

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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RSA 2809 of 2013 (O&M)
Date of decision: 27.04.2016

Naib Singh and others

..... Appellants

Versus

Union of India and others

.....Respondent(s)

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Vikas Bahl, Senior Advocate with
Mr. Nitish Garg and Ms Balpreet Sidhu, Advocates
for the appellants

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

Rekha Mittal, J.

The present appeal has been directed against the consistent findings recorded by the Courts below whereby suit filed by the appellants/plaintiffs seeking declaration that they are co-owners in possession of suit land measuring 56 kanals 2 marlas situated in Village Sarangpur, Tehsil and District Ambala, detailed in para 1 of the judgment of the trial trial Court, was dismissed by the learned trial Court and findings recorded by the trial Court have been affirmed in appeal.

Counsel for the appellants has submitted that Mangal Singh left behind some properties in Pakistan and in lieu thereof a *parchi* allotment was issued. Later, allotment was made to one Iqbal Singh but the same was

cancelled in August 1957. Balbir Singh claiming to be legal heir of Shri Mangal Singh filed an application for allotment of the land but the same was dismissed in January 1994. Thereafter, Balbir Singh and Jeeto initiated proceedings for obtaining succession certificate and they were granted succession certificate by the civil Court on 27.10.1994. Subsequent thereto, allotment in favour of Balbir Singh and Jeeto was made qua 40 standard acres of land in December 1994. Mutation Ex. P7 was sanctioned in favour of Balbir Singh and Jeeto on the basis of allotment made by the competent authority. The appellants/plaintiffs after verifying the revenue record purchased the suit land vide two sale deeds i.e. sale deeds No. 3191 dated 25.01.1996 and No. 3263 dated 02.02.1996 for a valuable consideration of Rs.3,20,000.00 and Rs.3,22,000.00 respectively on the basis whereof mutation Nos. 424 and 425 were sanctioned and entries in the jamabandi for the year 1997-98 were accordingly made in their favour. The appellants came in peaceful possession of the suit property as owners without any interruption from any quarter since the date of its purchase. They obtained copy of jamabandi from Halqa Patwari to raise loan on the suit property and came to know of a red entry and rapt No.228 dated 06.09.2002 and on further inquiry, it was revealed that the defendants have passed order regarding cancellation of the allotment. It was further revealed by the defendants that the suit property would be auctioned on 09.01.2006.

Counsel for the appellants would contend that at the time of cancellation of allotment in favour of Balbir Singh and Jeeto vide order dated 27.06.2002 Ex D1, no notice much less an opportunity of hearing was provided to the appellants despite the fact that necessary entries were incorporated in the revenue record on the basis of sale deeds executed in

their favour as back as in the year 1996, therefore, the order of cancellation of allotment is neither binding upon the appellants nor can adversely affect their ownership in possession of the suit land more particularly in the circumstances that the registered sale deeds executed in their favour have not been set aside/cancelled till date in any appropriate proceedings. It is argued with vehemence that had the appellants been provided with an opportunity of hearing, they would have raised their plea that they are not privy to any alleged misrepresentation made by the original allottees when otherwise, they are not in any manner related to them. In addition, it is submitted that had the appellants been informed and joined in the proceedings initiated for cancellation of allotment of land, which admittedly the respondents intend to sell by way of auction, the appellants would have participated in the auction and claimed their preferential rights on the basis of sale deeds executed in their favour by the original allottees and they being in possession of the suit land on the basis thereof. It is vehemently argued that as the impugned order has been passed in utter violation of the principles of natural justice for failure of the authorities to provide an opportunity of hearing to the appellants, the same is liable to be set aside qua the appellants with a direction to the authority concerned to pass a fresh order after giving notice to the affected parties. In support of his contention, he has referred to judgment of this Court in RSA No. 4357 of 2012 decided on 19.10.2012. He has further produced before the Court the judgment passed by the Additional District Judge, Ambala in similar set of circumstances that came to be affirmed by this Court in the aforesaid regular second appeal.

Counsel has further submitted that as per his information, no

appeal against the judgment passed by this Court has been preferred before Hon'ble the Supreme Court of India.

I have heard counsel for the appellants and perused the records particularly the judgments passed by the Courts below.

It is an undisputed position of the case that the allotment made in favour of Balbir Singh and Jeeto, claiming themselves to be legal heirs of Mangal Singh was cancelled vide order Ex D1 after providing them an opportunity of being heard and taking into consideration their plea that a succession certificate was issued in their favour by the civil Court and the same has not been set aside till date. A casual reading of the judgments passed by the Courts below does not leave any manner of doubt that in the proceedings initiated by the authorities regarding cancellation of allotment made in favour of Balbir Singh and Jeeto, culminated in order dated 26.06.2002 Ex D1, the appellants were not joined as a party nor they were provided with an opportunity of being heard despite the fact that sale deeds executed in their favour in the year 1996 by the original allottees are duly reflected in the revenue record on the basis of mutation sanctioned in their favour in the year 1996 itself. The allotment in favour of Balbir Singh and Jeeto has been cancelled by holding that the same is based on fraud and misrepresentation as they alleged themselves to be legal heirs of deceased Mangal Singh which is contrary to the facts and reality.

