

State Vs. Mohd. Aslam and ors.

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Court : Jammu and Kashmir

Decided On : Mar-24-2005

Reported in : 2005(3)JKJ1

Judge : S.K. Gupta, J.

Acts : Jammu and Kashmir Land Acquisition Act; ;Big Landed Estates Abolition Act, 2007; ;Land Acquisition Act; ;Code of Criminal Procedure (CrPC) - Sections 227, 228 and 251; ;Prevention of Corruption Act, 2006 (1949 A.D.) - Section 5(2); ;Government Rules; ;Government Orders; ;Government Act - Section 2; ;Big Landed Estates Abolition Act, 2007

Appeal No. : Cr. Revision No. 15/1998

Appellant : State

Respondent : Mohd. Aslam and ors.

Advocate for Def. : J.P. Singh and; V.R. Wazir, Advs.

Advocate for Pet/Ap. : B.S. Slathia, AAG

Disposition : Petition dismissed

Judgement :

S.K. Gupta, J.

1. This revision is directed against the judgment and order dated 24.11.1997, passed by the learned Special Judge, Anti-Corruption, Jammu. By means of the impugned order, the trial Court held that no prima facie case is made out against the accused-persons, dismissed the challan and discharged them.

2. The facts of the case, in resume, may be noticed:-

Non-official accused-respondents were in unauthorized possession of the State land in Villages Kartholi and Birpur. In the year 1958, on coming into force the Government Order No. LB-6/C of 1958, they became entitled to be declared as 'tenants-at-will' and thereafter under Government Order No. S.432 of 1966 for the conferment of proprietary rights in respect of the land in their respective possession in the year 1967. The mutations, accordingly, were attested in their favour under the Government Order No. LB-6/C of 1958 and also vested with the proprietary rights under Government Order No. S.432 of 1966 subsequently in the years reflected in the record, which is explicitly clear from the table given in the order impugned by the trial Court. The mutations were attested in respect of the land located in Villages Kartholi and Birpur. However, some portion of the land in respect of which proprietary rights were vested in favour of non-official accused came to be acquired by the Government under the provisions of Jammu & Kashmir Land Acquisition Act. The award was made by the competent authority and compensation paid to the said persons.

3. According to the prosecution, the entire transaction, right from the stage of attestation of mutations till the payment of compensation after the passing of the award in respect of some of the land acquired by the Government and also in respect of which proprietary rights were conferred upon some persons, was carried out in consequence of a criminal conspiracy of the government officials who joined at different times with the non-official accused and by abuse of their official position conferred undue pecuniary benefits on the non-official accused. It was during the investigation of another FIR No. 46 of 1985, it transpired that a big fraud has been played with the compensation of land acquired by the government and Lacs of Rupees have been grabbed by the accused through this land scandal. A detailed investigation was conducted by the Vigilance Organization after the

registration of the case which disclosed that the mutations were attested by Ganga Dutt Bhagat who was posted as Additional Tehsildar, Samba during the period 28-10-1978 to 4.2.1979 and accused, Shiv Nath Gupta, who remained posted as Additional Tehsildar, Samba in the year 1966. Both the official accused-respondents were alleged to have attested the mutations under Government Orders No. LB-6/C of 1958 and No. S.432 of 1966 in favour of the persons who were in possession of the said land in Villages Kartholi and Birpur. The draft award of some of the land, which was acquired, was prepared by C.L.Bhushan, Collector, Land Acquisition and after its approval by the Government, the compensation was distributed by his successor, Mohd Aslam, Collector. Further case of the prosecution is that the mutations were attested in favour of the non-official accused after the ban was imposed by the Government vide its Order No. Revenue-S-Agri-453 of 1973 dated 29/9/1973 and, thus, the same is found to be violative of the Rules and Government Orders.

4. The controversy in this case appears to have centred around the competency of the Revenue officials with regard to the attestation of the mutations in favour of the non-officials accused under the Government Order No. LB-6/C of 1958, and conferment of proprietary rights under the Government Order No. S.432 of 1966 and further on the action of official accused, despite the ban imposed on such mutations vide Order No. Revenue-S-Agri-453 of 1973 issued on 29.9.1973 and further circular No. 270-419/PLO/Agri dated 8/7/1980 issued by the Commissioner, Agrarians Reforms, J & K Srinagar.

5. Mr. B.S. Slathia, learned counsel appearing for the State, argued that the trial Court has not appreciated the scope of section 251 Cr.P.C, which entered into a roving enquiry, sifted and weighed the material on record not for a limited purpose to find out the prima facie case, but in such a manner as is done on the conclusion of trial for recording conviction. His further submission is that the trial Court has not appreciated the material in its proper perspective and the finding returned by it suffers from serious legal infirmity, the same deserves to be set aside, and the accused persons are liable to be charged under Section 5(2) of PCA. Whereas, M/S J.P. Singh and Ved Raj Wazir, learned counsel appearing for the accused-respondents, argued that the material assembled during the investigation and

placed before the Court has been properly appreciated by the trial Court and rightly found that no prima facie case is disclosed against the accused persons and in consequence thereof discharged them. The case has been examined by the Court below with erudite assistance provided by the learned counsel appearing for the respective parties and in the light of the facts as they exist on the file as well both oral and documentary.

