

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

RSA No.3375 of 2013 (O&M)

Date of Decision: November 8, 2019

Estate Officer, Excise Area and another

...Appellants

Versus

Capt. Amrinder Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vinod S. Bhardwaj, Advocate
for the appellants.

Mr. Madhu Tewatia, Advocate with
Mr. R.D. Gupta, Advocate
for the respondents.

JAISHREE THAKUR, J.

1. This is a regular second appeal that has been filed by the appellants-defendants (henceforth called 'the appellants') seeking to challenge the judgment and decree dated 28.08.2009 passed by the lower court, decreeing the suit of the respondents-plaintiffs (henceforth called 'the respondents') as well as judgment and decree dated 17.11.2011 passed by the first Appellate Court whereby, the appeal filed by the appellants stood dismissed. Along with the appeal, an application has been filed seeking condonation of delay of 513 days in filing the appeal.

2. Briefly, the facts are that the appellants herein issued notice No.ESTO/99/11 dated 23.12.1999 to the respondents in respect of Kothi

No.123-B situated on Staff Road/Lawrence Road, Ambala Saddar, Ambala Cantt. claiming that the suit property under GLR (General Land Register) Survey No.267, Ambala Cantt. was held on '*Old Grant*' terms as contained in GGO (Governor Generals Order) No.179 dated 12.09.1836. It was further claimed by the appellants that the respondents have violated the terms and conditions of the grant by way of unauthorized construction and by increasing the plinth area, as such, the Government was entitled to resume the suit property. Upon receiving the said notice from the appellants, the respondents herein instituted a civil suit seeking the relief of declaration and permanent injunction, while claiming that the respondents are owners of the suit property, which was purchased by Her Highness Florance Gretude, Maharani of Patiala vide conveyance deed dated 10.10.1894, on the basis of which she became absolute owner of the same without any let and hindrance of anybody including the Govt. of India and after her death, His Highness Maharaja Yadwinder Singh became its absolute owner. It was averred that the suit property was never held on any terms and conditions and was never an '*Old Grant*' as claimed by the appellants.

3. In the civil suit, exhaustive grounds were taken for setting aside the notice. It was further submitted by the respondents that the impugned notice was liable to be declared illegal, unauthorized etc. as the Estate Officer, Excised Area, Ambala Sadar had no valid authority to issue it, as it could not be issued without the permission of the Defence Minister, as per the rules and regulations of the Cantonment Code, Leases and Old Grants. It was further alleged that the Central Government never delegated the powers

to the Haryana Government to act under GGO No.179 of 1836 nor would any such powers be even exercised by the Haryana Government or its officers. The Haryana Government is not the owner of the suit property. There was no '*Old Grant*' and its copy was never supplied to them with the notice. It was pleaded that the alleged '*Old Grant*' as sought to be relied upon by the government was not signed either by the Maharaja of Patiala, Maharani of Patiala or the original owner. It was claimed that there is no change of purpose or unauthorized construction and plinth area was never increased. The N.A.C., Ambala Sadar, Municipal Committee, Ambala Sadar sanctioned mutation in the name of the respondents, which shows that they are the absolute owners of the suit property. It was stated that the alleged GLR record of the appellants is not valid, authentic or correct and is, therefore, not binding on the respondents. It was claimed that neither the Central Government nor the State of Haryana have been shown as owners in any authenticated record nor the conditions of the Excise Agreement dated 05.02.1977 have not been fulfilled by the Haryana Government.

4. It was further submitted by the respondents that the GGO No.179 of 1836 was meant for Bengal Army and never made applicable to Cantonment of Ambala under any government notification. It was averred that under the GGO No.179 of 1836, the land can be resumed either for defence purposes or public purposes, however, no such requirement has been mentioned in the impugned notice. Even in the impugned notice, no document has been referred to showing the proof of title by the government, as such, the GGO No.179 dated 12.09.1836 is not applicable to the suit property. It was pointed out that the suit property is not subject matter of a

grant registered under clause (5), as such, it cannot be resumed under clause (6) because existence of a registered grant and proof thereof, is a mandatory pre-condition. It was further averred that in view of the admission made by the Solicitor General of India on behalf of Union of India in ***Appeals No.609-11 and 613-18 of 1980***, titled as ***'Union of India vs. P.T. Anklesaria and others'***, decided on 04.08.1998, if the government wants to dispossess the respondents, the ordinary remedy of civil suits should be adopted. It was stated that the Army Regulation contained in GGO 179 of 1836 stood superseded or repealed after coming into force of the Land Acquisition Act, the Cantonments (House Accommodation) Act of 1923 and Cantonment Act, 1924. It was further claimed that the Government of Haryana cannot resume the suit property by giving one month's notice, as the Government of Haryana does not possess any such right to resume the suit property. It was further averred that the alleged GLR was prepared in Ambala Cantonment simply on assumptions, conjectures and surmises after 103 years of the establishment of Ambala Cantonment. It was specifically denied that the suit property was held by the respondents and their predecessors as an 'Old Grant' under the terms of alleged GGO No.179 of 1836.

