

IN THE PUNJAB & HARYANA HIGH COURT
AT CHANDIGARH

Date of Decision: 24 .12.2015

CWP No.11558 of 1994

Jatinder Singh & others

...Petitioners

Versus

Union of India & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. M.L.Sarin, Senior Advocate, with
Mr. Ritesh Aggarwal and Ms. Ankita Sambyal, Advocates,
for the petitioners.

Mr. Vipul Aggarwal, Advocate, for
Mr. Anil Chawla, Advocate, for Union of India.

HEMANT GUPTA, J.

The petitioners have invoked the writ jurisdiction of this Court claiming an enquiry either by the sitting or a retired Hon'ble Judge of this Court or by the Central Bureau of Investigation in respect of act of taking possession by the respondents and also to award suitable compensation for the loss suffered by them.

The petitioners have pleaded that one Parvati Kaur, wife of Arjan Singh, was the owner of land measuring 56 Kanal 2 Marla comprised in Khasra No.4326 situated in the revenue estate of Kapurthala, Tehsil & District Kapurthala. The petitioners claim that after the death of Parvati Kaur, her estate was inherited by her close relatives namely Vishwajit Singh and

Atamdev Singh, as Parvati Kaur died issueless. The petitioners entered into an agreement to purchase with Vishwajit Singh and Atamdev Singh on 29.07.1983 in respect of land measuring 28 Kanal 1 Marla. Vishwajit Singh and Atamdev Singh also executed an irrevocable power of attorney. The attorney executed sale deeds in favour of the petitioners. It is, thereafter, the petitioners have constructed houses and shops.

It is alleged that on 02.06.1994 at about 11.00 PM, hundreds of jawans of 25th Madras Infantry surrounded the area, where houses and shops of the petitioners as well as old haveli and 30 servant quarters were located. Under the threat, the forcible possession of houses, shops etc. was taken and that jawans used bulldozers to raze around 100 *jhuggies* to the ground.

In the written statement filed on behalf of the Government of India, it is pointed out that Parvati Kaur died on 15.08.1956 bequeathing the disputed property to the Jagatjit Government Hospital, Kapurthala by virtue of will dated 21.07.1956. The Health Department sought Letters of Administration in respect of the property. Vishwajit Singh and Atamdev Singh contested the Letters of Administration on the basis of natural succession. The letters of Administration was granted by the learned Single Bench of this Court on 06.03.1986. Aggrieved against the said order, Vishwajit Singh and Atamdev Singh filed LPA No.300 of 1986. In the said appeal, an undertaking was given by the appellants i.e. Vishwajit Singh and Atamdev Singh that no construction has been raised nor would be raised during the pendency of the appeal. On the basis of such undertaking, an application of stay for restraining the appellants from raising any unauthorized construction filed by the State was dismissed on 02.12.1987. The said appeal has since been dismissed vide order dated 26.04.2014. Thus, the State has been found to be the owner of the property left

by Parvati Kaur on the basis of will dated 21.07.1956. It is also pointed out that Indian Army/State Forces has been in possession of the disputed property, as tenants before partition. One Gulab Singh was granted this property in *Jagir* by the then Maharaja of Kapurthala. Such *Jagir* was shared equally by his four sons and the Army remained in occupation as tenants with their consent. Subsequently, Arjan Singh, eldest son of Gulab Singh, purchased this property from the Maharaja and became the sole owner as per the revenue record. The tenancy of the Army continued uninterrupted. Arjan Singh died in the year 1936 and his wife Parvati Kaur became the sole owner of this land. Earlier the State Forces were in possession of the property free of rent, but Parvati Kaur started charging Rs.500/- per annum as rent. The tenancy of the Army is recorded in the revenue documents in the jamabandi up to the year 1960-61. It is pleaded that Indian Army aggrieved by unlawful interference by trespassing third parties, having no right, title or interest in the disputed property, asked the petitioners to vacate the premises, which they did knowing that they had no valid title to the said property. It is also pointed out that the sale deeds were executed in favour of the petitioners during the months of July to September, 1983 in respect of land measuring 16 Kanal 17 Marla. The sale deeds are void, as affected by a person, who had no title over the property. It is also pointed out that the property in question is in the midst of sensitive Army installations and occupation of this area is security hazard to the existing defence installations. The trespassing petitioners sought time to remove their belongings, fixtures and permanent fitments etc. from the illegal construction and none of the petitioners objected to the surrender of possession, as they were fully conscious of the fact that they had no title or legal status.

