

Before Surya Kant, R.P. Nagrath, JJ.

MOHINDER SINGH—Appellant

versus

STATE OF PUNJAB AND OTHERS—Respondents

LPA No.402 OF 2012

30th November, 2012

Constitution of India, 1950 - 226 & 227 - Letters Patent, 1919 - CLX - Punjab Land Administration Manual - Para 493 - Land of Appellant was acquired by State for excavating a drain - But was not used for that purpose - Respondent No. 5 was in illegal and unauthorized occupant for about 26 years as the same was not utilized - Appellant filed application to re-vest land in his favour - Respondent No. 5 filed petition for allotting the land on reasonable price - Both petitions dismissed by District Collector with direction to evict unauthorised occupants - In another Writ Petition it was directed that if respondent No. 5 hands over possession his claim for purchase be considered as per policy dated 26.09.2007 - Appellant filed a writ petition challenging the said order - Held Government/ Public Property if misutilized or not required for any purpose, it has to be put to open auction, which would benefit State Exchequer-writ order upheld - Letters Patent Appeal dismissed.

Held, that the Government/Public Property if misutilized or not required for any purpose it has to be put to open auction, which would benefit State Exchequer.

(Para 7)

Further held, that if the land was not used for the purpose for which it was acquired, it was for the Government to take action but that did not confer any right on the original owners of the land to ask for restitution of the land.

(Para 11)

Gurcharan Dass, Advocate, *for the appellant.*

Amit Rawal, Senior Advocate, Addl. AG, Punjab with Mikhail Kad,
AAG, Punjab.

Gaurav Chopra, Advocate, for respondent No. 5.

R.P. NAGRATH, J.

(1) This litigation has brought to fore a glaring example of wasteful manner in which the State has bestowed its largesse for peanuts to an illegal and unauthorized occupant of big chunk of public property, which is land measuring 20 kanals and 7 marlas. This is a prime land and situated at a very potential site as observed by the District Collector, Faridkot in his order dated 02.08.2007 (Annexure P-4), while disposing of the rival petitions of appellant and respondent No. 5, seeking the allotment/purchase of the said land. Thanks to the equally greedy appellant in seeking allotment of the land in question as a preferential claimant, that the disturbing instance of wasteful disposal of public property has been highlighted before us. Such a State action has to be instantly struck down. Besides that we would also like to examine the similar cases with suitable direction that we propose to issue while parting with this order.

(2) This appeal has arisen out of the judgment dated 16.07.2010 passed by the learned Single Judge in CWP No. 3450 of 2008. The appellant and proforma respondent No. 6 were original owners of the land measuring 20 kanals and 7 marlas, both of whom were the petitioners in CWP No. 3450 of 2008. This land was acquired by the State for excavating a drain. The drain fell into disuse on account of setting up of Army Cantonment. The facts also reveal that apart from this 20 kanals and 7 marlas of the land, some more land belonging to the appellant was acquired in the year 1967-68. Apart from that the appellant also sold some of his remaining land in favour of respondent No. 5. This private respondent is basically the contesting party in this litigation. He was also owner of some adjoining land. Respondent No. 5 is an illegal and unauthorized occupant of the disputed land for about 26 years as the same was not utilized for the purpose for which the same was acquired.

(3) The petitioner moved an application to the District Collector, Faridkot to re-vest this land in his favour. At the same time, respondent No. 5 filed a petition before the District Collector that being in possession of this land, which is adjoining to his other land, the same may be allotted to him on reasonable price on the basis of his continuous possession, claiming that he had spent approximately ' 2 lacs for development of the said land. Both the petitions were dismissed by the District Collector vide order

dated 02.08.2007 (Annexure P-4) with a specific direction to the Sub Divisional Magistrate, Faridkot to initiate eviction proceedings against the illegal occupants and take possession of the Government land and thereafter to dispose of the land as per the instructions of the Government preferably by public auction. The attempt of the appellant in seeking quashing of the said order of the District Collector before the learned Single Judge failed and that order has been assailed by filing this appeal.

