SUPREME COURT OF INDIA

Dashmesh Educational Society

Vs.

Punjab Urban Development Authority

C.A.Nos.4684-4685 of 2005

(Ranjan Gogoi and N.V.Ramana JJ.)

25.03.2015

JUDGMENT

RANJAN GOGOI, J.

1. The plaintiff in civil Suit No.65 of 2001 i.e. Dashmesh Education Society has preferred these appeals against the common order dated 12.10.2004 passed by the High Court of Punjab and Haryana in RSA Nos. 4328 and 4345 of 2002. By the aforesaid order, the decree passed by the trial court in favour of the plaintiff, which was affirmed in first appeal, has been reversed by the High Court.

2. Civil Suit No.65 of 2001 was filed seeking a declaration that the Application dated 21.8.1998 filed by the plaintiff before the defendants seeking permission for setting up a Country Club/Resort at village Karoran, Tehsil Kharar, District Ropar is deemed to have been allowed and permission granted/sanctioned, the same having not been refused in writing within the statutory period of 90 days of its submission as mandated by the provisions of the Punjab New Capital Periphery Control Act, 1952. Consequential relief of permanent injunction was also sought "restraining the defendants and their agents from interfering in any manner in the works undertaken by the plaintiff over the land and from demolishing the constructions/developments already made over the suit land forcibly or in any other manner."

3. According to the plaintiff, a registered body, by application dated 21.08.1998 it had sought permission for setting up a forest hill country club/resort within the area of village Karoran, Tehsil Kharar, District Ropar. According to the plaintiff the project was a non polluting industry and was capable of generating substantial

employment. The plaint averments also disclosed that it is the case of the plaintiff that the area over which the resort was planned is covered by the provisions of the Punjab New Capital Periphery Control Act, 1952 (hereinafter referred to as "the Act of 1952"). The application dated 21.08.1998 submitted by the plaintiff under the said Act had initially invoked the response of the defendants in the suit who had asked for submission of site plan/location plan etc., all of which requirements were complied with by the plaintiff. No action was subsequently forthcoming despite several representations/ reminders submitted by the plaintiff. According to the plaintiff, under Section 5 of the Act of 1952 a decision was required to be taken by the respondents within 90 days, failing which, the application of the plaintiff must be deemed to have been accepted. Hence the suit claiming the reliefs earlier noticed.

4. The suit was contested by the State of Punjab as well as the Punjab Urban Areas Development Authority (PUDA) contending, inter alia, that the application filed by the plaintiff was not under Section 5 of the Act of 1952 as the essential requirements thereof were not complied with. Consequently, no question of deemed permission can and does arise. The suit was also claimed to be not maintainable as the Forest Department of the State, a necessary party, was not impleaded. Specifically it was contended that the land falls within the purview of the Punjab Land Preservation Act 1900 (hereinafter referred to as PLPA) and attracts the provisions of Indian Forest Act, 1927 and the Forest (Conservation) Act 1980. It was accordingly urged that the land could not be used by any non forest purpose without the prior approval of the Union Government and that the State Government was not competent in law to give permission for setting up of the country club/resort without due permission from the Government of India.

5. The suit, as mentioned earlier, was decreed and the first appeals filed by the State and PUDA were also dismissed by the learned District Judge by order dated 30.04.2002. Aggrieved, RSA Nos.4328 and 4345 of 2002 were instituted before the High Court by the PUDA and the State wherein by the impugned judgment and decree dated 12.10.2004 the High Court allowed the second appeals and reversed the judgment and decree passed by the learned trial court and affirmed by the first appellate court. It is against the aforesaid order passed in the second appeals that the plaintiff in the suit has filed the present appeals.

6. We have heard the learned counsels for the parties.

7. It will be appropriate, at this stage, to notice the substantial questions of law that were framed by the High Court for determination in the second appeals in question.

