

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

RSA No.3932 of 2013 (O&M)

Date of Decision: November 8, 2019

Estate Officer, Excise Area and another

...Appellants

Versus

Smt. Somwanti Aggarwal (since deceased) and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Arun Jain, Senior Advocate with
Mr. Dhruv Mittal, Advocate
for respondent No.1.

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 15.01.2010 passed by the lower court, decreeing the suit of respondent No.1-plaintiff (henceforth called 'respondent No.1') 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 518 days in filing the appeal.

2. Briefly, the facts are that the appellants herein issued notice No.ESTO/99/18 dated 23.12.1999 to respondent No.1 in respect of

Bungalow No.126-B situated at Staff Road, Ambala Sadar, 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 respondent No.1 has 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, respondent No.1 herein instituted a civil suit seeking the relief of declaration and permanent injunction, while claiming that respondent No.1 is absolute owner of the suit property and it was never held on any terms and conditions and was never an '*Old Grant*' as alleged in the impugned notice. It was stated that respondent No.1 purchased the suit property for a valuable consideration from R.B. Vishan Bhagwan vide registered sale deed dated 24.09.1969 free from all encumbrances. It was averred that the suit property was never subjected to alleged GGO No.179 dated 12.09.1836 and even the predecessor of respondent No.1 held the suit property free from all encumbrances. It was pointed out that respondent No.1 even applied for mutation of the suit property and the same had been mutated in the name of respondent No.1. It was submitted that respondent No.1, after purchasing the suit property, constructed 63 shops and 08 halls and the Municipal Counsel is charging house tax over the same.

3. It was submitted that the Estate Officer/State of Haryana has no right to resume the suit property, as the same is not an '*Old Grant*'. It was averred that the suit property was earlier situated in the area of Ambala

Cantonment and was alleged to have been excluded from Cantonment Area and handed over to the State of Haryana vide a unilateral letter issued by the Central Government, which is now alleged to be an Excision Agreement. The alleged transfer was subjected to certain terms and conditions and the same does not confer any proprietorship on State of Haryana. It was stated that even in the alleged GLR, referred to by the appellants in the notice, the Union of India has been shown to be landlord and the name of State of Haryana does not figure anywhere. The Government of Haryana has no right, title or interest in the suit property and it was never held under GGO No.179 dated 12.09.1836. In fact, GGO No.179 dated 12.09.1836 was not even applicable to the Ambala Cantonment and the Ambala Cantonment was never a station of the Bengal Army. The Government of Haryana or the Estate Officer does not possess any right to resume the suit property by giving one month's notice. It was averred that the alleged GLR was prepared simply on assumptions, conjectures and surmises after 103 years of the establishment of Ambala Cantonment. It was submitted that the Cantonment Magistrate/M.E.O (Military Estate Officer) office illegally forced the various owners of the properties to give admission deeds in their favour, which was against Cantonment Land Administration Rules, 1925, thus, the admission deeds were obtained under coercion and pressure. It was claimed that the alleged GLR is not a complete and legal document, as number of columns in it are lying vacant and the same was prepared at the back of owners of the properties. No resumption can be made without prior approval of Defence Minister of the Central Government. It was stated that no defence purpose or public purpose has been mentioned in the impugned

notice. In the excised area of Ambala Sadar only Haryana Municipal Act is applicable, in which there is no provision for resumption. It was submitted that no details of alleged illegal construction, enlargement of plinth area or change of purpose have been mentioned in the impugned resumption notice. It was further averred by respondent No.1 in the plaint that as per GGO order dated 12.09.1836, the power of resumption under clause (6) is applicable only to properties, in respect of which 'Grants' have been made and registered under clause (5). A property which is not subject matter of a 'Grant' registered under clause (5) cannot, therefore, be resumed under clause (6). The existence of a registered grant and proof thereof, is thus a mandatory pre-condition for the availability and exercise of the power of resumption under the Governor's General Order dated 12.09.1836. In the civil suit, exhaustive grounds were taken for setting aside the impugned notice.

