

645

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4430-2003

Date of decision : 08.03.2017

Vivek Gupta and others

... Petitioner(s)

Versus

State of Haryana and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Jain, Senior Advocate with
Mr. Ravi Kadian, Advocate and
Mr. J.L. Malhotra, Advocate
for the petitioner(s).

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. S.S. Sodhi, Advocate
for the LR's of respondent No.6.

AMIT RAWAL, J. (ORAL)

The petitioners are the successors-in-interest of Kamla Rani and Harbhagwan Nanda seeking the vindication of their grievance by challenging the orders dated 10.02.1986 (Annexure P-24), 05.07.1987 (Annexure P-25) & 07.02.2003 (Annexure P-42) with a further prayer of writ in the nature of *mandamus* directing respondent No.1 to decide the revision petition filed by the petitioners under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short 'the 1954 Act'), on merits.

Mr. V.K. Jain, learned Senior Counsel assisted by Mr. Ravi Kadian and Mr. J.L. Malhotra, learned counsel appearing on behalf of the

petitioners submits that three khasra numbers are in dispute bearing No.1393, 1394 & 1407, as per the jamabandi for the year 1943-44 measuring 2 bighas 15 biswas, 4 bighas 17 biswas and 7 bighas 11 biswas, respectively, which is reflected from the copy of the jamabandi (Annexure P-1). The land measuring 7 biswas from khasra No.1393 and 16 biswas from khasra No.1394 was transferred in favour of Sh. S.C. Mitra after subdividing the aforementioned khasra numbers and the transfer in favour had already upheld upto this Court. Both Harbhagwan Nanda and Kamla Rani were the lessees of the aforementioned land and had moved an application for purchase of the land, which was rejected by the Managing Officer vide order dated 17.06.1961 (Annexure P-10). In the meantime, the Government of India added the Rule 34 (C), (D) and (E) in the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (for short 'the 1955 Rules), vide notification dated 19.07.1962 (Annexure P-11) and raised the limit from ₹ 10,000/- to ₹ 15,000/- on the premise that a person, who is a lessee, is entitled to purchase the land, if the value of the land does not exceed ₹ 15,000/-.. The Chief Settlement Commissioner wrote a letter dated 15.01.1963 (Annexure P-12) to Harbhagwan Nanda calling upon him to deposit a sum of ₹ 14,400/- which was accepted by Harbhagwan Nanda and 1/5th of the amount, i.e. ₹ 2,880/-, vide challan dated 21.01.1963 (Annexure P-13) was deposited. However, the valuation of the land was assailed before the Chief Settlement Commissioner, who vide order dated 19.08.1963 (Annexure P-16) remanded the matter back for re-fixation. The Managing Officer revaluated the land and fixed the price as ₹ 11,932.50. The aforementioned amount was accepted by Harbhagwan Nanda and not only Conveyance Deed was executed, but registered on 18.01.1964

(Annexure P-22). In the case of Kamla Rani also, the price was revalued and ultimately, permission was granted and the sale deed dated 14.01.1964 (Annexure P-21) was executed and registered. Despite the execution of the aforementioned conveyance and sale deeds, the Government, on 11.03.1956, caused a publication for public auction of Khasra No.1393, 1394, 1405, 1406 & 1407 and Smt. Suhagwanti was held to be a highest bidder. Since she did not deposit the bid amount and the Managing Officer vide order dated 24.11.1964 cancelled the auction. Even the sale deed in favour of Sh. S.C. Mitra had been duly executed and registered on 17.07.1968 (Annexure P-45). Smt. Suhagwanti challenged the aforementioned cancellation of the auction vide CWP No.7846 of 1976, which was dismissed as withdrawn on 23.02.1977 and filed a petition under Section 33 of the 1954 Act. In those proceedings, Sh. S.C. Mitra was arrayed as respondent(s). Smt. Suhagwanti moved an application for challenging the sale deed in favour of Harbhagwan Nanda and Kamla Rani and the same was adjourned *sine die*. However, the Chief Settlement Commissioner vide order dated 05.07.1982 (Annexure P-23) remanded the matter back to the Managing Officer, who vide impugned order dated 10.02.1986 (Annexure P-24), by relying upon the judgment rendered by the Single Bench of this Court rendered in CWP No.2604 of 1977 titled as "Govind Ram V/s State" suggested that the khasra number could not be prepared and therefore, conveyance deed could not have been executed and registered in favour of Harbhagwan Nanda and Kamla Rani and referred the matter to the Chief Settlement Commissioner for setting aside the conveyance deed. The Chief Settlement Commissioner vide impugned order dated 15.07.1987 (Annexure P-25) accepted the recommendations.