> "1. Whether the request for setting up Forest Hill Country Club Resort made in these application dated 21.8.1998 can be considered to have been automatically granted on the expiry of 90 days even when the application was not submitted under any specific provisions of the Act or in the prescribed proforma and to the appropriate authority?
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> 2. Whether the provisions of Land Preservation Act, 1900, Indian Forest Act, 1927, the New Punjab Capital (Periphery) Control Act, 1952 and the Forest (Conservation) Act, 1980 are attracted in the present case?
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> 3. Whether the plaintiff/respondent could justify the legality of his actions of setting up the said Resort within the area falling under the purview of 1952 Act on the ground of huge expenditure incurred on the alleged development works on the basis of deemed sanction?
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> 4. Whether the Forest Guard Sunil Kumar was competent to accept the report submitted by the Patwari regarding the nature and status of land in question without any reference to either the revenue records or to the notifications issued under the Acts mentioned in para No.9 above? More so, when the Forest Guard was not specifically detailed for any such purposes?
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> 5. Whether the construction made by the plaintiff/respondents without any specific and express permission from the competent authorities in violation of the provisions of the Acts mentioned in para No.9 above is illegal and liable to be demolished?"

8. Though a large number of contentions have been urged on behalf of the rival parties it will not be necessary for us to consider the same and record our views thereon in view of certain parallel judicial orders of the same date i.e. 12.10.2004 that came to be passed by the High Court in a PIL registered as WP No.1134 of 2004. The relevant facts in the aforesaid proceeding may now be taken note of.

9. An order dated 12.10.2004 was passed in the aforesaid PIL to the effect that the land in question covered by the PIL (same as in the present appeals) is forest land and no non-forest activity is permissible thereon. The said order was challenged before this Court in Civil Appeal No.4682- 4683 of 2005. The said civil appeals

have since been disposed of by an order of this Court dated 21.05.2014. By the aforesaid order this Court, on the grounds and reasons assigned, has set aside the decision of the High Court to the effect that the entire land in Village Karoran District Ropar is forest land for the purpose of Section 2 of the Forest (Conservation) Act, 1980 and has remanded the matter to the High Court for a fresh hearing and decision. Pursuant to the aforesaid order passed by this Court, the High Court has since considered the matter and directed a physical verification of the land to be made for determination as to whether the same or any part thereof is forest land or not. Such determination was ordered by the High Court in another separate but connected proceeding i.e. CWP No.22756 of 2013 which proceeding along with the PIL (CWP No.1134 of 2004) has since been disposed of after taking on record the report of the survey undertaken.

10. The order passed by this Court in civil appeal No.4682-4683 of 2005 remanding the matter for de novo consideration by the High Court; the consequential consideration of the matter by the High Court; the directions for survey and the report of survey are subsequent facts which cannot be overlooked or ignored while rendering our orders in the present appeals. Though valiant efforts have been made by learned counsel for the appellants to restrict the scope of the arguments to certain other specific issues and not to dwell upon the aforesaid aspects of the case, the same are too significant to be overlooked or ignored. In fact, we have already noticed that specific issues/substantial questions of law were framed by the High Court in the second appeals in question with regard to the land being covered by the provisions of the Forest (Conservation) Act, 1980. The High Court, however, did not feel it necessary to go into the said question except for the purpose of a prima facie decision thereon for determining as to whether the State Forest department was a necessary party in the civil suit. In fact, the second appeals were decided on consideration of certain other questions namely, as to whether the application for permission was in the proper prescribed form; whether relief could have been granted to the plaintiff without impleading the forest department and other similar questions. However, in view of the subsequent developments which have been noted above there is no escape from the necessity of consideration of the question as to whether the land on which the resort/country club is sought to be established being a part of the Karoran village is forest land within the meaning of the Forest (Conservation) Act, 1980 or not. A decision on the said question so as to conclusively and effectively determine the rights of the plaintiff has become unavoidable in view of the parallel developments and orders of this Court in civil appeal No. No.4682-4683 of 2005 and the consequential orders passed by the High Court. In fact such determination of the entitlement of the plaintiff cannot be short-circuited by avoiding a decision on the said question

particularly when a substantial question of law was framed by the High Court in the second appeals before it as noticed and extracted above i.e. whether the land in question is covered by the provisions of the Forest (Conservation) Act, 1980. The said question not answered by the High Court in the judgment under challenge will now be requiring a specific determination in view of the subsequent development and orders of the court in the parallel and connected proceedings in C.A. Nos. 4682-4683 of 2005.