6. It is not in dispute that mutations under the Government Order No. LB-6/C of 1958 in respect of the land of Village Birpur were attested by Shiv Nath Gupta, the then Additional Tehsildar, Samba on 20.12.1967. Shiv Nath Gupta further attested mutations conferring the proprietary rights upon the non-officials respondents under the Government Order No. S. 432 of 1966.

7. It is apt to point out that there was no ban for the attestation of mutations under Government Order No. LB-6/C of 1958 in the year 1967. In fact, there was no legal restriction in the way of official respondents for attestation of mutations under Government Order No. LB-6/C of 1958 in favour of the non-official, accused-respondents, namely Prem, Amar Nath, Jagan Nath, Dev Raj, Munshi, Kanshi, Sansar Chand, Gogi and Gori. Similarly, there was no legal impediment for the attestation of mutations, conferring proprietary rights under the Government Order No. S. 432 of 1966 upon the persons in possession of land on 4.9.1978 by the official accused-respondents.

8. This clearly shows that no undue benefit was given to the non-official accused-respondents by the official accused-respondents by mis-using their official position either by attesting the mutations under Government Order No. LB-6/C of 1958 or subsequent conferment of proprietary rights under the Government Order No. S.432 of 1966. The ban order is of 1973 and the same was not in operation when the mutations under Government Order No. LB-6/C of 1958 were attested by Shiv Nath Gupta, the then Additional Tehsildar Samba.

9. As regards the mutations conferring proprietary rights under Government Order No. S.432 of 1966, the ban order of 1973 did not pertain to it so as to affect its validity in any manner whatsoever. Mr. B. S. Slathia, AAG, however, contended feebly that even the mutations under the Government Order No. LB-6/C of 1958

could not be made in the year 1967 as the land stood excluded by section 2 of the Government Order No. LB-6/C of 1958 being a land governed by the provisions of land contract. This plea is not available to the petitioner as the case of the prosecution is neither based on such a plea nor mutations have been questioned on these basis even in the sanction order.

10. As regards the mutations of the land located in Village Kartholi are concerned, these were attested by the Tehsildar- accused Ganga Dutt Bhagat. These mutations are stated to have been attested on the report of Patwari Chaman Lal. The mutations of the land in Kartholi Village came to be attested in 1978/79 and the mutation of one Baldev Singh-accused of Village Birpur was also attested, the details of which have been given explicitly by the trial Court in its impugned judgment. Mr. Slathia, AAG, at the out set, submitted that these mutations were attested in clear violation of ban order of 1973 and instructions issued by the Agrarian Reforms Commissioner on 2.7.1980 and 8.7.1980 respectively. According to the ban order of 1973, issued by the Government under Government Order No. 453 of 1973, it was directed that no mutation under the Government Order No. LB-6/C of 1958 be attested, henceforth. In this context, it is meaningful to point out that the Government Order No. LB-6/C of 1958 has neither been repealed nor rescinded by the order of 1973; only a direction was issued for not attesting the mutations under Government Order No. LB-6/C of 1958 in favour of the persons who were holding the State land un-authorizedly. This was neither published in the government gazette nor widely circulated. The trial court also found from the Photostat copy of the order, placed on record, that this order was forwarded only to the following officers:-

i. Divisional Commissioner, Jammu/Kashmir,

ii. Dy. Commissioner_____.

iii. Tehsildar_____.

iv. Circle officer_____.'

11. It is nowhere gatherable from the order that it was also communicated to the accused officials. In the absence of any evidence collected during investigation about the service of the ban order of 1973 on the accused officials, the question of its violation does not arise.

12. That apart, the accused officials were never found posted during that period on any of these posts to whom the copy of the order could be said to have been sent. In such event, it cannot be presumed that the ban order was within the knowledge of these officials. Even Mr. B. S. Slathia, AAG, could not show from the record that Government Order No. 453 of 1973 was published in any of the government gazette. He, however, admitted the publication of the Government Order No. LB-6/C of 1958 in the government gazette on 21-6-1958. Relevant portion of Government Order LB-6/C of 1958, for facility of reference, is reproduced as under:-

'It is ordered that the occupants of the State land including that vested in the State under the Provisions of the Big Landed Estates Abolition Act, 2007 and that from which ejectment was ordered under Council order No. 40-C of 1944 but ejectment has not taken place till kharif 1957-58 be recorded as tenants-at-will (under the State) in respect of the area in their cultivating possession or occupation in Kharief 1957-58, subject to the following conditions,'

