

Harwansh Kaur & Anr. Vs. Special Area Development Authority (Counter Magnet), Gwalior & Ors.

Civil Appeal No. 6424 of 2021 arising out of S.L.P. (Civil) No. 21294 of 2019
2021-01-01 |
Repository ID: F2J-C-1991

Full judgment text

Harwansh Kaur & Anr. Vs. Special Area Development Authority (Counter Magnet), Gwalior & Ors.

[Civil Appeal No. 6424 of 2021 arising out of S.L.P. (Civil) No. 21294 of 2019]

Leave granted.

This appeal challenges the order dated 03.06.2019 passed by the High Court of Madhya Pradesh at Gwalior in Review Petition No.450 of 2013 filed by respondent no.1 herein.

The appellants-legal representatives of one Dilip Singh had filed Case No.38-A/2005 in the Court of Second Civil Judge, Class-II, Gwalior, submitting inter alia that the lands in question were under title and possession of the appellants; that the ownership was initially that of Late Dilip Singh who all through his life remained in possession of the land and was doing agricultural operations; and, that the Gram Panchayat was threatening to utilize the land for construction of school and playground. The suit therefore claimed declaration of ownership as well as for permanent injunction restraining defendants no.1 and 2, the Government of Madhya Pradesh and the Gram Panchayat Milawali respectively from interfering with the possession of the appellants.

The stand taken by the defendants no.1 and 2 in their written statement was as under:

"3. Defendant No. 1 has denied the pleadings of the plaintiff and has stated that the disputed land is the government land and this has been mentioned in the Khasara of 2003/2004 and Late Dilip Singh had never been the owner of the disputed land nor the plaintiffs had done agricultural work on the disputed land as owner. There is wheat crop on the disputed land of plaintiffs. He has not tendered any threatening to the plaintiffs. Plaintiffs does not have cause of action against him. Therefore, prayer has been made for rejection of the plaint of plaintiff with special cost.

4. Defendant No.2 in its separate written statement has denied the pleadings of the plaintiff and has stated that the disputed land neither was under the ownership and title of Late Dilip Singh nor is under the ownership of the plaintiffs nor they are in possession and are doing agricultural work, instead, the said land is government land and being the land of village Milawali is the land of Gram Panchayat. Since this is government land therefore, no one has any right to get his name mutated. There is proposal of Gram Sabha Milawali for construction of playground on disputed land and which has been forwarded to the Tehsildar for appropriate proceeding. On that basis the said proposal was passed and has been sent to the Collector. Since the disputed land is government land therefore, proposal of Gram Panchayat to reserve the same for public use has been forwarded and this is for public purpose. They have never threatened the plaintiffs. Late Dilip Singh has got the forged entry done in Khasara and therefore, he does not get any title or right over the disputed land. On the aforesaid basis the suit of the plaintiffs may be dismissed while granting special compensation to the defendant."

The Trial Court framed the following Issues:

"(1) Whether plaintiffs are the owners and possession holders over the disputed land in Survey No.11 area 7 Bigha 9 Biswa and land in Survey No.12 area 2 Bigha 14 Biswa situated in village Milawali? Proved.

(2) Whether defendants are trying to have unlawful possession thereon by constructing School on the said disputed land? Proved.

(3) Whether Plaintiffs are entitled for relief of again mutation of name of Shri Dilip Singh in column No.3 of Khasra? Proved.

(4) Whether plaintiff has lawfully evaluated the suit and has paid the proper court fee? Proved.

(5) Whether plaintiff has filed this suit to cause hindrances in public work, if yes then whether defendant is entitled to recover a sum of Rs. 5000/- towards special damages from plaintiff? Not proved.

(6) Relief and Cost? Defendants will bear the cost of plaintiff."

After considering the material on record, the relevant Issues were considered by the Trial Court as under:

"8. Now it has to see as to whether the plaintiffs are lawful and valid owners of the disputed land then in this regard it is clear that by way of Ext. P 1 and 2 the competent officer had transferred the title of disputed land in favour of Dilip Singh as owner of the disputed land. As far as the Ext. D 1 filed by the defendant is concerned then the said document is in possession of defendant himself wherein the defendant can do any change at any time. But on behalf of the defendants no such record has been produced from which it would be clear that against the order of Ext. P 1 and 2 it has filed any appeal and had got the said order set aside. Therefore, under the aforesaid facts and circumstances, it is clear that the order dated 7.12.60 had attained finality.

In aforesaid reference the Section 158(3)(1) of the M.P. Land Revenue Code has been perused, herein it has been provided that each person who is holding the land under his land ownership right on the basis allotment by the State Government or allotment officer on start of Land Revenue Code 1992 or prior to that on the basis of lease approved prior to that. From such date of start with regard to such land he will be presumed to be land owner and he will have every right and responsibility. Which is granted to any land owner by this code or has been imposed thereon. But such any person will not transfer such land within the period of 10 years of lease or allotment. On perusal of this provision it is clear that the plaintiff has not transferred the said land. Plaintiffs have pleaded that at present also they are doing farming on disputed land. This fact is not being denied by any evidence produced on behalf of the defendants. Therefore, it becomes clear that under Section 18(3)(1) of the aforesaid Act, husband of the plaintiff no.1 and father of the plaintiff no. 2 had become owner of the disputed by operation of law and after death of Dilip Singh, plaintiffs who are his legal heirs, have become owner of the said disputed land. Therefore, on the basis of aforesaid analysis it becomes proved that the plaintiffs are the valid owner and possession holder of the disputed land."

