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“that a Decree for Declaration to the Effect That Vs. Union of India and Others

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Court : Punjab and Haryana

Decided On : Apr-26-2014

Appellant : “that a Decree for Declaration to the Effect That

Respondent : Union of India and Others

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CM No.4969-C of 2014 in Rs.No.131 of 2013 Date of decision: 26th April, 2014 Ajit Singh and others Applicant-Appellants Versus Union of India and others Non-applicant/Respondents CORAM: HONBLE Mr.JUSTICE RAKESH KUMAR GARG1 Whether Reporters of Local Newspapers may be allowed to see the judgment?.

2.

Whether to be referred to the Reporters or not?.

3.

Whether the judgment should be reported in the Digest?.

Present: Mr.Arun Nehra, Advocate for the applicant-appellants.

RAKESH KUMAR GARG, J.

Appellants along with others filed the instant suit seeking the following relief: That a decree for declaration to the effect that plaintiffs have filed the present suit for declaration to the effect that plaintiffs are owners in possession of the suit land, fully detailed and described in Schedule A attached with the plaint known as Chaksalar Pur, which was previously in the State of Uttar Pradesh and has come to the territory in the State of Haryana, Tehsil Ballabgarh, District Faridabad by virtue of the Act No.31 of 1979, mentioned above with the directions of the State of Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 2 Rs.No.131 of 2013 Haryana, defendant for incorporating the ownership and possession of the plaintiffs qua the suit land in the revenue records of the State of Haryana of Village Chaksalarpur with consequential relief of permanent injunction restraining the defendants from interfering in the ownership and legal possession of the plaintiffs over the suit land may kindly be passed in favour of the plaintiffs and against the defendants with cost.

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The suit was decreed by the trial Court vide its judgment and decree dated 26.12.2006 in the following manner: It is ordered that the suit of the plaintiffs succeeds and the same is hereby decreed with no order as to costs to the effect that plaintiffs or their predecessors-in-interest are owners in possession of agricultural land measuring 357 Bighas 5 Biswas comprising of plot No.1/1 (60-0-0).1/2 (5-0-0).1/3 (10-14-0).3/1 (6-0-0).3/2 (5-0-0).3/3 (2- 0-0).3/4 (0-10-0).3/5 (1-10-0).4 (5-0-0).5/1 (2-0-0).5/2 (4-0-0).5/3 (10-8-0).6/7 (7-10-0).7/1 (8-0-0).7/2 (3-17- 0).8/1 (6-0-0).8/2 (25-0-0).8/3 (16-10-0).9/1 (26-15-0).9/2 (10-0-0).9/3 (9-0-0).9/4 (6-7-0).9/5 (7-8-0).10/1 (15- 0-1).10/2 (8-0-0).10/3 (1-10-0).10/4 (1-0-0).11/1 (4-12- 0).11/2 (4-5-0).11/3 (2-0-0).11/4 (20-0-0).12/1 (2-5-0).12/2 (2-0-0).12/3 (6-0-0).12/4 (5-0-0).13/1 (3-0-0).13/2 (4-0-0).13/3 (3-0-0).13/4 (1-0-3).14/5 (5-0-0).14/7 (10- 0-0).14/8 (2-0-0).14/9 (4-0-1).14/10 (7-7-4).plot No.44, situated within the revenue estate of Village Chak Salarpur, Tehsil Ballabgarh, District Faridabad (previously situated in Chak Salarpur, Tehsil Dadri, District Ghaziabad (U.P.) is

required to be incorporated in the revenue records in the names of plaintiffs and their possession is also not required to be disturbed except in due couRs.of law.

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Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 3 Rs.No.131 of 2013 However, the appeal filed on behalf of the Union of India against the aforesaid judgment and decree of the trial Court was accepted by the Additional District Judge, Fridabad vide judgment and decree dated 29.11.2012 and consequently, suit of the plaintiff- appellants was ordered to be dismissed with costs reversing the findings of the trial Court.

Aggrieved from the aforesaid judgment and decree of the lower appellate Court, the appellants filed the instant appeal.

It is a matter of record that along with this appeal, appellants had also moved an application i.e.CM No.347-C of 2013 seeking injunction against the respondents restraining them from interfering into the peaceful possession of the appellants in the suit land or dispossessing them from the suit land.

The appeal was admitted vide order dated 15.01.2013.

The said order reads thus: A suit for declaration was filed by the plaintiffs with the prayer that they being owners in possession of the suit land as described in Schedule-A annexed with the plaint in village Chaksalarpur which was previously in State of Uttar Pradesh and was now in the territory of State of Haryana by virtue of a statutory enactment, defendants be directed to incorporate ownership and possession of the plaintiffs qua the suit land in the revenue estate of village Chaksalarpur.

