
(2000) 07 P&H CK 0175

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1059 of 1999

Pritam Singh and Others

APPELLANT

Vs

Additional Director of Consolidation and Others

RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 6
Transfer of Property Act, 1882 — Section 52

Citation : (2000) 126 PLR 632 : (2000) 4 RCR(Civil) 320

Hon'ble Judges : Arun B. Saharya, C.J.;V.K. Bali, J

Bench : Division Bench

Advocate : P.S. Patwalia and P.K. Gupta, for the Appellant; G.S. Dhillon, Add. A.G. and S.N. Chopra, for the Respondent No. 2 and Naresh Parbhakar, for the Respondent Nos. 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Learned Single Judge, vide orders dated October 15, 1999, allowed Civil Writ Petition No. 3585 of 1999, giving rise to this appeal filed under Clause X of the Letters Patent, on the basis of law, as settled by the Hon"ble Supreme Court in Gram Panchayat, Kakran v. The Additional Director of Consolidation and Anr. 1997(8) SC 430, Har Govind Jaggi Vs. The Executive Engineer Delhi Development Authority and Others, and Gram Panchayat, Village Sidh v. Additional Director, Consolidation of Holdings, Punjab and Ors. 1997 (1) P.L.J. 313, yet, in our considered view, on the strength of peculiar facts of the present case, as would be enumerated thereafter, the writ deserves to be dismissed. We are informed, during the course of arguments and which fact besides being borne out from the records of writ petition, also stands admitted, that the counsel then representing the petitioners made an application for withdrawing from the case having no instructions. When the application was dismissed by the learned Single Judge, the counsel simply walked out of the Court. Primarily, it appears to us that it is for this precise reason that the facts, which had a great

bearing on ultimate fate of the writ petition, could not be canvassed before the learned Single Judge. In the backdrop of what has been said above, it becomes utmost essential to give detailed facts culminating into filing of original lis (Civil Writ Petition No. 3585 of 1999). Reference to the parties in this appeal is being made as per original lis.

2. There writ petitioners, namely, Joginder Singh, Gajan Singh and Som Nath, claiming themselves to be belonging to Harijan Community of village Jago Chanarthal, Tehsil and District Fatehgarh Sahib, pleaded a vested right in them to take one third land of respondent-Gram Panchayat on lease by virtue of Rule 6(a) of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter to be referred to as the "1964 Rules"). They then pleaded that the respondents 3 to 24, appellants-herein, alleging themselves as cosharers of village Jago Chanarthal, had filed a petition u/s 42 of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act (herein-after to be referred to as "the Consolidation Act") after a lapse of 30 years of the completion of consolidation proceedings in the village. They challenged the ownership of Gram Panchayat and succeeded in their endeavour as vide orders dated June 3, 1996, Annexure P-1, the said petition was allowed. It is then pleaded that neither the petitioners nor any member belonging to Harijan Community was at all impleaded as party-respondent before the authorities under the Consolidation Act, even though they were to be directly affected of any order that might have been passed. It was further their case that the land, as per revenue record, is owned by Nagar Panchayat Deh and, therefore, the Additional Director, Consolidation, had no jurisdiction whatsoever to go into the question as to whether the same was shamlat-deh i.e., belonging to the Gram Panchayat, or not and that this question of title could only be decided by the authorities under the Punjab Village Common Lands (Regulation) Act, 1961 (for short "1961 Act"). This order of the Additional Director, Consolidation was challenged by the Gram Panchayat through CWP No. 9162 of 1996 which was dismissed by Division Bench of this Court on July 3, 1996 and SLP bearing No. 10509 of 1996 also met with the same fate. It was further pleaded that order passed by the Additional Director Consolidation, Annexure P-I, was nonest, void and beyond the competence and jurisdiction of the said respondent. With a view to buttress their right of getting the land belonging to Gram Panchayat (Shamlat deh) on lease, they further pleaded that petitioner No. 1 had taken 130 kanals 5 marlas of land on October 14, 1998 and in similar manner, petitioner No. 2 had taken 63 kanals 3 marlas of land on lease from Gram Panchayat on the same day for a period of one year

3. The respondents resisted the claim of petitioners on irrefutable or undisputed previous litigation and by way of preliminary objections pleaded that the writ was an abuse and misuse of the process of court as petitioners had concealed material facts from this Court. It was stated that order, Annexure P-1, challenged in the present writ, was first challenged by Gram Panchayat, respondent No. 2, by filing CWP No. 9162 of 1996 which was dismissed on July 3, 1996, Gram Panchayat challenged the said order by way of SLP before the Hon''ble Supreme