Counsel for the appellants has fairly conceded that fraud unravels everything and once the original allotment in favour of Balbir Singh and Jeeto is held to be based on fraud, the appellants cannot seek protection of Section 41 of the Transfer of Property Act, 1882 (in short, 'TPA') by contending themselves to be bona fide purchasers for

consideration without notice. This apart, the appellate Court has considered this question at length in para 11 of the judgment and has negated plea of the appellants. The Full Bench of this Court in ***Smt. Niranjan Kaur and others v. The Financial Commissioner, Revenue and Secretary to Government, Punjab and others 2010 (4) R.C.R. (Civil) 610***, has held that in case the transfer is procured by fraud and misrepresentation in absence of bona fide, the plea of bona fide purchaser is not available as it is settled law that the fraud vitiates everything. Further it has been held that Displaced Persons Act 1954 is a Special Act whereas the TPA Act is a general Act. The provisions of said statute would override provisions of Section 41 of TPA. The subsequent vendees can only claim damages from its vendors but cannot seek the protection of Section 41 of the TPA by raising plea of the bona fide purchaser. In view of enunciation of law laid down in *Smt. Niranjan Kaur's* case (supra) as also admitted by counsel for the appellants, even if an opportunity of hearing is provided to the appellants, plea of bona fide purchaser, for consideration, without notice is not available to them.

The question of violation of principles of natural justice or an opportunity of hearing to be provided to an affected person/party is to be examined by the Court from the point of view of prejudice. Hon'ble the Supreme Court in ***Bar Counsel of India v. High Court, Kerala (2004) 6 SCC 311*** has held that the principles of natural justice cannot be put in a strait-jacket formula, it must be viewed with flexibility and when there is complaint of violation of principles of natural justice, the Court may insist on proof of prejudice before interfering or setting aside an order.

Another relevant judgment ***Indu Bhushan Dwivedi v. State of Jharkhand and another (2010) 11 SCC 278***, relates to service matter. The

Hon'ble Supreme Court has held that “.....however, every violation of rules of natural justice may not be sufficient for invalidating action taken by competent authority/employer and Court may refuse to interfere if it is convinced that such violation has not caused prejudice to affected person/employee.”

In a recent judgment ***M/s A.S. Motors Pvt. Ltd. v. Union of India and others, 2013 (2) R.C.R. (Civil) 323***, the Hon'ble Apex Court, after due consideration of the observations made from time-to-time in various cases particularly the decision in ***Aligarh Muslim University v. Mansoor Ali Khan, 2000(4) S.C.T. 313***, wherein the Court with approval quoted the following observations of *Sir Willam Wade* (Administrative Law, 9th Edn. Pp.468-471)

“... .. it is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth.”

has arrived at the following conclusion:-

“Absence of any allegation of mala fides against those taking action as also the failure of the appellant to disclose any prejudice, all indicated that the procedure was fair and in substantial, if not strict, compliance with the requirements of Audi Alteram Partem.”

Turning to the case in hand, admittedly, plea of bona fide purchaser for consideration without notice is not available to the appellants in the circumstances of the present case. So far as the plea that had the appellants been given an opportunity of hearing in the matter, they would have participated in the auction proceedings qua the land in question, counsel on a pointed query by the Court has been fair enough to inform that auction of the land in question has not been conducted till date and cancellation of allotment vide order Ex.D1 would not debar the appellants from participating in auction, if any, conducted by the respondents.

When the facts and circumstances of the present case are analyzed in the light of observations made in the aforesaid authorities, I agree with the findings of the learned appellate Court that it would not make any difference in the position of the appellants even if they had been provided with an opportunity of being heard or they are still provided with such an opportunity. Under the circumstances, no useful purpose would be served by setting aside the impugned order qua the appellants or directing the authority concerned to take a fresh decision qua the appellants/plaintiffs, after hearing them in the matter. As the appellants have failed to convince this Court that an opportunity of hearing can possibly change the position to their advantage, re-opening the matter in the circumstances would be nothing short of an empty formality at the cost of wastage of time of the authority concerned as well as that of the Court(s) in the eventuality of claim being rejected and then challenged in second bout of litigation.

To be fair to the appellants, counsel has referred to the judgment of this Court in ***RSA 4357 of 2012*** decided on 19.10.2012 titled

State of Haryana through Collector, Ambala and others v. Krishan Lal. In the said case, the suit filed by Shri Krishan Lal to challenge cancellation of allotment made in favour of his vendor was decreed by the trial Court and was affirmed in appeal filed by the State of Haryana, therefore, there were consistent findings recorded by the Courts below in favour of Shri Krishan Lal. This apart, in the said litigation, it was a case of double allotment and not a case of allotment on the basis of fraud and misrepresentation. As has been noticed hereinbefore but for the sake of repetition that fraud vitiates everything. Once the allotment in favour of vendors of the appellants was found to be based on fraud and misrepresentation, the appellants cannot claim any right in the suit property on the basis of sale deeds executed by the allottees whose allotment has been cancelled by the competent authority in an appropriate proceedings by invoking the provisions of Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and has attained finality qua them.

In view of what has been discussed herein above, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

27.04.2016
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