

(2013) 08 P&H CK 0886

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4291 of 2012

Gram Panchayat Village Nurpur
Bet

APPELLANT

Vs

Natha Singh and Others

RESPONDENT

Date of Decision: Aug. 5, 2013

Acts Referred:

- Specific Relief Act, 1963 - Section 6

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: S.S. Brar, for the Appellant; Vikas Bahl, for the Respondent

Final Decision: Disposed Off

Judgement

K. Kannan, J.

The revision petition is against the order granting injunction in favour of the plaintiff restraining the Gram Panchayat from alienating and transferring the property in any manner and for also a restraint against change or demolition of any part of the existing construction, disconnecting electricity or installing any new electricity connection. The suit had been filed by the plaintiff u/s 6 of the Specific Relief Act complaining that he was dispossessed from the property otherwise than in due process of law. The plaintiffs contention is that he is representative in interest of purchaser of a property from an allottee of the land under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. His claim to previous possession arose by the fact that the transaction of purchase was in the year 1976 and he had been in possession for all these years. Although the plaintiffs possession is now sought to be characterized as wrongful by a contention of the Gram Panchayat that the allotment was wrongly made in favour of the plaintiffs transferor, it appears that there had been earlier proceedings before this Court where the Gram Panchayat and the original allottee were locked up in litigation and this Court has dismissed the writ petition filed by his transferor finding that he had somehow manipulated

with the records and connived with public authorities to secure an order. The plaintiffs prima facie case is sought to be established by the fact that he had been admittedly in possession of the property all these years and the Gram Panchayat itself has filed a petition under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1974 admitting the plaintiff to be in possession of the property. The petition is still pending before the Collector, Ludhiana where there is an admission by the defendant that the plaintiff had been in possession. The Gram Panchayat's entry into possession of the property on 08.02.2010 was indeed the cause of action for the suit and the suit had been filed within a period of six months on 06.04.2010. The plaintiffs' apprehension is that the Gram Panchayat shall not use the property in any way that can imperil his own right to repossession if third party interest is brought in. His further apprehension is that he has put up construction worth several lacs of rupees and if they were demolished, he will be put to great prejudice.

2. The defendant would contend that revenue entries at all times showed that the property was with the Gram Panchayat and the previous proceedings had revealed the prima facie entitlement of the Gram Panchayat in relation to the property. It is also the contention that the plaintiff has no prima facie case at all that his own vendor has been found to have secured an allotment by deceit and the plaintiff as a representative of his vendor cannot put up an issue of bona fides by a purchase from a person whose original allotment has been cancelled. When the suit itself is for recovery of possession, a restraint order issued by the Court below was grossly unjustified.

3. Against the order of injunction, it appears that there had been an appeal filed before the District Judge and the same was dismissed as not maintainable since order passed u/s 6 is final and if at all an intervention is possible in a higher forum, it can be only by means of a revision. A fortiori even an interim order passed in such a suit could have been only by means of a revision before this Court and not before the Court below. I have no difficulty in seeing that the appeal filed before the District Judge was not proper.

4. In a situation where the suit is filed for recovery of possession, to fetter the defendant in the manner of user of the property would normally be seen as not appropriate. In this case, however, the plaintiffs prima facie case u/s 6 arises by an admission of the defendant that the plaintiff had been in possession of property and therefore, the Gram Panchayat has filed a petition under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1974 for recovery of possession. In this case, however, when this revision was filed, the Court has dealt with an interim prayer for stay in an elaborate fashion and has allowed for the property to be used by lease or otherwise and securing the benefit for the welfare of the State. By obtaining an order of suspension of injunction on 26.07.2012, the learned counsel would urge that the Gram Panchayat has actually leased the property and it has

obtained benefit of the property and any restraint now to be issued again will cause great hardship. No act of the Court can cause prejudice to parties. If the Court has, therefore, allowed for a lease to be granted, I would not put the clock back but it is essential that the plaintiff, if he is successful cannot be made to face third party intervention. It is only appropriate, therefore, that the amount which the Panchayat has recovered by means of lease ought to be put in Court to the credit of the case and shall not have the benefit of the money which it has secured. This is to ensure that in the event of success for plaintiff, the plaintiff shall also be entitled to whatever amount which the Court determines as damages or mesne profits. I would also make it clear that it shall be unnecessary to implead any subsequent alienee from the Panchayat and the provisions of Order 21 Rule 103 shall sufficiently protect him from taking possession of the property, if he is successful, even against any subsequent alienee.

5. With these observations, the order of injunction which is granted by the Court below stands vacated to the extent of allowing for continuance of lease of the properties already made pursuant to the order of this Court. The property shall be put to use only for agricultural purpose. In respect of the building that is said to have been constructed, there shall be no act of the Panchayat which can change the character of the property. The property shall be retained in the status quo and if it is sought to be used by means of lease then it shall be done after obtaining permission from the trial Court and the amount recovered shall be put in Court.

6. Since learned counsel appearing on behalf of the petitioner has himself not any information about actual lease which was collected, I direct that a disclosure of the same to be made by producing original records before the trial Court and deposit the entire money collected to the credit of the case within four weeks. If for any reason, the amount collected by means of lease is not available for deposit, for the same amount there shall be a bank guarantee secured and filed before the Court. I also clarify that any direction in this order or in the order of Civil Court u/s 6 of Specific Relief Act, shall not fetter the right of Gram Panchayat to legitimize its rights to secure possession in the proceedings said to be pending before the Collector. With these observations, the revision petition is disposed of.