11. In view of the above, we arrive at the conclusion that the aforesaid determination should now be made by the High Court and for that purpose if the High Court considers it necessary may allow parties to adduce additional evidence. Such evidence appears to be readily available as the appellant themselves have brought on the record of the present appeals all the relevant subsequent developments. Reception of the said material may be made in the second appeals by following the procedure prescribed by law and thereafter the High Court shall arrive at a decision on the entitlement of the parties in the light of the said materials. As the matter has been pending for long we request the High Court to expedite its process of consideration of the matter in the light of the present order. Consequently both the appeals are disposed of in terms of the direction(s) as indicated above.

Special Leave Petition (C) Nos.19226 of 2013 & 20235 of 2013

12. Writ Petition (C) No.12105 of 2013 was disposed of by the High Court of Punjab & Haryana on 29.5.2013 in terms of an earlier order dated 15.05.2013 passed in writ Petition (C) No.10478 of 2013. Aggrieved by the orders passed in the two writ petitions, the present SLPs have been filed. By order dated 05.07.2013 of this Court, both the SLPs have been tagged with Civil Appeal No.4682-4683 of 2005. No notice was issued.

13. Civil Appeal Nos.4682-4683 of 2005 has been disposed of by this Court by order dated 21.05.2014 whereby the matters have been remanded back to the High Court with certain directions. The present SLPs initially tagged with the aforesaid two civil appeals have been de-tagged and directed to hearing separately.

14. The short contention of the petitioners in the SLP is that the Notifications issued under Sections 4 and 5 of the Punjab Land Preservation (Chos) Act, 1900 (hereinafter referred to as the '1900 Act'), which were challenged before the High Court were issued under the provisions of Section 3 of the 1900 Act prior to the amendments made to the said Section 3 in 1914 and the somewhat comprehensive

amendment of the entire 1900 Act effected in the year 1942. According to the petitioner, Section 3 having been amended in 1914 and the very object and purpose of the 1900 Act having been also altered by the amendment of 1942, the subsequent Notifications issued under Sections 4 and 5 in the year being under the old Section 3 of the 1900 Act are non est in law.

15. The High Court declined to go into the pleas raised in the writ petition on the ground that the writ petitions are highly belated and in any case a dispute pertaining to the land is pending before this Court. The said dispute, as already noticed, arose in Civil Appeal Nos. 4682-4683 of 2005 which has since been remanded to the High Court and have also been redecided/ reanswered by the High Court.

16. In so far as delay in filing the writ petitions is concerned, a series of Notifications, issued from time to time, had been challenged by the petitioner. The last of the Notifications under challenge is of the year 2004. The petitioner apparently came into possession of the property much earlier i.e. in the year 1988. If that be so, it was necessary for the petitioner to bring his challenge before the High Court well in time; instead the writ petitions were filed in the year 2013. The view taken by the High Court on account of delay therefore cannot be faulted though the High Court appears to have computed such delay from the date of first Notification issued under Section 3 of the 1900 Act overlooking the subsequent Notifications issued which were also under challenge. Even if the subsequent Notifications (of the year 2004) are taken into account, the eventual conclusion of the High Court cannot be faulted.

17. For the aforesaid reasons, we do not consider it appropriate to entertain the SLPs any further. Both SLP (C) Nos. 19226 of 2013 & 20235 of 2013 are dismissed.