Court but without any success as the said SLP came to be dismissed vide orders dated 2.9.1996, Annexure R-2. Petitioners, to the limited extent, as aforesaid, so pleaded in the writ petition but the fact that those, who were tenants of Gram Panchayat at the time of passing order, Annexure P-1, had also filed CWP No. 10113 of 1996 challenging the same very order, Annexure P-1 and same was dismissed by this Court vide order dated March 21, 1997, Annexure R-3 was not brought to the notice of this Court. This order, Annexure R-3 too was challenged before the Hon"ble Supreme Court but the same was upheld vide order dated May 7, 1997, Annexure R-4. Further, the fact that yet another set of tenants, not being satisfied with order, Annexure P-1, had brought about yet another writ petition, challenging once again order, Annexure P-1 by way of CWP No. 7263 of 1997 and which too was dismissed vide order, Annexure R-5, was also not brought to the notice of this Court. Against this order as well, SLP came to be dismissed by the Hon"ble Supreme Court vide order, Annexure R-6. It is during the pendency of this SPL that the Hon"ble Supreme Court had allowed the Gram Panchayat to put the land to auction and accordingly, as per directions given by the Court, land was put to auction on October 14, 1998. Petitioners 1 and 2, thus, came into possession on the dint of orders passed by the Hon"ble Supreme Court in SPL No. 7583 of 1998 alone. This SPL too was dismissed on February 22, 1997 vide order, Annexure R-6. Darshan Singh son of Charan Dass, brother of petitioner No. 3 was a party to the litigation, immediately referred to above. It is the case of respondents that these facts have been intentionally and deliberately concealed from this Court. Nothing more at all is required to be mentioned on the facts of this case in as much as, in so far as pleadings with regard to the authorities constituted under the Consolidation Act to deal with the question as was done by Annexure P-1, are concerned, the question is no more res-integra, having now been settled in favour of petitioners as was also held by learned Single Judge. It would, thus, be an exercise in futility to give any further details of this case.

4. The pertinent question that, thus, arises in this case is as to whether order, Annexure P-1, having attained finality through successive petitions before the High Court, resulting into order of dismissal upto the Hon"ble Supreme Court, both by Gram Panchayat and its tenants, could be reopened by those, who came into possession of land by virtue of interim orders passed during the pendency of litigation when the main case, in which the said orders were passed was ultimately dismissed. Before we may, however, focus our attention on the crucial issue, framed above, we would hasten to add that whereas petitioners 1 and 2 came into possession of the land on the dint of interim orders passed by the Hon"ble Supreme Court, petitioner No. 3 is brother of Darshan Singh, who was himself writ petitioner in CWP No. 10113 of 1996. These facts are not denied either in the pleadings or during the course of arguments as also that but for the Gram Panchayat challenging order, Annexure P-1, and its fate upto the Hon"ble Supreme Court, reference of no other litigation, as detailed above, was given in the writ.

5. Hon''ble Supreme Court in Gram Panchayat Nurpur's case (supra) held that "the Additional Director, Consolidation, has no authority to go into the question as to whether the land in dispute is shamlat deh or not in a petition filed u/s 42 of Consolidation Act. It was further held that "the question, as to whether the land is shamlat deh or not, can only be decided by the authorities under the Act of 1961". While so holding, a decision of this Court in upholding the order of the Additional Director, Consolidation, through writ petition filed in this Court, was reversed. This decision came to be rendered on November 7, 1996. This view was reiterated by the Hon''ble Supreme Court in yet another judgment in Gram Panchayat, Sidh's case (supra). This judgment came to be made on November 21, 1996. It appears, once again, order of the Additional Director, Consolidation, which was perhaps upheld by this Court, was set aside by the Hon''ble Supreme Court. There is no mention in the reported judgment with regard to writ having been filed by the Gram Panchayat in High Court but once SLP was filed, it could, in our view, only be in an appeal against the judgment of High Court, which, in turn could only be through Civil Writ Petition.

6. In Swaran Singh and others Vs. State of Punjab and others, it was held by the Hon''ble Supreme Court that "in a petition u/s 42 of the Consolidation Act, tenants under the Panchayat are interested parties and they should, thus, be heard in the matter". The question of Limitation in filing application u/s 42, after a lapse of number of years, also came to be decided by the Hon''ble Supreme Court in Gram Panchayat, Kakran v. Additional Director of Consolidation and Anr. 1997(8) S.C. 430, wherein it was held that "an application made after 40 years without any satisfactory explanation for delay, can not be considered as reasonable delay u/s 42 and even if rule 18 of the Rules was not directly attracted, application after 40 years ought not to have been entertained".

