

# SUPREME COURT OF INDIA

Suraj Bhan

Vs.

Dy. Commnr., Sonapat

C.A.No.5130 of 2008

(Tarun Chatterjee and P.Sathasivam JJ.)

19.08.2008

## JUDGMENT

### **Tarun Chatterjee, J.**

1. Leave granted.
2. The present appeal is filed at the instance of the appellant against the impugned judgment dated 4th of January, 2005 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 12158 of 2003 whereby the High Court dismissed the Writ Petition filed by the appellant.
3. The brief facts leading to the filing of this appeal may be narrated as under:

“The appellant alleged that he was in possession of the land in dispute measuring 40.3' ft x 5 ft., consisting of a bathroom thereon since the time of his father (hereinafter referred to as the `said land'). In respect of the said land, the respondent Nos. 5 to 7 filed a civil suit for mandatory injunction in the Court of Subordinate Judge, 1st Class, Rohtak against the appellant for a direction upon him to remove the bricks lying in the said land and also for a direction to the father of the appellant to close his door opened on the plot of the Chopal. The Civil Court decreed the suit on 16th of August, 1976.

First appeal was filed by the father of the appellant in the Court of Additional District Judge, Rohtak, against the aforesaid judgment, which was dismissed. Being aggrieved and dissatisfied by the judgment of affirmance passed by the courts below, the father of the appellant filed a regular second appeal before the High Court, which was dismissed by the judgment dated 2nd of June, 1987, against which a SLP was filed in this Court, in respect of which leave was granted.”

4. This Court while disposing of the said appeal passed an order allowing 3 feet passage to the appellant in the said land for ingress and egress to his house on payment of compensation.

5. The Gram Panchayat Barona, Respondent No.4 herein, filed an ejectment application against the appellant, under Section 7 (2) of the Punjab Village Common Lands (Regulation) Act, 1961 alleging that the appellant had illegally encroached upon some area of Khasra no. 33/100, which was reserved in the consolidation for Harijans Chopal and vested in Gram Panchayat. The said application was allowed by Assistant Collector, Ist Grade, Sonapat by order dated 29th of March, 1994. Against the aforesaid order an appeal was filed before the Collector, Sonapat and the Collector vide order dated 22nd of September, 1994 directed the appellant to get a resolution passed from respondent no.4 for the purchase of the said land within six months and get the proceedings for the purchase of land in order, failing which he would be treated as dispossessed.

Thereafter, the appellant submitted an application dated 29th of November, 1994 to the respondent no.3 for permission to deposit the amount.

6. It is the case of the appellant that the Gram Panchayat passed a resolution on 22nd of April, 1995 requiring the appellant to deposit Rs.8000/- and further requiring the case to be sent to the Director Panchayat, Haryana for approval. Accordingly, the appellant deposited the above mentioned amount on 22nd of April, 1995.

7. However it was alleged by the Gram Panchayat that no resolution dated 22nd of April, 1995 was ever passed by it.

8. Thereafter a representation was filed by one Zile Singh and other residents of Village Barona before the Deputy Commissioner, Sonapat, respondent no.1 herein, for cancellation of order dated 22nd of September, 1994. The appellant also approached the respondent for getting the registration of sale in his favour. The Respondent No.1 passed an order dated 29th of July, 2003, holding that since the above mentioned amount of Rs.8000/- was not deposited by the appellant within the stipulated period mentioned in the order dated 22nd of September, 1994, the possession of the appellant was illegal and unauthorized. Respondent No.1 further directed Respondent Nos.3 & 4 to take steps to remove the appellant from being in unauthorized possession of the said land. Respondent No.4 was further directed to refund the amount deposited by the appellant to him.

9. Aggrieved by the aforesaid order, the appellant filed writ petition no. 12158 of 2003 before the High Court for quashing the order dated 29th of July, 2003 and for directing the Respondent to execute sale deed in favour of the appellant. The High Court dismissed the Writ Petition of the appellant by its judgment dated 4th of January, 2005.

10. Being aggrieved and dissatisfied with the aforesaid order of the High Court, the SLP was filed, which on grant of leave was heard in presence of the learned counsel for the parties.

11. We have heard the learned counsel for the parties and we have also examined the materials on record including the orders of the High Court as well as of the other authorities as mentioned herein above. After hearing the learned counsel for the parties and after going through the materials on record, we do not find any reason to interfere with the order passed by the High Court.

12. A bare perusal of the order of the High Court would show that a stand was taken by the appellant that the amount of Rs.8000/- was deposited by him in compliance with the resolution of Gram Panchayat dated 22nd of April,1995. It also appears from the order of the High Court that the Gram Panchayat had taken a specific stand that as per their record, no resolution dated 22nd of April, 1995 was ever passed by it and that the Gram Panchayat neither had sent any resolution to the Director, Panchayats, for approval of the same nor any approval was ever granted for transfer of the land which was mandatory as per Rule 8(3) of the *Punjab Village Common Lands (Regulation) Rules 1964* (in short 'the Rules'). The High Court on consideration of Rule 8(3) of the Rules and other materials came to a conclusion that neither any resolution was passed nor the same was ever approved by any competent authority. The High Court went on to consider that in view of Rule 8(3) of the Rules, the Gram Panchayat was competent to pass the resolution subject to approval by the Director. Since the Collector before passing the order dated 22nd of September, 1994 ought to have considered that such resolution ought to have been taken in terms of Rule 8(3) of the Rules and approval of the Director was also mandatorily required, the High Court held that the order passed by the Collector on 22nd of September, 1994 was without jurisdiction and therefore no effect could be given on the said order of the Collector and accordingly the appellant became illegal occupant of that portion of the land. It is also evident from the record that this Court in an earlier proceeding admittedly allotted only 3 feet wide street from the land of the Harijans Chopal to the appellant but in spite of that allotment made by this Court, the appellant encroached upon 5 feet more area to widen the street. Keeping in mind the conduct of the appellant as well as the fact that no resolution was passed by the Gram Panchayat nor any approval was taken from the Director, the High Court refused to interfere with the order dated 29th of July, 2003 passed by the Deputy Commissioner, Sonapat. We also find that the order passed by the Collector directing the appellant to get a resolution passed from the Gram Panchayat, for the purchase of the disputed land was without jurisdiction as the same was passed without complying with Rule 8(3) of the Rules and such order even if it was passed had to be approved by the Director which was admittedly not done. That apart, admittedly the appellant did not fulfill the condition of the order of the Collector, as he failed to get the sale proceedings completed within the time stipulated in the aforesaid order. Therefore, the High Court while exercising its discretionary power under Article 226 of the Constitution was fully justified in holding that no interference could be made in respect of the order dated 29th of July, 2003 passed by the Deputy Commissioner, Sonapat. Such being the position, in our view, in the exercise of our power under Article 136 of the Constitution, we do not find any ground to interfere with the impugned order of the High Court.

13. Further more, in the earlier occasions, this Court had taken into consideration the entire facts and directed that the appellant should be allowed 3 feet space and after getting

possession and allotment of 3 feet space, it is now an admitted position that the appellant had encroached a further 5 feet which should not be permitted to continue.

14. For the reasons aforesaid, we do not find any substance in this appeal and the appeal is thus dismissed. There will be no order as to costs.