

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

1. CWP-5918-1991(O&M)

Roshan LalPetitioner

vs.

State of Punjab and othersRespondents

2. RSA-2245-2007(O&M)

Decided on: 17.02.2016

Sukhdev RajPetitioner

vs.

Ashwani Kumar and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr.R.S.Bains, Advocate
for the petitioner in CWP-5918-1991
and appellant in RSA-2245-2007.
Mr.B.S.Mann, Advocate for Mr. G.S.Nagra, Advocate
for respondents no.3 to 7 in CWP-5918-1991.
Mr. S.N.Saini, Advocate
for respondents no.8 to 10 in CWP-5918-1991
and respondents no.5 to 8 in RSA-2245-2007.
Mr. Anant Kataria, DAG, Punjab.

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Mahesh Grover, J

By this common order I shall dispose of both the aforementioned cases as RSA-2245-2007 is the outcome of the order impugned in CWP-5918-1991. The facts are being taken from CWP-5918-1991.

The petitioner has prayed for setting aside the order dated 14.03.1991

(Annexure P10) passed by respondent no.2.

It is a case with complex history of facts. Property which is comprising in khasra no.626 measuring 4 marlas (20' x 39') was the evacuee property which was given to the petitioner on the basis of possession. On 15.09.1970, the petitioner made an application to the Rehabilitation Department followed by two other applications dated 28.10.1970 and 09.02.1971 for purchase of this land in accordance with law.

On 30.08.1977, an order of transfer of land was passed regarding this very plot in favour of the petitioner on deposit of Rs.3,689/- but before this could materialize, a Conveyance Deed was executed in favour of Tilak Raj on 18.08.1977.

It is pertinent to mention here that the mischief started from this point as subsequent facts would reveal that this Conveyance Deed was executed without there being any formal order of transfer in favour of Tilak Raj. Even though, a document Annexure P-17/A (corresponding to Annexure R3/1) is being relied upon by the respondents to state an inference of transfer in his favour.

The petitioner then moved for cancellation of the sale deed in favour of the respondents and prayed for inquiry which was dismissed on 24.11.1977 against which a revision petition was filed before the Chief Settlement Commissioner (hereinafter known as CSC) which also met the same fate. The petitioner then filed proceedings under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter known as the Act) before the Financial Commissioner which was allowed and the conveyance deed executed in favour of Tilak Raj respondent was set aside.

Subsequent, thereto, land was transferred to the petitioner by the Tehsildar (Sales) on 10.12.1980. Respondent, in turn, filed a Civil Writ Petition No. 4499 of 1980 which was also dismissed. For the purposes of references, the relevant portion of the order of the Financial Commissioner (Revenue) as appearing in order dated 30.09.1980 is extracted here below:-

“ 6. From the foregoing discussion and perusal of the record, it is evident that the petitioner made applications for the transfer of the disputed plot within the stipulated period and his petition before me is competent. I have gone through the ruling reported in 1958-PLR-45 which is not at all applicable in the present case. It is difficult to accept the contention of respondents no.1 and 2 either that it is not necessary that there should be an order in support of a deed of conveyance or that a conveyance deed as such can be appealed against. A deed of conveyance is only a formal act and it has to have its origin in an order authorising the substance of section embodied in the conveyance deed. If there were to be no supporting orders and conveyance deeds could be issued straightway without any supporting record etc; utter confusion is likely to be the result. That sanad is only a formal Act also finds support from the ruling cited by the petitioner's learned counsel viz1963-PLR-page1141.It was,therefore,perfectly in order for the petitioner to report to the Chief Settlement Commissioner for exercise of powers under Section 24 of the DP(C&R) Act without filing an appeal against the action of the M.O embodied in the Conveyance Deed, because there was no order as such which could be appealed against to the Settlement Commissioner under

Section 22 of the Act ibid. Therefore, it was not in order for the learned Chief Settlement Commissioner to hold that the petitioner could not invoke powers of the Chief settlement Commissioner under Section 24 of the Act ibid without first availing of the remedy under Section 22 of the Act.

