

(2007) 05 P&H CK 0059

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Municipal Council

APPELLANT

Vs

Ranjit Singh and Others

RESPONDENT

Date of Decision: May 28, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Section 36

Citation: (2007) 4 PLR 280 : (2007) 3 RCR(Civil) 624

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

Present regular second appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit for declaration with consequential relief of permanent injunction has been ordered to be decreed.

2. The plaintiff-respondents filed a suit for declaration and permanent injunction on the plea that they are permanent residents of village Balaur, Tehsil Bahadurgarh District Jhajjar. The case set up by the plaintiff was that prior to the independence the land comprised in Khewat No. 136/139, Khatoni No. 327, Khasra No. 639, and land measuring 3 bighas 12 biswas pukhta was under the ownership of shamlat Pana Nashiyan @ 5 biswa and was under the tenancy of Attaulla son of Azemmuddin, resident of Bahadurgarh as gair marusi. The land was cultivated by Sohan son of Azemmudin as tenant. After the partition of the country Attaulla son of Azemmudin shifted to Pakistan. The land was recorded on the basis of biswardari rights in favour of Custodian Department and consequently Custodian Department allotted the land bearing khasra No. 638/1 (13-12) biswas and 639/2(0-1) biswa and allotted to Nebh Raj son of Dalu Ram and Menat Rai under allotment Nos. 92/38/1

and 92/33/2, respectively. The land was inherited by their sons namely Heera Nand and Chakan Lal. The mutation was sanctioned in their favour. Heera Nand and Chakan Lal sold the allotted land in favour of Pehlad Singh, Surat Singh and Ranjit Singh vide sale-deed bearing No. 161/141, Khatoni No. 426, Khasra No. 639 min measuring 3 bighas 12 biswas pukhta. Pehlad Singh, Surat Singh and Rajneet Singh sons of Sohan become owners and Sohan son of Gurdial cultivated the land as gair marusi who was father of the vendees. Nemat Rai son of Dalu Ram sold the land comprised in khewat No. 161 Khata No. 427, Khasra No. 639 min on 3.8.1959 through registered sale-deed. Land measuring 0-12 biswas was deducted as a pukhta road and thus, all vendees claimed to have become the owners in possession of the land after the death of Sohan Lal. However, many mutations have been inserted in the jamabandi but the same had no effect on the suit land, in any manner, except the area measuring 0-12 Biswas which was used for Pukhta road. Consequently, the plaintiffs claimed that after the death of Sohan Lal, Pehlad Singh, Surat Singh plaintiffs have inherited the suit land and they are the owners in possession of the suit land measuring 2 bighas 13 biswas because land used for old path is under the cultivation in place of land use for pukhta road. However, entries in the revenue record was effected in view of the Govt. Notification No. HLA P-1999-D dated 9-2-1990 and the land of the plaintiffs was mutated in favour of Municipal Committee, Bahadurgarh. On the basis of said mutation land stood under the ownership of Panna 5 biswa and same has affected the legal rights of the plaintiffs. Consequently, it was claimed that the revenue entries are wrong and did not depict the correct picture.

3. The suit was contested. It was averred that the plaintiffs were estopped from riling the suit; the suit was bad for non-compliance of notice u/s 53 of the Haryana Municipal Act, 1973 and it was also claimed that the civil court has no jurisdiction. It was further claimed that the suit was filed to harass the answering defendants and to save his ejectment. It was also claimed that the suit is barred by limitation. On merit while admitting that the land was under the ownership of Panna Nashiyan alias five biswa. The other averments made in the plaint were denied. It is also pleaded that the land was vested in the Custodian Department. It was also claimed that the land never came under the ownership of Custodian. The allotment of land to Nebh Raj and Nemat Rai was also disputed. It was claimed that if there was any such allotment it was wrong, illegal, null and void and no binding on the rights of Municipal Committee, Bahadurgarh. It was also claimed that the land was not vested in the Custodian and the question of allotment as well as inheritance of the same to the sons of Nebh Raj are illegal, null and void. The sale-deed was said to be false, fictitious and claimed to have been executed subsequently. The base of such claim was that the vendor did not have any valid title and therefore, he could not pass a better title. The mutations were also challenged to be illegal. It was also claimed that the suit land was pukhta road and is wrongly being cultivated by the plaintiffs. The allotment was also claimed to be illegal, null and void by the

Custodian Department as it was claimed that the Custodian Department was not authorized to allow shamlat land of Panna Nishayan. It was also claimed that no notice was served on the affected persons. The claim of bona fide purchaser was also disputed. The allegation that the land was never used for public or common purposes was also disputed.

