

State of Punjab and Others

Vs

Sadhu Ram

Civil Appeal No. 8373 of 1995

(K. Ramaswamy, G. B. Pattanaik JJ)

25.07.1996

ORDER

1. This appeal by special leave arises from the judgment and decree of the High Court of Punjab and Haryana made on 10-10-1991 in Regular Second Appeal No. 28 of 1983, reversing the judgments of the appellate court and the trial court and decreeing the suit with prayer that the respondent is an equitable owner of the lands and directing the appellants to deliver possession of the lands to the erstwhile owners.

2. The undisputed facts are that on 25-5-1951 notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short "the Act") was published. Thereafter, an award came to be passed and compensation was paid to the erstwhile owners. The land was acquired for the purpose of digging the earth and completion of the bridge. The bridge came to be completed in the year 1954. Thereafter, when the land was in pits the respondent came to be in possession as a lessee in the year 1965. He paid the premium till the year 1974-75. The total extent of the land is about 70 acres. Subsequently, it would appear that the respondent had purchased the lands from the erstwhile owners by registered sale deeds and filed the civil suits in 1976 for declaration that he is an equitable owner of the land and alternatively for a direction to surrender the land to the erstwhile owners.

3. The learned Judge having noticed the procedure prescribed in disposal of the land acquired by the Government for public purposes, has held that the said procedure was not followed for surrendering the land to the erstwhile owners. The respondent having purchased the land had improved upon the land and is, therefore, entitled to be an equitable owner of the land. We wholly fail to appreciate the view taken by the High Court. The learned Judge had not referred to the relevant provisions of the Act and law. It is an undisputed fact that consequent upon the passing of the award under Section 11 and possession taken of the land, by operation of Section 16 of the Act, the right, title and interest of the erstwhile owner stood extinguished and the Government became absolute owner of the property free from all encumbrances. Thereby, no one has nor claimed any right, title and interest in respect of the acquired land. Before the possession could be taken, the Government have power under Section 48(1) of the Act to denotify the land. In that event, land is required to be surrendered to the erstwhile owners. That is not the case on the facts of this case. Under these circumstances, the Government having become the absolute owner of the property free from all encumbrances, unless the title is conferred on any person in accordance with a procedure known to law, no one can claim any title much less equitable title by remaining in possession. The trial court as well as the appellate court negated the plea of the respondent that he was inducted into possession as a lessee for a period of 20 years. On the other hand, the finding was that he was in possession as a lessee on yearly basis. Having lawfully come into possession as a lessee of the Government, Section 116 of

the Evidence Act estops him from denying title of the Government and set it up in third party. By disclaiming government title, he forfeited even the annual lease. Under these circumstances, having come into possession as a lessee, after expiry and forfeiture of the lease, he has no right. Illegal and unlawful possession of the land entails payment of damages to the Government.

4. The entries in the revenue records came to be relied upon by the High Court. Thereby, he trapped himself in the paradise of the patwari who freely fabricated the entries in the revenue records. Can an Executive Engineer have any power on behalf of the Government to confer title on the erstwhile owner by surrender ? If so, under what provisions ? It is not the case that as per procedure in financial code the land was reallocated to him or the erstwhile owner. Do the entries confer any title on him ? It would be obvious that all the entries were got recorded in collusion with the appropriate authorities. Therefore, the Government is not bound by such entries made. Under these circumstances, the learned Judge blissfully omitted to consider the relevant provisions of law and devoted 33 page judgment on weed (sic) and has committed the gravest error of law in reversing the judgment and decrees of the first appellate and the trial courts and decreeing the suit.

5. The appeal is accordingly allowed. The judgment and decree of the High Court are set aside and that of the trial court is confirmed with costs throughout.