

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

RSA No.1613 of 2013

Date of decision: May 16th, 2018

Kuldeep Kaur and others

....Appellants

Versus

Punjab State and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate
for the appellants.

Mr. V.G. Jauhar, Senior DAG, Punjab.

RAJ SHEKHAR ATTRI, J.

The agrarian society in this part of country always remained distressed, sometimes due to atrocities of their money lenders/creditors and sometimes by the apathetic attitude of the State. In the case in hand, the plaintiffs/appellants had fallen prey to the arbitrariness, unfairness and barbarous policies of the State.

The moot question which arises for determination is as to whether the State can acquire or possess the land of a citizen without following the due process of law or procedure of acquisition and without the payment of compensation to the concerned landowners.

Undisputedly, the plaintiffs/appellants and their forefathers are/were the absolute owners of the land in dispute, which is part of their agricultural holding. But the State had constructed the road thereon few decades ago. The land was appropriated by the State without making any payment or compensation to the land owners nor any procedure was followed as prescribed under the Land Acquisition Act, 1894.

Instant suit has been filed by the plaintiffs for possession of the land measuring 17 kanals 18 marlas as per jamabandi for the year 1997-98 and they also sought mandatory injunction directing defendants to pay compensation/cost of the abovesaid land measuring 17 kanals 18 marlas at the present market value.

The case of the plaintiffs is that the possession of defendants over the suit land is permissive and the defendants are licensee thereon. The respondents had raised construction of the road in an arbitrary manner. But now plaintiffs seek the return of their land and thus, the license stands revoked.

The State has contested the suit, mainly on the ground, that the road was constructed more than 50 years ago and plaintiffs or their predecessors-in-interest never raised any objection, as such, the State has become the owner by way of adverse possession and the claim of the plaintiffs is barred by rigours of limitation.

It has been specifically added in the written statement as under:-

“That the suit of the plaintiffs qua the relief of possession mandatory is injunction, as allegedly demanded in the amended plaint, hopelessly time barred because as per records of the answering defendants, a Pacca Road from Tarn-Taran to Manochahal-Shabajpur, was got constructed by the P.W.D. Department in the year 1956-57 and since that period, the same is running smoothly without any kind of hindrance and till the filing of the present suit, neither the plaintiffs nor any of their fore-fathers had raised any objection, representation or claim regarding the possession or compensation and as such present relief as allegedly claimed by the plaintiffs at this belated stage, after more than 50 years, is barred by the law of limitation and

the same deserves to be dismissed on this sole ground alone.

That the plaintiffs have no locus standi to file present suit against the defendants, because, the land in question was offered by the P.W.D. Department by the predecessor/fore-fathers of the plaintiffs with their own sweet will and without any pressure of any kind for the purpose of noble and common cause of construction of pucca road and at that time, they had never made any such alleged demand of compensation or to take back the possession of the suit land, thereafter, from the defendants department.

That the land in question has already been become the ownership the defendants department by way of adverse possession because the same was taken into possession by the P.W.D. Department as per verbally consent and own sweet will made by the predecessors/fore-fathers of the plaintiffs in the year 1956-57 and therefore, now this belated stage, the plaintiffs have also lost their any kind of right, interest or title over the suit land and thus the present suit is also liable to be dismissed on this score alone.”

By replying the plaint on the merits, it has been further added,

as under:-

“... The predecessor/fore-fathers of the plaintiffs, to the P.W.D. Department in the year 1956-57 with their verbally consent and own sweet will and without any pressure from any kind and thereafter, the defendants department had got constructed a pacca road on the land for a noble and common cause. Since then none had raised any objection, representation claim for getting back the possession of the same or for the grant of compensation from the defendants, till the filing of the suit. Hence, the land in question has become the ownership of the defendants department by way of adverse possession and the plaintiffs have no concern, interest, right or title over the same, as alleged in this para.”

Thus, State claims ownership of land on the basis of adverse possession. However, it is not disclosed on which date the road was constructed and only approximate year 1956-57 of the construction has been given in the plaint. No sanctioned plan or any document with regard to date or year by the State has been placed on record. Paradoxical plea has also been raised that the predecessor of the plaintiffs have offered their land and road was constructed with their consent.

The plaintiffs filed replication while denying the preliminary objections as well as reply on merits and reiterated the averments made in the plaint.

