

SUPREME COURT OF INDIA

Gopal Singh

Vs.

Swaran Singh

C.A.No.11930 of 2018

(Uday U.Lalit and R.Subhash Reddy,JJ.,)

07.12.2018

JUDGMENT

R. Subhash Reddy,J.,

SLP.(C)No.27108 of 2018

1. Leave granted.

2. This appeal is filed by the legal heirs of the deceased defendant no.5 in the suit, aggrieved by the judgment and order dated 16.02.2018 passed by the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No.1163 of 1991 (O&M). Respondent nos.1 to 4 herein were the plaintiffs in Suit No.496 of 1985 filed before the Sub-Judge 1st Class, Sultanpur Lodhi, District Kapurthala in the state of Punjab. In the said suit following reliefs were claimed by them :

"Suit for declaration that they are absolute owners in possession being bonafide purchasers for consideration and without notice of land measuring 82 kanals 3 marlas bearing khasra nos.54/22min (4-0), 61//2 (8-0), 1min (4-18), 9(10-4), 54//22min (4-0), 61//min (4-0), 55//16 (8-0), 17 (7-7), 54//19min (4-0), 20 (8-0), 21 (8-0), 54///19min (4-0), 25/25 (6-17), and 60/5/2 (0-17), total 82 kanals 3 marlas, situated in village Kamalpur Patti, Tehsil Sultanpur Lodhi, District Kapurthala as per Jamabandi for the year 1981-82 and the order of learned Chief Sales Commissioner, Kapurthala dated 28.3.1985 vide which the sale in favour of Mohan Singh son of Alladatta of village Mothawala, Tehsil Sultanpur Lodhi, District Kapurthala dated 23.12.1964 qua the suit land has been cancelled and allotment of this land in favour of Gopal Singh defendant no.5 has been considered right is highly illegal, arbitrary, unwarranted without jurisdiction, against the provisions of law and is thus unsustainable and not binding on the rights and title of the plaintiffs over the suit land with the consequent relief of permanent injunction restraining the defendants from reacquiring the suit land or alienating it in any other manners and further restraining the defendants from interfering in the peaceful possession of the plaintiffs in the suit land in any manner."

3. The suit schedule property was auctioned in the restricted auction under the provisions of The Punjab Package Deal Properties (Disposal) Act 1976 [for short 'the Act']. It was originally sold to one Mohan Singh, son of Aladitta, resident of Kamalpur in the auction held on 23.12.1964. There was a restriction on transfer which was held pursuant to an auction, not to alienate the suit property till the final realisation of the loan amount taken by the allottee for purchase of the land or till the expiry of 10 years which is later. On the ground that the said Mohan Singh has breached the condition, proceedings were initiated for resumption of the land. Initial order for resumption passed by the authority was set aside in the writ petition by the High Court. Thereafter, further order was passed by the Deputy Commissioner-cum-Chief Sales Commissioner, Kapurthala on 28.03.1985. The aforesaid order was passed by recording a finding that cancellation of the auction was proper and further confirmed the allotment made in favour of the appellants herein.

4. The said order dated 28.03.1985 passed by the competent authority under the provisions of the Act and the rules framed thereunder has become final.

5. The trial court, by recording the finding that respondent-plaintiffs are bonafide purchasers, has decreed the suit by declaring the order dated 28.03.1985 passed by the competent authority under the provisions of the Act as null and void and granted consequential relief of injunction restraining the defendants from dispossessing the plaintiffs from the suit land.

6. Aggrieved by the judgment and decree of the trial court dated 25.01.1989, the appellant herein who is defendant no.5 has filed Civil Appeal No.57 of 1989 and Defendant nos.1 to 4 which are authorities of the State also filed Civil Appeal No.59 of 1989. By the common judgment and decree dated 18.01.1991, the first appellate court allowed the appeals by setting aside the judgment and order of the trial court mainly on the ground that in view of the provision under Section 16 of the Act, Civil Court has no jurisdiction to try the suit. Further, it was also held by the appellate court that the suit is liable to be dismissed because no notice, as required under Section 80 of the Code of Civil Procedure (CPC) was given before filing the suit and no application was filed to dispense with the requirement of giving notice under Section 80(2).

7. Aggrieved by the common judgment and decree passed in the said civil appeals by the first appellate court, the respondent-plaintiffs have filed Second Appeal Nos.1163 and 1164 of 1991. Said appeals are allowed by the High Court of Punjab & Haryana at Chandigarh by judgment and decree dated 16.02.2018. Thus, the judgment and decree passed by the trial court were restored.

