
(2010) 05 P&H CK 0220
In the Punjab And Haryana At Chandigarh

Nathi Ram and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 16
Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 465, 467, 468

Citation : (2010) 05 P&H CK 0220

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Judgement

Gurdev Singh, J.—Heard.

2. The petitioners--Nathi Ram, Rajinder, Jagpal and Zile Singh have filed this petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") invoking the inherent jurisdiction of this Court for issuance of directions to the respondents to further investigate u/s 173(8) of the Code, the case FIR No. 291 dated 20.12.2005, registered under Sections 420, 465, 467, 468, 471 and 120-B IPC in Police Station Indri, District Karnal (Annexure P-1) in view of the recommendations made in the Inquiry Report (Annexure P-3) submitted by Deputy Director General of Police, Chief Minister Flying Squad, Haryana, Chandigarh, recommending reinvestigation u/s 173(8) of the Code and for entrusting the investigation of the case to some independent agency and for getting the same supervised from some higher ranking officer.

3. As per the contents of this petition one Nawab Mohammad Aizaz Ali Khan was the owner of 6700 bighas of agricultural land in the revenue estate of Village Dabkoli Khurd, Teshsil Indri, District Karnal, which was under the cultivation of about 150 Harizan families of that village, including forefathers of the petitioners as tenants since the year 1903 continuously and they had installed tubwell etc., in that land. On account of change of the course of River Yamuna sometimes this land had been falling in the limits of U.P and sometimes in the limits of Haryana

State. The said Nawab migrated to Pakistan after the partition of the Country in the year 1947 and as such this land was declared as evacuee property under the provisions of Administration of Evacuee Property Act, 1950 (hereinafter referred to as the "Act"). Though in the revenue record land continued to be recorded in the ownership of different persons, but the petitioners continued to be recorded as tenants. A petition was filed by the said Nawab u/s 16(1) of the Act that he was not an evacuee and his properties have wrongly been declared as evacuee properties. That petition was accepted. He applied for restoration of possession. Before the possession could be delivered, he died on 4.3.1963 without leaving behind any legal heir. Thereafter, the petition filed by him u/s 16(2) of the Act was dismissed. That Nawab was having bad habits and taking undue advantage of his being under the influence of liquor, Bishan Sarup, proprietor of M/s Gopi Nath & Sons got forged and manipulated a sale deed from the Nawab in his favour with respect to the certain properties situated in Karnal and on the basis thereof, applied to Evacuee Department for restoration of those properties.

4. The Custodian Department of U.P State declared the property of the Nawab as Evacuee Property. Then the tenants were allotted the Bhumidari rights of the land in dispute by the Rehabilitation Department on the payment of nominal charges vide order dated 8.2.1962 passed by Assistant Custodian (Judicial), Saharanpur (U.P). The land became vested in the State free from all encumbrances. In order to grab this land one Ashok Kapoor and Vinod Kapoor forged and fabricated two Wills purported to have been signed, on 27.11.1962. In the year 1993 they obtained Civil Court decrees in their favour and in favour of successors by impersonating some fictitious persons as the natural legal heirs of the Nawab. Attempts were made to get entries in the jamabandi, which were in the favour of the petitioners, cancelled. However they failed in their attempt. Still Vinod Kapoor and Ashok Kapoor got the mutation sanctioned in their favour. In collusion with the revenue authorities, their names were incorporated in the revenue record. After 1947 no Muslim was shown to be in the possession of the land in the revenue record and it was Harijan Community, which was shown to be in possession. The entire land remained in cultivating possession of the predecessors of the petitioners and they never paid any Batai or other charges. They and other co-tenants made complaints to various authorities regarding grabbing of the land by the above said persons in connivance with the revenue staff.

5. An enquiry was got conducted through Chief Minister Flying Squad Haryana, Karnal Division. The allegations were found to be correct. On the basis of the enquiry report submitted by flying squad above said FIR was registered against Ashok Kapoor, Vinod Kapoor and others. Though, collusion of the officials of the revenue department was also established in the fraud of land grabbing, still the challan was not presented against them. As the investigation was not conducted properly so they and other effected persons moved an application to the higher authorities on the basis of which further enquiry was got conducted through Deputy Director General of Police, Chief Minister Flying Squad, Haryana,

Chandigarh. After conducting a detailed enquiry, it was concluded by that officer that investigation has not been conducted properly. Reinvestigation of the case was recommended, but still no action has been taken so far. The intention of the investigating agency appears to be to protect the culprits, by not unearthing the truth, in connivance with the officers of the revenue department.

6. On notice of motion having been issued, the respondent--State filed the reply. In that reply they tried to assert that it was after fair investigation in the said FIR that the challan was presented against the accused; namely, Ashok Kumar, Vinod Kapoor, Chander Gupt, Bharat Bhushan, Dharam Pal and Jasmer Khan. No representation was ever submitted by the petitioners for re-investigation to any higher authority.

7. I have heard learned Counsel for both the sides.

8. It has been submitted by learned Counsel for the petitioners that though in the inquiry ordered by the respondent it was found that the revenue officials were guilty of making false and fabricated record and recommendation was made for re-investigation, yet no such step was taken by the State. No further investigation was conducted nor any supplementary challan was produced in the Court. It can easily be made out that the officials of the revenue department, who tried to fabricate the record in order to help the land grabbers and in order to deprive the petitioners and other tenants of their possessory rights, managed to stale the investigation. In that eventuality the investigating agency was required to conduct further investigation to bring the guilty revenue officials before the court of law. He prayed that further investigation be ordered u/s 173(8) of the Code.

9. It has not been denied by learned State counsel that the State itself ordered an enquiry to be conducted by Deputy Director General of Police, Chief Minister Flying Squad, Haryana, Chandigarh, who after the enquiry submitted a detailed report. That report has been annexed with the present petition as Annexure P-3. It is incorporated in that report that the land grabbers got entered mutation of the land in the revenue record in the name of concubine of Nawab and his son and daughters and while making changes in the revenue record, got entered false mutations in their names. It is also incorporated therein that the revenue officials connived with the land grabbers in the said illegal act. A recommendation was made for re-investigation u/s 173(8) Cr.P.C by constituting a special team and for submitting challan in the Court on the ground that during investigation of the case the true facts had been concealed. No reason has come forth as to why the State has not accepted these recommendations. The only conclusion that can be drawn is that an attempt has been made to protect revenue officials, who were at fault and who had been conniving with the land grabbers. It is a case where further investigation should have been conducted. It is well settled that further investigation can be ordered u/s 173(8) of the Code, even after the presentation of Challan in the Court. Reference in that regard can be made to judgment of the Apex Court reported in *Reeta Nag v. State of West Bengal* 2009(5) RAJ 297.

10. Accordingly this petition is hereby accepted and a direction is issued to the respondent to constitute a special team headed by some DIG for further investigation in the case, in order to ascertain the names of the revenue officials who prepared the false and forged revenue record in order to help land grabbers and the revenue officials, who connived with them in the commission of the offences mentioned in the FIR. It is also directed that after the completion of the exercise supplementary challan be presented u/s 173(8) of the Code against the persons who are found to be guilty.

11. The petition is disposed of accordingly.