
(1970) 09 DEL CK 0015

In the Delhi High Court

Case No : Letter Patent Appeal No. 26 of 1968

Tej Ram

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 14-09-1970

Acts Referred:

Citation : (1970) 09 DEL CK 0015

Hon'ble Judges : P.N. Khanna, J; Narain Andley, J

Bench : Division Bench

Advocate : P.N. Nag, R.S. Paul, Chabildas and Inder Singh, for the Appellant;

Judgement

P.N. Khanna, J.

(1) This letters patent appeal has been directed against the judgment dated October 15, 1968, of the learned single Judge, V.S. Deshpande, J. who dismissed the appellant's writ petition under Articles 226 and 227 of the Constitution of India praying for the quashing of the order dated April 1, 1966 of the Collector, for ejectment of the appellant from certain land.

(2) According to the appellant he was the owner and in possession of three plots of land measuring 21 Bighas and 10 bids was contiguous to his other fields situated in Phati Dhallan Kothi Bhallan, Tehsil Seraj. District Kulu. The said land was a part of the waste land in Rupri Jagir which was owned by Rai of Rupri subject to the right of cutting grass there from, vesting in the proprietors in the village and of the ownership in the trees standing thereon, in the Government. Out of this land an area of 2 Bighas and 5 bids was was admittedly transferred to the appellant on Nautor Patta by the Rai of Rupri in the year 1959 vide mutation No. 476 sanctioned on September 19, 1959. The remaining land of the three plots measuring 19 Bighas and 5 bids was had been broken and used by the appellant, for cultivation and horticulture and in which according to the appellant. he had acquired title and possessory rights as he had been using the same for more than 16 years.

(3) Spondents Nos. 4 to 8 right-holders in the same Phati, made an application to the Deputy Commissioner, Kulu, through the Naib-Tehsildar, Seraj for taking necessary action against the appellant, for, according to them, the appellant had encroached upon the said land. Proceedings were started by the revenue authorities and the impugned order was passed by the Collector (respondent No. 3) on April 3, 1966, in the following terms:-

" PER report of Naib-Tehsildar Banjar, report should be submitted after removal of the encroachment."

(4) The appellant challenged in his writ petition, the said order of eviction by the Collector, mainly on two grounds-(1) that the said order was without jurisdiction and (2) that it was passed in violation of the principles of natural justice inasmuch as he was neither heard nor was given an opportunity to show cause against it. Respondents Nos. 1 to 3 (Union of India, the Lieutenant Governor, Himachal Pradesh and the Collector, Kulu District, Kulu) as also respondents Nos. 4 to 8 (claiming to be the other right-holders in the village) contended that the ejectment proceedings were not in respect of the land granted to the appellant by the Rai of Rupi, but were in respect of the other land reserved for common purposes of the co-sharers in the village which had been encroached upon by the appellant. The impugned order of the Collector according to them was passed u/s 150 of the Punjab Land Revenue Act. Although the said order was passed on April 1, 1966, the possession was taken by the revenue authorities on May, 11, 1967. The petitioner had ample opportunity to resort to the ordinary remedies of preferring an appeal against the eviction order, or of filing a suit in the civil Court. Not having done so the writ petition according to them, was misconceived and, Therefore, liable to be dismissed.

(5) The learned single Judge held that Section 150(1) of the Punjab Land Revenue Act was prima facie applicable to the facts of the case. The appellant had not been able to show why these proceedings were without jurisdiction. The learned Judge, Therefore, held that the Collector was fully competent to pass the order which he did.

(6) In respect of the appellant's other ground, the learned single Judge held that from the date of the impugned order to the date of actual eviction on May 11, 1967, the appellant had ample opportunity of showing cause against his eviction. Both the Naib-Tehsildar as well as the Field Kanungo had been approaching the appellant for removing the encroachment, but the appellant was avoiding the execution of the order of the Collector by asking for time and later going back on his undertaking to vacate. The learned Judge held that the rules of natural justice required that before the petitioner was actually evicted .he should be heard against the eviction. He found that the petitioner was heard by the revenue authorities entrusted with the task of executing the Collector's order before his actual removal. The petition was, Therefore, dismissed leaving the parties to bear their own costs.

(7) The learned counsel for the appellant urged the same two objections before us which were urged by him before the learned single Judge. According to him Section 150 of the Punjab Land Revenue Act is not applicable to the facts of the present case as respondents Nos. 4 to 8 having no proprietary rights in the land in dispute are not co-sharers referred to in the said section. The Collector, contended the learned counsel, was not competent to pass the impugned order.

(8) Section 150 of the Punjab Land Revenue Act reads as follows:-

"150.(L) WHERE land which has been reserved for the common purposes of the co-sharers therein has been encroached on by any co-sharer, a Revenue Officer may, on the application of any other co-sharer, eject the encroaching co-sharer from the land, and by order proclaimed in manner mentioned in section 22 forbid repetition of the encroachment.

(2)The proceedings of the Revenue Officer under sub-section (i) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction."

