

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 25576 of 2013
Date of decision : April 30, 2015,

Jagdish Singh Rana

..... Petitioners

Versus

**The Financial Commissioner-cum-Principal Secretary and
others**

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. L. R. Sharma, Advocate
for the petitioner.

Mr. Hitesh Pandit, Additional Advocate
General, Haryana.

Mr. H. N. Mehtani, Advocate
for respondent No.3.

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

Amit Rawal, J (Oral).

The challenge in the present writ petition is to the order dated 10.7.2013 alleged to have been received by the petitioner on 22.8.2013 Annexure P-18 and also disagreement note dated 8.6.2012 (Annexure P-15) whereby a punishment of stoppage of one increment with cumulative effect has been imposed upon the petitioner.

In brief the facts are that in pursuance to a suit filed by the plaintiff claiming declaration with consequential relief for permanent injunction had been partly decreed vide judgment and decree dated 7.12.2005. The operative part of the judgment is

extracted hereinbelow:-

“in view of my findings on issued No. 1 to 3, clause (a) of the prayer seeking declaration regarding notice dated 4.11.97 being illegal is declined clause (b) of the prayer seeking declaration to the effect that the plaintiffs are owners in possession of the entire land is partly declined as the plaintiffs are owner in possession of area filing under schedule No. 18 but they cannot be held to be owner in possession of yellow portion; Clause (c) deserves to be allowed as it is the admitted case of the defendants that they are willing to allot the unauthorized area to the plaintiff on the payment of Rs. 22/- per sq.yard and even during arguments learned GP for the defendants conceded that the prayer may be allowed and defendants would be willing to allot the area of the plaintiff @ Rs.22/- per sq.yard. As far as clause (d) of the prayer is concerned, in view of my findings on issue No.3, prayer for injunction against the defendants restraining them from interfering in peaceful possession of the plaintiffs is allowed. However, defendants may proceed to dispossess the plaintiff from unauthorized area in case plaintiff do not pay the cost @ Rs.22/- per sq.yard after demarcation and calculation of the encroached area to be performed within a period of three months and payments to be made within one month thereafter. That the dispossession shall be done only in accordance with the procedure established by law and not otherwise. Accordingly suit stands partly decreed and party dismissed with costs.”

The aforementioned order had been passed on the basis of pleadings as well as documentary and oral evidence brought on record. It would be apt to refer to paragraph 10 of the plaint whereby the Industrial Department, Panipat categorically stated that an offer was given to the plaintiff to allot a land at the rate of ₹22/- per sq. yard, despite that the plaintiff did not deposit the same, accordingly proceedings for ejectment were initiated.

“That Para 10 of the plaint is wrong, hence denied. As submitted above, as per sale deed, an area of 100x 41 Sq.ft.i.e. 4100 sq.ft covered and 8246 sq.ft uncovered i.e. total 12346 sq.ft was sold to M/s Anil Kumar Jai Parkash. Tentative demarcation was carried out and as per the same, the plaintiff was found in excess possession of the area measuring 32726 sq.ft. This area surrounded the area covered under the shed No.18. Though the plaintiff has been admitting his illegal possession over that such area, and has been ready to purchase the same, yet the only dispute remained with regard to the rate at which it was being offered to the plaintiff by the defendant. Since the plaintiff failed to deposit the amount of the area, the question of allotment does not arise at all. So far as the question of rate was covered, since the plaintiff failed to accept the nominal rate of 22/- and did not deposit the amount the proceedings for ejectment of the plaintiff were initiated.”

Even the witnesses of the defendant i.e. General Manager, District Industries Centre Panipat Industries in an affidavit submitted by way of examination-in-chief stated that the Government vide notification dated 20.8.1990 proposed the sale of

excess land at the rate of 22 per sq. yard. The relevant paragraph of the affidavit is extracted hereinbelow:-

“That the Government vide modification dated 20 August 1990 proposed to sell the excess land @ 22/- per sq.yds.”