In the backdrop of this analysis, the conclusions arrived at by the Trial Court were as under:

"13 (1) Plaintiffs are the legal and valid owner and possession of the disputed land in Survey No.18/ 1 New No.11 area 7 Bigha 9 Biswa, Survey No.19 new No.12 area 2 Bigha 14 Biswa total area 10 Bigha 3 Biswa situated in village Milawali, Patwari Halqa No.33 Tehsil District Gwalior.

(2) Defendants should not dispossess the plaintiffs from disputed land without following the due process of law nor should raise construction thereon nor get the same done and should not cause any loss to the crop of plaintiffs standing thereon."

The suit was thus allowed by the Trial Court vide its judgment and order dated 17.11.2005.

The determination by the Trial Court was not specifically put in challenge by filing any appeal. However, Case No.27A/09 E.D. was filed on behalf of the respondent no.1 herein in the Court of 14th Additional District Judge, Gwalior, Madhya Pradesh against the present appellants as well as the Government of Madhya Pradesh and Gram Panchayat Milawali.

It was stated on behalf of respondent no.1 that the lands in question were allotted to it by way of a permanent lease by the Collector, District Gwalior vide Document dated 31.08.2001 which was well before the decision was rendered on 17.11.2005 in the case instituted by the appellants.

The suit therefore claimed that the decree passed by the Trial Court in said Case No.38-A/2005 be declared void and inoperative.

The aforesaid suit was dismissed by the Trial Court vide its judgment and order dated 25.10.2010.

The stand taken by the present appellants was set-out in paragraph 4 as under:

"4. Defendant Nos.1 and 2 have denied the claim of the plaintiff and have stated that the disputed land has never been under the title and possession of the defendant no.3. Instead the disputed land was the land under title and possession of Dilip Singh husband of the defendant no.1 and father of defendant no.2. After death of Dilip Singh the defendant nos.1 and 2 have become owner of this land. As far as the question of grant of said disputed land on Lease to the plaintiff by the Defendant No.3 on 31.08.2001 is concerned, no

such document has been produced by the Plaintiff Organization and when disputed land is not under the title of defendant no.3 then the defendant no.3 does not have any right to allot the same on lease. Defendant No. 3 has not mentioned this fact in its written statement in Case No.38A/05 that it has given the disputed land on lease to the plaintiff. Order dated 31.08.2001 passed by the Collector does not confer any title on the Plaintiff therefore suit of the plaintiff may be dismissed."

After considering material on record and the rival submissions, the Trial Court found as under:

"13. In this case, first of all this is an important point as to whether is the land under title and ownership of the Government of Madhya Pradesh? In this regard the defendant witness no.1 Gurudayal Singh has stated in his statement that the disputed land survey No.11 and 12 situated in village Milawali is under its title and possession. Earlier this land was of Government of Madhya Pradesh. On behalf of the Government of Madhya Pradesh the Addl. Nayab Tehsildar, Gwalior vide the Order dated 7.12.60 passed in Case No.56/162 had given the said land to Dilip Singh. Dilip Singh is his father. Order of Tehsildar is Ext.D2. Original of the said Ext.D2 is enclosed in Case No.38A/05, Smt. Harvansh Kaur Versus Government of Madhya Pradesh in the the court of 2nd Civil Judge Class 2, Gwalior. If this document is perused then as per this document the Government of Madhya Pradesh transferred ownership title of the disputed land in favour of Dilip Singh and in compliance thereof Dilip Singh deposited the revenue vide Ext.D3.

16 Therefore, from the aforesaid analysis and perusal of evidence of plaintiff and defendant it is found that even though the disputed land was recorded in the name of Government of Madhya Pradesh in revenue records but the said land was given to Dilip Singh by the Government and Dilip Singh during his life time remain in possession of the land and after his death the legal heirs of Dilip Singh filed suit against the government and got their title declared on the said land. In the written statement of government of Madhya Pradesh in Case No.38A/05 in the court of Second Civil Judge Class 2 also this fact has not been mentioned that it has allotted the said land to SADA. In the High Court written statement of Government of Madhya Pradesh is Ext.D8. From this it is also evident that during that period government had not allotted the land to SADA as per law.

17. From the aforesaid analysis it is found that the disputed land is not under the title and ownership of Government of Madhya Pradesh, therefore, the issue no.2 is hereby decided in negative.

18. As far as the issue no.3 is concerned, since from the conclusion of issue no.2 it is proved that the disputed land was not the land under the title and ownership of Government of Madhya Pradesh. Therefore, when disputed land does not belong to Government of Madhya Pradesh then the government does not have right to transfer this because government does not have title over property and cannot transfer this to any one, therefore" this allotment is found to be baseless and this issue is hereby decided that the government did not have right to give disputed land to plaintiff on lease.