4. 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 respondent No.1 is absolute and full owners of the suit property or that the suit property is free from all encumbrances. It was submitted that a person cannot pass on any title, which he himself does not possess, as such, respondent No.1 has been enjoying occupancy rights only as shown in the GLR record. It was averred that as per General Land Register, the suit property vested in the name of Govt. of India, which was later transferred to State of Haryana vide excision agreement dated 05.02.1977. It was claimed that the ownership of the appellants has been admitted by respondent No.1 by giving admission deed

in the office of M.E.O. It was stated that the notice dated 23.12.1999 was issued on the directions from Financial Commissioner and Secretary of Haryana State vide letter dated 10.12.1999. The Estate Officer has been designated vide notification No.8-275-80 for initiating proceeding for resumption, as such, notice dated 23.12.1999 is legal and as per provisions of law. It was averred that respondent No.1 has no title or right whatsoever in the suit property. It was submitted that respondent No.1 has violated the purpose of use of the grant and plinth area has also been increased by way of unauthorized construction. It was further stated that the excision agreement has not been challenged in any court till today by any individual or public man. The Govt. of India had introduced a new land policy on 15.11.1976, in which Govt. of India has given guidelines to deal with the cases of breach of conditions. No complaint was ever made regarding taking of admission deed forcibly nor an FIR was ever lodged by any resident of excised area Ambala Cantt. against any authority for obtaining admission deed by pressure. It was pointed out that Military Estate Officer has already resumed a number of bungalows in Ambala Cantt. area on the basis of GLR record. The GGO No.179 dated 12.09.1836 is very well applicable in Ambala Cantonment as it is a part of Union of India, which governed by the British Empire by their rules and regulations prior to 1947 and the Govt. of India has adopted the same land policy for all Cantonments in India vide letter dated 15.11.1976. It was claimed that respondent No.1 has only occupancy rights over the land and title of ownership vested with the State of Haryana after the excision agreement, which never been disputed by respondent No.1 till today. All the grounds

taken in the civil suit by respondent No.1 challenging the impugned order were denied in toto.

5. 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.

6. 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 respondent No.1 is an admitted fact, as such, on the failure of respondent No.1 to prove her ownership by the sale deed dated 24.09.1969 as claimed, the notification of the excision agreement dated 05.02.1977 established that respondent No.1 was not owner 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 respondent No.1 and no evidence was led by respondent No.1 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 respondent No.1. 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*.

7. Per contra, Mr. Arun Jain, Senior counsel for respondent No.1, assisted by Mr. Dhruv Mittal, 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 respondent No.1. 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, Senior counsel for respondent No.1 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 518 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*

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

9. The lower court, while decreeing the suit of respondent No.1, has held that the impugned notice dated 23.12.1999 Ex.P5 is wrong, illegal, arbitrary and mala fide and, therefore, set aside the same. It has been further held that respondent No.1 is 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.

10. In the instant case, impugned notice dated 23.12.1999 Ex.P5 issued by the appellants was challenged by the respondents on number of grounds. In the impugned notice dated 23.12.1999 Ex.P5, it was claimed by the appellants that the suit property was held by respondent No.1 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.

11. 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, respondent No.1 claimed herself to be owner of the suit property and admittedly, she is in possession of the same. It is the appellants, who are denying that respondent No.1 absolute and full owner 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 respondent No.1 is not owner of the suit property lies on the appellants herein. In their written statement, the appellants took the stand that respondent No.1 had only occupancy rights. The appellants are laying their claim on the basis of Mark-DX, 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 Mark-A, 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. However, original general land register was not produced in the court. 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 which lies on the appellants.

12. So far as the impugned resumption notice dated 23.12.1999 Ex.P5 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, 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. Further, the cross-examination of DW1 Jai Bhagwan (witness of the appellants) supports the case of respondent No.1 wherein he *inter alia* admitted that there is no admission deed in their office and that he did not know as to in which year and on what date, the admission deed was given: that they have no deed of grant or the terms and conditions of 'Old Grant' with them: that in the letter dated 05.02.1977 no power of resumption has been given: that all the constructions have been raised in accordance with the site plan; that no survey report, as has been mentioned in the impugned notice Ex.P5, has been placed on the record. 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. There is also no evidence to show that damage of purpose involved, unauthorized construction and plinth area has been exceeded, as has been mentioned in the impugned notice Ex.P5. 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.

13. There is also an application seeking condonation of delay of 518 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.

14. 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 518 days in filing the appeal.

15. 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.

16. Dismissed.

November 8, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No