(9) The word "co-sharer" has not been defined in the Punjab Land Revenue Act or in the Punjab Tenancy Act. This word in Section 150 is followed by the word "therein" which has a reference to the word "land" occurring earlier in the section. "Co-sharers therein", Therefore, means "co-sharers in the land". Respondents Nos. 4 to 8 have no proprietary right in the land in dispute; but they possess grazing rights or the right to cut grass from the land. They are, Therefore, land-owners as defined by Section 3(2) of the Punjab I and Revenue Act as they are in the enjoyment of a part of the profits of an estate. Being landowners in the aforesaid technical sense, they share with the appellant the right to cut grass from or grazing their cattle on the said land. They are, Therefore, in this sense co-sharers in the land. It is not necessary that a co-sharer must have proprietary interest on the land. A person joining a proprietor, to cultivate the latter's land on receiving a fixed share of the produce, although having no proprietary interest in the land, was for purposes of Punjab Tenancy Act, held to be a co-sharer in *Bakhshish Singh v. Kartar Singh* 1956 57 P.L.R. 476. The Collector, Therefore, was fully entitled on the application of respondents Nos. 4 to 8 the other co-sharers, to eject the encroaching co-sharer from the land reserved for the common purposes of the co-sharers therein. It cannot, Therefore, be said that the Collector while passing his order dated April 1, 1966 was acting without jurisdiction. This point does not appear to have been canvassed before the learned single Judge on behalf of the appellant; and the appellant would not ordinarily be entitled to raise it before us in appeal. But, as stated above, the contention of the learned counsel, in any case, is without any merit.

(10) The other contention of the learned counsel that the procedure adopted by the Collector while passing the impugned order was contrary to the rules of natural justice, however, is not without force. The learned counsel for the

respondents could not satisfy us that the appellant was given any opportunity to show cause against the intended action and that the impugned order of the Collector dated April 1, 1966, was not passed behind his back. He contended that the appellant still was given full opportunity to show cause against the said order as he was not evicted till May 11, 1967. There was sufficient time with the appellant to get redress, if he was entitled to any.

(11) It will, however, be observed from the two uncontroverted affidavits filed with the writ petition, one by Tara Chand Sarpanch, Panchayat and the other by Roop Chand, that 103 apple trees on the land in dispute were in fruit and 417 numbers were two to three years old, when the appellant was ejected. There was also wheat and pulse crop on the land. It was on April 28, 1966 that a notice was issued asking the appellant to quit. On that very day it was served on him and his statement was recorded by the Field Kanungo who had gone to execute the impugned order. Annexure RA-1 is the translation of the said statement, according to which the appellant had stated that the area in dispute was treated by him as his own land and that he did not make any encroachment intentionally. He had grown apple plants on that land during the last two years; and he requested for time to uproot the same, in order to replant them in his own land. He, thus, undertook to give up possession, as ordered .

(12) The respondents' learned counsel relied on this statement, for his contention that opportunity was given to the appellant to show cause against his eviction: but the appellant himself admitted having encroached upon the said land and promised to vacate. This according to the learned counsel, was the end of the matter, as it left nothing further to be explained. This is, Therefore, not a case where it could be said that rules of natural justice have been disregarded, urged the counsel; for it is the substance that matters and not any formal technicalities. The appellant wanted time for vacating and that was granted to him. He in fact had no objection to vacate and, on getting the time asked for: waived the objections, even if he had any.

(13) The contention of the learned counsel, however, is not tenable. The subordinate revenue staff entrusted with the job of carrying out the Collector's order was not in a position to help the petitioner in getting rid of the said order. The petitioner when confronted with the order of eviction had no other choice but to submit, or to incur the peril of forcible eviction at the hands of the staff who could inflict considerable loss on him by damaging his fruit and other crops. It cannot be said that he was given reasonable time to show cause against eviction. He was taken by surprise all of a sudden. His statement to the Field Kanungo cannot be said to be an intentional relinquishment or the voluntary abandonment or waiver of his rights. His promise to vacate extracted by throwing at his face an order of the Collector cannot be said to be a free and voluntary relinquishment of his rights. Waiver relied upon by the learned counsel, as distinguished from estoppel, which is a rule of evidence, is contractual and a sort of an agreement not to assert a right. In this sense a person cannot be said to agree, unless his

free and voluntary consent is forthcoming. The appellant when confronted with the orders of eviction from competent authorities could not be said to have relinquished his rights or objections voluntarily when he promised to submit, if given time.

(14) This was his attempt to avoid imminent threat to his property. There was, Therefore, no waiver even if it could be pleaded.

(15) The appellant's request was favorably considered by the Collector who allowed him time up to December 1966. A notice dated June 12, 1966 (Annexure RD) was issued calling upon him to vacate before January 15, 1967. The area of encroachment mentioned in this notice was 21 Bighas and 10 bids was (as against 19 Bighas and 5 Biswas, which alone, according to the respondents, was under encroachment) and he was threatened to be removed forcibly if he did not vacate by the said date. The appellant refused to accept the said notice. The Deputy Commissioner then summoned the appellant to explain why he had backed out from his previous commitment. Annexure Rg is the petitioner's statement dated September 18, 1966 in which he said that the measurements done by the revenue staff were not to his satisfaction. He asked for re-measurement. He explained that the land had been purchased by his mother before the settlement and that he was in possession of the said land through her. He also asserted that his earlier statement was not properly recorded. No attempt is shown to have been made to verify the appellant's contentions; nor was the appellant called upon to substantiate his version. Even the Rai of Rupi, the landlord, who had not made any complaint, and who admittedly could grant Nautor rights, was not consulted.

