

(2004) 04 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No's. 510-513 of 1999

Kashmir Singh and Others

APPELLANT

Vs

Panchayat Samiti, Ferozpur and Others

RESPONDENT

Date of Decision : 13-04-2004

Acts Referred:

Punjab Package Deal Properties (Disposal) Act, 1976 — Section 2
Transfer of Property Act, 1882 — Section 41

Citation : AIR 2004 SC 2438 : (2004) AIRSCW 3240 : (2004) AIRSCW 2970 :
(2004) 5 JT 334 : (2004) 2 RLW 290 : (2004) 4 SCALE 596 : (2004) 6 SCC 207 :
(2004) 3 Supreme 337

Hon'ble Judges : R. C. Lahoti, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Gourav Chopra, N.K. Banka, Palwinder Singh and R.D. Upadhyay, for the Appellant; R.S. Sihota, Manoj K. Mishra, N.S. Bisht, Kuldeep Singh, Raj K. Pandey and Naresh Bakshi, for the Respondent

Judgement

Ashok Bhan, J.—These appeals have been filed against a common judgment of the Punjab and Haryana High Court, wherein the High Court has set aside the order of the revisional authority (Commissioner, Ferozpur) and cancelled the sale made by Tehsildar(Sales) in favour of the appellants.

2. The facts of all the cases are similar and presently the facts are taken from the appeal of Gurcharan Singh son of Mohan Singh (hereinafter referred to as the 'appellant'). Appellant applied for transfer of land measuring 24 kanals 13 marlas being 1/4th share of land measuring 98 kanals 12 marlas comprising Khasra No. 136M/7(8-0), 8(8-0), 9(8-0), 6/2(4- 4), 14(7-9), 15/1(2-3), 15/2(2-18), 17/1(4-2), 17/2(1-10), 24/2(2-12), 19(8- 0), 21/2(5-7), 22/1(6-6), 139M/1/1(5-11), 2/1(0-710/1(0-2), 136M/12(8-0), 13(8-0), 18/1(0-1), 18/2(7-3), 23/2(0-17), situated in village Khai, Tehsil Ferozpur on the ground that he was in continuous possession of this land since Khariff 1989. The case recommended by the Tehsildar(Sales), Ferozpur vide his report dated 25th March, 1994 was approved by the Sales Commissioner, Ferozpur vide his order

dated 29th March, 1994.

3. Panchayat Samiti, Ferozpur, respondent No.1, (hereinafter referred to as the 'respondent') filed an appeal in the Court of Sales Commissioner, Ferozpur on 19th May, 1995. The Sales Commissioner, Ferozpur vide his order dated 6th June, 1995 returned the appeal on the ground that the Act and Rules pertaining to transfer of land were not applicable. Respondent then filed an appeal before the Chief Sales Commissioner (Deputy Commissioner), Ferozpur against the transfer of the land in favour of the appellant. The appellate authority after perusing the record came to the conclusion that the appellant had taken the land on lease from Panchayat Samiti for a sum of Rs.30,000/- in the year 1989-90 vide receipt No. 78 dated 2nd May, 1989. Subsequent to the taking of the land on lease, the appellant filed an application for allotment of land treating it to be in the ownership of the State being a Package Deal Property. The appellate authority found that the land belonged to the District Board and on the abolition of the District Board the land was transferred to the Panchayat Samiti, Ferozpur. Mutation had also been sanctioned in favour of the Panchayat Samiti. It was held that the land did not belong to the State of Punjab and the transfer made in favour of the appellant was bad in law as well as fraudulent. Aggrieved against this order of the appellate authority the appellant filed a revision before the Commissioner, Ferozpur Division, which was accepted.

4. Aggrieved against the said order of the revisional authority, respondent filed a writ petition which was accepted. The High Court held that the land was not a Package Deal Property which had been transferred by the Central Government to the State Government on payment of price. That the land belonged to the District Board and on the dissolution of the Board, the land was transferred and mutated in favour of the respondent. Respondent was found to be the owner of the land and the sale made in favour of the appellant was held to be invalid and without jurisdiction. Accordingly, the order of the revisional authority was set aside and the sale made in favour of the appellant was also set aside.

