

State of Punjab and Others

Vs

Brigadier Sukhjot Singh

Civil Appeal Nos. 1007-08 of 1992

(M. M. Punchhi, S. C. Agarwal JJ)

11.06.1993

JUDGMENT

M. M. PUNCHHI, J.

1. These two appeals at the instance of the State of Punjab, are directed against a common judgment of a learned Single Judge of the Punjab and Haryana High Court, passed in Regular Second Appeal Nos. 1719 and 1720 of 1989 and are limited in scope to the determination of title to a double storeyed building situated in a complex known as Jallowkhana in the town of Kapurthala. These appeals have arisen in the following manner.

2. The respondent herein is Brigadier Sukhjot Singh. He is the son of Maharaja Paramjit Singh and the grandson of Maharaja Jagatjit Singh in the order of primogeniture succession. The ancestry of Maharaja Jagatjit Singh is traced to Baba Jassa Sing Ahluwalia, the founder of Kapurthala State and the Ahluwalia dynasty. It is common ground that there is a complex known as Jallowkhana at Kapurthala which encompasses two historic havelis, which in the context mean palaces, going by the names Haveli Baba Jassa Singh and Nihal Mahal. Besides these two havelis, there are open spaces and other structures in the complex and the disputed one is a double storeyed building presently in the occupation of State of Punjab through its Public Works Department. The plaintiff-respondent claiming that since the possession of the State of Punjab thereon was permissive in character and in the nature of a licence, and despite his terminating the same the State of Punjab had not vacated the disputed building, he sought relief by way of suit for mandatory injunction requiring the State of Punjab to vacate the premises, and to keep its hands off from the other properties in the complex over which the plaintiff-respondent was owner in possession.

3. The State of Punjab on the other hand dispute the ownership of the plaintiff to the Jallowkhana complex and claimed that the building in dispute belonged to the Government and was being maintained by the Public Works Department at State expense since 1947. The possession of plaintiff towards any part of the buildings was denied. It was pleaded that when the princely states in this part of the country merged with the State known as the Patiala and East Punjab State Unions (PEPSU), the rulers of the merging State were required to declare their private properties, but the ruler of the Kapurthala State, however, while declaring his private properties, did not enlist the Jallowkhana complex as part of his private properties. On that analysis it was claimed that the entire Jallowkhana complex was owned by the State.

4. Since there were various pleas on both sides on locus, jurisdiction, limitation, estoppel and maintainability a number of issues were struck on the pleadings of the parties, but we are not concerned with them any more for they stand settled one way or the other so as to steer the suit to

its conclusion on title to the properties.

5. The trial court on its part partially decreed the suit holding that except the double storeyed building in occupation of the State of Punjab, the remnants in the Jallowkhana complex were owned and possessed by the plaintiff-respondent. It took the view that the State of Punjab had become the owner of the said double storeyed building by lapse of time. It viewed that there was no licence since admittedly no licence fee had ever been paid. Grounding its conclusion solely on that basis it held that even though the common entrance to the double storeyed building as well as to the palaces known as Haveli Baba Jassa Singh and Nihal Mahal through the deorhi was owned by the plaintiff-respondent, still the State of Punjab had a right of passage through it as easement. Similarly it held that the open courtyard in front of the double storeyed building as indicated in the plan, was in the ownership of the plaintiff but the defendant-State had an easement of passage over it. The court however did notice the fact that the State of Punjab had never pleaded alternatively any such easements and yet had no hesitation in the grant thereof. In the result the State of Punjab succeeded in quelling the claim of ownership of the plaintiff of the double storeyed building and it was held to be the property of the State "because of lapse of time", and other portions of the property as aforementioned were found to be subjected to easements, as spelled out earlier. The remaining parts of the complex including the two havelis were held to be in the ownership and possession of the plaintiff-respondent.

6. Two cross-appeals were filed before the District Judge, Kapurthala. The appeal of the State of Punjab was dismissed but the cross-appeal of the plaintiff-respondent was allowed. The plaintiff-respondent succeeded in having the suit decreed in entirety. The findings of the trial court on the questioned issues 5 and 8 were reversed and a mandatory injunction was issued calling upon the defendant-State to hand over the possession of the double storeyed building in dispute to the plaintiff, as well as affirming restraining the State from interfering in the possession of the plaintiff of properties in other part of the Jallowkhana complex. Obedience to the mandatory injunction was conditioned in terms that since the Government offices were functioning in the double storeyed building since long, the same may be vacated by the Government as and when suitable accommodation is made available for such offices, and till then the plaintiff and the State Government were suggested to mutually settled reasonable rent to be paid by the State Government for use and occupation till the Government vacated it.