8. We have heard Mr. Vikas Mahajan, learned counsel for the appellants and Mr. Neeraj Jain, learned senior counsel for the respondents who are on caveat and also perused the written submissions submitted on behalf of the parties.

9. In this appeal, it is the case of the appellants that against the initial cancellation of sale vide order dated 17.06.1975 the vendees of the original transferee have approached the High Court in Civil Writ Petition No.5210 of 1975 and in view of the judgment dated 09.10.1979,

after hearing all the necessary parties, order dated 28.03.1985 was passed by the competent authority, cancelling the sale and said order has become final and not challenged before The revenue authorities. It is the case of the appellants that the validity of the order dated 28.03.1985 cannot be the subject matter of challenge before the civil court in view of the bar under Section 16 of the Act. It is further submitted that in view of the opportunity provided by the authorities judgment relied on by the High Court cannot be applied having regard to the facts and circumstances. It is submitted that in any event the finding recorded by the first appellate court that suit is not maintainable for not issuing notice under Section 80 of the CPC is not interfered with and without recording any finding Second Appeal is allowed.

10. On the other hand, it is the case of the respondent- plaintiffs that respondent-plaintiffs are bonafide purchasers of the suit land for a valuable consideration and in similar cases this Court has dismissed the Special Leave Petitions, as such, there is no ground to interfere with the same. It is further submitted that in any event, in view of Section 41 of the Transfer of Property Act 1882, Civil Court is competent to entertain the suit for grant of relief as prayed for. It is also pleaded that defect in the prayer, if any, for quashing the order dated 28.03.1985, may not come in the way of the respondent-plaintiffs for seeking relief of declaration of their title which is to be protected in view of the provision under Section 41 of the Transfer of Property Act 1882.

11. Having heard learned counsel on both sides, we have perused the impugned judgment and the judgments of the lower appellate court and the trial court.

12. It is not in dispute that originally land was put to restricted auction to sell the land under the provisions of the Act and the Rules framed thereunder. There are restrictions on the alienation of the land as per the original transfer. At first instance when the order of cancellation was passed, matter was carried to High Court and the High Court has disposed of the petition by directing the authorities not to take steps for eviction of the petitioners therein unless they are provided opportunity before passing appropriate order. After order was passed by the High Court, order dated 28.03.1985 was passed cancelling the transfer and further allotment made in favour of the appellants herein was confirmed. Section 16 of the Act reads as under :

"16. Bar of jurisdiction and finality of orders (1) Save as otherwise expressly provided in this Act, every order made by any officer or authority under this Act shall be final and no Civil Court shall have jurisdiction to entertain any suit or proceeding, in respect of any matter which the State Government, or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Nothing in the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, shall apply to package deal property."

13. From a reading of the aforesaid provision, it is clear that every order made by any officer or authority under the said Act is final and no Civil Court shall have jurisdiction to entertain any suit or proceeding and no injunction shall be granted by any court or other authority in respect of any action taken under provisions of the Act. The first appellate court, by applying the aforesaid provision, has clearly recorded a finding that the suit is barred and further it was also held that suit is not maintainable against the State and its authorities, who are defendant nos.1 to 4, without issuing notice under Section 80 of CPC. There is also nothing on record seeking leave from the court for dispensing with issuance of notice as provided under Section 80(2) of the CPC. The said aspect is not at all dealt by the High Court. So far as the bar of the suit under Section 16 is concerned, the High Court referred to Special Leave Petition(C) No.26714 of 2015, but, it appears that the said petition is dismissed for non-prosecution. High Court also referred to certain other earlier judgments to support a finding on the validity of the order dated 28.03.1985. But we are of the view that when the suit itself is barred, it is not open for the civil court to record any finding on the validity of the order dated 28.03.1985. Even the judgment of the Full Bench of the High Court in the case of *State of Haryana & Ors. v. Vinod Kumar & Ors*¹. cannot be applied unless it is held that the order passed by the primary authority is a nullity. As we are of the view that the respondent-plaintiffs had an opportunity before the authority and when the said order has become final, in view of the bar under Section 16 of the Act, the High Court has committed error in recording finding on the validity of the order dated 28.03.1985. Further, as rightly contended by counsel for the appellants that the appellate court also has not disturbed the finding of the lower appellate court on issue of notice as contemplated under Section 80 of the CPC.

14. For the aforesaid reasons we allow this appeal and set aside the judgment and order dated 16.02.2018 passed in R.S.A.No.1163 of 1991 and consequently the Civil Suit No.496 of 1985 stands dismissed, with no order as to costs.

Judgment Referred.

¹(1986) 1 PLR 0222