

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

LPA No.807 of 2016 (O&M)

Date of Decision : 01.05.2017

State of Punjab and others

....Appellants

Versus

Gian Kaur and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

Present: Mr. Manoj Bajaj, Addl.Advocate General, Punjab
for the appellants.

Mr. S.D.Sharma, Sr.Advocate with
Mr. K.R.Sharma, Advocate
for the caveator/respondent No.1-Gian Kaur.

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MAHESH GROVER, J. (Oral)

This Letters Patent Appeal has been preferred against the order of the learned Single Judge dated 15.05.2015 directing the State of Punjab to ensure compliance for executing the Sale Deed in favour of respondent No.1 and handing over the possession as per the Punjab Package Deal Properties (Disposal) Act, 1976 (hereinafter known as '1976 Act').

We would briefly narrate the facts. CWP No.22913 of 2013 was preferred by Gian Kaur, who is the widow of Joginder Pal, the successful bidder in auction held on 17.10.1975 under the 1976 Act. Some amount was deposited by Joginder Pal and the sale was confirmed vide order dated 05.12.1975. This land was in occupation of one Dhanna Singh who challenged the auction process by filing a

revision petition which was dismissed on 30.07.1976 leading to a second revision under Section 10 of 1976 Act before the Chief Sales Commissioner, Punjab which was also dismissed vide order dated 06.06.1978. A third revision followed under Section 15 of the very same Act which was also dismissed in 1984 leading to filing of CWP No.4196 of 1984 which was dismissed on 11.01.2012 by the learned Single Judge. Dhanna Singh in this interregnum expired and the litigation was prosecuted by his legal representatives i.e. Joginder Singh and others who filed LPA No.732 of 2012, which was dismissed on 22.05.2012. Whereupon the matter was taken to the Hon'ble Supreme Court vide SLP (CC) No.7936 of 2013 which also met the same fate.

It may be useful to refer to the following findings of the Division Bench in LPA No.732 of 2012 preferred by Joginder Singh and others regarding status of land which was projected to be *Shamlat Deh* by the appellants but was negated by this Court and the said findings were upheld by the Hon'ble Supreme Court.

“Another argument raised by the learned counsel for the appellants that the property could not have been treated a surplus rural evacuee agricultural land because it was *Shamlat deh* and vests in the Gram Panchayat, also cannot be accepted. Undisputedly, in this case the Panchayat never staked any claim to the property. Even the appellants did not make any attempt to implead the Panchayat as a party in the proceedings.”

Subsequent to the culmination of these proceedings the State executed the Sale Deed in favour of the present respondent but did not hand over the possession leading to another round of litigation with the respondent urging the State to complete the transaction by ensuring the delivery of possession. It is in these proceedings (CWP No.22913 of 2015) that eventually the impugned order came to be passed by the learned Single Judge issuing the mandate noticed above.

It is not disputed that the possession has since been handed over to respondent No.1. This should have lent a quietus to the issue but for the State who chose to file a LPA by once again taking up the plea that the land could not have been auctioned in favour of the present respondent as it was *Shamlat Patti*.

Concerned with this stand, we had passed an order on 27.07.2016 questioning the State that if the land belonged to *Shamlat Patti* where was the occasion for it to accept the amount from the respondent and execute the sale deed on 19.02.2014 when the auction took place in 1975. It is then that affidavits have been filed by the State realising the incorrect stand that it has taken and filed another application seeking withdrawal of the appeal.

We have examined the issue at length and notice that the State has been constantly misleading this court. In CWP No.22913 of 2015 two responses were filed by the State. In the first one filed initially they did not rake up the issue of land being of *Shamlat Patti* but a specific affidavit was filed by Shri Rajdeep Singh Brar, SDM-

cum-Sales Commissioner, Kapurthala asserting that the land belongs to *Shamlat Patti* and the Tehsildar was not competent to allot this land on the basis of possession or in open sale by treating the same as surplus rural evacuee land. The revenue record in the shape of Jamabandi was also annexed. We may also extract the said para of the affidavit as under :-

“2. That it may be relevant to point out here that the land in dispute is Shamlat Patti land and the same is covered under the Punjab Village Common Land Act and the Tehsildar was never competent at any point of time to allot this land on the basis of possession or in open sale by treating the land in dispute as surplus rural evacuee land as the revenue records showing the same as Shamlat Patti land. Copy of Jamabandi is annexed herewith as Annexure R-1 (Colly).”

Now when the flaw was discovered by this Court, the appellants have very conveniently sought to withdraw from the appeal by contending that the issue of the land of *Shamlat Patti* already stood concluded in the earlier proceedings and thus the present appeal has been filed under the mistaken notion.

We do not accept this explanation offered by the State for the reason that when the respondent was fighting for possession, the SDM-cum-Sales Commissioner, Kapurthala Shri Rajdeep Singh Brar chose to oppose the petition by filing a specific affidavit in this regard even though the issue stood settled when the SLP was dismissed in

2013 itself. The action in opposing the possession smacks of an ulterior motive. So much so even when the court negated this stand the present appeal was filed and it is now stated by the appellants that there was a clear decision taken by the Deputy Commissioner that the present case is not fit to be prosecuted and this was recorded after the possession was delivered to the respondent. Despite this the present appeal has been filed by Shri Gurmit Singh, Tehsildar, Kapurthala (presently posted as Tehsildar Shahkot, District Jalandhar). We may also notice that there is an inordinate delay of 312 days in filing the appeal.

The whole gamut of facts as extracted above shows that the officials of the State of Punjab deliberately tried to obstruct the possession of a widow who has been fighting for it since long. An absolutely false and misleading affidavit has been filed by Shri Rajdeep Singh Brar, SDM-cum-Sales Commissioner, Kapurthala and similarly Shri Gurmit Singh, Tehsildar has chosen to file an appeal despite the decision of the Deputy Commissioner to the contrary. We, therefore, construe it to be an obstruction in the course of justice which has not only resulted in frustrating the rightful claim of the respondent but has also resulted in sheer wastage of time of the court. Once the matter stood concluded in favour of the respondent with a categorical finding that the land did not belong to *Shamlat Patti*, there was no occasion for the appellants to insist on the same and that too two years after the culmination of the earlier proceedings before the Hon'ble Supreme Court.

We cannot shut our eyes to the harassment meted out to the citizens largely at the hands of the officers of the State and their sheer reluctance in facilitating the possession in favour of the respondent obstructing her petition by raking up a false plea which can only be construed to be smacking of reasons dictated by dishonesty. We would, therefore, take these officers to task and thus issue a show cause notice to them to explain as to why they obstructed the course of justice.

In so far as Shri Rajdeep Singh Brar is concerned, he is directed to show cause why proceedings under the Contempt of Courts Act be not initiated against him for filing a false affidavit. Shri Gurmit Singh, Tehsildar is burdened with costs of Rs.50,000/- which shall be recovered from his personal pay for filing a frivolous appeal resulting in sheer wastage of time and also unnecessary harassment to the respondents.

The costs recovered from the Tehsildar shall be compensatory to respondent No.1.

The contempt petition be listed as per roster.

Appeal dismissed.

(MAHESH GROVER)
JUDGE

01.05.2017
dss

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No