

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

RSA No. 777 of 1998(O&M)

Date of decision : 23.02.2018

**Holiday Home Hotel & Restaurant Chohal,
District Hoshiarpur**

..... Appellant

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Swaran Singh, Sr. Advocate
with Mr.Chetan Goel, Advocate
for the appellant.

Ms.Akanksha, AAG, Punjab.

AMIT RAWAL, J. (Oral)

This appeal has been filed against the judgment and decree dated 10.01.1998 whereby the Lower Appellate Court has set aside the judgment and decree dated 4.6.1993 passed by Additional Senior Sub Judge whereby suit of the appellant-plaintiff was decreed.

The appellant-plaintiff instituted a suit for declaration challenging the orders dated 28.3.1989 issued by the Executive Engineer, Jansuri-Chohal Construction Division, Hoshiarpur of Irrigation Department and the order dated 19.6.1989 passed by Divisional Forest Officer to be illegal, without jurisdiction with a consequential relief of permanent injunction restraining the defendants(respondents herein) from interfering in its project on the premise that plaintiff had decided to set up a tourist complex comprising of 16 rooms plus four honeymoon huts equipped with

high class kitchen at an approximate cost of Rs. 75 lacs in an area of 10 kanals to which another area of 18 kanals 8 marlas was to be added subsequently at village Chohal in the year 1988 on the main road i.e. Hoshiarpur-Dharamshala road. For that purpose he purchased a land and prepared a project report and ultimately in the year 1989 tenders were received and after negotiations work was allotted to M/s National Builders, Sodhal Road, Jalandhar for construction. It was averred that the letters aforementioned issued by the Irrigation Department and the Forest Department were the outcome of a vengeance and rancour, for the hotel building was located near the central line of spill way of the proposed Chohal Dam for which the department had completed the investigation. The Executive Engineer was requested to change the said proposal but the same was rejected on 17.4.89 and by that time the ground floor of the hotel building had already been commissioned. The action of the department for stopping the work was without jurisdiction. The firm approached the Executive Engineer with the suggestion that no such order could be passed. The Executive Engineer being annoyed with this suggestion wrote a letter dated 19.6.89 to the Forest Department to take action against the plaintiff firm under the Forest Act. Then Divisional Forest Officer, vide letter dated 19.6.89 directed the plaintiff to stop the work. It is against that direction the aforementioned suit was filed.

Defendants No. 1, 3 and 4 namely State of Punjab, Secretary to Government of Punjab, Union of India through Secretary to Government of India/Ministry of Environment and Department of Forest and Wild Life filed a joint written statement whereas defendant No.2 filed a separate written statement. It was stated that the land where construction was to be carried

out was covered under the provisions of Section 4 of the Land Preservation Act of 1990 i.e.under the Notification dated 12.12.1992. It was further averred that only one kanal of land was an old abadi area and the plaintiff was allowed to raise construction thereon. The Divisional Forest Officer, Hoshiarpur served a notice on the plaintiff on receipt of the letter from the Executive Engineer as the plaintiff firm started construction of retaining walls and thus disturbed the soil on steep slopes.

The trial Court, on the basis of pleadings of parties, framed the following issues:-

1. Whether the order dated 28.3.89 vide letter No. 672-74 passed by Executive Engineer Jansuri is illegal, void and without jurisdiction?OPP
2. Whether the order passed by Divisional Forest Officer vide letter No. 884 dated 19.6.89 is illegal, void and without jurisdiction?OPD
3. Whether no legal and valid notice u/s 80 CPC has been served upon the defendant?OPD
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiff has no locus standi to file the present suit?OPD
6. Whether the suit is barred as per provisions of Section 21 of the Punjab Land Preservation Act, 1900?OPD
7. Whether the plaintiff is entitled for the injunction as prayed for?OPP
8. Relief.