7. In view of the above discussion, I am inclined to agree with the assertions of the learned counsel for the petitioner. I accordingly accept the present petition under Section 33 of the Act, set aside the impugned order dated 7.6.1978 of the Chief Settlement Commissioner, Punjab, Jullundur and also set aside the Conveyance Deed executed in favour of Tilak Raj, issued under the signatures of the ASO (cum-M.O) Rehabilitation Department Punjab on 18.8.1977.”

A perusal of the above indicates that the Conveyance Deed in favour of Tilak Raj was clearly negated.

The issue of transfer in favour of the petitioner by the order of the Tehsildar (Sales) was questioned before the CSC who remanded the case for fresh decision.

Alongside this, proceedings were initiated in the Civil Court for various reliefs claimed by the disputants.

On 20.03.1984 the Civil Court granted injunction in favour of the petitioner when he preferred a suit for permanent / perpetual injunction. This suit was dismissed but in appeal the findings were reversed. A specific finding regarding the possession of the petitioner was returned. This order attained

finality. In the meantime, Tilak Raj had sold the property to present respondent Sukhdev Raj on 05.06.1978.

It is pertinent to mention here that in the Civil proceedings initiated by the petitioner, Sukhdev Raj and Tilak Raj both were parties.

It would be apposite to note here that when the CSC remanded the matter back for fresh decision in proceedings against the order of transfer in favour of the petitioner vide orders dated 19.05.1983, the Tehsildar (Sales) and Managing Officer decided the matter in favour of Tilak Raj vide his order dated 04.10.1985 by reporting that he had visited the spot to find the possession of Tilak Raj instead of the petitioner.

Interestingly the Civil Court's finding regarding possession in the suit property of the petitioner earlier determined was not even referred to by the Tehsildar and Managing Officer while passing order dated 04.10.1985. The petitioner was then forcibly dispossessed on 14.10.1985 which led to a civil suit for restoration of the possession on 25.10.1985 which was decreed and appeal filed by Tilak Raj against the same was also dismissed.

The petitioner also challenged the order of the Tehsildar (Sales) by way of appeal which was allowed vide order dated 25.08.1986 and the Conveyance Deed issued in favour of respondent Tilak Raj was set aside. A specific order for execution of the Conveyance Deed in favour of the petitioner was passed.

On 14.03.1991, the Financial Commissioner set aside the order of CSC by virtue of order Annexure P10 which is now the cause of grievance to him.

Since the Civil Court proceedings and the proceedings before the CSC / Financial Commissioner were carrying on almost simultaneously, the civil suit filed by the petitioner for restoration of possession was decreed subsequent to the order of the Financial Commissioner (Annexure P10) on 25.08.1993 against

which a revision petition was preferred by the present respondent Sukhdev Raj which was also dismissed.

Thereafter Sukhdev Raj filed a civil suit on 27.01.1994 for declaration that he is owner in possession of the property having purchased from Tilak Raj. This suit was dismissed as also was the appeal against which RSA-2245-2007 has been filed and is pending.

It is in the backdrop of these convoluted facts that the petitioner seeks quashing of Annexure P10 on the ground that there is no visible right in favour of Tilak Raj who never had any allotment in his favour and thus anything purchased by the present respondent Sukhdev Raj from Tilak Raj would be inconsequential in view of settled preposition of law that a person cannot have a better claim or title than the one from whom it has been derived.

Even though the facts are complex, the controversy is largely simple. Tilak Raj had claimed right to the disputed property on the basis of a Conveyance Deed which was negated for the simple reason that he had failed to produce any allotment / transfer / approval of sale in his favour. The Conveyance Deed was specifically negated by the Financial Commissioner in the first order that came into existence on the issue on 30.09.1980 when the Financial Commissioner observed against the claim of Tilak Raj.

Indeed a Deed of Conveyance is formal ratification of right which has been created by a document of transfer. Under the provisions of the Act, an order of transfer / approval had to precede the execution of the conveyance deed by any authority empowered under the Act, but the same has not seen the light of the day either before the authorities under the Act or before the Civil Court or even before this Court. No such order has been produced so as to lay the foundation of a legitimate claim.

During the course of proceedings, the Court had put it repeatedly to the respondents to produce such a document which would legitimise his argument

and justify the execution of Conveyance Deed in favour of Tilak Raj.

