

Darshan Kaur v. Gurdial Singh and another (S. S. Sodhi, J.)

It is further prayed that during the pendency of the writ petition, the operation of the impugned notification at Annexures P-1 and P-2 be kindly stayed in the interest of justice.

D. S. Bali, Sr. Advocate, with R. A. Yadav, Advocate, for the Petitioners.

S. V. Rathee, Advocate, for Respondent No. 1 and 2.

ORDER

(1) Mr. Bali admits having received the costs.

(2) Mr. Rathee also appears for respondent No. 1 and says that he adopts the reply already filed by respondent No. 2.

(3) Under section 4(2) of the Haryana Municipal Act, 1973, any inhabitant of the municipal area or a local area, on alteration of the boundaries of the municipal area, is entitled to raise objections. The petitioner herein is a Gram Panchayat of village Khaira and is supposedly aggrieved on the alteration of the boundaries of the municipal area. In our view, the Gram Panchayat, which is a juristic person and not a natural one, cannot be termed as 'inhabitant' so as to object under section 4(2) about the alteration of the boundaries of the municipal area. That privilege is with natural persons and not juristic ones like the Panchayat.

For this reason we dismiss the petition *in limine*.

R.N.R.

Before : S. S. Sodhi, J.

DARSHAN KAUR,—Petitioner.

versus

GURDIAL SINGH AND ANOTHER,—Respondents.

Civil Revision No. 1174 of 1988

16th November, 1989.

Code of Civil Procedure (5 of 1908)—S. 47, O. 21, Rl. 34—Execution of decree for specific performance—Judgment-debtor Proceeded

ex parte after notice—Local Commissioner executing sale-deed of suit land—Judgment-debtor, thereafter, filing application u/s 47 for setting aside sale-deed—J.D. neither stating objections to sale-deed nor pleading prejudice caused by its execution—Where J.D. Proceeded against ex parte, Provisions of O. 21, Rl. 34 are merely directory—Serving of draft sale-deed upon J.D. for inviting objections not necessary—Non-compliance does not vitiate sale-deed.

Held, that where the judgment-debtor has not come-forth to state his objections, if any, to the sale-deed as registered nor has he pointed out any prejudice caused to him by the contents of the sale-deed as executed and where the judgment-debtor does not appear despite notice and is proceeded against ex parte, the provisions of Order 21 Rule 34 of the Code of Civil Procedure, that the court shall cause a draft of the sale-deed to the executed to be served upon the judgment-debtor for inviting his objections, to it if any, must be held to be merely directory and non-compliance with them will not vitiate the sale deed executed under order of the Court.

(Paras 4 and 5)

Petition under Section 115 of Act C.P.C. of 1976 for the revision of the order of the Court of Shri S. K. Garg, PCS, Additional Senior Sub-Judge, Nawanshahar, dated 5th May, 1988, setting aside the sale deed and ordering that notice of the draft sale-deed be given to the J/Ds-Objectors and objections be invited for 13th May, 1988.

*Claim :—Suit for specific performance and Execution proceedings.
Claim in Revision :—For reversal of the order of Lower Court.*

S. P. Jain, Advocate with B. S. Sodhi, Advocate, for the Petitioner.

S. M. Sharma, Advocate, for the Respondents.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here concerns the execution of a decree for specific performance.

(2) Execution of a decree for specific performance having been applied for, notice was served upon the judgment-debtor. The judgment-debtor was proceeded against *ex parte* when he did not appear despite service. On the application of the decree-holder, thereafter, it appears, a Local Commissioner was appointed who executed a sale deed pertaining to the land which was the subject matter of the decree. It was thereafter that the judgment-debtor filed an application under Section 47 of the Code of Civil Procedure

Darshan Kaur v. Gurdial Singh and another (S. S. Sodhi, J.)

seeking the setting aside of the said sale deed on the ground that the draft of the document to be executed had not been served upon him and no opportunity had been afforded to him for filing objections to the proposed sale-deed. The reference here being to the provisions of Order 21 Rule 34 of the Code of Civil Procedure. This objection prevailed with the trial court where these provisions were held to be mandatory and the sale-deed was consequently set aside and notice of the draft sale deed was ordered to be given to the judgment-debtor.

(3) A reading of the impugned order of the trial court would show that what appears to have titled this case against the decree-holder was the judgment of the High Court of Andhra Pradesh in *P. Venkanna Chetti and another v. B. Apparao Naidu* (1), where, it was held that the provisions of Order 21 Rule 34 (3) that the court must consider the objections of the judgment-debtor to the draft sale-deed, were mandatory. A reading of this judgment would however show that on facts, it was clearly distinguishable from the present case, in that, there a draft sale-deed had been served upon the judgment-debtor, with the notice to him to file objections, if any, to it. The judgment-debtor instead filed another draft sale-deed. The court without considering the objections of the judgment-debtor accepted the draft submitted by the decree holder. It was in this context, that the court observed that the provisions of Order 21 Rule 34(3) of the Code of Civil Procedure were mandatory. The order of the executing court was consequently set aside and the trial court was directed to consider the objections of the judgment-debtor to the draft sale-deed. It deserves note that unlike the present case, that was not a case where the judgment-debtor was being proceeded against *ex parte* for failure to appear despite notice.

(4) It would also be pertinent to note here that the judgment-debtor has not come forth to state his objections if any, to the sale-deed as registered nor has he pointed out any prejudice caused to him by the contents of the sale-deed as executed.

(5) In a case like the present where the judgment-debtor does not appear despite notice and is proceeded against *ex parte*, the provisions of Order 21 Rule 34 of the Code of Civil procedure, that the court shall cause a draft of the sale-deed to be executed to be served upon the judgment-debtor for inviting his objections, if any to it, must be held to be merely directory and non-compliance with them will not vitiate the sale deed executed under orders of

(1) A.I.R. 1959 Andhra Pradesh 666.

the court unless the judgment-debtor is able to show that prejudice was caused to him by the draft sale-deed not being served upon him and opportunity thereby being denied to him to file his objections against it.

(6) Seen in this light, the impugned order of the trial court cannot indeed be sustained and is accordingly hereby set aside. This revision is thus accepted with costs. Counsel fee Rs. 300.

R.N.R.

Before : J. V. Gupta and M. S. Liberhan, JJ.

NAND LAL SHARMA AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 8534 of 1988.

19th December, 1989.

Constitution of India, 1950—Arts. 14, 16(2) and 226—Civil Services Rules, Volume I, Part I—Rls. 2.13, 5.1, 5.2, 5.3 and 5.5—Punjab State Reorganisation Act, 1982—S. 82—The Third Punjab Pay Commission, 1986—Cls. 14.18 to 14.20—Writ Jurisdiction—Mandamus—House Rent Allowance—Rural Area Allowance—Government withdrawing H.R.A. on recommendations of the Pay Commission—Place of posting made basis for admissibility of allowance—Condition of residence within 8 Kms. of the city entitling employees to H.R.A. waived off—Rural area allowance—withdrawal of H.R.A. and consequent grant of rural area allowance—Such allowance paid under executive instructions is mere concession—Government has power to withdraw unilaterally—Change in policy—Withdrawal of concession does not amount to altering conditions of service—Payment of allowance cannot be claimed in writ jurisdiction—Writ under Art. 226 not maintainable—Withdrawal does not result in discrimination.

Held, the house rent allowance was being paid under executive instructions and not under any statute as such and, therefore, any change made therein by the State Government could not be challenged in writ jurisdiction as there was no vested right in the petitioners which could be said to have been violated by the impugned orders.

(Para 15)