file and listing of the matter before the court for consideration without pointing out and removal of deficiencies are writ large.

10. But the fact remains that in the petition filed by the first respondent inter alia on behalf of the appellants herein, an interim order was passed by this court restraining the official respondents from dispossessing the petitioners from the land in dispute and thus, all the petitioners including the appellants herein enjoyed the interim order passed for all these years and the present application, which is decided by the learned Single Judge by the order impugned, was filed after a lapse of about 11 years. It is pertinent to note that in the application filed, the appellants have averred that they had preferred the applications under Section 90B of the Rajasthan Land Revenue Act, 1956 before the Urban Improvement Trust in the year 2008. Obviously, had there been no interim order passed by this court, the appellants would have been dispossessed from the land in question pursuant to the award passed by the Land Acquisition Officer and could not have claimed the regularisation of the land in their favour. It appears that the present application was filed by the appellants after a lapse of 11 years inasmuch as, on 23.8.12, the first respondent filed objections against the applications filed by the appellants before the UIT, Udaipur.

11. It is true that the appellants had preferred the application indicating that neither they authorized the first respondent nor they signed any vakalatnama, the fact which stands fortified from the documents on record, but it cannot be ignored that the writ petitioners other than the appellants herein have filed affidavits categorically stating that they had authorized the first respondent herein for filing joint writ petition with other purchasers before this court. Thus, the learned Single Judge was absolutely justified in not initiating the criminal proceedings against the first respondent for perjury observing that on the basis of the material on record, it cannot be said with any amount of certainty that the first respondent has prima facie indulged in committing perjury.

12. The appellants herein having taken a categorical stand that they have not authorized the first respondent to file the petition, the learned Single Judge has

already permitted them to withdraw the writ petition. The appellants while withdrawing the petition could not have claimed dismissal of the writ petition specially when other co-petitioners had taken the stand that they had authorized the first respondent to file the writ petition on their behalf. If the appellants' rights are likely to be affected by the decision of the writ petition pending and they were not inclined to pursue the writ petition having been filed on their behalf unauthorizedly, nothing prevented them from making a prayer before the learned Single Judge for their transposition as the respondents in the matter.

13. So far as the allegation of the appellants regarding the first respondent preparing a forged document i.e. Annexure 1 dated 20.5.2000 is concerned, it was always open for the appellants to lodge the criminal proceedings against him in accordance with law. Further, notwithstanding the disposal of the application filed by the appellants as aforesaid, the writ court is not precluded from considering the question regarding the forged document being prepared by the first respondent while deciding the writ petition.

14. In view of the discussion above, the order impugned passed by the learned Single Judge does not warrant any interference by us in exercise of intra court appeal jurisdiction.

15. The special appeal is therefore, dismissed. No order as to costs.