The trial Court, on the basis of letter Ex.P10 written by the Executive Engineer directing the plaintiff firm to stop construction, held that nothing comes on the record to prove that the land on which the plaintiff

was going to raise construction earlier was purchased vide sale deeds Ex.P3 to P-5 as reflected in the Jamabandi Ex.PX was acquired by the Government under the Land Acquisition Act or under the Punjab Land Preservation Act, 1900. Rather the number of notification had wrongly been mentioned whereas it was 643 of 12.12.1902. Vide said notification the provisions of Punjab Land Preservation Act, 1900 were extended to the area as mentioned in the schedule and a part of the village Chohal was also included. Thus, a part of village Chohal was covered by the said notification and not the whole village. It also noticed that there was nothing on the file to show that the site in dispute fell within the area covered by the said notification. The trial Court also took into account the notification dated 25.3.1988 vide which provisions of Punjab Land Preservation Act had been extended to some areas and some area of village Chohal was also covered but failed to point out that the place where the plaintiff firm was going to raise construction was covered under the said notifications. The trial Court further held that the area in suit was a reserved forest and, therefore, the provisions of the said Act are not applicable and decreed the suit. The Lower Appellate Court reversed the finding holding therein that it was a forest land, therefore, no construction could be raised. It also considered the provisions of both the notification dated 25.3.88 and 5.11.1997 to form an opinion that once the notification was issued in the year 1997 the area in question as per the notification was brought under the provisions of the Act. It was noticed that the entire area of the village was 2223 acres, 1038 acres was reserved under the Punjab Land Preservation Act, 346 area was reserved under the Indian Forest Act, 1980 and the remaining area of 839 acres was reserved vide notification Ex.D1.

Mr.Swaran Singh, learned senior counsel assisted by Mr.Chetan Goel, learned counsel appearing on behalf of the appellant submits that the judgment of the Lower Appellate Court is not sustainable in the eyes of law, for the department had failed to connect the land with the hotel. According to him, the Lower Appellate Court's finding qua the entire village Chohbal being covered under the notification Ex.D1 is incorrect. This notification was for a period of 20 years., To cover the entire area, another notification dated 5.11.1997 was published wherein “the balance area to be notified” has been made to be read as “balance area notified” thus making it crystal clear that the balance area would deemed be notified from the date when this notification has been issued. The Lower Appellate Court was totally swayed away within the findings of the Hon'ble Supreme Court in Hindustan Oil Mills Ltd. and another v. Special Duty Collector(Land Acquisition), AIR 1990 SC 731 and Gian Chand Kalra v. State of Haryana and others, 1996 PLJ 670 and did not advert to the documentary evidence on record. A suit is always dealt with as per the contents of pleadings in view of the provisions of Order 6 Rule 2 CPC. He further submits that no notification under Section 4 of the Act could be issued unless the area of the entire village was reserved under Section 3 of the said Act. The notification dated 25.3.1988 was only for a period of 20 years and it has not come on record that the period was further extended. He referred to the statement of Paramjit Singh, Patwari Halqa(PW3) who stated that there was no entry in their record which showed that any area of Chohal came under Section 4 or 5 of the Land Preservation Act and Forest Act. It was thus prayed for setting aside the judgment and decree of the Lower Appellate Court by affirming that of the Additional Senior Sub Judge.

Learned AAG reiterated the stand as taken in the written statement and submitted that there is no illegality or perversity in the judgment of the learned Lower Appellate Court and the appeal of the appellant deserved to be dismissed.

I have heard learned counsel for the parties and have gone through the entire evidence on record with the assistance of learned senior counsel and am of the view that there is force in the arguments of learned counsel for the appellant. While issuing notice of motion this Court had also stayed the demolition. The question to be seen is as to whether the applicability of the notification in view of Sections 3, 4 and 5 of the Punjab Land Preservation Act, 1900 is to be made. Reference has been made to a decision of the Hon'ble Supreme Court in B.S.Sandhu v. Government of India and others 2014(12) SCC 172 wherein the matter decided by this Court holding the area to be falling in the forest area i.e. PLPA was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court, after noticing the facts and the judgment in T.N.Godavarman Thirumulkpad v. Union of India, (1997) 2 SC 267, held that the Forest(Conservation) Act, 1980 was enacted with a view to check further deforestation and was to apply to all forest irrespective of the nature of ownership or classification thereof. For bringing the area under the PLP Act, the Government is liable to refer to the land surplus before enactment of the said Act. Para 16 of the aforementioned judgment reads as under:-

“16. In fact, the High Court failed to appreciate the meaning of ‘forest’ and ‘forest land’ in Section 2 of the Forest (Conservation) Act, 1980 as given by this court in the order dated 12.12.1996 in the case of T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra). The relevant portions of the

order dated 12.12.1996 of this Court in the case of T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra) on the meaning of the words 'forest' and 'forest land' is extracted hereinbelow: “

4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.”