5. Upon notice, the appellants appeared and filed their written statement by taking the preliminary objections regarding maintainability of suit etc. On merits, it was denied that the respondents are absolute and full owners of the suit property or that the suit property is free from all encumbrances. It was submitted that as per Govt. Policy dated 23.07.1959 regarding evacuee property, proprietary rights of the Govt. would remain

unaffected. It was claimed that the impugned notice is valid, justified and has force in the eyes of law, as the appellants have been authorized by the State of Haryana to issue notice vide notification. It was stated that the Govt. of India had transferred the proprietary rights of the land of the excised area to the State of Haryana vide excision agreement dated 05.02.1997, which has not been challenged by any resident of the excised area. It was stated the respondents have admitted the title of the government in their admission deed. It was submitted that as per the GLR, ownership of the suit property has been shown in the name of the Govt. of India and the nature of the holders rights has been recorded as 'Old Grant'. It was alleged that the respondents were given only occupancy rights and they have violated the terms and conditions of the grant by way of unauthorized construction and by increasing plinth area. The suit property stood transferred in the municipal record, which was meant only for tax purposes. It was stated that the Govt. of Haryana vide its notification No.8-275-80 designated Estate Officer for this specific purpose and to issue the notice of resumption. It was claimed that the GGO No.179 of 1836 is very much applicable to the excised area of Ambala Cantt. being a part and parcel of Union of India and the same has been maintained according to the rules of Cantonment laws. In their written statement, the appellants further submitted that in continuation of GGO No.179 of 1836, the Govt. of India introduced its new land policy on 15.11.1976, in which, Govt. of India has given guidelines to deal with the cases of breach of conditions of the '*Old Grant*' lands. It was claimed by the appellants that the admission deed was tendered by the respondents in the office of Municipal Committee, Ambala

Sadar and the same is binding upon them. It was averred that the impugned notice is only a show cause notice, which was issued on the directions received from the Financial Commissioner and Secretary of Haryana State vide letter dated 10.12.1999. All the grounds taken in the civil suit by the respondents challenging the impugned order were denied in toto.

6. Replication to the written statement was filed. From the pleadings of the parties, issues were framed and evidence was led by both the parties. On appreciating the evidence, the lower court decreed the suit of the respondents, which decision was upheld by the first Appellate Court in appeal. Now judgments and decrees passed by both the courts below have been challenged in this regular second appeal.

7. Mr. Vinod S. Bhardwaj, counsel appearing on behalf of the appellants argues that the courts below have failed to appreciate the facts and evidence brought on record. It is submitted that execution of the admission deed by the respondents is an admitted fact, as such, on the failure of the respondents to prove their ownership by the conveyance deed as claimed, the notification of the excision agreement dated 05.02.1977 established that the respondents were not owners of the suit property. It is contended that the courts below have failed to appreciate that copy of the GLR Ex.D1 is *per se* admissible by virtue of provisions of Section 289 of Cantonment Act. It is further argued that there is no documentary evidence to prove the title of the suit property in favour of the respondents and no evidence was led by the respondents to prove that the suit property is a private property. It was also contended that the courts below have relied upon previous litigation between the private parties, so as to conclusively

draw a presumption as regards ownership in favour of the respondents. Regarding the application seeking condonation of delay in filing the appeal, it is argued that for the purpose of filing the regular second appeal vide its order dated 12.12.2011, the competent authority ordered to engage an attorney and the file was handed over to the dealing clerk namely Jai Bhagwan, who eventually retired on 31.12.2011. It is contended that owing to the retirement of said dealing clerk, further proceedings in the matter, which were entrusted to him, could not be brought to the knowledge of the appellants, and the said fact came to light when the subsequent incumbent namely Surinder Singh (Lease Clerk) joined in the month of March 2013. It is submitted that the appellants are pursuing separate departmental proceedings against the said delinquent employee namely Jai Bhagwan, Dealing Clerk (Retd.) and a show cause notice dated 27.11.2018 has been issued to him. It is argued that delay in filing the appeal was not intentional and has occurred due to the above-said reason, as such, delay in filing the appeal ought to be condoned. In support of his contentions, he relies upon judgments rendered in *N. Balakrishnan vs. M. Krishnamurthy, 1999(2) RCR (Civil) 578* and *Executive Officer, Antiyur Town Panchayat vs. G. Arumugam (D) by LRs, 2015(2) RCR (Civil) 337*.