From the pleadings of the parties, following issues were framed:-

- 1) Whether the plaintiffs are owners of the suit land? OPP
- 2) If issue No.1 is proved, then whether the plaintiffs are entitled to possession of the suit land? OPP
- 3) Whether the plaintiffs are entitled to compensation in the alternative? OPP
- 4) Whether the Civil Court has got jurisdiction to entertain and try the present suit? OPP
- 5) Whether the suit in the present form is not maintainable? OPD
- 6) Whether the plaintiffs are guilty of suppressing the true facts? OPD
- 7) Relief.

Learned trial court has afforded adequate opportunities to both the parties to adduce evidence. In order to prove his case, plaintiff No.1 herself stepped into witness box as PW1 and examined Puran Singh as PW2, Gurnishanbir Singh as PW3 and proved on record Sajra Aks Ex.P1, Ex.P2, notice Ex.P3, receipts Ex.P4, Ex.P5, copy of Khasra Girdawri Ex.P6, copy of jamabandi for the year 1997-98 Ex.P8, copy of jamabandi

for the year 1992-93 Ex.P9, copy of jamabandi for the year 1977-88 Ex.P10, copy of jamabandi for the year 1982-83 Ex.P11, copy of jamabandi for the year 1977-78 Ex.P12, copy of jamabandi for the year 1967-68 Ex.P13, copy of jamabandi for the year 1972-73 Ex.P14, reply of application by XEN PWD, Amritsar Ex.P15, reply/reference by Secretary, Punjab Govt. Ex.P16, copy of notice dated 27.08.2003 Ex.P17, certified copy of statement of Naib Tehsildar, Lakhwinder Singh Ex.P18, copy of order passed by the appellate court Ex. P-19, original reply to the notice Ex.P-20 and letter of Deputy Commissioner, Tarn Taran Ex.P-21. On the other hand, defendants/respondent examined Inderjit Singh, Sub Divisional Engineer as DW1.

On appreciation of evidence by learned civil court, it was held that the suit was barred by the period of limitation and that the State had become owner of the suit land on the basis of adverse possession. Resultantly, the suit was dismissed.

The plaintiffs had preferred first appeal which was also dismissed.

This court has heard learned counsel for the parties and gone through the record.

Learned counsel for the appellants/plaintiffs has contended that in the revenue record plaintiffs are recorded as owners in possession till date; the possession of State is permissive as that of a licensee, that the plaintiffs and their predecessor-in-interest had never consented to transfer the ownership of the suit land to the State; rather it is the case of defendant that the predecessors of appellants gave a consent to construct road is devoid of any merit; that nothing is placed on record with regard to

construction of the road or with regard to giving consent and it has been wrongly asserted by the State that the road was constructed in the year 1956-57 and further that State is stopped by its acts and conduct for raising such a plea. Further submitted plea of adverse possession neither permissible nor available to the respondents. In support of this contentions, reliance has been placed upon the judgment in case of *State of Haryana Vs. Mukesh Kumar and others*, 2011(4) CCC 706 (S.C.).

On the other hand, learned State counsel has vehemently contended that the State has been in continuous possession since 1956-57; that neither plaintiffs nor their predecessors-in-interest ever raised any finger of protest and that State has become owner by way of adverse possession. He has placed reliance upon the judgments in cases titled as *Khatri Hotels Private Limited and another Vs. Union of India and another*, 2011(9) SCC 126 and *Popat Bahiru Govardhane etc. Vs. Special Land Acquisition Officer and another*, 2014(1) RCR (Civil) 557.

This court has given it thoughtful consideration to the rival contentions.

As per the jamabandi, plaintiffs are recorded as owners in possession. However, the nature of the disputed land is shown as '*Gair Mumkin Sarrak*' (i.e. non cultivable being road). It is nowhere mentioned if State is owner of the suit land. Neither any entry has been made in the revenue record in the name of the State nor any entry is made if the road is constructed by the State, albeit, this is the case of both the parties that road has been constructed by the State. But the State has failed to place on record any material to establish in which year and under what scheme the road was constructed and how much amount was spent for its construction.

Even nothing has been placed on record to establish if any of the plaintiffs or their forefathers had given their consent for construction of the road. No reason has been assigned for withholding these documents which might be in possession of the State.