(16) Respondents Nos. 4 to 8 again made a representation to the Collector for the execution of the earlier ejectment order. It was then that on May 11, 1967, the appellant's possession was removed by the Field staff under the order of the Collector, in the words of the return filed on behalf of the respondents, "by removing and burning the. thorny fence and by removing the plants and by getting the unripe standing wheat crop grazed by cattle".

(17) This despotic action in the execution of the order passed in utter disregard of the rules of natural justice can have no justification at all. In this contention a reference to letter No. 1615-B-52/2341, dated the 7th June, 1952, from the Under Secretary to -Government Punjab, Development Department, Simla to the Commissioner, Jullundur Division, a copy of which was filed by the appellant as Annexure "M" is relevant. Para 2 of the said letter reads as under:

" WITH regard to the encroachment by the right holders .Government are pleased to accept the recommendation of Conservator of Forests, North Circle, as contained in his memorandum No. 3341/C dated 6th March, 1952 (copy enclosed) and to order that where encroachers can be turned out without causing serious hardship, they should be ejected. Where ejectment of such encroachers is subject to serious hardship and is not considered practicable or

desirable the grant of nautor in such cases may be made on payment of full market value of the land encroached upon. Instructions may also be issued to the Deputy Commissioner, Kangra and SubDivisional Officer, Kulu that before determining whether any plot should or should not be sold to a right-holder, the opinion of the Local Divisional Forest Officer should be taken."

(18) The respondents in their return have stated in reply that the instructions of the Government were in regard to the encroachment discovered during the course of the land settlement operations and that the same are not applicable to the present case. But the respondents' reply refers specifically to letter No. 8185-D dated August 10, 1948. They have given no answer with respect to letter dated June 7, 1952, filed as Annexure "M". The respondents have also stated that these instructions were discretionary in nature and need not have been followed in every case and that the action taken for removal of present encroachment was "in good faith and reasonable in the circumstances of the case". It has not been explained why the discretion in the present case could not be exercised in favor of the appellant; nor has the high handed manner, in which a helpless citizen was deprived of his crops and property, without being given reasonable opportunity of being heard been explained. As has been repeatedly held, the rules of natural justice require that no person should be made to suffer by an order passed by an authority behind his back without an opportunity being given to him to show cause against the proposed action. It is a rule against the arbitrary exercise of power and requires to be strictly observed in all matters where the rights of an individual are threatened to be dealt with to his prejudice. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, Mr. Justice K.S. Hegde speaking for the Court observed:

"IN a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision."

(19) Thus it is a question of acting fairly which would imply that the person concerned who is to be affected to his prejudice, must be given a fair chance to have his full say and the authority concerned must take all circumstances into consideration before making a decision.

(20) The derogatory nature of the action taken against the appellant becomes further conspicuous, by the fact that the owner of the land, Rai of Rupri has not come forward to lodge a complaint. Even the area from which the appellant has been evicted appears to be 21 Bighas and 10 bids was as mentioned in the

notice Annexure Pd which would include 2 Bighas and 5 Biswas, admittedly belonging to the appellant. The learned counsel for the respondents undertook to see that the possession of this 2 Bighas and 5 Biswas, is restored to the appellant, if it is found that he has been evicted there from as complained by the appellant. This only shows the arbitrary manner in which the appellant's orchard was ransacked without caring even to determine the precise area from where it was intended to oust him.

(21) We do not find any justification for the high handed manner in which action was taken against the appellant. On the other hand, the rules of natural justice, which require a fair and objective examination of all material facts after affording the person concerned to show cause against the proposed action, were wantonly ignored throughout. We, Therefore, do not agree with the observations of the learned single Judge that "it cannot be said, Therefore, that the orders were contrary to natural justice." It appears that none of the above referred to circumstances was brought to his notice.

(22) In case the revenue authorities are convinced that the petitioner is in fact an encroacher they would still be at liberty to take suitable action; after affording full opportunity to the appellant to show cause against the proposed action. But the order dated April 1, 1966 as it stands and the action taken in execution thereof can have no justification and cannot be sustained. The appellant is entitled to get possession of the land from which he has been ousted. As to damages for the alleged loss of fruit and other crops, no relief can be granted to the appellant in these proceedings.

(23) In the result this appeal must be accepted. Reversing the judgment of the learned single Judge the order of the Collector dated April 1, 1966, is quashed. Respondents Nos. 1 to 3 are directed to restore to the appellant, the possession of the land from which he has been evicted. The respondents shall also pay the appellant's costs throughout. Counsel's fee Rs.200.00.