8. Per contra, Ms. Madhu Tewatia, Advocate appearing on behalf of the respondents vehemently opposes the arguments raised by counsel for the appellants. It is argued that the both the courts have, after considering all the material on record, rightly decreed the suit of the respondents. It is contended that the arguments, so addressed by counsel for the appellants, have been dealt with in detail by the courts below and no ground is made

out to interfere with the concurrent findings returned by them. So far as question of delay in filing the appeal is concerned, counsel for the respondents argues that the instant appeal is hopelessly barred by period of limitation. The appellants have failed to show or substantiate sufficient cause warranting condonation of exorbitant delay of 505 days in filing the appeal. It is contended that nothing has been placed on record to show that orders to file the second appeal and engage a counsel had been issued on 12.12.2011. It is also contended that the date on which the case was handed over to the dealing clerk, has not been mentioned in the application. It is submitted that the story put forth by the appellants even in this second application seeking condonation of delay (previous one being withdrawn with the liberty to file fresh one with better particulars) is false and fabricated. It is argued that negligence of a party constitute a sufficient cause to dismiss the application seeking condonation of delay. In support of his arguments, counsel for the respondents relies upon judgments rendered in *State of Rajasthan vs. Nav Bharat Construction Co., (2005) 11 Supreme Court Cases 197*, *Amalendu Kumar Bera and others vs. State of West Bengal, (2013) 4 Supreme Court Cases 52* and *Postmaster General and others vs. Living Media India Limited and another, (2012) 3 Supreme Court Cases 563*

9. I have heard counsel for the parties and gone through the case file and judgments as relied upon.

10. The lower court, while decreeing the suit of the respondents, has held that the impugned notice dated 23.12.1999 Ex.P2 is wrong, illegal, arbitrary and mala fide and, therefore, set aside the same. It has been further

held that the respondents are owners in possession of the suit property and as such, restrained the appellants herein from interfering over the suit property. The findings of the lower court were affirmed in appeal by the first Appellate Court.

11. In the instant case, impugned notice dated 23.12.1999 Ex.P2 issued by the appellants was challenged by the respondents on number of grounds. In the impugned notice dated 23.12.1999 Ex.P2, it was claimed by the appellants that the suit property was held by the respondents on '*Old Grant*' terms as contained in the GGO No.179 dated 12.09.1836, under which the Government is entitled to resume the suit property at any time on giving one month's notice and on payment of value of the authorized building. It was further claimed by the appellants that the land policy formulated by the Government of India, Ministry of Defence, stipulates that the sites so held on resumable tenure would be subjected to the resumption, under certain circumstances, as contained in the impugned notice.

12. Section 110 of the Indian Evidence Act, 1872 provides for burden of proof as to ownership, which says that "*when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.*" In the present case, the respondents claimed themselves to be owners of the suit property and admittedly, they are in possession of the same. It is the appellants, who are denying that the respondents are absolute and full owners of the suit property or that the suit property is free from all encumbrances. So, as per Section 110 of the Indian Evidence Act, the onus to prove that the respondents are not owners of the

suit property lies on the appellants herein. In their written statement, the appellants took the stand that the respondents had only occupancy rights. The appellants are laying their claim on the basis of Ex.D1, which is an extract from the General Land Register dated 04.02.2000, in which Government of India has been shown as landlord of the property and nature of the holder's rights has been shown as '*Old Grant*'. The appellants further relied upon notification dated 05.02.1977 Mark-D, as per which the proprietary rights of Government of India in the Ministry of Defence in all the properties in the excised area were transferred to the Government of Haryana and the proprietary rights of the Cantonment Board in respect of the excised area were transferred to the Notified Area Committee, subject to the further conditions contained therein. Keeping in view the notification dated 05.02.1977 Mark-D and letter dated 5.2.1977 Mark-C, in column No.9 of the Extract from the General Land Register Ex.D1, holder of occupancy rights should have been shown in the name of the respondents and landlord of the same should have been shown the State of Haryana, however, entries contained Ex.D1 are wrong. In the case of ***Maman Singh vs. Emperor, AIR 1935 Lahore 588(b)*** and ***Phiroze Temulji Anklesaria vs. H.C. Vashistha and others, AIR 1980 Bombay Page 9 at page 10 (F)***, it was held that entries contained in the Extract from the General Lands Register cannot be relied upon. So all these documents are unable to discharge the burden of proof lies on the appellants.

