



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2040-1992 (O&M)
Reserved on: 13.11.2024
Date of decision: 27.11.2024

SMADH SARBHANJI

..Appellant

Versus

RANGE FOREST OFFICER, SEONSAR & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shvetanshu Goel, Advocate
Mr. Shrey Goel, Advocate
for the appellant.

Mr. Naveen S. Bhardwaj, Addl. A.G., Haryana.

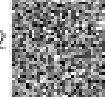
ANIL KSHETARPAL, J.

1. Factual Background:-

1.1 The plaintiff has filed this regular second appeal challenging the correctness of the judgment passed by the First Appellate Court, which in turn has reversed the judgment of the trial Court.

1.2 In the considered opinion of this Court, the following two issues require adjudication:-

- i. Whether the Government is entitled to claim acquisition of ownership based on doctrine of adverse possession?
- ii. Whether plantation of trees on a waste/un-cultivable land is sufficient to establish *animus possidendi*, which is *sine qua non* for invoking the doctrine of adverse possession?



1.3 The plaintiff, which is a religious institution, claiming to be the owner filed a suit for possession of 19 kanal and 6 marlas land based on jamabandi for the year 1985-1986. It was claimed that defendants are threatening to cut and remove the trees standing on the land.

1.4 While contesting, the defendants asserted their possession since 1958, whereas, as per the revenue record and in year 1962-1963, the Forest Department planted *Shisham* and *Eucalyptus* trees on the land in dispute. The trial Court on the basis of the pleadings culled out the following issues:-

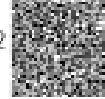
- “1. Whether the plaintiff is entitled for possession of the suit land mentioned in para No.1 of the plaint? OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present suit? OPD*
- 3. Whether no notice has been issued upon the defendants before filing the present suit? OPD*
- 4. Whether plaintiff has no cause of action? OPD*
- 5. Whether the suit of plaintiff is false and frivolous? OPD*
- 6. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD*
- 7. Whether the defendants have become owner of suit land by way of adverse possession? OPD*
- 8. Whether plaintiff has no locus standi to file the suit? OPD*
- 9. Relief.”*

2. **Evidence produced by the respective parties:-**

2.1 The plaintiff in its evidence examined its mohatmim/Mahant and produced copies of the revenue record.

2.2 On the other hand, the State of Haryana examined, Sh. Sumer Chand, Patwari, produced the revenue record and reports Ex.D-2 and Ex.D-3, to prove plantation of trees in the year 1962-1963.

2.3 The trial Court found that as per jamabandi for the year 1975-



1976 (Ex.P-4 and Ex.P-6), the suit land was recorded to be owned by '*jumla malkan*' (belong to the Proprietors of the Village) whereas its possession was with Sh. Shital Singh etc. Subsequently, as per jamabandi for the year 1980-1981, the suit land fell to the share of the plaintiff. The trial Court further found that the plantation is only on 30 acres out of total land measuring 75 acres comprised in Rectangle No.201, 202, 203. Ultimately, the suit was decreed in favour of the plaintiff (appellant herein).

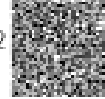
2.4 The First Appellate Court reversed the decree passed by the trial Court while heavily relying upon inspection reports prepared by the Forest Department Ex.D-2 and Ex.D-3 to prove that the plantation was carried out by the Forest Department in the year 1962-1963, when the total land was '*Banjar*' (waste land).

3. Analysis and Discussion:-

3.1 This Bench has heard the learned counsel representing the parties and with their able assistance perused the paper book along with requisitioned scanned copy of the digital record of the Courts below.

3.2 For proving acquisition of title by way of adverse possession, the party, who asserts such right, is required to prove the date on which he came into possession, the nature of his possession, whether factum of possession was known to other party, how long his possession continued and whether his possession was open, hostile and undisturbed. The reliance in this regard can be placed upon **Saroop Singh Vs. Banto, AIR 2005 (SC) 4407.**

3.3. In **Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and others, (2004) 10 SCC 65**, the Supreme Court held that every possession is



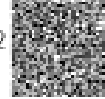
not adverse possession in law. Before invoking the doctrine of adverse possession, the Courts are required to examine the nature of the property, the nature of title vesting in its rightful owner and the kind of possession. For acquisition of title by way of adverse possession, it is to be proved that the possession commenced wrong and is maintained against lawful right.