Consequential relief of permanent in junction was sought to restrain the defendants from interfering into the possession of the plaintiffs over the suit land.

Suit was decreed by the trial court.

Two separate appeals were preferred by Union of India and State of Haryana.

On the same set of evidence, Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 4 Rs.No.131 of 2013 the appellate court came to a different conclusion and reversed the judgment of the trial court.

Learned counsel for the plaintiffs/appellants have submitted that following substantial questions of law are involved for consideration in this case:- (i) Whether inadmissible evidence was taken into consideration by the lower appellate court?.

(ii) Whether judgment of lower appellate court is based on mis-appreciation of evidence and non-consideration of relevant exhibited documents on record?.

(iii) Whether in view of the statutory enactment i.e.Alteration of Boundaries Act, 1979, plaintiffs were entitled to the relief prayed for?.

(iv) Whether it is obligatory on the part of State of Haryana in view of the evidence brought on record to make relevant entries in the revenue record to show that plaintiffs are owners in possession of the land situated in village Chaksalarpur?.

Heard.

Admitted.

Notice re: stay for 14.2.2013.

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On 14.02.2013, on a request made on behalf of respondents the matter was adjourned to 12.04.2013.

It is also a matter of record that appellants filed another application i.e.CM No.2908-C of 2013 dated 11.03.2013 seeking the same relief as was sought in CM No.347-C of 2013 and in this application, the appellants have made a submission that the defendant-respondents were interfering in their peaceful possession over the suit property and have made an effort to dispossess them.

Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 5 Rs.No.131 of 2013 Notice of this application was also issued vide order dated 12.03.2013, which reads thus: Notice of the application for the date fixed i.e.12.4.2013.

Respondents are directed not to harass the applicants by use of force till the next date of hearing.

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Thereafter, on 10.05.2013 this Court passed the following order in CM No.2908-C of 2013: Learned counsel for the respondent prays for one last opportunity to file reply to the application for stay.

On his request, adjourned to 26.7.2013.

Learned counsel for the appellant submits that appellant is being harassed by the respondents.

However, counsel representing respondents assure the Court that appellant shall not be harassed except in accordance with law.

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Thereafter again, the appellants moved an application i.e.CM No.6651-C of 2013 making same prayer, as made in the earlier applications and on those very averments which were made in CM No.2908-C of 2013.

In this application also, notice was issued to the respondents and they were directed to file reply.

Still not satisfied, the appellants filed CM No.7375-C of 2013 making a prayer that the Air Force Authorities may be restrained from fencing the suit land putting barbed wire and from destroying the crops standing in the suit land.

It may further be noticed that in this application also, apart from mentioning the facts which were mentioned in the earlier applications, it was alleged that on

08.07.2013 Air Force Authorities were interfering in their possession and even one Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 6 Rs.No.131 of 2013 Mahindra Tractor bearing registration No.URR4370belonging to Ram Kishan son of Kalwa Ram was set on fire.

However, on this application, this Court, on the basis of request made by learned counsel for the appellants, passed the following order on 19.07.2013: Learned counsel for the applicant-appellants has stated that the applications be heard with the main case, which is fixed for 26.7.2013.

It is ordered accordingly.

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CM No.347-C of 2013 and CM No.2908-C of 2013 were disposed of by this Court vide order dated 26.07.2013, which reads thus: These civil miscellaneous applications are disposed of with a direction to the parties to maintain the status quo with regard to possession till further orders.

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At this stage, it may be noticed that the appellants moved another application i.e.CM No.438-C of 2014 on 11.12.2013 seeking the following directions to the respondent Authorities: (i) Direct the respondent-UOI/Army Authorities not to cause obstruction while the appellants/their servants do agricultural activities & irrigate the rose plants; (ii) Direct the respondent-UOI/Army Authorities not to forcibly enter the land and change the nature & use of suit land; (iii) Clarify that the status quo order passed by this Honble Court on 26.07.2013 (Annexure A-1) shall be applicable from the date of the application; (iv) Exempt from filing the certified as well as typed copies of the Annexures; Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 7 Rs.No.131 of 2013 (v) Pass any such other order or direction as this Honble Court may deem fit in the peculiar facts & circumstances of the case;.

In the aforesaid application, i.e.CM No.438-C of 2014, a specific averment was made as under: That it is also relevant to state that illegal activities of mining are being carried out by or at the instance of the officers of respondent-UOI/Army authorities from the adjoining land which is in their possession.

