

(2001) 10 P&H CK 0178

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5476 of 2000

Ravi Singh

APPELLANT

Vs

District Development and
Panchayat Officer Exercising the
Powers of Collector, Gurdaspur
and Another

RESPONDENT

Date of Decision: Oct. 18, 2001

Acts Referred:

- Constitution of India, 1950 - Article 227
- Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 - Section 5

Citation: (2002) 3 RCR(Civil) 109

Hon'ble Judges: Bakshish Kaur, J

Bench: Single Bench

Advocate: Sanjay Majithia, for the Appellant; S.S. Khaira, for the Respondent

Final Decision: Allowed

Judgement

Bakshish Kaur, J.

This is a petition under Article 227 of the Constitution for setting aside the order dated November 4, 2000 passed by the District development and Panchayat Officer, exercising the powers of Collector, Gurdaspur, being arbitrary and opposed to the basic legal principles.

2. Avtar Singh-respondent No. 2 had filed an application u/s 5 of the Punjab Public Premises (Eviction and Recovery of Rent) Act, 1973 (hereinafter referred to as "the Act") for the eviction of Ravi Singh, Balwant Singh, Hari Singh and Kamal Kishore from the land situated in village Chewa, Tehsil & District Gurdaspur. During the pendency of the eviction proceedings, compromise was effected between the parties, therefore, the eviction application was dismissed on 25th October, 1999.

3. Later, on an application filed by Avtar Singh-respondent No. 2. the case was restored to its original stage. The application for restoration of the case was accepted vide order dated 14th November, 2000. It is this order which has been challenged in this revision petition.

4. I have heard Shri Sanjay Majithia, learned counsel for the petitioner, Shri S.K. Khaira, learned counsel for the respondents and Shri A.S. Grewal, learned Deputy advocate General for the State of Punjab.

5. The compromise effected between the parties to the eviction proceedings is Annexure P-6, which bears the signatures of Avtar Singh-respondent as well as of Ravi Singh-petitioner and others. It reads as under:-

Compromise

"With the intervention of the respectable and relatives of the parties, the parties have compromised between each other and there is no grudge between the parties and the applicant does not want to proceed with the application further.

Sd/- Avtar Singh,

applicant

Sd/- Ravi Singh

Sd/- Hari Singh

Sd/- Balwant Singh

Sd/- Kamal Kishore"

6. In the wake of the aforesaid compromise, the District Development and Panchayat Officer-respondent No. 1 had dismissed (he application for eviction vide his order dated October 25, 1999. In the order, the grounds on the basis of which eviction is sought find mention to the effect that, "It is mentioned in the application for eviction that the land in dispute is meant for common use of the villagers and the respondents are in illegal possession thereof, therefore, they be restrained from illegally using the land in dispute and the possession be restored to the Panchayat." It is also mentioned therein, that, "Avtar Singh-applicant had made the statement that he has entered into a compromise with the respondents and that he has no ill-will against them, therefore, he does not want to proceed with the application further." On the basis of the compromise, the application was dismissed.

7. Whether a party who seeks eviction of another person/persons and during the pendency of the eviction proceedings enters into a compromise and represents on account of compromise effected between the parties that there is no more grudge against the parties and the case be dismissed, can retract from the terms of the compromise, and seek restoration of the case? This is the short question which needs consideration in this revision petition.

8. The case was restored vide order dated November 14, 2000 (Annexure P-10), which reads as under: -

"Applicant is present in person along with counsel. Arguments have been heard on the application for restoration as moved by the applicant. He stated that correct facts involved in the case are required to be considered. Hence the restoration application moved on behalf of the applicant is hereby accepted. File be put up for further hearing on 21.11.2000.

Sd/-Collector."

9. From the perusal of the order, it is apparent that the passing of the order as above would amount to sitting over judgment against his own order. Earlier, the Collector had dismissed the application for eviction on the basis of the compromise and also by observing that in view of the compromise dated October 25, 1999, no further action is required in this case. The Collector while passing the order, was fully conscious of the fact that the compromise was not effected under any undue influence or pressure. It was for the Collector to look into the matter whether the land belonged to the Gram Panchayat. If that was the case, whether he was competent to consider the compromise arrived at between the parties and permit withdrawal of the case? All these material facts are missing from the impugned order.

10. The application u/s 5 of the Act was dismissed on 20.10.1999, vide order Annexure P-5/T whereas the order for the restoration of the case was made on 14th November, 2000. When the impugned order is bereft of the material facts, as it is nowhere made out that a fraud was practiced upon Avtar Singh or the compromise was obtained from him by coercion or misrepresentation of facts, under these circumstances, the order having been passed with the consent of the parties by the Court after application of mind, the said order having attained finality, it can not be set aside. In this regard, Mr. Sanjay Majithia learned counsel places reliance on *Sailendra Narvan Bhanja Deo v. The State of Orissa*, AIR 1956 SC 345 wherein it has been held that a judgment by consent is as effective between the parties as a judgment where by the Court exercises its mind on a contested case. The learned counsel has also placed reliance on *Dulichand Laximinarayan v. Commissioner of Income Tax, Nagpur*, 1956 SC 354. The observations made by the Hon'ble Judges of the Apex Court in para 27 are as under:-

ii) That a compromise or consent decree can be got set aside on one of the grounds on which a contract can be set aside, namely, if obtained by fraud, misrepresentation or coercion", with an additional ground in favour of the minors or persons of unsound mind, if they are able to prove that the next friend or the guardian, who acted on their behalf, was negligent in conducting the proceedings. If none of these grounds is established, the Courts in a subsequent suit will have no jurisdiction to go behind the consent decree to find out whether the fact stated in

the plaint, which culminated into compromise decree were right or wrong."

11. In the case in hand as already discussed above, there is nothing on the record to show that the compromise was obtained by fraud, misrepresentation or coercion or that the order was passed on the basis of misstatement of facts. Thus, the impugned order restoring the case to its original stage on an application moved by Avtar Singh who is one of the signatories of the compromise Annexure P-6 cannot be sustained, rather the impugned order has occasioned a failure of justice.

12. It is well-settled that while exercising the revisional powers u/s 115 of the Code of Civil Procedure, the High Court is required to consider whether the Court below has exercised the jurisdiction which has not vested in it, or, has failed to exercise the jurisdiction so vested, or, had acted in the exercise of its jurisdiction illegally or with material irregularity, or that the impugned order has occasioned a failure of justice. In this regard reliance is also placed on [Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav](#) .

13. Similarly in [Vadivelu Vs. Sundaram and Others](#) , the Supreme Court has held that the revisional powers of High Court can be exercised and trial Court's order set aside, where there has been an error of jurisdiction or flagrant violation of law.

14. In the given case in hand, the District Development and Panchayat Officer, once having dismissed the eviction application on the basis of the compromise, could not recall the earlier order by restoring it to its original stage. No cogent reason has been given. The impugned order passed in flagrant violation of law has occasioned a failure of justice. In view of the aforesaid, this revision is allowed. The impugned order is set aside. The application for restoration of the case filed by Avtar Singh stands dismissed.