3.4 In the matter at hand, the State has examined DW1 Sh. Sumer Chand, the Patwari of the Forest Department. He states that in the year 1962-1963, they planted trees and, thereafter, the Department is in peaceful possession of the land in dispute. He has failed to disclose when the possession was taken and what was the nature thereof. In the cross-examination, he admits that some part of suit land is already in possession of the plaintiff, whereas, the remaining is under trees plantation, however, he failed to disclose the number of trees planted in the suit land. He further states that the disputed land was acquired by the Forest Department, however, he failed to produce any evidence.

3.5 It is evident that the State has failed to prove the date when they came into possession of the property and the nature of their possession i.e. ‘whether it was hostile or not?’

3.6 It is also not proved that the factum of possession was known to the other party because previously, as per revenue record, the land was a common land of the proprietors. The property in dispute fell to the share of the plaintiff in the year 1980-1981. The State was required to prove adverse possession against the plaintiff. The suit was filed on 30.09.1987.

3.7 Moreover, mere plantation of trees is not sufficient to prove *animus possidendi*, which is *sine qua non* for claiming applicability of

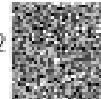


doctrine of adverse possession. The State was required to prove that possession commenced wrong and it was open, hostile and undisturbed. When trees were planted, the State of Haryana did not know about the owner of the suit land. Owner of waste land may not feel threat to his title by mere act of plantation of some trees by the State Government. Hence, the State of Haryana has failed to prove acquisition of ownership by way of adverse possession for the required period.

3.8 Moreover, it has been laid down by the Supreme Court in **State of Haryana Vs. Mukesh Kumar, (2011) 10 SCC 404**, that the State, which is protector of rights of the citizens is not entitled to claim acquisition of ownership by way of doctrine of adverse possession. In para 45, the Court held that the State being a Welfare State cannot be permitted to take a plea of adverse possession, which is extracted as under:-

“45. 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. 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.”

3.9 Similarly, in **Vidya Devi Vs. State of Himachal Pradesh and others, 2020 (2) SCC 569**, the Supreme Court once again held that the State authorities cannot deprive a citizen of their property without sanction of law because the right to property may not be a fundamental right, however, it continues to be a human right in a Welfare State and a Constitutional Right under Article 300A of the Constitution of India, which provides that no



person shall be deprived of his property save by authority of law. The relevant paras are extracted hereunder:-

“12.2 The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right 2 in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article.

12.3 To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai, wherein this Court held that:

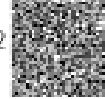
“6. ... Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.”

12.4 In N. Padmamma v. S. Ramakrishna Reddy, this Court held that:

“21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300A of the Constitution of India, must be strictly construed.”

12.5. In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors., this Court recognized the right to property as a basic human right in the following words:

“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. “Property must be secured, else liberty cannot



subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."

12.6 In *Jilubhai Nanbhai Khachar v. State of Gujarat*,⁷ this Court held as follows :

"48. ...In other words, Article 300A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation."

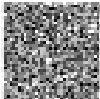
12.7 In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

12.8 The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

12.9 In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.* wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10 This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

12.11 We are surprised by the plea taken by the State before the High Court, that since it has been in



continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.”

3.10 Once again, the Supreme Court in its recent judgment titled as **State of Haryana and another Vs. Amin Lal (since deceased) through LRs and others, SLP (C) No.25213 of 2024**, has reiterated the aforesaid view.

4. **Decision:-**

4.1 Keeping in view the aforesaid discussion, the appeal is allowed. The judgment passed by the First Appellate Court is reversed and that of the trial Court is restored.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

27th November, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

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