The underlined portion of the order dated 12.12.1996 in the case of T.N.Godavarman Thirumulkpad v. Union of India & Ors. (supra) would show that the Forest (Conservation) Act, 1980 was enacted with a view to check “further deforestation” and was to apply to all forest irrespective of the nature of ownership or classification thereof. Hence, Section 2 of the Forest (Conservation) Act, 1980 puts a restriction on further deforestation of ‘forest land’ and would apply to any land which at the time of enactment of the Forest (Conservation) Act, 1980 was ‘forest land’ irrespective of its classification or ownership. This is exactly the view taken also by the CEC in its recommendations dated 10.09.2003 in I.A. 727 in T.N.Godavarman’s case (W.P. [C] No.202 of 1995). Paragraph 8 of the recommendations dated 10.09.2003 of the CEC in I.A. No.727 is extracted hereinbelow:

“8. After examining the submissions made by the applicant, affidavit filed by the State Government of Punjab and the ‘No Objection’ give by MoEF, the CEC is of the view that deletion of areas, which were under cultivation/habitation prior to 25.10.1980, i.e. enactment of the FC Act, would not be against the spirit of the FC Act, and this Hon’ble Court’s order dated 12.12.1996, if such areas were included in the ‘list of forest area’ on technical reasons alone. However, the areas closed under Section 4 of the PLPA are recorded as ‘forest’ in the Forest Department’s records for the last 40-50 years. This Hon’ble Court by order dated 12.12.1996 has held that areas recorded as ‘forest’ in Government records are forest for the purpose of the Section 2 of the FC Act. It would therefore be necessary to obtain prior approval of the Central Government under Section 2 of the FC Act, for deleting such areas from the “list of the forest area” after following the procedure as laid down in the Forest (Conservation) Rules, 1981, and the guidelines issued by the Central Government for implementation of the said Act. Irrespective of the merits of the case, it would not be appropriate to allow deletion of such area from the ‘list of forest area’ without following the procedure as laid down in the Forest (Conservation) Rules, 1981, and the guidelines issued by the Central Government for implementation of the said Act. Irrespective of the merits of the case, it would not be appropriate to allow deletion of such area from the ‘list of forest area’ without following the prescribed procedure and provisions of the Forest (Conservation) Act.”

Thus, what the High Court was called upon to decide is whether the land on which the Forest Hill Golf and Country Club of Col. B.S. Sandhu was situated was forest land as on 25.10.1980 irrespective of its classification or ownership. This is a factual question and the High Court should have decided this factual question on the basis of Government records as on 25.10.1980 and other materials filed before the High Court, but the High Court has instead decided this question by reference to the provisions of the PLP Act, 1900 and the records of the Forest Department in which the land was shown to be under the Forest Department because of the fact that the land was closed under the PLP Act, 1900 several decades before the enactment of the Forest (Conservation) Act, 1980. Moreover, by recording a blanket finding that all land in village Karoran, District Ropar, was ‘forest land’ for the purpose of Section 2 of the Forest (Conservation)

Act, 1980, the High Court has affected the legal rights of several villagers, agriculturists, farmers, shop owners, inhabitants of village Karoran, District Ropar, who were carrying on their respective occupations on their land even before the enactment of the said Act on 25.10.1980. In our view, the High Court should have been very careful before recording findings which affect the property rights of persons protected by Article 300A of the Constitution.”

In the present case no evidence has come on record as to whether the land record was ever referred to or not much less notification under Section 3. Notification under Section 4 could be issued preceded by Section 3 Notification. Now the point to be determined is whether the subsequent notification dated 05.11.97 i.e. corrigendum notification or notification dated 25.3.88(Ex.D1) where it was mentioned that balance area to be notified was substituted whether it would relate back to the notification of 1988 or 1997. The notification cannot take retrospective effect unless and until it is specifically mentioned. In my view the respondent-department had no jurisdiction to stop the construction. It has been pointed out the dispute is only with regard to the raising of construction at the site. Mr.Swaran Singh has further informed that his client will not raise any further construction in case area is under the PLP Act.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed

under Section 100 of Code of Civil Procedure and decision thereof could be without framing substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **"Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others"** 2001(4) SCC 262, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **"Pankajakshi 's case"** (supra) reads thus:-

*"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled." [at paras 27 - 29]"*

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of*

India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons I intend to hold that the finding of the Lower Appellate Court below was not based on the preponderance of probability, the same is set aside and that of Trial Court is restored.

Appeal stands allowed.

(AMIT RAWAL)
JUDGE

23.02.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No