Even during the cross-examination to a specific question the General Manager stated as under:-

“After the notification dated 20.8.1990, the Department had given offer to sell out and transfer land measuring 32726 Sq.ft to plaintiff firm @ Rs.22/- per sq.yds. After the said letter, the plaintiff firm kept on having correspondence with Department. The plaintiff never refused to our offer in their letters. Voluntarily said that but the plaintiff firm has not so far deposited the money, rather the plaintiff kept on putting off the matter on one pretext or the other of the petitioner.”

On the basis of the alleged concession recorded in the judgment the petitioner was served with a charge sheet dated 17.3.2010 (Annexure P-12). On going through the contents of the charge sheet, it is manifest that an opinion was formed by the then Financial Commissioner-cum-Principal Secretary, Government of Haryana, Department of Judicial Administration that the petitioner-Jagdish Singh Rana, Assistant District Attorney appeared as a witness and suffered some statement in the cross examination and did not move an application for amendment of the order dated 7.12.2005.

Mr. L.R. Sharma, learned counsel for the petitioner contends that on the basis of the charge sheet the petitioner filed a

detailed reply but the authorities did not find the same satisfactory, thus, an enquiry officer was appointed. However, the enquiry officer on the basis of the witnesses brought on record, exonerated the petitioner from the charges. Copy of the enquiry report dated 28.6.2011 is (Annexure P-14). The Punishing Authority-Financial Commission-cum-Principal Secretary, Government of Haryana, Department of Judicial Administration on 8.6.2012 gave a “disagreement note” to the report of the enquiry officer, as a result thereof, the petitioner vide order dated 10.7.2013 (Annexure P-18) has been awarded a punishment of withholding of one increment with cumulative effect.

He further submitted that the judgment and decree dated 7.12.2005 was challenged before the lower appellate Court. Copy of the grounds of appeal has been annexed as Annexure P-6 and a specific ground qua the alleged concession recorded in the judgment and decree had been taken. The relevant ground No.1 is extracted as under:-

“That the plaintiffs has produced various documents regarding the possession. The possession which is illegal one; the plaintiff has not proved the ingredient of adverse possession as alleged. The plaintiffs failed to prove that how the notice removed the illegal possession or illegal encroachment is illegal. The Hon'ble Trial Court erred in deciding the issued with the documents placed on the file. It is also wrong to allege that the learned P.P. for the State has never admitted the case as alleged. Moreover, the facts alleged in the suit is to proved by the evidence merely the

admission can never be a ground to decree a suit in favour of the plaintiffs.”

He further submitted that the petitioner was performing his duties diligently and did not suffer any statement, much less no statement was recorded by the Civil Judge.

Mr. Hitesh Pandit, Additional Advocate General, Haryana submits that a “disagreement note” dated 8.6.2012 (Annexure P-15) is in consonance with the record of the trial Court which has not been noticed by the enquiry officer while exonerating the petitioner, therefore the punishment awarded or imposed upon the petitioner is legal and justified and is in consonance with the Haryana Punishment and Appeal Rules, 1987.

I have heard learned counsel for the parties and appraised the paper book.

The charge sheet extracted (supra) leaves no manner of doubt that the officer while drafting the charge sheet did not know about the intricacies of trial being conducted in civil suits.

Be that as it may, the fact remains that the petitioner did not appear as a witness nor there was an occasion to seek amendment of the order and despite giving a detailed reply, an enquiry officer had been appointed. The enquiry officer, after examining the witnesses of the department and as well as the defence witnesses produced by the petitioner came to a categorical conclusion that the charges served upon the petitioner had not been proved and accordingly exonerated the petitioner.