7. Having given the law, as now stands settled by the Hon''ble Supreme Court, time is now ripe to evaluate and, thus, see the effect of earlier litigation on the fate of present case.

8. Order dated June 3, 1996, Annexure P-1, that has been challenged in the present writ, as mentioned above, came to be first challenged by Gram Panchayat, Jago Chanarthal, which was obviously most interested party claiming title in itself, through CWP No. 9162 of 1996 which was dismissed on July 3, 1996 as on that date, law, as settled by this Court and which ultimately came to be upset by the Hon''ble Supreme Court in Gram Panchayat, Village Sidh's case (supra), held the field. As mentioned above, SLP, arising from this order was dismissed on September 2, 1996, once again, before the law came to be changed by the Hon''ble Supreme Court. Ram Lal and others, claiming as tenants of land, challenged the same very order, Annexure P-1, through CWP No. 10113 of 1996, also pleaded that they were tenants and being necessary party, ought to have been heard before passing order u/s 42 of the Consolidation Act, This writ too was dismissed by Division Bench of this Court on March 21, 1997 by passing the following order: -

"On 3.3.1996 Hon"ble Mr. Justice A.S. Nehra and Hon"ble Mr. Justice V.K. Jhanji, JJ, have already upheld the impugned order of the Additional Director in Civil Writ Petition No. 9162 of 1996 by passing the following order in limine:-

"No merit, dismissed."

The aforementioned order was upheld by Hon"ble Supreme Court in SLP No. 16450 of 1996. No interference in writ jurisdiction is called for. Dismissed at this stage of motion hearing."

9. By the time, order aforesaid came to be passed by this court, surely, in so far as jurisdiction of the Additional Director, Consolidation to deal with the subject matter in question is concerned, it had already been finally adjudicated upon. Despite that, not only that writ was dismissed by the Division Bench of this Court, even SLP was dismissed by the Hon"ble Supreme Court on May 7, 1995. Further, way back in 1994 in Swaran Singh's case (supra), the Hon"ble Supreme Court had held that tenants of Gram Panchayat are necessary party and should be heard before any order is passed by the Additional Director, Consolidation. Surely, petitioners in CWP No. 10113 of 1996, who were tenants of Gram Panchayat, could have pressed into service the judgment of the Hon"ble Supreme Court in Swaran Singh's case. Further, yet another set of tenants filed CWP No. 7263 of 1997 which was dismissed on February 10, 1998 by passing a speaking order. Relevant part of the said order reads thus:-

"Respondent Gram Panchayat challenged the order dated 3.6.1996 by filing a writ petition in this court being CWP No. 9161 of 1996 which was dismissed in limine by order dated 3.7.1996. SLP against the order of a Division Bench of this Court passed in CWP No. 9162 of 1996 was dismissed by the Apex Court by order dated 2.9.1996. Not only this Ram Lal and others the tenants on a part of the land in dispute filed another writ petition challenging the order dated 3.6.1996 being CWP No. 10113 of 1996. SLP at the instance of Ram Lal and others against, the order of this Court was dismissed by the Apex Court by order dated 7.5.1997. The petitioners, as already noticed, are some of other tenants on a part of the land in dispute. They have challenged the order dated 3.6.1996 now again on the same grounds on which it was challenged in CWP No. 10113 of 1996. Thus, in view of the dismissal of above two writ petitions being CWP No. 9162 of 1996 and 10113 of 1996 filed on two different occasions challenging the same order which has been challenged now in this writ petition also, we see no ground to interfere especially having regard to the fact that special leave petitions preferred on each of the two occasions against the dismissal of the writ petitions were dismissed by the Supreme Court. Challenge having already failed at least on two occasions earlier, we are not now inclined to permit the petitioners to rake up the issue/matter which has been settled upto the Supreme Court. The writ petition is consequently dismissed"

10. SLP filed against this order also came to be dismissed by the Hon"ble Supreme Court on February 22, 1999. Surely, by this date, all the judgments,

which speak in favour of the petitioners and which have been noticed by the learned Single Judge as well, had come into being. Learned counsel representing the respondents, in our view, rightly contends that there is no-question that all these judgments were not pressed into service either before the High Court or before the Hon"ble Supreme Court and yet the fate of writ petitions and SLPs was as has been mentioned above. It is during the pendency of SLP, arising from CWP No. 7263 of 1997 that petitioners 1 and 2 came to be inducted as tenants. Relevant part of the interim order passed by the Hon"ble Supreme Court, by virtue of which alone they came into possession, reads thus:-

"It is stated by learned counsel for the petitioners that usually lands were given on annual lease by public auction. In the same way the lands in dispute be put to public auction by the Gram Panchayat to this course learned counsel appearing for the respondents have no objection.

