

Punjab State and Others Vs Rajinder Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 5, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 80

Constitution of India, 1950 â€” Article 14

Forest (Conservation) Act, 1980 â€” Section 2

Citation: (2008) 4 RCR(Civil) 726

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below

vide which suit filed by the plaintiff respondent for permanent injunction restraining the defendants from demolishing the tubewell and other

construction over the land measuring 2 Kanal 1 Marla bearing Khewat No. 44, 425, Khatauni No. 473, 452, Khasra Nos. 977 and 971

measuring 22 Kanals 8 Marlas and 2 Kanals 3 Marlas respectively situated in village Chohal, H. B. No. 494, Tehsil and District Hoshiarpur as per

jamabandi for the year 1994-95, has been ordered to be decreed.

2. The plaintiff had brought a suit for permanent injunction on the grounds that he purchased the land as fully detailed in the headnote of the plaint,

measuring 22 Kanals 8 Marlas from Hardial Singh son of Naghayia son of Uttam resident of village Chohal vide sale deed dated 30.11.1992 and

another land measuring 2 Kanal 3 Marlas bearing Khasra No. 971 from the Central/Punjab Government vide sale certificate dated 3.2.1994. It

was the case of the plaintiff that the land bearing Khasra No. 977, as per jamabandi for the year 1946-47, before consolidation was converted

into various khasra numbers. All the khasra numbers were under cultivation or under abandi khasra numbers are not pahar, but it is barani and

banjar kadim and these khasra numbers were never under forest or under pahar. It was claimed that the notification under Land Preservation Act,

1970 and Forest Conservation Act, 1980 was not applicable to the land in dispute. It was claimed that there was no forest in the land in dispute at

all. It was also claimed that as the purchase of the land measuring 2 Kanal 3 Marlas was from the Punjab Government, there was no restriction

under the notification, as they applied to the private land and not to State/Central Government's land. It is also the case of the plaintiff that he has

not violated the restriction so imposed in village Chohal vide notification dated 25.3.1988. It is also the case of the plaintiff that there was no

restriction to raise construction. The aforesaid construction was in existence since 1994. It is also the case of the plaintiff that the defendants should

only object to if there was any violation of the Punjab Land Preservation Act. It is also the case of the plaintiff that the restriction imposed vide

notification dated 25.3.1988 was not applicable for raising construction over the land which was not under the forest or tress. It is also the case of

the plaintiff that there were no tree in the land in which the construction was raised. It is further case of the plaintiff that after issuing notice to

restrain the plaintiff from raising further construction an attempt was made to demolish the construction raised by the plaintiff.

3. On notice, State appeared and filed written statement in which the plea was taken that no notice u/s 80 C.P.C. was served. It is also the case of

the defendants that no cause of action accrued to the plaintiff and further that the Civil Court has no jurisdiction to entertain the present suit. On

merits, purchase of the land by the plaintiff was admitted. However, it was denied that the application of notification was restricted only to the land

of the private owners. It was the case of the defendants that word Forest has to be interpreted as understood according to its dictionary meaning.

In the judgment of the Hon'ble Supreme Court, the case of the defendants was that the distinction covers all statutory recognized forest whether

designated as reserved, protected or otherwise for the purpose of Section 2(1) of Forest Conservation Act. On the basis of the said plea, it was

claimed that the suit land along with the adjoining area is hilly area with undulation terrian having number of standing trees and other growth is

undoubtedly and explicitly is forest in dictionary. Thus, it was claimed that the suit land is under Forest and Forest Conservation Act, 1980. It was

also the case of the defendants that no construction can be raised within the said area and, thus, any construction on the suit land was in violation of

notification against Forest Conservation Act, 1980. It is also the case of the defendants that notification dated 25.3.1988 issued by the Punjab

Government has to be read with corrigendum issued vide endorsement dated 5.11.1997 which makes notification applicable to the area falling in

village Chohal and, thus, area was covered under the Land Preservation Act, 1900 and Forest Conservation Act, 1980.

4. The learned Courts below on appreciation of evidence have recorded a finding of fact that the land in dispute was under the cultivation prior to

coming into force of the notification and further that the construction was raised prior to issuance of corrigendum dated 5.11.1997 and in view of

this, the suit filed by the plaintiff respondent was decreed.

5. An appeal, filed by the State was also dismissed by the learned lower appellate Court by observing that the notification would have perspective

effect and, therefore, would not apply to the land under cultivation or under construction prior to issuance of corrigendum.

6. The learned Counsel appearing on behalf of the appellant contends that the notification would have a retrospective effect and, therefore, the suit

of the plaintiff should have been dismissed as the construction raised or cultivation undertaken by him was contrary to notification under Land

Preservation Act, 1970 and Forest Conservation Act, 1980. In support of this contention the learned Counsel for the appellant has placed reliance

on the judgment of the Hon"ble Supreme Court in the case of State Bank's Staff Union (Madras Circle) Vs. Union of India (UOI) and Others, to

contend that the Hon"ble Supreme Court has been pleased to lay down that merely because rights of some persons such as right to customary

bonus were affected by the retrospective effect of the said amendment of the State Bank of India Act, 1955 would not render to be violative of

Article 14 of the Constitution of India. The Hon"ble Supreme Court was, therefore, pleased to lay down that it was within the competence of

Parliament to make laws and once an Act was inserted with retrospective effect the same could not be declared to be ultra vires. However, this

judgment has no application in the present case as firstly the notification was not issued by state legislation nor the notification can be treated to be

having retrospective effect unless the same is made retrospective in exercise of legislative power.

7. Thus, judgment and decree impugned does not suffers from any illegality or impropriety which may call interference by this Court nor any

substantial question of law arises for consideration in this appeal.

8. Accordingly appeal is dismissed in limine.