

(19) However, still considering the fact that the respondent-plaintiff, who immediately approached the court when communication was sent to him by the bank for take possession of the property in dispute and the matter remained pending either before the Court below or before this Court and time to file appeal before the Debts Recovery Tribunal being 45 days from the date on which measure under Section 13 of the Act is taken, in my opinion, the respondent cannot be left remediless. In case he approaches the Debts Recovery Tribunal for redressal of his grievances within a period of two weeks from the date of receipt of copy of the order, the appeal filed by the respondent shall be considered by the Debts Recovery Tribunal on merits and shall not be dismissed only on the ground of delay, subject to fulfillment of other conditions.

(20) The petition stands disposed of.

P.S. BAJWA

Before Surya Kant and P. B. Bajanthari, JJ.

KULDEEP KAUR—*Petitioner*

versus

KASHMIR SINGH—*Respondent*

LPA No. 463 OF 2014

MAY 18, 2015

Code of Civil Procedure, 1908 – O.43 Rl.1 – Punjab Package Deal Properties (Disposal) Act, 1976 – S. 2(5) – Punjab Package Deal Properties (Disposal) Rules, 1976 – Rl.3 – Unauthorized possession of land – Disputed land was owned by State Government – Said land was allotted to father of first respondent – Allotment was cancelled due to non-deposit of balance allotment price – Authorities held a fresh auction and sold land – First respondent filed writ petition in which parties were directed to maintain status quo regarding possession – Appellants sought their impleadment in decided case and claimed that subject-land had been already allotted to them during pendency of writ petition -Single Judge and transfer of such rights in favour of appellants and execution of conveyance deed in their favour all were fraudulent transactions and contrary to public policy – Claim of appellants dismissed.

Held, that the subject and is admittedly owned by the State Government. The father of first respondent took over its possession may be unauthorizedly. The land was allotted to him way back on 24-5-1972. The allotment was cancelled due to non deposit of the balance allotment price. Be that as it may, when the claim of first respondent for restoration of allotment was *sub judice* before this Court, he surrendered his claim in favour of Smt. Shaminder Kaur on 12-03-2002 ‘after receiving consideration’. He thus lost his *locus standi* or cause of action to seek restoration of allotment made in favour of his deceased father.

(Para 19)

Further held, that Smt. Shaminder Kaur entered into an *ex facie* illegal transaction for the transfer of ‘unauthorized possession’, hence she too did not acquire any title or right in the suit land. The same would be the fate of the appellants who claim to have acquired “illegal possessory rights from Smt. Shaminder Kaur”. Suffice it to observe that neither Smt. Shaminder Kaur nor the appellants entered into illegal or unauthorized possession when the land was still owned or possessed by the State Government. There are private transactions without any hostile claim against the State. The so-called Government policies are therefore, inapplicable in their cases.

(Para 20)

Further held that assuming that the Government policy dated 26.9.2007 were to be valid, yet the appellants or their vendor both do not fulfill its clauses No.1 and 2, hence are otherwise ineligible to seek transfer of the title. The acknowledgement of surrender of possession in favour of Smt. Shaminder Kaur and transfer of such rights by Smt. Shaminder Kaur in favour of appellants as well as acknowledgement of possession of the appellants over the suit land and execution of conveyance deed in their favour all are fraudulent transactions and contrary to public policy. Consequently, every such transaction is declared illegal, *void ab initio* and not binding on the State Government.

(Para 21)

Dinesh Ghai, Advocate for the appellants
KR Dhawan, Advocate for respondent No.1
Aman Bahri, Addl. AG Punjab
Jagraj Singh Khiva, Advocate for respondent No.7

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal assails the judgment dated 25.10.2013 whereby the writ petition filed by first respondent was allowed and while setting aside the auction of the land in dispute in favour of Resham Singh – respondent No.7 (respondent No.6 in the writ petition) its allotment was restored in favour of respondent No.1. The order dated 12.02.2014 vide which the appellants' application for their impleadment in the decided case as well as for reviewing the order dated 25.10.2013 has been dismissed by the learned Single Judge, is also under challenge.

(2) A brief reference to the facts may be made. Bholu Singh – father of the first respondent was allotted land measuring 51 kanals in village Jalalpur, Tehsil Zira, District Ferozepur for a sale price of `3188/- on 24.05.1972.

(3) The allottee deposited `630/- on 27.05.1972. As regards the balance amount, the case of respondent No.1 was that his father was not permitted to deposit the same on the ground that the allotment file was not traceable though the official respondents controverted such claim. The allotment was cancelled without issuing any notice against which the first respondent filed an appeal as meanwhile his father had died.