The relevant portion of the report of the enquiry

officer is extracted hereunder:-

After going through the arguments it is very clear 'moot question', to be decided is whether the judgment dated 7.12.2005 of Ld.Civil Court (Senior Divison) Sh. Sundeep Singh is based only on the factum of concession made in arguments by Sh. Jagdish Singh Rana ADA or it is on the basis of other factors i.e. pleadings and evidence brought on file. The concluding para of the judgment is produced below:-

Relevant para of the judgment under the title "Issue No.6 Relief" says:-

Clause (c)deserves to be allowed as it is the admitted case of the defendants that they are willing to allot the unauthorized area to the plaintiff on the payment of Rs. 22/- per sq.yard and even during arguments learned GP for the defendants conceded that the prayer may be allowed and defendants would be willing to allot the area of the plaintiff @ Rs.22/- per sq.yard. As far as clause (d) of the prayer is concerned, in view of my findings on issue No.3, prayer for injunction against the defendants restraining them from interfering in peaceful possession may proceed to dispossess the plaintiff from unauthorized area in case plaintiff do not pay the cost @ Rs.22/- per sq.yard after demarcation and calculation of the encroached area to be performed within a period of three months and payments to be made within one month thereafter. But dispossession shall be done only in accordance with the procedure established by law and not otherwise. Accordingly suit stands partly decreed and party dismissed with costs."

The perusal of the para and its reading

conveys that it is not based only the arguments alone whereby Sh. Jagdish Rana ADA has conceded that Govt. is still agreeable to give this land to the plaintiff if he agrees to pay the demand amount. The Ld. Civil Judge in his judgment has very specifically said, it is admitted case of defendants that they were willing to allotted_____". In appeal court of Addl.District Judge Sh. A. K. Jain has based judgment dated 31.7.2007 on the pleadings and evidence lead before the Ld. Civil Court. It is thus clear from the judgment dated 31.7.2007 that the judgment of the Ld. Trial Court.)(Senior Division) was not only the basis of what was conceded by Sh. Jagdish Singh Rana, Assistant District Attorney. The judgment dated 7.12.2005 merges into it has become final. Since Hon'ble High Court has declined to interfere with the order passed. As far as the concealment of facts is concerned it has been categorically and specifically been stated by Sh. Jagdish Singh Rana, ADA that the case was dealt with by two District Attorneys at different times and difference of opinion between the two law officers can always exist. The other related issues such as grounds of appeal, inaction of the department need no comments being not written the ambit of inquiry. From the reading in the judgment of Ld.Civil Judge (Senior Division) Panipat dated 7.12.2005 it is very clear that the judgment is based on the admitted case of the defendants and the conceded arguments of Sh. Jagdish Rana Assistant District Attorney which could not be in any case contrary to the admitted case of defendants. In view of the facts stated above charges against Sh. Jagdish

Singh Rana Assistant District Attorney stand not proved against him.

Conclusion:- The charge against Sh. Jagdish Singh Rana, ADA, o/o District Attorney Panipat stands not proved.”

The “disagreement note” dated 8.6.2012 (Annexure P-15) is also not in consonance with the Code of Civil Procedure. It appears that the department of Administration is duly oblivious of the procedure as enshrined under Order 6 Rule 2 of Code of Civil Procedure and various other provisions of CPC as to how and in what manner the judgment and decree of the Courts are to be challenged or seeking modification in case of any arithmetical mistake is to be sought.

A specific ground has been taken in the grounds of appeal qua findings recorded by the Civil Court whereby the Civil Court had noted the alleged concession of the Assistant District Attorney. The lower appellate court also dismissed the appeal filed by the department of Industries, Haryana. Even the Regular Second Appeal has also been dismissed by this Court.

The disagreement note does not record any reason as to how the enquiry officer did not act in accordance with law. It is a matter of concern that the enquiry officer was none else but a retired HCS officer and the authorities which served the charge sheet and gave a dissenting note are from the office of Administration of Judicial Department but it appears that they have not discharged their duties with any degree of responsibility. The best course for the authorities was to seek legal opinion from the office of Legal

Remembrancer before serving the charge sheet.

The charge sheet, *ibid*, is most absurdly drafted and in my opinion is an act of repugnancy.

In view of the what has been observed above, the impugned order dated 10.7.2013 (Annexure P-18) and disagreement note dated 8.6.2012 (Annexure P-15) are hereby quashed.

The writ petition is accordingly allowed.

April 30, 2015
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(AMIT RAWAL)
JUDGE