The conclusions arrived at by the Trial Court in its judgment dated 25.10.2010 were:

"21. From aforesaid analysis it is found that the disputed land had not been under the title and ownership of Government of Madhya Pradesh, therefore, had no right to transfer the suit land to plaintiff on lease. Under such circumstances the Lease issued by the Government on 31.8.2001 in favour of plaintiff and from this plaintiff does not get any title. Therefore, plaintiff is not entitled to get the relief of injunction as sought. Therefore, the issue no.5 is hereby decided in No. Therefore, it is found that the suit of plaintiff is not fit to be accepted and therefore is dismissed and the following decree is passed:

1. Suit of the Plaintiff is hereby rejected.

2. Both parties will bear their own respective costs."

Respondent no.1 being aggrieved filed First Appeal No.227 of 2011, which was dismissed by the Division Bench of the High Court by its judgment and order dated 18.07.2013. The observations made by the High Court on the concerned issues were:

"From perusal of the record, it appears that in the earlier suit which was numbered as C.S.No.38A/2005, written statement was filed by the respondents No.3 and 4. In the said suit respondents No.1 and 2 filed documents which are Ex.P.1 to Ex. P.12 which included the order of Naib Tehsildar dated 07/12/1960, whereby land was allotted to predecessor in title of respondents No.1 and 2 and lease was also granted which is Ex.112, to prove this document, respondents No.1 and 2 have examined Gurdayal Singh as PW.1 and Sukhdev Singh as PW.2. Both the witnesses were cross examined by Shri Kamal Jain, Government

Advocate thoroughly.

Thereafter respondents No.3 and 4 also examined Ashok Kumar Singh Rajpoot, Patwari of the village. Neither any evidence was adduced nor any cross examination has been made that the land was transferred to the appellant vide order dated 31/08/2001. In the revenue record of the year 2003-04, the name of the Government is mentioned. Against the judgment and decree no appeal has been preferred by the respondents No.3 and 4. In the subsequent suit which is filed by the appellant, number of documents have been filed to demonstrate that the land in question has been transferred to the appellant. Ex.P.3 is the order dated 31/08/2001 whereby it is alleged that the land has been transferred to the appellant. As per condition No.2 of the said order, the agreement was required to be executed amongst appellant and respondents No.3 and 4, no such agreement is produced, on the contrary it is admitted in cross examination by the appellant that no such agreement was ever executed.

In the facts and circumstances, this Court finds that learned Courts below committed no error in dismissing the suit filed by the appellant."

On 04.10.2013, Review Petition No.450 of 2013 was filed by the respondent no.1 submitting inter alia that certain important documents could not be placed on record. Those documents, according to the respondent no.1, were:

1. The allocation of land vide communication dated 16/23.07.2001 in favour of respondent no.1.
2. Agreement dated 09.08.2001 for transfer of land in favour of respondent no.1.
3. Grant dated 31.08.2001 made by the Collector, District Gwalior in favour of respondent no.1.

Allowing the Review Petition, the Division Bench of the High Court held that there were errors apparent on record justifying interference in the review jurisdiction. The order dated 18.07.2013 was, therefore, recalled and the appeal was restored to its file to be disposed of on merits. During the course of its decision the High Court observed that the procedure in terms of which the land was stated to have been transferred in favour of Dilip Singh was not in conformity with the settled procedure and that the initial entry of the name of Dilip Singh was only for a period of two years and his name was deleted from the revenue record after the period of two years.

In this appeal challenging the decision of the High Court allowing the Review Petition, we heard Ms. Purna Mehta, Advocate for the appellants and Mr. Prabuddha Singh, Advocate for Respondent No.1.

The record clearly indicates that the issue concerning the right, title and interest of the present appellants was initially gone into the suit filed by the appellants. By its judgment and order dated 17.11.2005, the Trial Court accepted the claim and decreed the suit. It is pertinent to note that the stand taken by the Government of Madhya Pradesh was quite clear and specific and yet the submission made on its behalf stood negatived. Furthermore, while considering the present suit, the issues were again gone into by the Trial Court and the assessment made by the Trial Court was affirmed by the High Court while dismissing the First Appeal.

The documents which were the fulcrum for maintaining the review petition were purely in the nature of grant or allocation in favour of the respondents no.1 and 2. Those documents did not in any way have any bearing on the controversy which was gone into by the Trial Court on the first occasion and again by the Trial Court and the High Court in the second suit. The basic issue was whether the Government of Madhya Pradesh could be said to be having title so as to pass the same in favour of respondent no.1. The documents annexed to the review petition were not, therefore, of any relevance so as to entertain review petition.

In our view, the exercise undertaken by the High Court in the present matter clearly amounted to reopening the issues on merits, which exercise the High Court could not have undertaken in its review jurisdiction. We, therefore, allow this appeal and set-aside the order dated 03.06.2019 passed by the High Court, without any order as to costs.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

Disclaimer: This material is for general information and legal research. It is not legal advice. Verify current law, the operative order and later history, and consult a qualified professional before acting.