The stay granted will not stand in the way of Gram Panchayat (respondent No. 31) from putting up the lands in question by public auction, as usual for annual lease ordered accordingly".

11. From the narration of facts, as have been fully detailed above this Court is of the firm view that writ on behalf of petitioners 1 and 2, who came into possession, by virtue of an interim order passed by the Hon"ble Supreme Court in the SLP, preferred by the sitting tenants of gram Panchayat and which SLP later on came to be dismissed, was wholly incompetent. If those, who had filed the writ petitions, referred to above and who were tenants, could not ultimately succeed, surely, those who came into possession by virtue of an interim order obtained by the sitting tenants, can also not succeed. Transfer of property, during the pendency of a lis, is prohibited by Section 52 of the Transfer of Property Act. If perhaps, even Gram Panchayat or those tenants, who were petitioners in CWP No. 7263 of 1998, were to confer or create any right or interest in the petitioners during the pendency or lis present petition would have been dismissed under the principle of lis-pendence. Here, some interest came to be conferred upon petitioners 1 and 2 by an interim order of the Court which, surely, would sink on dismissal of SLP.

12. The matter does not rest there as petition filed on behalf of the present petitioners was also barred by the principle of res-judicata as not only that the Gram Panchayat, which claimed title in the subject matter of dispute, had lost its cause upto the Apex Court, but those, who derived right or interest through Gram Panchayat, on the dint of tenancy, also lost likewise. Another set of tenants, who too raked the same issue, i.e., challenging order, Annexure P-1, also did not succeed. The matter, on all counts, had assumed finality and could not be reopened. If what the petitioners have done is allowed only on account of law which was either available at that time or as it came about by virtue of a change by the Apex Court, in a the matter which stands finally settled, it would open flood gates of litigation. No litigation would ever achieve finality and the principle that "no body should be vexed twice for the same cause of action"

would go abagging. We are, thus, of the confirmed view that the present petition is also barred by the principles of res-judicata.

13. Coming now to the only question that the petitioner had an independent right under Rule 6(a) of the 1961 Rules, it would be seen that at the most one third of the cultivable land, proposed to be leased by the Gram Panchayat, had to be reserved for giving it on lease to the members of Scheduled Caste. It has further been provided in the said rule that if on two different dates so fixed, no such person is forthcoming or Panchayat Samiti refuses to confirm the auction, the reservation shall cease to have effect. Reservation of one third land for the purpose of leasing it out to the members of reserved category is not absolute. The Panchayat can refuse to confirm auction in favour of members of Scheduled Caste. In any case, if those who had actually been granted lease, had lost their cause upto the Apex Court, those, on whom such a right could be conferred by virtue of rule 6(a), can not possible have a different result. If the matter might have been looked from this angle on the issues, as canvassed before us and as have been discussed above, in all probability, result of this litigation would have been different. As mentioned above, all these facts could not be brought to the notice of learned Single Judge as the learned counsel, then representing the petitioners, on dismissal of application moved by him to withdraw from the case, simply walked out of the Court. Such an act of a lawyer can not be appreciated and without commenting anything more upon the same, we leave the matter at that. Suffice, it however, to say that if perhaps counsel representing the petitioners had brought to the notice of learned Single Judge the facts, so mentioned above, and which have been pleaded in the written statement as well, the appellate court would have been saved from mentioning all these facts for the first time in appeal and, in all probability, as referred to above, decision of the case might have been otherwise.

14. As mentioned above, even though learned Single Judge has correctly applied the law as it stood on the relevant date on the issue with regard to jurisdiction of the Additional Director, Consolidation as also on the question of limitation and hearing of tenants, as reflected vide judgments, referred to above, yet, as mentioned above, result of this case has to be in dismissing the writ petition on the peculiar facts and circumstances of this case.

15. For the reasons stated above, this appeal is allowed. Judgment of learned Single Judge is set aside. Consequently, writ petition is dismissed leaving, however, the parties to bear their own costs.