(4) The authorities instead of awaiting the outcome of appeal held a fresh auction on 23.12.1983 and sold the land to respondent No.7. The auction was confirmed on 18.01.1985. The first respondent challenged the confirmation of auction. His original appeal as well as the one filed against confirmation of auction in favour of respondent No.7 were dismissed by the Revenue authorities. Being aggrieved of those orders, the first respondent came to this Court in writ petition filed in the year 1994 in which the parties were directed to maintain *status quo re.* possession.

(5) Learned Single Judge has allowed the above mentioned writ petition vide judgment dated 25.10.2013 after holding that without deciding the appeal against cancellation of allotment filed by the first respondent, the land could not have been auctioned in favour of respondent No.7.

(6) Learned Single Judge has further directed that first respondent shall deposit the outstanding amount with interest @ 9% p.a. from the date it fell due and on doing so, the allotment shall stand restored.

(7) It appears that Resham Singh – subsequent auction purchaser has not challenged the judgment of the learned Single Judge. The appellants, however, sought their impleadment in the decided case and also moved an application for reviewing the final order. They claimed that the subject land had been allotted to them in the year 2010 for consideration and since their right and title in the suit land has been adversely affected, they are entitled to be heard.

(8) Learned Single Judge observed that once there was an order to maintain *status quo re.* possession as it existed on 21.11.1995, the land could neither be sold nor its possession delivered to the applicants. Further, they are claimed to have purchased the land during the pendency of writ petition and it was open to them to seek legal remedies as may be available in law. Consequently, both the applications have been dismissed vide order dated 12.02.2014 giving rise to this Letters Patent Appeal.

(9) The appellants have moved a separate application for permitting them to pursue the appeal. The State of Punjab and other official respondents have filed reply to that application through Tehsildar, Dharamkot. The contents of the reply shockingly reveal as to how valuable public properties have been grabbed by the appellants in collusion and connivance with the Revenue authorities especially the then Naib Tehsildar, Zira and Sales Commissioner-cum-SDM (Civil), Moga.

(10) As noticed earlier, while admitting the writ petition filed by first respondent (Kashmir Singh) *status quo re.* possession was directed to be maintained by this Court. At that time, village Sayyad Jalalpur was in Sub Tehsil Dharamkot, Tehsil Zira, District Ferozepur. In 1999-2000, the area of sub-Tehsil Dharamkot stood transferred to District Moga (from District Ferozepur).

(11) Strangely, the first appellant moved two separate applications for transfer of ownership of land measuring 39 kanal and 17 kanal, respectively situated in village Sayyad Jalapur on 23.02.2010 to the Naib Tehsildar, Dharamkot “on the basis of her possession”. The Naib Tehsildar, Dharamkot passed an order dated 06.05.2010 transferring title of these two parcels of land in her favour and both these orders were confirmed by SDM, Moga vide order dated 17.08.2010. Immediately, conveyance deeds were also issued in favour of both the appellants.

(12) How did the appellants come into possession of the land in dispute? The reply by the State of Punjab unfolds that “Kashmir Singh, respondent No.1, had voluntarily surrendered the possession of the land in favour of Smt. Shaminder Kaur, after receiving consideration from her, as per rapat No.476 dated 12.3.2002...” and “Smt. Shaminder Kaur further transferred the possession of the land to the applicants/appellants after receiving consideration, vide Agreement dated 27.5.2005...”. The reply further claims that “thus, the land in question was rightly transferred by Naib Tehsildar, Dharamkot, in favour of Smt. Kuldip Kaur etc.”. (emphasis applied)

(13) At this stage, it becomes relevant to explain the import and value of “possession over a Government land”. Unfortunately, the State of Punjab has been issuing so-called policy decisions from time to time whereunder the persons who are in unauthorized and illegal possession of Government lands are permitted to purchase the land at the rate which was prevalent at the time when possession was illegally taken. The land mafia has been actively securing unauthorized possession of Government agricultural lands which are invariably lying unattended and then entries of possession in the Revenue record are secured in collusion with the officials in Revenue Department. Based upon such ‘entries of possession’, they apply to the State Government for transfer of the land as per ‘Government policy’.

(14) One of the such Government policy dated 26.09.2007 contemplates to transfer the possession of rural disposable land in favour of unauthorized cultivators on the basis of ‘continuous cultivating possession’. The policy reads as follows:-

1. The eligibility of the un-authorized cultivators, shall be fixed strictly on the basis of Punjab Package Deal Properties (Disposal) Act, 1976 and the Rules framed thereunder i.e. Punjab Package Deal Properties (Disposal) Rules, 1976.
2. The applicants of the eligible persons, for the transfer of land, the continuous cultivation possession without any dispute from the crop year, 2000, according to the entries of Revenue record, shall be established. The entries of Khasra Girdawari of the suspicious or altered shall be ignored.
3. The applications of the eligible persons for the purpose of transfer of land on the basis of possession, should be

reached within 3 months to the concerned Sub Divisional Magistrate from the date of publication of Advertisement in the Newspaper.