(4) It would be relevant to note that in a separate case in CWP No. 4649 of 2006, the learned Single Judge directed in the order dated 16.07.2010 (Annexure A-1) that in case the petitioner (now respondent No. 5 in this LPA) hands over the possession of the land in dispute in accordance with his statement, the Sub Divisional Magistrate, Faridkot shall consider his application for purchase of land in accordance with the policy dated 26.09.2007 (Annexure P-15 in the said petition) framed by the State of Punjab within three months. The learned Single Judge also observed as under:-

"It is, however, made clear that this order shall not be construed to be an expression of any opinion either in favour of or against the rights of the parties. The Sub Divisional Magistrate shall be competent to consider whether the petitioner's claim falls within the framework of policies framed by the State of Punjab that may be in force, within three months from receipt of a certified copy of this order."

(5) Respondent No. 5, thereafter, filed an application before the Sub Divisional Magistrate, Faridkot exercising the powers of Assistant Collector, 1st Grade, on the basis of the letter dated 26.09.2007 issued by Revenue and Rehabilitation Department of Punjab Government and that this respondent was in unauthorized possession of land for about 26 years. The Sub Divisional Magistrate, Faridkot vide order dated 02.11.2010 (Annexure A-2) directed the respondent to deposit ' 250/- per acre for every 6 months and in furtherance of Para No. 6 of the notification, the respondent was ordered to deposit the total amount within a period of 15 days as per instructions of the Government. The appellant challenged the above order before the Deputy Commissioner-cum-District Collector, Faridkot and the order dated 07.12.2010 (Annexure A-3) was passed entertaining the appeal and staying the operation of order (Annexure A-2).

(6) The Counsel for the appellant, the State Counsel and Counsel appearing for respondent No. 5 have been heard and we have given our thoughtful consideration to the whole controversy.

(7) We are of the firm view that the Government/public property if misutilized or not required for any purpose, it has to be put to open auction, which would benefit State Exchequer.

(8) We also find that discretion was rightly exercised by the District Collector in the order dated 02.08.2007 (Annexure P-4) while rejecting the claim of the appellant and also that of respondent No. 5, further proposing to put the land to open auction in accordance with Paragraph No. 493 of the Punjab Land Administration Manual after seeking approval of the Government.

(9) We hold the said decision to be neither arbitrary nor perverse or contrary to law. That was rather the most appropriate way of dealing with the Government land.

(10) We are, thus, in full agreement with the views expressed by the learned Single Judge that the decision of the Collector not to return the land to the appellant or to sell by way of public auction or dispose of it in accordance with the policy framed by the Government from time to time, falls within the discretion of the Government.

(11) There is a catena of authorities in support of the principle that if the land was not used for the purpose for which it was acquired, it was for the Government to take action but that did not confer any right on the original owners of the land to ask for restitution of the land. These authorities are; **Northern Indian Glass Industries versus Jaswant Singh and others (1)**, **C. Padma and others versus Dy Secretary to the Govt. of T.N. (2)**, **Chandragauda Ramgonda Patil versus State of Maharashtra and others (3)**.

(12) In **Chandragauda Ramgonda Patil's case (supra)**, it was held that it is not intended that any land which was acquired remained

(1) (2003) 1 SCC 335

(2) (1997) 2 SCC 627

(3) (1996) 6 SCC 405

unutilized, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification.

(13) In **V. Chandrasekaran & Anr. versus The Administrative Officer & Ors (4)**, the Hon'ble Supreme Court held as under:-

“22. In view of the above, the law can be crystallized to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the land owner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non-grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person interested, nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect.”

Therefore, this appeal to challenge the order passed by the learned Single Judge must fail.