The Financial Commissioner vide his order dated 30.09.1980 which was upheld by this Court in writ proceedings clearly negated the Conveyance Deed in favour of Tilak Raj but a liberty was given to the present respondents to establish their claim to the property independently which again he miserably failed to do because of lack of documents of transfer in favour.

Insofar as possession of the petitioner is concerned, that was commented upon in various proceedings initiated by the petitioner in suit for injunction as also for restoration of possession. It is not disputed that the petitioner was dispossessed when an order of transfer was passed by the Tehsildar (Sales) in favour of Tilak Raj on 04.10.1985. Prior thereto, respondents failed to show anything to establish their possession which was duly commented upon by the Civil Courts, and as a direct inference and fall out of this, there would be no escape from the conclusion that the petitioner was in possession of the property justifying his claim to legitimately ask for transfer of the same in view of prevailing instructions entitling a person to allotment on the basis of possession.

In view of the above, when the Conveyance Deed in favour of Tilak Raj was adversely commented upon or rather it was set aside, and since the respondents in turn failed to produce any record to prove that they were in possession either on the material date or subsequent dates, there would be no justification to accept the plea of the respondents.

The order of the CSC dated 25.08.1986 is well reasoned one whereas the order dated 14.03.1991 of the Financial Commissioner misses out on the crucial issue, and perversity is reflected in it as it chooses to refer to an interim order passed regarding injunction to comment on possession while the suit itself stood determined on the date when he was passing the order holding the petitioner to be in possession. It was imperative for him to refer to the proceedings of civil suit where

possession of the petitioner had been commented upon and take due note of the fact.

Learned counsel for the respondents would contend that civil Court proceedings would be completely barred in view of the provisions of the Act. It is to be noticed that the civil suit was only for injunction and not for any claim under the Act and, therefore, this plea is totally without any merit. Since the Civil Court had commented on the possession, this ought to have been noticed by the Financial Commissioner who ignored it altogether while passing the order. It was also a perversity of sorts that the Financial Commissioner chose to rely upon the spot inspection of the Tehsildar Sales as against the findings of a Civil Court based on evidence produced by both the parties. The fact that the present respondent Sukhdev Raj was a party to the civil suit was not to be ignored. It will imply that the findings of the civil Court were binding on him as well. It is for this reason that the impugned order suffers from a grave infirmity besides suffering from a crucial deficit of reasoning that Tilak Raj had no order of allotment in his favour leading to the observations by this Court of cancellation of the Conveyance Deed.

Evidently, the respondents failed to establish their claim to the suit property.

Another fact which needs to be noticed is that Sukhdev Raj filed a civil suit on 14.05.1984 and prayed for an interim injunction which was declined. The Civil Suit No. 61/1984 filed on 26.03.1984 (Annexure P-28) itself was abandoned resulting into dismissal. He then filed another suit for declaration that he is owner in possession of the suit property (626/13) having purchased it from Tilak Raj which suit was also dismissed and appeal against it also met with the same fate resulting into RSA-2245-2007.

Insofar as the Regular Second Appeal is concerned, once this Court concludes that there was no document of allotment/transfer in favour of Tilak Raj, any transaction entered into by the said Tilak Raj in favour of the present

respondent Sukhdev Raj would be inconsequential. Tilak Raj could not pass on any better title to the subsequent vendee than the one he himself had. Having said so Sukhdev Raj thus could not have claimed ownership of the property. The filing of the subsequent suit i.e Civil Suit No.61/1984 and its maintainability itself by Sukhdev Raj in the wake of dismissal of the earlier suit would be a moot question. The Regular Second Appeal No. 2245 of 2007, therefore, has to be dismissed and it is so ordered. Besides, it raises no substantial question of law. Pure findings of fact have been recorded.

The present Civil Writ Petition No. 5918-1991 is accepted and the impugned order dated 14.03.1991 (Annexure P10) passed by respondent no.2 is set aside. The petitioner is held entitled to the suit property comprising of Khasra No. 626/13 on the basis of transfer order passed in his favour on 30.08.1977.

17.02.2016
mamta

(MAHESH GROVER)
JUDGE