The petitioners approached this Court vide CWP No.5878 of 1987, but this Court directed the petitioners to move an application under Section 33 of the 1954 Act which was ultimately filed, but the authorities under the aforementioned Act did not accept the case and upheld the recommendations of the Chief Settlement Commissioner for cancellation of the conveyance deed.

He further submits that a registered document cannot be cancelled, in the manner and mode, as indicated above, in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in “Satya Pal Anand V/s State of M.P. and others” 2016 (4) RCR (Civil) 904, as the remedy lied elsewhere, in essence, by approaching the Civil Court. Even otherwise, as per the provisions of the Limitation Act, if any registered document is required to be cancelled and set aside, the limitation is three years, in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in “Ramti Devi V/s Union of India” 1995 (1) JT 223, thus, the impugned orders under challenge are not sustainable in the eyes of law.

Per contra, Mr. Sandeep Singh Mann, Sr. DAG, Haryana submits that the finding of the authorities below in affirming an opinion of grabbing the Government land is perfectly legal and justified. The petitioners are no longer having any interest in the property as Harbhagwan Nanda and Kamla Rani had further sold the property. There is no illegality and perversity in the order dismissing the revision petition and the appeal. The order dated 17.06.1961 cannot be challenged as the same is hit by *Doctrine Akin to Delay and Latches*. The petitioners' case was not falling under the Rule 34 (C) of the 1955 Rules as the value of the land exceeded to ₹ 10,000/-, thus, urges this Court for dismissal of the present writ petition.

In rebuttal, Mr. V.K. Jain, learned Senior Counsel submits that the impugned orders are not sustainable as it tantamounts to recalling of the review orders dated 19.08.1963 (Annexure P-16), 08.01.1964 (Annexure P-17) and 02.01.1964 (Annexure P-18) and urges this Court for setting aside the impugned orders under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that as per the Articles 113 and 59 of the Scheduled to the Limitation Act, 1963, a document can be avoided or cancelled by a proper declaration, in essence, the duly registered document remains valid and binds the party, therefore, the suit necessarily has to be laid within three years from the date when the cause of action had occurred.

The aforementioned view of mine is derived from the *ratio decidendi* culled out by the Hon'ble Supreme Court in **"Ramti Devi's case"** (supra). The relevant para No.2 of the judgment cited supra reads as under:-

"2. The question is whether the suit is within limitation. In the evidence, it was admitted that she had knowledge of the execution and registration of the sale deed on 29-1-1947. Initially a suit was filed in 1959 but was dismissed as withdrawn with liberty to file fresh suit. Admittedly, the present suit was filed on 30-7-1966. The question, therefore, is whether the suit is within limitation. Article 59 of the Schedule to the Limitation Act, 1963, relied on by the appellant herself, postulates that to cancel or set aside an instrument or decree or for the rescission of a contract, the limitation is three years and it begins to run when the plaintiff entitles to have the instrument or the decree cancelled or set aside or when the contract rescinded first became known to him. As seen, when the appellant had knowledge of it on 29-1-1949 itself the limitation began to run from that date and the three years'