13. The aforesaid direction seems to have been enacted by the government for the regularization of unauthorized possession of the persons over the State land. Under this order, the un-authorized occupants were treated as 'tenants-at-will'. Whereas Government Order No. 453 of 1973 banning the attestation has been issued without repealing or rescinding the Government Order No. LB-6/C of 1958 of all its legal imports. The order of 1973 banning attestation of the mutations under Government Order No. LB-6/C of 1958 was rendered only as an administrative order to be implemented by the concerned revenue officers to whom it was conveyed and communicated. This has admittedly not been published in any of the government gazette and does not envisage general presumption of knowledge by all the officers. The Investigating Agency having not collected and placed any evidence on record showing that the ban order of 1973

was ever served upon these officers viz., official accused, therefore, they cannot be made liable for its violation or non-implementation.

14. It was next contended by Mr. B.S. Slathia, AAG, that the mutations attested are in violation of the instructions of the Agrarian Reforms Commissioner, J & K issued vide his letters dated 2.2.1980 and 8.7.1980 respectively. The record shows that when the mutations were attested by the accused-officials, these instructions were not in existence, so the question of their violation does not arise.

15. So far as the accusations against C.L. Bhusan and Mohd Aslam, the then Collectors are concerned, Mr. C.L. Bhusan is stated to have prepared the draft award for the grant of compensation to the persons whose land was acquired under the provisions of the Land Acquisition Act. According to the prosecution, since the mutations pertain to some land which has been acquired, being illegal and these have been attested in violation of the ban order of 1973, no draft award could be prepared by him. The draft award in this case has been prepared relying upon the entries in the record showing the mutations attested in the names of the said non-official accused. The draft award submitted to the government was accepted and approval accorded.

16. Mr. Slathia also submitted that a circular of 1980 issued by the Agrarian Reforms Commissioner, Srinagar, J & K also required the Tehsildars and Collectors to record a note about the extinguishment of rights on both the parats of the mutations attested under the Government Order No. S. 432 of 1966. The material collected during the investigation does not disclose the persons appointed as Tehsildars/Collectors on whom the responsibility of recording such a note on both parats of the mutations under the Government Order No. 432 of 1966 could be fixed. When, Mr. C.L. Bhusan, took over as Assistant Collector in 1984, there was no such note appended on the parats of the mutations as per the circular of 1980 issued by the Agrarian Reforms Commissioner, Srinagar, J&K.; Even this is also not the case of the prosecution that C.L.Bhusan and Mohd Aslam were the Collectors of Jammu when the aforesaid circular came to be issued and they were required to append the said note on both the parats of the mutations of the land acquired under Land Acquisition Act. Mr. C.L. Bhusan, accused has relied upon

the entries in the record and a draft award was prepared which stood accepted by the Government and sanction accorded, when submitted. So in such circumstances, no fault could be found with C.L. Bhusan, official-accused. It may further be indicated that C.L. Bhusan has since died and otherwise also charge against him stands abated.

17. Official accused, Mohd Aslam, Collector, passed the final award when the draft award had been received after approval from the Government. Once the draft award was approved by the Government, Collector Land Acquisition had no discretion but to pass the final in terms of the draft award approved by the Government. He cannot be said to have violated any of the Government Orders or provisions of law. Mohd. Aslam, Collector, cannot be attributed with any criminal intention or committing any illegality in passing the final award. The trial Court, on the basis of the material placed on record, did not find any prima facie case against the official accused to proceed with the trial.

18. It is also not in dispute that the mutations alleged to have been attested by the official accused have not been challenged in any proceedings and I am afraid, if now the question of validity of mutations attested cannot be examined nor the propriety of payment of compensation can be looked into. The material on record, in my view, does not disclose prima facie any abuse of official position by the official accused in giving the benefits to the non-official accused persons.

19. As regards scope of sections 227/228 of the Code of Criminal Procedure (Central), the Apex Court in case Satish Mehra v. Delhi Administration and Anr., 1996(3) Crimes 85 (SC), held as under:-

'Held : When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'.

Further held: The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is necessary to

proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court (sic) out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of work-load. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or ship the proceedings at the stage of Section 227 of the Code itself.'

20. The aforesaid judgment is a complete answer to the contention raised by Mr. B.S.Slathia, learned AAG appearing for the petitioner that the trial Court has exceeded its power in evaluating material placed before it at the preliminary stage of hearing.

21. Adverting to the above facts and bestowing with my anxious consideration, I, unhesitatingly, reach the conclusion that there is no sufficient ground to proceed with the trial in the case. I do not find any palpable illegality or irregularity in the order impugned, propounded by the trial Court, warranting any interference in this revision.

22. In the facts and circumstances of the case, the revision, in my view, does not possess any merit and the same is, accordingly, dismissed.