The respondents are likely to carry out mining from the land belonging to the applicant-appellants by forcibly obstructing them from entering upon the land which is on the northern side of river Yamuna and falling in Village Chaksalarpur and thereby diminishing its value.

Various news items regarding illegal activities of mining carried out by or at the instance of army officers in the land in their possession appeared in the NewspapeRs.copy thereof is attached herewith as Annexure A-17.

In this context it is also relevant to state that on an application moved by Noida Lok Manch against the illegal activities of mining in the adjoining areas the National Green Tribunal, New Delhi has issued notice to Union of India and others including the Army Authorities.

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The said application was dismissed by this Court by passing the following order on 20.01.2014: The order itself is self-explanatory.

No clarification is required.

The application is dismissed.

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It may further be noticed that in the aforesaid application, the appellants again harped upon the fact that they were in actual possession of the suit land and the respondents were interfering in Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 8 Rs.No.131 of 2013 their possession, and further raised a grievance that the respondent- Authorities were proceeding against the appellants for eviction under the Public Premises Act.

It is their further case that they filed COCP No.2200 of 2013 in this Court, which was disposed of on 27.08.2013 by passing the following order: The claim raised in this petition is that despite the interim order passed by this Court the Air Force authorities are harassing the applicant/appellants.

Learned counsel states that in this regard the applicant/appellants has served a Legal Notice/ Representation dated 09.08.2013 inter-alia to the Air Chief Marshel, Vayu Bhawan, New Delhi.

In my opinion, it would be appropriate if at this stage in the fiRs.instance a direction is issued to the Air Chief Marshal, Vayu Bhawan, New Delhi to consider the said representation/legal notice and communicate his decision to the applicant/appellants.

Ordered accordingly.

Let necessary action be taken within a period of one month from the date of receipt of a certified copy of this order.

Petition stands disposed of at this stage in the above terMs.Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

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According to the appellants, the Air Force Authorities passed an order dated 11.10.2013, wherein it has been mentioned that the Authorities have taken possession of the suit land in pursuance of the eviction proceedings started under the Public Premises Act.

The aforesaid order reads thus: Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 9 Rs.No.131 of 2013 (a) That the issues raised by you relate to land in village Chaksalarpur whereas Air Force does not own any land in the said village and is owner of land measuring 759 acres in village Salarpur, District Faridabad, Haryana, which has been certified by competent revenue authorities

and accepted by the learned ADJ.Faridabad in his order dated 29 Nov.

12 in Civil Appeal No.51/2007.

(b) That the eviction proceedings were duly carried out by the Air Force authorities without use of force, in accordance with law and duly supported by the District Administration, Faridabad.

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The appellants further filed COCP No.2873 of 2013, which came up for hearing in November 2013 and has been ordered to be heard along with the instant RSA.

Thus, in spite of the fact that the appellants have made repeated attempts by moving various applications seeking the same relief and all those applications were decided by this Court, yet the instant application i.e.CM No.4969-C of 2014 has been filed making the following prayer: (i) to allow the applicant/appellants to cultivate the land in dispute so as to ensure that the land remains fertile; (ii) not to permit any person to do mining &/or change land use; OR pass any such other order/direction as this Honble Court may deem fit; (iii) Exempt from filing the certified as well as typed copies of the Annexures;.

A careful reading of the prayers made in CM No.438-C of 2014 and the instant application i.e.CM No.4969-C of 2014 would Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 10 Rs.No.131 of 2013 show that again the same relief has been sought which was sought in the aforesaid application, by re-phrasing the relief clause.

However, in pith and substance, same relief has been claimed as was claimed in the earlier application, which is clear from a comparative study of both these applications as under: CM No.438-C of 2014 CM No.4969-C of 2014 (i) Direct the respondent- (i) to allow the applicant/ UOI/Army Authorities not to appellants to cultivate the land cause obstruction while the in dispute so as to ensure that appellants/their servants do the land remains fertile; agricultural activities & irrigate (ii) not to permit any person to do the rose plants; mining &/or change land use; (ii)

Direct the respondent- OR pass any such other UOI/Army Authorities not to order/direction as this Honble forcibly enter the land and Court may deem fit; change the nature & use of (iii) Exempt from filing the certified suit land; as well as typed copies of the (iii) Clarify that the status quo Annexures; order passed by this Honble Court on 26.07.2013 (Annexure A-1) shall be applicable from the date of the application; (iv) Exempt from filing the certified as well as typed copies of the Annexures; (v) Pass any such other order or direction as this Honble Court may deem fit in the peculiar facts & circumstances of the case; Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 11 Rs.No.131 of 2013 It may also be noticed that in the instant application, verbatim claims have been made as were made in CM No.438-C of 2014 without mentioning any change of circumstances and emergence of new facts.