limitation has hopelessly been barred on the date when the suit was filed. It is contended by Shri VM. Tarkunde, learned Senior Counsel for the appellant, that the counsel in the trial court was not right in relying upon Article 59. Article 113 is the relevant article. The limitation does not begin to run as the sale deed document is void as it was executed to stifle the prosecution. Since the appellant having been remained in possession, the only declaration that could be sought and obtained is that she is the owner and that the document does not bind the appellant. We are afraid that we cannot agree with the learned counsel. As seen, the recitals of the documents would show that the sale deed was executed for valuable consideration to discharge pre-existing debts and it is a registered document. Apart from the prohibition under Section 92 of the Evidence Act to adduce oral evidence to contradict the terms of the recital therein, no issue in this behalf on the validity of the sale deed or its binding nature was raised nor a finding recorded that the sale deed is void under Section 23 of the Contract Act. Pleading itself is not sufficient. Since the appellant is seeking to have the document avoided or cancelled, necessarily, a declaration has to be given by the court in that behalf. Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the suit necessarily has to be laid within three years from the date when the cause of action had occurred. Since the cause of action had arisen on 29-1-1947, the date on which the sale deed was executed and registered and the suit was filed on 30-7-1966, the suit is hopelessly barred by limitation. The courts below, therefore, were right in dismissing the suit. The appeal is accordingly dismissed with costs."

The Hon'ble Supreme Court in "Satya Pal's case (supra), has

held that a registered document cannot be set aside by Registering Officer or

any other mode except, if the aggrieved party has any grievance, he has to avail the civil remedy. Concededly, the aforementioned sale deeds are on behalf of the Government and between Harbhagwan Nanda and Kamla Rani. For the sake of brevity, the relevant para Nos.22, 23, 25 & 26 of the judgment cited supra are extracted hereinbelow:-

"22. The procedure for registration of documents is spelt out, inter alia, in part VI of the Act of 1908. Section 32 of the said Act reads thus:

PART VI

OF PRESENTING DOCUMENTS FOR REGISTRATION

"32. Persons to present documents for registration.- Except in the cases mentioned in 24 [sections 31, 88 and 89], every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office-

- (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or*
- (b) by the representative or assignee of such a person, or*
- (c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.*

23. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the Extinguishment Deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitly to cause loss and harm to the other party to the Deed,

is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the Act of 1908 enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the Act of 1908 can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court.

25. The Andhra Pradesh High Court, in the case of Yanala Malleshwari (supra) was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in Sections such as 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court. The majority view of the Full Bench was that if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not

the proper remedy.

26. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the Act of 1908. In the case of Park View Enterprises (supra) it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition."

All the authorities have not taken into consideration the aforementioned facts and position of law and therefore, the impugned orders under challenge are not sustainable in the eyes of law. A valuable right had accrued in favour of the vendees by virtue of the sale deeds dated 18.01.1964 (Annexures P-21 & P-22). Smt. Suhagwanti had an independent right for establishing her case viz-a-viz non-adherence to the terms and conditions of the auction, but could not have moved an application in the manner and mode, as indicated above, to the authorities for the purpose of cancellation of the conveyance deeds. If at all, she had any grievance, could have approached the competent court of law. Even that application of 1972 kept pending for a period of 10 years, which was decided by the Chief Settlement Commissioner vide order dated 05.07.1982 (Annexure P-23). The *ratio decidendi* culled out by the Single Bench Judgment of this Court rendered in **CWP No.2604 of 1977** titled as **"Govind Ram V/s State"**, heavily relied upon by the Managing Officer that

khasra number cannot be sub-divided, had already been set aside by the Division Bench Judgment of this Court rendered in **LPA No.424 of 1987** titled as **“Krishan Lal and others V/s State of Haryana and others”** decided on 18.01.1993, whereby the allotment in favour of the similarly situated persons was held to be valid i.e. legal heirs of Gobind Ram.

There is another aspect of the matter that identically Sh. S.C. Mitra, was also in possession of some pieces of land of the same very khasra number and his sale deed had already been upheld as he was arrayed as respondent in a writ petition preferred by Smt. Suhagwanti i.e. CWP No.7846 of 1976 and the sale deed, aforementioned, has already in his favour.

All these facts were required to be gone into. The *quasi* judicial authorities are obliged to apply their judicial mind and in case, at some points, are not able to discern, they can always seek an opinion from the concerned Advocate General for the purpose of arriving at a fair and effective decision, in essence, the outlet cannot be said to be without jurisdiction.

For the foregoing reasons, the impugned orders under challenge are hereby set aside and resultantly, the present writ petition is allowed.

08.03.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**