4. The applications which have been received prior to the prescribed date, but are pending for consideration, those applications shall be decided under the scheme prevalent at the time of submission of the application. For this purpose, prior to deciding the applications, one month notice will be given.
5. xxx xxx xxxx
6. xxx xxx xxx
7. xxx xxx xxx
8. Other conditions shall remain in force as required under the provisions of Punjab Package Deal Properties (Disposal) Act, 1976 and the Rules framed thereunder i.e. Punjab Package Deal Properties (Disposal) Rules, 1976.”

(15) Knowing fully well that possession is the singular factor to secure ownership in respect of a Government land, the appellants are said to have entered into an agreement dated 27.05.2005 whereby the previous unauthorized occupant of the Government land, namely, Smt. Shaminder Kaur surrendered her possession in favour of the appellants. Smt. Shaminder Kaur, on the other hand, is claimed to have taken possession on payment of consideration on 12.03.2002 from the first respondent, namely, the writ petitioner.

(16) We are unable to understand as to how could there be an enforceable contract between the parties for the transfer of illegal possession? The fact that the Revenue authorities continue to recognize such transactions and Naib Tehsildar, Dharamkot and SDM Moga have unhesitatingly transferred the title based upon such illegal transactions, leaves no room to doubt that a big chunk of Government land has been misappropriated by all of them in collusion, connivance and conspiracy with the first respondent, Smt. Shaminder Kaur as well as the present appellants.

(17) The adverse inference drawn by us is fortified by the fact that the alleged voluntary surrender by the first respondent in favour of Smt. Shaminder Kaur vide rapat No.476 dated 12.03.2002 or further surrender of possession by Smt. Shaminder Kaur in favour of the appellant was never disclosed by the official respondents before the learned Single Judge. It is strange that the authorities as also the first

respondent concealed all these material facts from learned Single Judge instead of taking a plea that the first respondent no longer had any *locus standi* to pursue the writ petition as he had already surrendered possession after receiving consideration from Smt. Shaminder Kaur? These facts have first time surfaced in this appeal only.

(18) We have heard learned counsel for the parties and gone through the paper-book.

(19) The subject land is admittedly owned by the State Government. The father of first respondent took over its possession may be unauthorizedly. The land was allotted to him way back on 24.05.1972. The allotment was cancelled due to non-deposit of the balance allotment price. Be that as it may, when the claim of first respondent for restoration of allotment was *sub judice* before this Court, he surrendered his claim in favour of Smt. Shaminder Kaur on 12.03.2002 'after receiving consideration'. He thus lost his *locus standi* or cause of action to seek restoration of allotment made in favour of his deceased father.

(20) Smt. Shaminder Kaur entered into an *ex facie* illegal transaction for the transfer of 'unauthorized possession', hence she too did not acquire any title or right in the suit land. The same would be the fate of the appellants who claim to have acquired "illegal possessory rights from Smt. Shaminder Kaur". Suffice it to observe that neither Smt. Shaminder Kaur nor the appellants entered into illegal or unauthorized possession when the land was still owned or possessed by the State Government. There are private transactions without any hostile claim against the State. The so-called Government policies are therefore, inapplicable in their cases.

(21) Assuming that the Government policy dated 26.09.2007 were to be valid, yet the appellants or their vendor both do not fulfill its clauses No.1 and 2, hence are otherwise ineligible to seek transfer of the title. The acknowledgement of surrender of possession in favour of Smt. Shaminder Kaur and transfer of such rights by Smt. Shaminder Kaur in favour of appellants as well as acknowledgement of possession of the appellants over the suit land and execution of conveyance deed in their favour all are fraudulent transactions and contrary to public policy. Consequently, every such transaction is declared illegal, *void ab initio* and not binding on the State Government.

(22) At this stage, we may also rely upon the *dictum* in **Jagpal Singh versus State of Punjab**¹ declaring the Government policy like dated 26.09.2007 wholly illegal and without jurisdiction. The Apex Court ruled that common interest of the villagers cannot be permitted to suffer merely because the unauthorized occupation has subsisted for many years.