5. We have heard learned counsel for the parties at length.

6. Package deal property is the property which is transferred by the Central Government to the State Government on payment of price. Clause (1-A) of Section 2 of the Punjab Package Deal Properties (Disposal) Act, 1976, defines the "package deal property" as the property which was taken over as surplus evacuee property by the State Government. The Schedule attached to the aforesaid Act, gives details of the lands which were bought by the state Government of Punjab from the Central Government. On transfer by the Central Government all such lands vested in the Provincial Government under the aforesaid Act. Counsel for the appellant fairly conceded that the land in question does not find mention in the Schedule attached to the aforesaid Act. This conclusively shows that the property was not a "package deal property" as contended by the learned counsel for the appellant and was not in the ownership of the State Government.

7. The property belonged to the District Board. It has been provided u/s 118 of the Zila Parishad Act, 1961 that on the abolition of the District Boards, all the assets and liabilities would devolve on the Panchayat Samitis functioning in the districts or in the Zila Parishad in such manner as the Government may order/direct. On the abolition of the District Boards, their properties were apportioned amongst the Zila Parishads and the Panchayat Samitis under the order of the State Government dated 13th February, 1962. The property situated in village Khai (which is in dispute) has been shown in Schedule 'H' annexed to the order of the State Government dated 13th February, 1962. It has been described as 'Nazul' property. Thereafter on a request made by the respondent-Panchayat Samiti, the Deputy Commissioner, Ferozpur directed the Sub-Divisional Officer(Civil), Ferozpur, on 9th May, 1972 to transfer the land to the respondent. It was made clear in the said letter that the government land situated at village Fattuwalla, Gamewala, Khai and Mamdot belonged to the Zila Parishad and thereafter the land stood transferred to the respondent. This also shows that the land did not belong to the State government but belonged to the Zila Parishad/ Panchayat Samiti as the successor to the District Board and which in turn was transferred to the respondent.

8. Faced with this situation as a last resort, learned counsel for the appellant contended that the appellant was bona fide purchaser for consideration without notice and, therefore, the protection provided u/s 41 of the Transfer of Property Act was available to him. We do not find any force in this submission. Section 41 of the Transfer of Property Act reads:

"41. Transfer by ostensible owner- Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."

9. u/s 41 of the Transfer of Property Act, transfer made by an ostensible owner with the consent, express or implied of the real owner is protected provided that the transferee after taking reasonable care to ascertain that the transferor had the power to make transfer had acted in good faith. Learned counsel for the appellant was unable to show from the record that the State government had transferred the land in favour of the appellant acting as an ostensible owner with the consent, express or implied, given by the respondent in favour of the State Government. Learned counsel for the appellant was also unable to show that the appellant had taken any care to ascertain that the State Government was either the owner or had the power to transfer the land and that he had acted in good faith. On the contrary, it has been brought on record that the appellant had taken the land on lease from the respondent in the year 1989-90 which clearly demonstrates that he knew that the respondent was the owner of the land. Even in the Zamabandi, exhibit P-9, wherein the State government has been shown to

be the owner, the possession of the appellant in column No.5 has been shown to be through the respondent-panchayat samiti. In spite of knowing all these facts the appellant did not take care to ascertain the title of his vendor. In these circumstances the appellant is not entitled to the protection provided u/s 41 of the Transfer of Property Act.

10. The land was transferred to the appellant on payment of Rs.62,625/- out of which the appellants had initially deposited a sum of Rs.3,082/- being the 1/20th share of the price within 15 days in the treasury on the presentation of the challan. The remaining amount was to be deposited with interest @ 10% in 19 equated installments. Learned counsel for the parties were unable to state as to how much amount has been paid by the appellants to the State Government. In the circumstances, we direct that the appellants (in all four appeals) would be entitled to the refund of whatever amount has been deposited by them with the State Government. The State Government is directed to refund the amount deposited by the appellants within a period of three months from today.

11. For the reasons stated above, we do not find any merit in these appeals and the same are dismissed with no order as to costs.