In the separate written statement filed on behalf of the Government of Punjab, jamabandi for the year 1925-26 was appended as Annexure R-10/B-1, which shows that the property was in possession of the State Forces. As per jamabandi for the year 1930-31 (Annexure R-10/B-2), Arjan Singh, husband of Parvati Kaur, was recorded as owner of the land. In a subsequent jamabandi for the year 1939-40 (Annexure R-10/B-3), Parvati Kaur is recorded as owner and that State Forces are in possession of the land at the rent of Rs.500/- per annum. The said averments made in the written statements have been controverted by filing separate replications.

It may be stated that the question of inheritance of the estate of Parvati Kaur now stands settled vide order dated 26.04.2014 rendered in LPA No.300 of 1986 titled 'Vishavjit Singh Vs. State of Punjab & others', wherein State has been found to be the successor-in-interest of the estate of Parvati Kaur. As a necessary consequence, Vishwajit Singh and Atamdev Singh had no title and interest over the land owned by Parvati Kaur, which they could convey to the petitioners vide sale deeds executed in the year 1983. The sale deeds executed in favour of the petitioners are by a person, who was not the owner of the land and had no authority to sell the same. Therefore, the petitioners cannot be said to have any semblance of right or interest, as owner of the land on the basis of purchase of land from said to have been purchased by them from Vishwajit Singh and Atamdev Singh.

It may also be stated that in CWP No.10949 of 1989 titled 'State of Punjab & others Vs. Puran Singh & others', the dispute was regarding apportionment of compensation awarded in lieu of acquisition of land by the Improvement Trust between Puran Singh and the State. The said issue was also decided vide order dated 12.10.2015 holding that the occupant-tenant i.e.

Puran Singh would be entitled to 25% of the compensation amount, whereas 75% of the compensation amount would be payable to the State.

The argument of learned counsel for the petitioners is that even if the petitioners are illegal and unauthorized occupants of the land in question, they can be evicted only by due process of law. Reliance is placed upon the judgments of Hon'ble Supreme Court reported as Mohan Lal & others Vs. The State of Punjab & others 1971 PLJ 338 (SC), Rudul Sah Vs. State of Bihar & another AIR 1983 SC 1086, Krishna Ram Mahale (dead) by his LRs Vs. Mrs. Shobha Venkat Rao AIR 1989 SC 2097 & Premji Ratansey Shah & others Vs. Union of India & others JT 1994 (6) SC 585 as well as a Single Bench judgment of Pepsu Court in Mohindar Singh Vs. State of Pepsu & another AIR 1955 PEPSU 60 and a Single Bench judgment of this Court in Prem Mohan Kalra Vs. State of Haryana & others AIR 2011 P&H 161.

It is also contended that the decision in proceedings for grant of Letters of Administration is not a decision of question of title. Therefore, the State cannot claim any title on the basis of decision on the proceedings of Letters of Administration. He relied upon a judgment reported as Ghulam Qadir Vs. Special Tribunal & others (2002) 1 SCC 33.

The argument of learned counsel for the petitioners is that they were not party in the Letters Patent Appeal nor the Army was party, therefore, such order will not enure for the benefits of Indian Army or can be used against the petitioners. However, we do not find any merit in the said argument. The petitioners are the successor-in-interest of Vishwajit Singh and Atamdev Singh. Thus, any order suffered by their vendors would be binding on the petitioners. The rights of the petitioners are not larger than the rights of their vendors.

The judgments of the Hon'ble Supreme Court, referred to by the learned counsel for the petitioners, are the cases where the Court has intervened where there is threatened interference in the unauthorized possession. But in the present case, true owner is in possession, though as alleged by the petitioners forcibly. The question required to be examined is, whether writ Court in exercise of equitable jurisdiction should order payment of compensation, as observed by the Hon'ble Supreme Court in Rudul Sah's case (supra).