Surprisingly, the State has laid claim over the suit land on the basis of adverse possession. But the very concept of adverse possession is anathema and odious to settled law under the doctrine of 'due course of law'. We are forwarding towards the concept of a welfare state. The state is supposed to protect the rights, liberties and properties of its citizens and public at large. State has no right to claim ownership of property of its subjects by way of prescription. Repulsive and abhorrent concept of adverse possession cannot be relied upon by the State to deprive the valuable rights of individuals/owners in an immovable property, especially when the property has been grabbed unauthorisedly and unfairly by the State. Such practices are not only contrary to principle of democratic set up of our country but also against the very spirit of our Constitution, which prescribes that no one can be deprived of his rights, liberties and property save by authority of law which means except in due course of law. Thus, the State has failed to establish if it acquired ownership by way of adverse possession.

So far as limitation is concerned, under the revenue record plaintiffs/appellants are shown owners in possession of the land in question. It is well settled law that when a landowner has been shown as an owner in possession of the land then the adverse entries made in the revenue record, does not affect his legal rights qua the ownership and possession and also the question of limitation does not arise at all. Herein

even revenue entries show the ownership and possession of the plaintiffs. There is no reference or entry in the name of the State.

Surprisingly, the State has taken a specific plea that road was constructed with the consent of the land owners. Ex.DW1 Kuldip Singh Boparai, Sub Divisional Engineer, has submitted his affidavit Ex.DW1/A wherein it is stated that the predecessors of the plaintiffs had given their consent verbally and road was constructed with their sweet-will and without any pressure. It is further added in Ex. DW1/A that metttled road was constructed for noble and common cause of the society. He admitted that in the revenue record plaintiffs are recorded as owners and no compensation was ever granted to the plaintiffs or their predecessor-in-interest.

In the absence of any record with regard to date or time of construction of the road, it cannot be inferred on the basis of oral evidence that the road was constructed in the year 1956-57.

In this view of the matter, the construction of the road in the fields of the hapless farmers by the State is an act of arbitrariness and unfairness. Thus, from this view of the matter, State has no authority to possess and grab the land of the appellants without following due procedure of law and without making payment of compensation.

The defendants/respondents have adopted a specific plea to the effect that the forefathers of the plaintiffs had never objected to the construction of a road and in this way they have consented for the same. To the mind of this court, this plea has no legs to stand. There is no document available on record if any of the predecessors-in-interest of the plaintiffs had given verbal or written consent for the construction of the

road. The State can never claim adverse possession nor it is a case of abandonment of the ownership rights by the plaintiffs or by their predecessors-in-interest over the suit property.

This court is not oblivious to the fact that before the independence, our country had remained under foreign rule continuously for more than 700 years and under the yoke of a tyrant rule. In the infamous genocide of 1919, when thousands of the innocent people of Punjab were massacred in Jallianwala Bagh (Amritsar), which had caused a great psychological impact and fear in minds of the people of Punjab and they remained depressed continuously. Thereafter, in the year 1947, during the partition of the country, the people of Punjab had suffered a great loss, agony and sufferings. All this had a psychological pressure in their minds. They developed psychological tendency to tolerate the atrocities, barbarous and unfair acts of the State. Under these circumstances, if the plaintiffs could not raise any objection with regard to the construction of the metaled road in their fields, it will not affect their property rights, especially when they are recorded as owners in possession of the suit property.

Hon'ble the Supreme Court in case *State of Haryana Vs. Mukesh Kumar and others*, 2011(4) CCC 706, has discussed in detail with regard to acquisition of land by the State without following procedure as contained in Land Acquisition Act, 1984. In that case the State has acquired land for the purpose of constructing the police lines in the State of Haryana. It took the plea that nobody ever raised objection and the State has become owners by way of adverse possession. Hon'ble the Supreme Court in Para No.26-29 has made following observations:-

“26. In a democracy, governed by rule of law, the task of protecting life

and property of the citizens is entrusted to the police department of the government. In the instant case, the suit has been filed through the Superintendent of Police, Gurgaon, seeking right of ownership by adverse possession.

27. The revenue records of the State revealed that the disputed property stood in the name of the defendants. It is unfortunate that the Superintendent of Police, a senior official of the Indian Police Service, made repeated attempts to grab the property of the true owner by filing repeated appeals before different forums claiming right of ownership by way of adverse possession.

28. The citizens may lose faith in the entire police administration of the country that those responsible for the safety and security of their life and property are on a spree of grabbing the properties from the true owners in a clandestine manner.

29. A very informative and erudite Article was published in Neveda Law Journal Spring 2007 with the title 'Making Sense Out of Nonsense: A Response to Adverse Possession by Governmental Entities'. The Article was written by Andrew Dickal. Historical background of adverse possession was discussed in that article."