13. So far as the impugned resumption notice dated 23.12.1999 Ex.P2 is concerned, the grounds for issuing the same are change of purpose, unauthorized construction and increase in plinth area whereas, the

appellants have not produced on record any '*Old Grant*' or any terms and conditions thereof or any survey report in support thereof. As regards the admission deed Mark-A, as relied by the appellants is concerned, first of all original of the same has not been produced on record. Further, in the similar circumstances, in the case of ***Union of India vs. Shri Purushotam Tandon and another, 1987 HP 162 (i)***, the Apex Court held that the alleged admission was made after the dispute had started and it is inconceivable that the respondents would have made any admission acknowledging the title of the Government, when the respondents are repeatedly asserting that they are owners of the land. More so, conveyance deed dated 10.10.1894 Ex.P12/Ex.PW3/1 reflects that the suit property was purchased by Florance Gretude, Maharani of Patiala free from all encumbrances and she was the absolute owner of the suit property without any hindrance from any side including the Govt. of India and it was never held on any terms and conditions of any '*Old Grant*' and after her death, Maharaja Yadvinder Singh became absolute owner of the said property and obtained the possession of the same vide judgment dated 31.08.1962 Ex.PW3/2 and decree Ex.PW3/3. Further, the cross-examination of DW1 Jai Bhagwan (witness of the appellants) supports the case of the respondents wherein he *inter alia* admitted that in the excision letter Mark-C, Haryana State has no power of resumption; that he has no '*Old Grant*' deed with him; that he did not know the conditions of the '*Old Grant*' deed regarding Bungalow No.123; that no such order has been placed on record of the Haryana Government whereby, the Haryana Government had ordered the Estate Officer, Ambala Saddar to resume the suit property. There is no evidence

available on record to substantiate the fact that GGO dated 12.09.1836 which was promulgated at the different stations of the Bengal Army, was also made applicable for the Ambala Cantonment or that Ambala Cantonment was a station of the Bengal Army. Under these circumstances, once the appellants failed to establish on record that the suit property was an '*Old Grant*' or that they are owners of the same, the arguments addresses by counsel for the appellants are not tenable and the appeal is liable to be dismissed.

14. There is also an application seeking condonation of delay of 513 days in filing the appeal, which is strongly contested. The appellants are seeking condonation of the said delay on the ground that vide its order dated 12.12.2011, the competent authority had directed to file the regular second appeal and for this purpose, file was handed over to dealing clerk namely Jai Bhagwan, who eventually retired on 31.12.2011, due to which further proceedings in the matter could not be brought to the knowledge of the competent authority and this fact came to light when the subsequent incumbent namely Surinder Singh joined in the month of March 2013. It is also averred in the application that separate departmental proceedings have been initiated against the said dealing clerk namely Jai Bhagwan and a show cause notice dated 27.11.2018 has been issued to him. While averring these facts, the appellants claimed that delay in filing the appeal was not intentional.

15. It is settled principle that under Section 5 of the Limitation Act, length of delay is no matter, acceptability of the explanation is the only criteria. Rules of limitation are not meant to destroy the right of the parties.

The condonation of delay is a matter of discretion of the court. In the case in hand, in the application seeking condonation of delay, various averments have been made, however, there is no document appended with this application, which supports these averments. There is no order dated 12.12.2011 passed by the competent authority available on record, whereby, an attorney was ordered to be engaged. Further, there is no document available on record which shows that the case file was handed over to dealing clerk namely Jai Bhagwan or when he superannuated from the services. Similarly, no document has been produced on record as to when Surinder Singh (Lease Clerk) joined in place of said Jai Bhagwan in the month of March 2013. Likewise, no document has been produced that as to what departmental proceedings have been initiated against said Jai Bhagwan or whether show cause of notice has been issued to him. There are only bald averments that have been made in the application, without any documentary evidence in support thereof. So, the bald averments made by the appellants cannot be accepted as gospel truth. This court is of the considered opinion that, under these circumstances, no sufficient cause is made out to condone the delay. Because of this reason, the judgments as rendered by the Apex Court in the case of *N. Balakrishnan vs. M. Krishnamurthy* and *Executive Officer, Antiyur Town Panchayat vs. G. Arumugam (D) by LRs (supra)* and relied upon by counsel for the appellants, cannot be applied to the peculiar facts and circumstances of the instant case. Accordingly, there is no sufficient cause made out to condone the delay of 513 days in filing the appeal.

16. In view of the above, this court finds no illegality or perversity

in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellants-defendants, which has no merit. Further, as no sufficient cause is made out to condone the delay, the application seeking condonation of delay in filing the appeal stands also dismissed.

17. Dismissed.

November 8, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No