Firstly, we find that the petitioners were in possession of the public property without any title on the basis of alleged sale by a person, who had no title. The Hon'ble Supreme Court in Seema Arshad Zaheer Vs. Municipal Corpn. of Greater Mumbai (2006) 5 SCC 282 examined the issue as to whether there should be an order of ad-interim injunction regarding demolition of buildings. It was held that where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. The Court held as under:

“31. It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of the plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorized and the final order passed by the Commissioner (of the

Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality.”

In Sopan Sukhdeo Sable & others Vs. Assistant Charity Commissioner & others (2004) 3 SCC 137, the Hon’ble Supreme Court examined the issue of a person in settled possession, but without title. It was observed that whether a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief Act, 1963. The other question examined was; can the trespasser seek injunction against the true owner. The Court held as under:

“24. There are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible dispossession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be dispossessed by the owner except by recourse to law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That section says that

“If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.”

That a person without title but in “settled” possession — as against mere fugitive possession — can get back possession if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh* AIR 1968 SC 620, *Krishna Ram Mahale v. Shobha Venkat Rao* (1989) 4 SCC 131 (SCC at p. 136), *Ram Rattan v. State of U.P.* (1977) 1 SCC 188 and *State of U.P. v. Maharaja Dharmander Prasad Singh* (1989) 2 SCC 505. The leading decision quoted in these rulings is the decision of the Bombay High Court in *K.K. Verma v. Union of India* AIR 1954 Bom 358.

25. Now the other aspect of the matter needs to be noted. Assuming a trespasser ousted can seek restoration of possession under Section 6

of the Specific Relief Act, 1963, can the trespasser seek injunction against the true owner? This question does not entirely depend upon Section 6 of the Specific Relief Act, but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunction. In *Mahadeo Savlaram Shelke v. Pune Municipal Corpn.* (1995) 3 SCC 33 it was held, after referring to Woodroffe: Law Relating to Injunctions; Goyle, L.C.: Law of Injunctions; Bean, David: Injunctions; Joyce: Injunctions and other leading articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court quoted *Shiv Kumar Chadha v. Municipal Corpn. of Delhi* (1993) 3 SCC 161 wherein it was observed that injunction is discretionary and that: (SCC p. 175, para 31)

“Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court.”

26. Reference was also made to *Dalpat Kumar v. Prahlad Singh* (1992) 1 SCC 719 in regard to the meaning of the words “prima facie case” and “balance of convenience” and observed in *Mahadeo Savlaram Shelke v. Pune Municipal Corpn.* (1995) 3 SCC 33 that: (SCC p. 39, para 9)

“9. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession”.

In another judgment reported as Mandal Revenue Officer Vs. Goundla Venkaiah (2010) 2 SCC 461, the Hon’ble Supreme Court observed that it is well-nigh impossible for the State and its instrumentalities including the local authorities to keep everyday vigilance/watch over vast tracts of open land owned by them. No amount of vigil can stop encroachments and unauthorized occupation of public land by unscrupulous elements, who act like vultures to grab such land. It has been held as under:

“47. In this context, it is necessary to remember that it is well-nigh impossible for the State and its instrumentalities including the local authorities to keep everyday vigilance/watch over vast tracts of open

land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularised. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers, unauthorised occupants or land grabbers.”

In view of the judgments referred to above, we find that the petitioners had no title over the land in question. Having dispossessed from the land, which was admittedly not owned by them, the petitioners cannot claim restoration of possession or any compensation. Though this Court can exercise jurisdiction to award compensation, but in the present case, where the State has taken possession of its property from the petitioners, who have no semblance of right, title or interest over the land in question, we do not find that any case is made out for compensation.

Learned counsel for the petitioners relied upon Ghulam Qadir’s case (supra) to contend that the question of title cannot be decided in probate proceedings. We find that the said argument is misplaced. Though no question of title can be decided in probate proceedings, but the fact remains that the question, who inherits the property, is decided by the probate Court on the basis of Will. In the present case, the vendors of the petitioners claimed natural succession of the estate of Parvati Kaur though Parvati Kaur died issueless. The property was found to be bequeathed in favour of the State.

Therefore, the so-called natural heirs could not sell the property, which could confer any valid and legal title on the petitioners.

In view of the above, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(HEMANT GUPTA)
JUDGE

24 .12.2015
Vimal/d.gulati

(RAJ RAHUL GARG)
JUDGE