4. Defendant Nos. 2 to 4 filed separate written statement and it was claimed that the Union of India and other functionaries are unnecessary parties to the suit. It was claimed that the Custodian and Rehabilitation Department has no interest in the suit land. It was also claimed that the suit land was acquired as evacuee property in the year 1947 and was allotted to the displaced persons in the year 1950 and hence the civil Court has no jurisdiction to try the suit as envisaged under Sections 36 and 46 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and Administration of Evacuee Property Act, 1950, respectively. It was claimed that the plaintiffs were at liberty to approach the higher authorities of this department. It was also claimed that the suit was liable to be dismissed for want of notice u/s 80 of the Code of Civil Procedure. It was claimed that the suit land was acquired by the Municipal Committee, Bahadurgarh as per Gazette Notification dated 9.2.1999 as mentioned in the mutation under challenge. On merit, the averments made by the plaintiff were denied.

5. The learned trial Court on appreciation of evidence decided that the plaintiff was owner in possession of the suit property and revenue entries showing the ownership of M.C. qua Panna 5 biswas was held to be illegal, null and void and therefore, not binding on the rights of the plaintiffs. Accordingly, it was held that the plaintiffs were entitled to injunction. Other issues were decided against the defendant-appellant.

6. In appeal, findings recorded by the learned trial Court were affirmed and it was recorded that besides other evidence the plaintiffs have proved themselves bonafide purchasers.

7. Learned Counsel for the appellant placed reliance on the judgment of Hon"ble Supreme Court in Gram Panchayat of village Jamalpur v. Malvinder Singh and Ors. 1985 P.L.J. 463 to contend that under the Punjab Village Common Lands (Regulation) Act, law passed by State Legislature being a measure of agrarian reform, conducive to welfare of community would have overriding effect over the Administration of Evacuee Property Act, 1950.

8. Learned Counsel for the appellant also placed reliance on the Division Bench judgment of this Court in [Gram Panchayat Vs. Union of India \(UOI\) and Others](#), : Shri Jowand Singh and Ors. v. Assistant Custodian General and Ors. (1991) 100 P.L.R. 672; [Gram Panchayat Vs. State of Haryana and Others](#), to contend that the shamlat land stands vested in the gram panchayat and cannot be mutated in favour of the Custodian Department and the taking of shamlat land amounted to acquisition and

therefore, mutation passed in favour of Custodian Department was ordered to be set aside.

9. I have considered the arguments raised by the learned Counsel for the appellant and find no force in the same.

10. In the present case, the dispute is not whether the land vested in Custodian or in the Gram Panchayat but the factum whether the plaintiff-respondents were entitled to protection of their rights being bonafide purchaser for consideration.

11. The learned Counsel for the appellant contends that the findings of the learned Courts below on this issue cannot be sustained in view of the judgment of Division Bench of this Court in Gram Panchayat Johar Majra thru. Nar Singh Panch v. Union of India? (supra) wherein it has been held that as the custodian did not have a valid title to be transferred, the transferee cannot claim any right or title except that they can claim refund from the Custodian or establish them to be bonafide purchasers in the appropriate forum. This judgment also does not advance the case of the appellant as the respondent-plaintiffs have proved in civil court that they were bonafide purchasers for consideration and concurrent findings of fact has been recorded to this effect. Even otherwise, the plaintiff-respondents were in possession in pursuance to the purchase in the year 1959 and mere entries in the revenue record which was found to be wrong, would not take away the title which vested in them under a valid sale-deed.

12. The learned courts below are, therefore, right in coming to the conclusion that the plaintiff-respondents were owner in possession of the property and revenue entries were not correctly recorded and the sale was duly mutated in view of the revenue record. Consequently, there is no scope to interfere in the impugned judgment passed by the learned courts below in regular second appeal.

No question of law much less substantial question of law arises in this appeal for consideration of this Court.

Dismissed.