Further it was observed in Para No.44 to 51 as under:-

"44. In case, the Parliament decides to retain the law of adverse possession, the Parliament might simply require adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere

12. Such an extension would help to ensure that successful claimants have lived on the land for generations, and are therefore less likely to be individually culpable for the trespass (although their forebears might). A longer statutory period would also decrease the frequency of adverse possession suits and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title.

45. Reverting to the facts of this case, if the Police department of the State with all its might is bent upon taking possession of any land or building in a clandestine manner, then, perhaps no one would be able to effectively prevent them.

46. It is our bounden duty and obligation to ascertain the intention of the

Parliament while interpreting the law. Law and Justice, more often than not, happily coincide only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious re-look is absolutely imperative in the larger interest of the people.

47. Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible.

48. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.

49. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country.

50. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.

51. In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”

The matter can be viewed from another angle also. It is a case of the respondents that the road was constructed without any order, scheme and payment of compensation to the land-owners, somewhere in the year 1956-57. At that time right to property was a fundamental right under

Article 31 of the Constitution of India as it was before 44th Amendment of 1978 i.e. original Article 31.

A classical doctrine of *Eminent Domain* gives the State unfettered power to acquire the private property. This doctrine enunciates that the government has inherent right to take and appropriate the private property belonging to individual citizens for the public use. It is offspring of political necessity. This right of the State rests upon the famous maxim- *Salus populi est superema lex*- which means that the welfare of the people or the public is the paramount law and also on the maxim *necessita public major est quam*, which means “public necessity, is greater than private”. This power is subject to limitations provided in the Constitution under the original Article 31 and new Article 300-A.

Original Article 31(1) provided that no person shall be deprived of his property except by authority of law. This means that the State had authority to take away the property of an individual but it could do so only by authority of law. Although, this Article was omitted and new Article 300-A has introduced in the Constitution which converted the right to property into a legal right by amendment 44th of the Constitution.

The word 'law' as used in Article 300-A makes it clear that the deprivation of the property can only be made by the authority of law, be it an Act of Parliament or State Legislature or a rule or statutory order having force of law, and not by an executive fiat or an order.

As per the version of State, road was constructed somewhere six decades ago i.e. prior to the 44th Amendment. At that time right to property was a fundamental right. Thus, the grabbing of the property of the plaintiffs was unconstitutional and illegal. Even after omitting of Article 31

by way of 44th Amendment, the right to property of the plaintiffs does not ceased to exist and still the same is available as a constitutional right.

Viewing from all the angles, this court is of the view that the construction of road in the agricultural lands of the poor farmers in an unfair and arbitrary manner was absolutely illegal and it deprive the plaintiffs of their rights to the property. In this view of the matter, the State has no concern with a suit property and it cannot claim right of ownership thereon.

The precedents placed on record by the learned State counsel are distinguishable on facts and *ratio decidendi* laid therein is not applicable to the facts of the case.

On the analysis of the evidence, this court is of the view that the State has no authority to grab the property of a citizen without adopting due procedure of law and by following the provisions contained in the Land Acquisition Act. Therefore, the appellants are also entitled to seek possession of the suit land and alternatively to seek compensation.

Learned courts below failed to appreciate the evidence available on record properly and wrongly gave finding that the defendants had become owner of the suit land by way of adverse possession. Both the courts below also failed to take notice that no material was placed on record with regard to the date or time when road was constructed; that even no scheme was chalked out by the defendants to raise a road in the agricultural lands of the plaintiffs, equally, there is not an iota of evidence if the plaintiffs or their predecessors-in-interest had given consent for carving a road in their lands. Rather, oral evidence adduced by the defendants is self-contradictory and not acceptable. Thus, the findings of the learned trial

court to this effect are hereby *set aside* and reversed.

Consequently, the appeal is accepted and impugned judgments and decrees are *set aside*, resultantly, the suit of the plaintiffs stands decreed by holding that they are the owners of the suit land and thus, are entitled to the vacant possession thereof, albeit, the defendants are hereby given an option to take a decision, within a period of three months from the date of receipt of copy of the judgment, if they required the land in question, in that event, they are directed to pay compensation to the plaintiffs in accordance with law. However, in case the State does not require the suit land, then its vacant possession, after removing the material laid thereon, be handed over to the plaintiffs after the period of three months.

Decreed accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

May 16th, 2018
m. sharma

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