

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CWP No.12379 of 2016
Date of Decision : 26.9.2016

Brahm Dutt

.....Petitioner

Vs.

The Collector, Phagwara, Distt.Kapurthala & others Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr.Anil Bansal, Advocate for the petitioner.

...

RAMESHWAR SINGH MALIK, J

Present writ petition is directed against the order dated 21.1.2016 (Annexure P-11) passed by the appellate authority, whereby the eviction order dated 8.10.2012 (Annexure P-10) was upheld and the appeal of the petitioner was dismissed.

Heard learned counsel for the petitioner.

It is the second round of litigation between the parties. Petitioner earlier approached this court by way of CWP No.10490 of 1998 (Brahm Dutt. Vs. Collector, Phagwara and others). The said writ petition filed by the petitioner was allowed by the Division Bench, vide order dated 24.4.2000 (Annexure P-7). The order Annexure P-7 passed by the Division Bench of this court was challenged by the Collector, Phagwara before the Hon'ble Supreme Court in Civil Appeal No.573-574 of 2003, which came to be allowed by the Hon'ble Supreme Court, vide its judgement dated

25.10.2010 (Annexure P-8).

A bare reading of the order dated 25.10.2010 (Annexure P-8) passed by the Hon'ble Supreme Court, would make it crystal clear that the stand taken by the petitioner before the Hon'ble Supreme Court was that he had become owner of the land in dispute by way of adverse possession. This stand is no more being taken by the learned counsel for the petitioner before this court. In fact, learned counsel for the petitioner could not substantiate any of his arguments. Petitioner has no case either on facts or in law. A bare combined reading of the impugned orders passed by the Collector as well as appellate authority, would make it crystal clear that they have committed no error of law, while passing their respective impugned orders and the same deserve to be upheld.

Before proceeding further, relevant observations made by the Hon'ble Supreme Court in paras 6 to 9 of its judgement dated 25.10.2010 (Annexure P-8), deserve to be noticed and the same read, as under :-

“ No doubt, in the same record, the provincial government is the owner of the land in dispute and the names of both the respondents were mentioned as cultivators/deemed owners (without payment of rent). Apart from the same, they also appeared and asserted their stand that they had been in cultivation and possession of the land in dispute for the last 50 years and by adverse possession, they became the owner of the land. Though the District Collector adverted to all the materials and assertions of the respondents, more particularly, about their statements that they were

cultivating the land after the grant/gift of Maharaja of Kapurthala to their forefathers, the said aspect was not looked into.

When the respondents herein filed appeals before the Commissioner under Section 9 of the Act, without adverting to any of these material aspects, the Commissioner dismissed both the appeals by passing a cryptic order.

The High Court, without adverting to the factual details, particularly, the assertions of the respondents as well as the entries in the jamabandi for the relevant years (Annexures R-1 to R-3), and without assigning valid reasons, set aside the orders of the original and the appellate authority.

On going through the factual details, the stand of the respondents, their assertions, the statement of Patwari and the Office Kanungo and the entries in the relevant Jamabandi, we feel that the ends of justice would be met by directing the original authority – the Collector, Phagwara, to pass fresh order after considering the above materials and after affording opportunity to all the parties concerned. Both the parties are permitted to lead fresh evidence, if any, with reference to their respective claim/stand within a period of eight weeks. It is made clear that we have not expressed any opinion on the claim/stand of both the parties and it is for the Collector

to apprise and take a decision in accordance with law within a period of six months. In view of the same, we set aside the impugned order of the High Court as well as the orders of the original authority -Collector, Phagwara and the appellate authority – the Commissioner, Jalandhar.

In the result, the civil appeals are allowed to the limited extent. There shall be no order as to costs.”

In compliance of the above said judgement of the Hon'ble Supreme Court, fresh proceedings were initiated against the petitioner. It is not the pleaded or argued case on behalf of the petitioner that he was not granted due opportunity to put up his case by placing on record all the relevant material. In fact, ownership of the Government had never been in dispute at any point of time. When a specific query was put to learned counsel for the petitioner, as to how the premises in question were not public premises, referring to relevant provisions of law contained in the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, he had no answer and rightly so, it being a matter of record.

Once the premises in question have been rightly found to be the public premises and in unauthorised occupation of the petitioner, his eviction was rightly ordered by the learned Collector, vide impugned order dated 8.10.2012 (Annexure P-10). Having said that, this court feels no hesitation to conclude that the learned Collector was very well in his jurisdiction, while passing the impugned eviction order and the same deserves to be upheld, for this reason also.

Thereafter, petitioner filed his appeal, which also came to be dismissed by the learned appellate authority i.e. Commissioner, Kapurthala, by passing a self contained order dated 21.1.2016 (Annexure P-11). During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in either of the impugned orders passed by the respondent authorities. Further, no prejudice of any kind, whatsoever, has been pointed out which might have been caused to the petitioner, while passing the impugned orders. Appellate Authority has reconsidered the matter specifically referring to and relying upon the observations made by the Hon'ble Supreme Court in its above said judgement dated 25.10.2010 (Annexure P-8), while passing the impugned appellate order Annexure P-11 dated 21.1.2016.

Under these peculiar facts and circumstances of the case, it cannot be said that the respondent authorities have violated any observations or directions issued by the Hon'ble Supreme Court in its above said judgement Annexure P-8. In fact, since both these impugned orders have been passed by the respondent authorities strictly in accordance with relevant provisions of law, including the observations made by the Hon'ble Supreme Court, no fault can be found with either of the impugned orders and the same deserve to be upheld, for this reason as well.

So far as the judgement relied upon by learned counsel for the petitioner in **Raj Kumar Divender Singh and another Vs. State of Punjab and others**, AIR 1973 S.C. 66 and a judgement of this court in **Banwari Vs. State of Haryana and others**, 1983 PLJ 6, are concerned, there is no dispute about the observations made therein. However, a close perusal of both these judgements would show that none of the cited

judgements is of any help to the petitioner, both these judgements being clearly distinguishable on facts.

It is so said because the facts in both these cases are entirely different. Both these cases being the cases of sale in favour of the owner, whereas present one is not a case of that type. Further, it is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in *Padmausundra Rao and another Vs. State of Tamil Nadu and others*, 2002 (3) SCC 533.

Neither any contrary judgement was shown nor any other argument was raised on behalf of the petitioner.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, present writ petition stands dismissed, however, with no order as to costs.

26.9.2016
GS

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No