

SUPREME COURT OF INDIA

Gram Panchayat, Village Bahmanian

Vs.

Jagir Singh

C.A.No.10562 of 2014

(Anil R.Dave and Kurian Joseph JJ.)

26.11.2014

JUDGMENT

KURIAN, J.:

1. Leave granted.

2. Alleging that the first respondent had encroached upon the land belonging to the Panchayat, more particularly, a public street, the appellant-Gram Panchayat has been airing its grievance before various forums. It succeeded in getting an order of eviction from the competent authority. That order was challenged in Civil Writ Petition No. 20116 of 2005 by the first respondent. The learned Single Judge of the High Court of Punjab and Haryana, in judgment dated 30.05.2009, passed the following order: "It appears that the Panchayat is unnecessarily trying to create problem for the petitioner. The petitioner apparently has constructed a house and as per the report has not encroached upon any street. His plea is that it may be a private street leading to his house constructed on a land bought by him from the private respondent. This will explain the attitude of respondent No.4 in objecting to the proposal being accepted. The petitioner, thus, is given liberty to deposit the compensation at twice the Collector rate for the land in his possession in the accounts of the Gram Panchayat. This order is basically passed in equity considering that the petitioner has constructed a house and is ready to compensate the Gram Panchayat for any land, which is found to be encroached by him but is not part of any street."

3. The stand of first respondent was that the alleged encroachment is not on a public street but a pathway leading to the house of the fourth respondent from whom he had bought the land. However, in the Report dated 15.05.2009, made by the District Development and Panchayat Officer, Jalandhar, it is mentioned that the alleged encroachment is in Khasra No. 112 which is a gair mumkin street as per Revenue records.

4. Thus, aggrieved by the order of the learned Single Judge, the appellant- Gram Panchayat approached the Division Bench. It was contended that the nature of the land being a public street, there was no provision for regularization and the first respondent requires to be evicted.

5. In the impugned judgment, the Division Bench, among other things, took note of the fact that the whole proceedings having been originally initiated at the instance of the fourth respondent and the said respondent apparently having got an alternate passage, there was apparently no need to rake up the issue again. It was also noted that the Panchayat did not have a consistent stand with regard to the passage. The Division Bench passed the following final order:

"Having perused the issues canvassed by the learned counsel for the appellant in the background of the controversy adjudicated upon by the learned Single Judge, we are of the view that the instant appeal preferred by the appellant is totally frivolous. The appellant could not assail the finding recorded by the learned Single Judge, either on issues of fact or on any issue of law. We have already recorded hereinabove, that the interest of the appellant - Gram Panchayat was fully protected in view of the offer made by Jagir Singh - respondent No.1, which was given effect to by the learned Single Judge. Keeping in view the decision recorded by the Gram Panchayat to accept one of the alternatives suggested by Jagir Singh - respondent No.1, we are surprised at the action of the appellant even in filing the instant appeal. The filing of the instant appeal is definitely not bona fide. So as to prevent persons similarly situated as the appellant from misusing the jurisdiction of this Court, we are satisfied that the instant appeal deserves to be dismissed with costs. The instant appeal is, accordingly, dismissed with costs quantified at Rs.10,000/-. The aforesaid costs shall be deposited by the appellant with the Legal Services

Authority, Punjab, within one month from today and a receipt thereof shall be placed on the record of the instant case. In case, no such receipt is placed on the record of the instant appeal within the time stipulated hereinabove, the Registry is directed to re-list this case for motion hearing for recovery of costs."

6. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondents.

7. We are informed that the first respondent, pursuant to the order passed by the learned Single Judge, has already deposited twice the market value of the alleged encroached land. We have also seen the site plan. It is fairly clear that the width of the passage is only 2 karams which is indicative of the fact that it was not a public street commonly used by the people. Though it was contended that the pathway leads to the well of Beer Singh, the said Beer Singh does not appear to have any grievance. The fourth respondent, at whose instance the proceedings for eviction were initiated, does not have a grievance as of now. The first respondent constructed the house more than a decade back. By demolition of the house and by restoring the alleged pathway, is not going to enure to the benefit of anybody. Therefore, in the interest of justice and for advancing the cause of justice, we are of the view that the dispute should be given a quietus once for all. Without treating it as a precedent, the Panchayat is directed to acknowledge the deposit of double the market value already made by the first respondent, as directed by the learned Single Judge, as damages for the alleged encroachment. There shall be no further proceedings in this regard. The Revenue records shall be corrected accordingly.

8. We also do not find any justification in enforcing costs on the appellant. After all, the Gram Panchayat has been vindicating a right cause. It is in fact the first respondent who is to bear the litigation expenses of the appellant. The appellant-Gram Panchayat cannot be said to be acting without bonafides when they take appropriate action in accordance with law. It is the encroachment made by the first respondent, which may not be deliberate, that dragged the appellant to litigation before various forums. Therefore, we vacate the order on costs imposed on the appellant-Gram Panchayat in the impugned judgment. The first respondent instead should bear the litigation expenses of the appellant-Gram Panchayat, which we quantify to Rs.35,000/-. This amount shall be paid by the first respondent to the appellant-Gram Panchayat within a month from today.

9. The appeal is partly allowed as above. There shall be no further order as to costs.