7. Two separate second appeals were filed by the State of Punjab in the High Court but those were dismissed by means of the common judgment under appeal. At the outset notice in the special leave petitions was issued by this Court limited to the question of the double storeyed building. In the meantime parties were permitted to file additional documents as existing on the trial court file, which were filled. Leave was then granted limited to the property referred to in the notice. During the course of the hearing of the appeal, it was felt that a report be called for from the Sub-Judge, Kapurthala as to whether the deorhi, through which was the common entrance, was in possession of the State Government and whether it needed repairs. He was also required to report whether the deorhi in the main entrance to the double storeyed building in dispute or whether the main entrance to the said building was from another route. The Sub-Judge had reported that the deorhi in question is in possession of Brigadier Sukhjit Singh-respondent and it is beyond repairs. He has further intimated that presently the deorhi is not the main entrance to the double storeyed building but on site a distinct 16 ft. wide path has been provided as main entrance to the double storeyed building. The additional documents in the form of photographs of the deorhi and the site plan Ex. R-7 showing its location go to show that the entrance to the deorhi is blocked by closing its gate and knitted by barbed wire, and the main entrance to the double storeyed building shifted

perpendicularly from a cross direction. This is the fact situation.

8. The case in the courts below has proceeded on the footing that the double storeyed building is part of Jallowkhana complex. Besides, not only does the afore-depiction establish, it has also been found otherwise by the courts below that the double storeyed building was and is part of the Jallowkhana complex. It is the Jallowkhana complex that the two historic havelis, namely Haveli Baba Jassa Singh and Nihal Mahal are situated and for all these buildings there was a common entrance through a deorhi which has now fell in disuse and that now a separate passage stands provided at site to reach the double storeyed building which is perpendicularly cross to the passage from the deorhi. It is also clear that the claim of the plaintiff that the double storeyed building in occupation of the State of Punjab was part and parcel of the Jallowkhana complex stands established and that the courts below, except the trial court, have held it to be in the ownership of the plaintiff-respondent; but the trial court has held that the plaintiff-respondent had lost ownership due to the occupation of the State of Punjab "because of lapse of time". The title to the Jallowkhana complex comprising the two historic havelis and other open places and structures, excluding the double storeyed building, has been put beyond dispute and the plaintiff-respondent is held to be the owner thereof and conversely the State has been held to be not its owner. This is the effect of the limited leave granted. Thus the limited question on which this appeal survives is : Should the double storeyed building be retrieved from that complex and held to be owned by the State as held by the trial court ?

9. Mr. Kapil Sibal learned senior advocate for the appellant-State contended that firstly the double storeyed building was not part of the Jallowkhana complex, secondly even if it was so, the State of Punjab had become its owner by adverse possession, and thirdly the same was not the property of the plaintiff-respondent since it is not included in the list of personal properties of the ruler at the time of merger. Much argument before the courts below and particularly before the High Court was centred around the construction of a Farman of the ruler of the State made on 28th Magh Samvat 1981, equivalent approximately to February 13, 1925 A.D. Its original in Urdu in English alphabets followed by its English translation is given hereafter :

URDU VERSION

"Nakal az Asal mashmoola misal No. 1020 confidential record Kapurthala State.

Minjanib Jagatjit Singh Maharaj Kapurthala. Apne sab pisaraan ko apni Oudh (waqai subajat mutahidda) ki Jaidad bataur hiba hissa rasadi de chuka hoon - uske baad yeh hukum sadir kiya jaata hai keh mere baad Tikka Sahib Raja Paramjit Singh bataur huqooq waliahed meri tamam Jaidad bakaya har-kisam ka wahid maalik banega. Aur is tareh se yeh laazim hoga keh har aanewala waliahed Ahluwalia khaandan ki rawayat ke mad-de-nazar Ahluwalia khaandan ki tawarikhi hawelian waquai Kapurthala, Baba Jassa Singh Haveli aur Nihal Mahal mausooma bataur Jallowkhana ka bhi maalik was kaabiz rah Kar is imarat ki tawarikhi haisiyat aur ehtaram ko kaem rakhega, jo imarat wabasta hain, taake Ahluwalia nassal ka chiraghta-dowam is imarat mein roshan rahey. Aur is imarat ki milkiyat-wa-kaabiziyat bhi meri deegar Jaidad se elahida tassawur ki Jakar bahaq har anewala waliahed ke haq men mansoob hogi. Lihaza tahrir haza bataur yaad-daasht ke likh-kar rakh di hai keh indul haajat kaam awe. Fakat tehrir 28 Magha Samvat 1981.

Daskhat Baharroof Urdu (Jagatjit Singh)

Maharaja Kapurthala - Bamai Mohar"

ENGLISH TRANSLATION

"Copy of the original of file No. 1020, Confidential Record Kapurthala State.

On the part of Maharaja Jagatjit Singh Kapurthala. To all my sons I have already gifted, in accordance with their respective shares, my properties in Oudh (situate in United Provinces). After that it is ordained that after me Tikka Sahib (heir apparent) Raja Paramjit Singh by his right of primogeniture would become the sole owner of my entire remaining properties. In the same manner it would be obligatory on each succeeding heir apparent, keeping in view the traditions of the Ahluwalia family, to be also owning and possessing the historic havelis of Ahluwalia dynasty situated at Kapurthala Haveli Baba Jassa Singh and Nihal Mahal, known as Jallowkhana, maintaining its historic character and respect which is connected to this structure, so that the lamp of the Ahluwalia dynasty is kept alight in this structure perpetually. Further, the ownership and possession of this structure be also treated separate from my other properties, and this shall vest in favour of each succeeding heir apparent. Therefore, this writing is made and kept for record to be put to use whenever necessary.