(14) We are, however, constrained to quash the allotment of this land made in favour of respondent No. 5 vide order dated 02.11.2010 (Annexure A-2), the same having been passed, relying upon the policy letter dated 26.09.2007, issued by the State Government. In fact, the letter dated 26.09.2007 on the basis of which the allotment of the land has been made in favour of respondent No. 5 has been declared as invalid by Hon'ble Supreme Court in **Jagpal Singh and others versus State of Punjab and others (5)**, decided on 28.01.2011. Hon'ble Supreme Court also held that such letters are wholly illegal and without jurisdiction. Such illegalities cannot be regularized. It was held that the common interest of the villagers cannot be permitted to suffer merely because the unauthorized occupation has subsisted for many years.

(4) 2012 (4) RCR (Civil) 588

(5) (2011) 11 SCC 396

(15) Such an allotment otherwise is liable to be struck down as it is in violation of Article 14 of the Constitution as every member of the public has a right to participate in the proceedings of sale of the public land, for which no public notice was issued. The whole process appears to have been completed unilaterally, although, there was a direction of the Court in CWP No. 4649 of 2006 to deal application of respondent No. 5 within a period of three months, and the earlier order passed by the District Collector, Faridkot (Annexure P-4) could not be ignored, where the appellant had also been raising a rival claim.

(16) The counsel for respondent No. 5, would urge that the legality of the order (Annexure A-2) is not within the scope of enquiry in the instant appeal. This contention cannot be sustained as it is well recognized that the powers vested in the Constitutional Court cannot be literally confined to the controversy before it, but must and always extend to the areas beyond that, especially when the facts and circumstances imminently require intervention, such as the instant case, and to protect the public property being abandoned as it has been virtually done in this case.

(17) In written reply of respondent No. 5, his only claim was to get the land in question at the market value as per averments in paragraph No. 1 of preliminary objections. The private respondent, who remained in unauthorized possession of the land in question cannot claim himself to be an aggrieved person if the land is put to open auction, on the ground that he made the land cultivable, because he had been enjoying the fruits of the huge chunk of land as an illegal and unauthorized occupant for a number of years. His contention in the written statement was that on account of abandonment of the drain, a thick growth of bushes and various others plants had started coming up in the area and consequently, the drain had become a hiding place for terrorists during the period of terrorism in the State of Punjab. He filled up the drain and since the year 1980 and cultivating the entire stretch of the land in his ownership and possession alongwith the area of drain filled by him. Being in unauthorized possession for long made him entitled to the allotment of land in dispute on the payment of market value of land in dispute. Therefore, even this statement in his written reply has been brought to naught by the Assistant Collector 1st Grade by regularizing his possession on payment of a paltry sum.

(18) In **Jagpal Singh's case** (supra), Hon'ble Supreme Court observed *that facts of the case reveal very sorry state of affairs as to how the public property can be looted with connivance and collusion of the so called trustees of the public properties. It reflects on the very bad governance of the State authorities.* (Emphasis supplied). The appellants before Hon'ble Supreme Court were neither the owners nor tenants of the land in question, which was recorded as a pond situated in village Rohar Jagir, Tehsil and District Patiala. They were unauthorized occupants of the land in the said village. They appeared to have filled in the village pond and made construction thereon.

(19) The Hon'ble Supreme Court observed that instead of ordering the eviction of these unauthorized occupants, the Collector surprisingly held that it would not be in the public interest to dispossess them, and instead directed the Gram Panchayat, Rohar to recover the cost of the land as per the Collector's rates from the respondents (appellants before the Supreme Court). It was observed that the Collector has regularized the illegality on the ground that the respondents have spent huge money on constructing houses on the said land. That was a case pertaining to the land of the Gram Panchayat, described as village pond. Hon'ble Supreme Court in that case observed as under:-

"5. *What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.*"

(20) In paragraph No. 14 and 15, Hon'ble Supreme Court held as under:-

"14. In M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores. In Friends Colony Development Committee vs. State of Orissa, 2004 (8) SCC 733 this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

15. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored."

