

Bhaskar and Others Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Aug-14-2015

Judge : A.B. Chaudhari & P.N. Deshmukh

Appeal No. : Criminal Application [APL] No. 516 of 2015

Appellant : Bhaskar and Others

Respondent : State of Maharashtra

Judgement :

Oral Judgment: [A.B. Chaudhari, J.]:

1. Rule. Rule is made returnable forthwith. Learned APP Mr. Nayak waives service for respondent sole. Heard learned counsel for the rival parties. By consent of rival parties, this Criminal Application is taken up for final hearing and disposed of by this Judgment and Order.

2. Following is the prayer in Prayer Clause [I] of the application for quashing FIR No. 57/2015 registered with Dahihanda Police Station, Tq. Akot, Distt. Akola, for offence under Section 447 read with Section 34 of Indian Penal Code:-

[I] Allow the instant application and thereby quash the first information report vide FIR No. 57/2015 [Annex.5], registered with the respondent, Police Station, Dahihanda, Tah. Akot, Distt. Akola, for offence punishable under Section 447 and 34 of the Indian Penal Code.?

3. The crux of the matter and the larger question that arises for consideration is whether Gayran lands can be cultivated and used illegally and then regularized for any other purpose than for what it is earmarked, namely for grazing?

4. The First Information Report dated 5th July, 2015 filed by the Secretary, Gram Panchayat, Devri, Tq. Akot, Distt. Akola, and order made by the Sub-Divisional Officer on 7th July, 2015 also show that the applicants encroached on the Gayran land. The allegation in the FIR is that green pastures, grass etc., grown on the Gayran land, in question, were removed by the applicants, insecticide was sprayed which was obviously dangerous for animals and a tractor was used for ploughing the land in question. That is why the FIR under Section 447 of Indian Penal Code was registered.

5. Learned counsel for the applicants relied on the Govt. Resolution dated 28th November, 1991 and submitted that the said Resolution clearly provides for regularization of encroachments on Gayran lands. He submitted that the applicants have been in possession of these lands from the year 1989 and, therefore, the applicants are entitled for regularization of those encroachments. On the last date, learned counsel for the applicants was asked to find out the view of the Apex Court in relation to Gayran lands, since the Govt. Resolution of 1991 is deemed to have been superseded by the extant policy.

6. Learned counsel for the applicants in fairness has produced before us the Govt. Resolution dated 12th July, 2011. The counsel submitted that para 7 of the said Govt. Resolution is what the Apex Court held in the case of **Jagpal Singh and others Vs. State of Punjab and others** [AIR 2011 SC 1123]. However, he submitted that para 7 [4] of the said Govt. Resolution permitted such regularization of encroachments. He also invited our attention to the order made by the Bombay High Court on 28th March, 2014 in Public Interest Litigation No. 204 of 2010 and submitted that with reference to earlier order made by the same Court on 16th December, 2010, the Principal Seat proceeded to dispose of the petition by directing regularization of the Gayran lands.

7. We have heard learned counsel for the rival parties at length.

8. It is true that the Govt. Resolution dated 28th November, 1991 did indicate regularization of encroachments on Gayran lands. That was also referred in the Circular dated 23rd September, 1999, as there is, again with reference to the Govt. Resolution dated 28th November, 1991. It is also true that the Judgment and order dated 28th March, 2014 made in Public Interest Litigation No. 204 of 2010 referred to earlier order dated 16th December, 2010 and ultimately, directions were issued for regularization. We, however, find that the earlier order dated 16th December, 2010 in Public Interest Litigation No. 204 of 2010 is obviously before the delivery of the Judgment of the Supreme Court in the case of Jagpal Singh and others Vs. State of Punjab and others [cited supra], based on which the Govt. issued the last Resolution dated 12th July, 2011. It is, thus, clear to us that the said order dated 28th March, 2014 does not refer to the Supreme Court judgment aforesaid in Jagpal Singh's case, so also the Resolution of the Govt., dated 12th July, 2011, a copy of which is taken on record and marked 'X' for identification. We think the Supreme Court Judgment and the Govt. Resolution based on that Judgment as aforesaid must be held to be holding the field and any order in ignorance thereof would not be valid. We are, therefore, bound by the Judgment of the Supreme Court and the consequent Govt. Resolution dated 12th July, 2011. We, therefore, do not subscribe to the submission made by the learned counsel for the applicants that the order dated 28th March, 2014 should be followed. We then find that in the districts of Akola and Buldana, large number of Gayran lands meant for grazing of animals have been encroached and are now being sought to be regularized, as, in the instant case, the application was made to the Collector to act for making regularization on the basis of the old Govt. Resolution of 1991. We think, in the light of the last Supreme Court Judgment in the case of Jagpal Singh and the Govt. Resolution based thereon, the regularization of such encroached Gayran lands cannot be allowed and on the contrary the encroachments are liable to be removed, as directed in the said Govt. Resolution.