Date of ordaining 28th Magh Samvat 1981 (13-2-1925 A.D. approximately)

Signature in Urdu Jagatjit Singh Maharaja Kapurthala and Seal."

10. We have done the exercise to translate the Farman ourselves, for we found that the translations done by the courts below at various points, were not happily worded. Urdu, for decades, was once the official language in that part of the country and had remained court language, even after independence, till State language took over. We thought it appropriate to put the matter in the right perspective, since the Farman had to be read as a whole and then construed, to meet the challenge of Mr. Sibal.

11. Now it is beyond doubt that the ruler of an Indian State was in the position of a sovereign and his command was the law. His Farman had the strength and potency of a law made by an elected legislature and his acts, administrative or executive, were sovereign in character. The Farman above referred to has necessarily to be imported with those attributes. When read as a whole it reveals three important factors :

(1) The historic havelis namely, Haveli Baba Jassa Singh and Nihal Mahal, which had commonly come to be known as Jallowkhana was not those buildings alone but the entire structure or complex containing those palaces, appurtenances, and open spaces as part of its fortification, otherwise Jallowkhana would not have been referred to in singular, when the palaces were referred to in plural.

(2) The complex as an integrated whole was ordained to be neither State property nor the personal property of the ruler. Its ownership and possession in the hands of each succeeding heir apparent by primogeniture was demised perpetually so as to keep the name of Ahluwalia dynasty perpetuated in the Jallowkhana as such. It is in the singular sense that it was ordained that its historic character and respect to the fortification shall be maintained to keep the family flame alight; and

(3) The structure known as Jallowkhana was to have a separate and special proprietary status inasmuch as it was thenceforth to remain neither the separate property of the ruler nor that of the State but a property settled on a title holder for keeping the family alive perpetually and vesting it in each succeeding heir apparent by the ruler of primogeniture. It was in the nature of an impersonal estate as opposed to private property or private estate.

12. Now creating such kind of a special estate undeniably was within the competence of the ruler. His creative dimension and imaginative skill need not have conformed to any set standards or patterns known to jurisprudence or law. His sovereign will could have been expressed in various innovations. And this is an instance in which he put his sentiment, attached to the complex, at a pedestal at which it was neither to be treated as State property nor personal property either for him or in the hands of the succeeding heir apparent in the line of primogeniture. Its ownership and possession in the hands of each succeeding heir apparent was devised as purposive, for perpetually keeping its integrity and the name of the Ahluwalia dynasty alive, the Jallowkhana structure symbolising such continuance by its special and reverence.

13. Once it is held that Jallowkhana complex is one integrated property, the argument of Mr. Sibal to the contrary is of no substance. Whatever is composed thereof is Jallowkhana. There cannot be two owners to such property. The property must remain with the heir apparent. The State of Punjab cannot partially be an heir apparent. On the other hand when the plaintiff-respondent terms the State of Punjab as a licensee, his plea cannot be negated on the mere plea that no licence fee was agreed to be paid. Payment of licence fee is not an essential attribute for the subsistence of a licence. The mere fact that the licence is of long duration dating back to the year 1925, as suggested by some of the plaintiff's witnesses, or of 1947 as said by the witnesses of the State, is of no consequence. Permissive possession, however long, cannot by itself be said to have become hostile by a "long lapse of time", more so, on property, the nature and character of which is unique and singular, having attributes of being impersonal. Such status of the property rules out the second objection of Mr. Sibal regarding adverse possession for which even an issue was not claimed in the courts below keeping apart the pleadings. Thirdly, for the ruler having not listed Jallowkhana complex as part of his personal properties at the time of merger, is for the reason that it was not his personal property. Thus not agreeing with Mr. Sibal we go on to hold that title to the double storeyed building in question could not be divested from the plaintiff due to the unique and singular character of the property it having attributes of being impersonal, as also by mere lapse to time, or on account of non-payment of any licence fee or rent, or on adverse possession, for which there is no plea, as well as the property in dispute State to its ownership has failed, and finally hold that the ruler on merger of his State need not have claimed this to be his personal property to maintain the instant suit and seek relief. This determination leads us to hold that the State of Punjab had not title to the disputed property and hence must obey the mandatory injunction issued by the lower appellate court as confirmed by the High Court. We, however, go on to observe that the mandatory injunction granted by the lower appellate court is so weakly worded that it is capable of being evaded totally, and in any event for a very long time to the point of negating it. In any case the injunction has to be carried out within a reasonable time. Thus, in order to do complete justice between the parties, we have thought it fit to fix a reasonable time for its obedience. Let the mandatory injunction issued by the lower appellate court be carried out in its entirety, latest by the end of three years, if not earlier, and on the breach of which the law may take its own course.

14. With these observations, we dismiss the appeals. In the circumstances, the parties shall bear their own costs.

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