(21) In paragraph 22 of the judgment, Hon'ble Supreme Court held as under:-

"22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the

speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/ Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

(22) The matter before Hon'ble Supreme Court in **Jaggal Singh's case** (supra) pertained to the eviction of the illegal and unauthorized occupants of the Gram Sabha/Gram Panchayat/ Poramboke/Shamlat Land and it was held that this must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village.

(23) The present case is another unique example of a similar pattern. The State Government almost gifted away the public property to unauthorized occupants by issuing a few lines letter dated 26.09.2007, which has otherwise been declared illegal and without jurisdiction. This letter says that application for the transfer of the rural disposable land is made under the Punjab Package Deal Properties (Disposal) Act, 1976 and rules framed thereunder. Earlier policy issued vide circular/letter dated 14.10.2003, was, however, considered and new policy has been made, as mentioned in the letter, relevant portion of which relating to the allotment of land to the unauthorized cultivators, is as under:-

"1. xx xx xx xx xx

2. The applications 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 which are suspicious or altered shall be ignored.

3 & 4 xx xx xx xx

5. Rs. 250/- per Acre per Crop as Rent shall be got deposited for the period of their possession from the rightful person.
6. From the general class farmers Rs. 15,000/- per Acre and from the persons belonging to Scheduled Caste and Backward Classes members who are eligible for the allotment of such lands, at the rate of Rs. 12,000/- per Acre shall be recovered from them towards its value. This amount will be recovered in 6 monthly equal installments.
7. In the event of being defaulter two consequent installments, the competent office shall issue one month notice to the defaulters, in case the due installments under default are not paid in that very period, then the offer of allotment of the land shall be cancelled.

xx x̄x xx xx xx''

(24) This letter as already discussed has been declared to be wholly illegal and without jurisdiction in judgment of the Hon'ble Supreme Court in **Jagpal Singh's case** (supra).

(25) With the above discussion the order of allotment dated 02.11.2010 (Annexure A-2) passed in favour of respondent No. 5, must be and is hereby quashed. Resultantly, his appeal filed before the District Collector, Faridkot is rendered infructuous.

(26) It would be relevant to reproduce the order dated 16.07.2010 passed by learned Single Judge in CWP No. 4649 of 2006, filed by respondent No. 5, which is as under:-

"After addressing arguments for some time, counsel for the petitioner states on instructions from the petitioner's son Harvinder Singh that the petitioner shall hand over possession of the land in dispute to the Assistant Executive Engineer, Faridkot Water Drainage Construction Division, Faridkot within 15 days. It is, however, prayed that as the abandoned drain passes through the petitioner's land and cannot be used by any other person, the Sub Divisional Magistrate may be directed to reconsider the petitioner's

prayer for purchase of this land in accordance with the policy dated 26.09.2007 (Annexure P-15), framed by the State of Punjab.

In view of the statement made by counsel for the petitioner, the petitioner is directed to hand over possession of the land in dispute to Mr. Kuljeet Singh, Assistant Executive Engineer, Faridkot Water Drainage Construction Division, Faridkot, within 15 days."

Respondent No. 5 appears to have not surrendered the possession of land to the District Collector, Faridkot in compliance to the above directions.

(27) While parting with the judgment, we would like to observe that on the basis of the policy letter dated 26.09.2007, the State Government may also have granted such benefits to various unauthorized occupants of Governments properties, other than the Gram Panchayat/Gram Sabha land, which are covered by the above judgment of Hon'ble Supreme Court.

(28) We would also like that similar allotments of Government land are examined by this Court in public interest. Consequently, we dispose of the appeal with following directions:-

- (i) The instant appeal is dismissed.
- (ii) The order dated 02.11.2010 (Annexure A-2), allotting the land to respondent No. 5 is quashed and the appeal pending before the District Collector, Faridkot against the said order is rendered infructuous.
- (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.
- (vi) Registry is directed to place the said information immediately on expiry of 3 months before Hon'ble the Chief Justice for appropriate orders.

Disposed of in the above terms.