9. One must realize the pitiable conditions of the animal husbandry in respect of which the lands meant for grazing etc., have also been encroached by human beings and the animal husbandry is being deprived of their basic food only because of the unending greed of human being. This is a pathetic state of affairs and we think that the State Govt. at least now must wake up to follow the said

Supreme Court Judgment in letter and spirit and the Govt. Resolution issued by the Govt. itself on 12th July, 2011, in particular Clause 9 (1) (2) thereof by drawing out the programme as suggested by the Supreme Court for driving out the human beings who have encroached on the lands meant for grazing of the animals rather than the animals being driven out by human beings. We are really taken aback that despite steep decline in the animal husbandry in proportion to human population in the country, the Govt., issued a Resolution dated 28th November, 1991 to regularize encroachments on Gayran lands.

10. We are fortified in our above view on this subject by the decision of Karnataka High Court in the case of **Holeyappa and others Vs. State of Karnataka represented by its Secretary and others** [ILR 2005 KARNATAKA 5437]. The observations made by the Karnataka High Court in the said Judgment, the relevant portion of which is quoted below, are apt in the present scenario:-

.....

.....No writ lies for issuing directions to the Government or the officials of the Government to compel them to act contrary to the statutory provisions. Respondents are directed to ensure that if any standing crop was there, it is harvested and the proceeds given to such persons who had raised the crop and to ensure that hence forth the land is retained as a gomal land, that no unauthorised encroachments are allowed on the land and land is preserved for the common utility of the community of the village. It is hereby directed that the respondents are bound to maintain the land as gomal land. #Over a period of time, no doubt the number of cattle might have got reduced but villagers still remain agricultural based and farmers continue to depend on cattle. Areas available for grazing of cattle, greenery, have got reduced over all on account of vast extents of lands becoming urbanised and rapid urbanization has not spared villages either. Non agricultural activities have proliferated and the demand for land has increased day by day. Vast extents of land which has been earmarked for such community purposes like gomal land have become the prime target of the greedy. Local politicians eye on it for their personal gains, set up people to grab such lands; applications are made by syndicates in benami and what not. Available lands are

grabbed by the powerful and greedy persons and the like at the cost of community even when there is absolute need for maintaining such lands as gomal lands and to ensure that they sub-serve the common interest of the community. Without any application of mind or thought and at the behest of greedy political bosses, bureaucrats threw to winds the relevant statutory provisions, subvert the provisions and virtually sell away Government lands in the guise of granting of lands. To further compound the situation such persons even seek aid of the Court praying for issue of directions to the respondents to legitimise their illegal activities and directions and mandamus are issued by this Court. More often than not such directions come in handy for conniving and fraud intent officials to put a seal of legitimacy for their arbitrary and illegal actions.

..?

11. We then find that in so far as the offence registered against the applicants is concerned, the facts disclosed in the FIR and the order made by the Sub-Divisional Magistrate show that there is a prima facie case against the applicants, as they had allegedly ploughed the Gayran land, cleared the green grass meant for animal grazing and not only that, they finally spread the insecticide over the grass lands. The applicants themselves say that they have encroached on the Gayran lands and, therefore, we have no doubt in our mind that an offence under Section 447 read with Section 34 is clearly made out. That being so, we make the following order:-

ORDER

[a] Criminal Application No. 516 of 2015 is dismissed summarily.

[b] State Govt. is directed to take note of the Govt. Resolution No. œ//.•. /œ-dated 12th July, 2011 and the Supreme Court Judgment, on which it is based, and to implement the Supreme Court Judgment and the Resolution at the earliest.

[c] State Govt. shall direct all the Collectors in the State not to regularize any encroachments on Gayran lands and to recall, if any, made as per Clause 9 (1) (2) of the said Govt. Resolution No. œ//.•. /œ- dated 12th July, 2011, and to take

possession of such Gayran lands for grazing of animals.

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