(23) Equally apt would be to refer the decision in **Mohinder Singh versus State of Punjab & Ors**² wherein also agricultural land measuring 20K-7M was sought to be transferred under the so-called Government policy. A Division Bench to which one of us (Surya Kant, J) was member held the transaction violative of Article 14 of the Constitution and while setting aside the allotment, issued the following directions:-

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) The respondent No. 5 would hand over the possession of the land measuring 20 kanals 7 marlas immediately to the Collector in accordance with the statement made by him in CWP No. 4649 of 2006, within 15 days.

(iv) The State Government would then put the disputed land to public auction in which the appellant and respondent No. 5 could also participate.

(v) Principal Secretary, Department of Revenue and Rehabilitation, Government of Punjab is directed to send a list of all such cases, where the Government land has been disposed of in terms of the State policy decision vide letter dated 26.09.2007 with complete particulars of allottees and dates of respective allotments to this Court within 3 months from the receipt of certified copy of this order for examining the said orders by this Court in public interest.”

(24) The instant case is yet another example as to how the public servants instead of protecting public properties or enforcing the rule of law have colluded and connived with land grabbers. Most unfortunately all the subsequent material events including the relevant decisions referred to above, were not brought/cited before the learned Single

¹ 2011(11) SCC 396

² ILR 2013(2) P&H 179

Judge. The first respondent is also guilty of hiding the correct facts from the learned Single Judge. If he had received consideration from Smt. Shaminder Kaur and surrendered possession in her favour voluntarily, how could he still insist that the allotment made in favour of his father be restored. In all fairness, his counsel still pleads innocence and maintains that the 1st respondent is an illiterate old man who has been duped by his co-villagers.

(25) Since due to *ad interim* stay granted in this appeal, respondent No.1 has not yet taken the benefit of the order passed by learned Single Judge, we allow this appeal in part; modify the orders passed by learned Single Judge and dispose of the writ petitions with the followings directions:-

- i. The appellants or Smt. Shaminder Kaur have no right, title or claim in respect of subject property hence the appeal so far as the claim put forth by the appellants is concerned, is dismissed with cost of `25,000/-. The appellants are held not entitled to have any claim *qua* the land in question.
- ii. The Financial Commissioner, Revenue, Punjab is directed to initiate enquiry to ascertain to correctness of the facts mentioned by Jarnail Singh, Tehsildar Dharamkot in his affidavit dated 21.05.2014 filed in this appeal, within three months from the date of receipt of a certified copy of this order.
- iii. If it is found that the first respondent had surrendered voluntary possession of the subject land in favour of Smt. Shaminder Kaur after receiving consideration from her as per Rapat No.476 dated 12.03.2002, the 1st respondent also shall have no right, title or interest in the subject land and his writ petition shall be treated to have been dismissed.
- iv. Similarly, Smt. Shaminder Kaur could have acquired no right or interest through an illegal transaction entered into between her and respondent No.1. Resultantly, the subject property shall stand restored in favour of State Government.
- v. Till the fact-finding enquiry is held, the Deputy Commissioner, Moga is directed to take over the possession of the suit land through an Official Receiver. The possession shall not be allowed to be retained either by the appellant or respondent No.1 (Kashmir Singh).

- vi. Subject to the fact-finding enquiry to be conducted by the Financial Commissioner, Revenue, Punjab, it is further directed that the subject land shall be sold only by way of public auction after due publicity in accordance with law.
- vii. The Financial Commissioner, Revenue, Punjab shall submit the fact-finding enquiry-cum-status report whereupon it shall be considered whether or not the matter should be entrusted to the State Vigilance Bureau against the public servants found involved in the illegal transactions.
- viii. The appellants are directed to deposit the cost amount of Rs 25,000/- in High Court Lawyers Welfare Fund within *two months*.

S. Gupta

Before Paramjeet Singh, J.

UDAY SINGH AND ANOTHER—*Petitioners*

versus

STATE OF HARYANA—*Respondent*

CRR No. 1278 of 2015

May 19, 2015

Probation of Offenders Act, 1958 – S. 4 – Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 – S. 12 – Code of Criminal Procedure, 1973 – Ss. 313, 360 & 361 – Narcotics Drugs and Psychotropic Substances Act, 1985 – S. 22 – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – S. 19 – Central Excise Act, 1944 – S. 9-E – Prevention of Corruption Act, 1988 – S. 18 – Probation – District and Town planner complained that several persons including petitioners were constructing roads for setting up unauthorized colony and were laying out means of access to National Highway without permission from Director of Department – Trial Court and lower Appellate Court convicted petitioners and others and sentenced them to undergo simple imprisonment for one year – Petitioners sought for release on probation under section 4 of Probation Act and section 360 of Cr. P.C. – Held, that provisions of section 360 of Cr. P.C. and Probation Act give