Further it may be noticed that much hue and cry has been raised before this Court with regard to illegal mining by the sand mafia in connivance with the respondent-authorities.

However, it is an admitted fact that the appellants through one Noida Lok Manch have already sought relief before the National Green Tribunal and the matter is pending before the Tribunal for 06.05.2014 as shown in the annexed ordeRs.It could not be shown as to how this application was maintainable in view of earlier applications, contempt petitions and the orders passed thereon, and the fact that appellants are also before the National Green Tribunal seeking same relief.

From the facts as narrated above, this Court is of the opinion that the instant application is nothing but an attempt on the part of the appellants to overreach the Court by making an effort of forum-shopping time and again on the basis of the same very facts, and this practice deserves to be repelled by imposing actual and heavy costs.

At this stage, this Court may also refer to the observations of the Hon'ble Supreme Court in the case of State of Uttaranchal versus Balwant Singh Chaufal and otheRs.2010(1) RCR (Civil) 842 has held that the Court should ensure that the frivolous petitions must be discouraged by imposing exemplary costs or by

adopting novel methods to curb such petitions.

It may be noticed that appellant has put up a false plea with regard to territorial jurisdiction at civil Court at Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 12 Rs.No.131 of 2013 Rajpura and thus, in view of the judgment of Hon'ble the Supreme Court in case of Dalip Singh versus State of Uttar Pradesh and otheRs.(2010) 2 Supreme Court Cases 114 such a petition should be dismissed.

Hon'ble the Supreme Court in the case of Prestige Lights LTD.versus SBI (2007) 8 Supreme Court Cases 449, observes that if the litigant is guilty of suppressing the facts or not disclosing the facts such a petition be dismissed without adjudicating the appeal.

It is also appropriate to refer to the observations of Hon'ble the Supreme Court made in Salem Advocate Bar Association v.

Union of India, 2005(3) R.C.R.(Civil) 530, which reads as follows:- Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party.

Unfortunately, it has become a practice to direct parties to bear their own costs.

In a large number of cases, such an order is passed despite Section 35(2) of the Code.

Such a practice also encourages the filing of frivolous suits.

It also leads to the taking up of frivolous defences.

Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal.

When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in

those cases where the court in its discretion may direct otherwise by recording reasons therefor.

The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 13 Rs.No.131 of 2013 litigation.

It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow.

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Thus, it has been noticed in the aforesaid judgment that the costs are imposed so that the same:- (a) should act as a deterrent to vexatious, frivolous and speculative litigations or defences and the spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence.

(b) costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the Court.

Hon'ble the Supreme Court in the case of Vinod Seth v.

Devinder Bajaj & Another, 2010(3) R.C.R.(Civil) 813 observed as under:- 26.

The provision relating to compensatory costs (Section 35A of the Code) in respect of false or vexatious claims or defences has become virtually infructuous and ineffective, on account of inflation.

Under the said section, award of compensatory costs in false and vexatious litigation, is subject to a ceiling of Rs.3,000/-.

This requires a realistic revision keeping in view, the Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court CM No.4969-C of 2014 in 14 Rs.No.131 of 2013 observations in Salem Advocates Bar Association (supra).Section 35B providing for costs for causing delay is seldom invoked.

It should be regularly employed, to reduce delay.

27.

The lack of appropriate provisions relating to costs has resulted in a steady increase in malicious, vexatious, false, frivolous and speculative suits, apart from rendering Section 89 of the Code ineffective.

Any attempt to reduce the pendency or encourage alternative dispute resolution processes or to streaming the civil justice system will fail in the absence of appropriate provisions relating to costs.

There is therefore an urgent need for the legislature and the Law Commission of India to re-visit the provisions relating to costs and compensatory costs contained in Section 35 and 35A of the Code.

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A Division Bench of this Court in C.W.P.No.18346 of 2005 decided on 20.5.2009 dismissed a review petition and imposed costs of Rs.1,00,000/- while observing that no one has the right to waste Court time.

Resultantly, the application is dismissed with costs.

Since costs should be actual to desist the litigant pursuing a frivolous litigation, it is deemed appropriate to burden the applicant-appellants with costs which are assessed at Rs.1,00,000/- in the instant case.

Let the costs be deposited with the Mediation and Conciliation Centre of this Court within one month from today.

(RAKESH KUMAR GARG) JUDGE April 26, 2014 rps Singh Rattan Pal 2014.05.02 11:13 I attest to the accuracy and integrity of this document Punjab & Haryana High Court

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