Ajay Singh vs Khacheru on 2 January, 2025

Author: Sanjay Karol

Bench: Sanjay Karol, C.T. Ravikumar

NON-

2025 INSC 9 IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos……..OF 2025
(Arising out of Special Leave Petition(Civil) Nos. 34407-34408

AJAY SINGH … AP

Versus

KHACHERU AND ORS. … RES

JUDGMENT

SANJAY KAROL J.

Leave granted.

2. The present appeals have been preferred against the judgment and order dated 13th May, 20131 in Civil Review Petition No.118411 of 2013 in Writ Petition (C) No.9192 of 2007 and the final order and judgment dated 17th January, 2013 in Writ Petition (C) No.9192 of 20072 passed by the High Court of Judicature at Allahabad, whereby the judgment and order dated 27th August, 2004 passed by the Additional District Magistrate/Additional Collector (City), Ghaziabad, in Case No.05 of 2003-04, against the order dated 13th September, 2006 passed by the Additional Commissioner, Meerut, in Revision No.135 of 2003-04 and against the order dated 29th December, 2006 passed by the Impugned order Impugned Judgment Additional Commissioner in Review Application in Revision No.135/2003-04, was set aside. The Civil Review Petition No.118411 of 20133 preferred by the respondent herein was dismissed vide order dated 13th May, 2013.

3. The factual matrix of the case is as follows: -

> This dispute relates to Khasra No.103 (earlier known as Khasra No.84) (hereinafter referred to as “disputed land”). In 1970, the disputed land was recorded as ‘Johad (Pond)’ in the Revenue Records. In 2003, One Khacheru (respondent herein) asserted a right over the disputed land, citing the alleged patta for Khasra No.103, as per the revenue records of the year 1981-82. One Ajay Singh (appellant herein) filed an application under Section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, asserting that the disputed land was Johad (Pond) before the

consolidation operation was initiated rather than the "Oosar"4 land and the said land was excluded from the consolidation scheme as it served as a water reservoir, used by the villagers to provide water for their cattle and other usage.

4. It was contended by the respondent before the Additional District Magistrate/Additional Collector, while relying on the alleged patta based on the revenue entries of the year 1981-82, that the disputed land was allotted in his name as Bhumidhar, 22 years ago and the disputed land was not Johad (Pond) instead, was an “Oosar” land, which has acquired its current depth as a result of Impugned Order In some other places, the record spells this as ‘Usar’ digging out the mud for use. Further, it was contended that such objections of the appellant were time-barred.

5. The Additional District Magistrate/Additional Collector, Ghaziabad, vide order dated 27th August, 2004 examined the evidence on record, considering the sole issue of whether the alleged patta for Khasra No.103 is false and the entries in Khatauni on the basis of the said patta, are fictitiously made. It was concluded that according to the report of the Tehsildar, no allotment file for the alleged patta is available in the Tehsil Office, and though the alleged patta is claimed to have been allotted in 1981 but the allotment register shows it to be made in the year 1978-79. Therefore, the entries made in the Khatauni are fictitious, and the same were not proved by the respondent. Further, it was ordered that the revenue entries be corrected and the alleged patta be considered as cancelled.

6. Aggrieved by order dated 27th August, 2004, the respondent filed a Revision Petition before the Appellate Authority, i.e., the Additional Commissioner, Meerut, which was dismissed vide order dated 13th September, 2006, upholding the findings of the authority to the effect that the entries were fictitious and the alleged patta in favour of the respondent, was rightly cancelled by the Collector as a consequence thereof.

7. The appellant also initiated proceedings, being Original Suit No.372 of 2003 before the Civil Judge (Junior Division) at Ghaziabad, seeking a permanent injunction against the respondent regarding the disputed land. The suit was proceeded ex-parte on default of the appearance of the respondent. On 7th November, 2005, the Civil Judge passed an ex-parte decree in favour of the appellant, permanently prohibiting the respondent from disturbing the villagers’ right to use the land as a Johad (pond) or interfering with its use as a water reservoir.

8. The respondent preferred a review application against order dated 13th September, 2006, passed by the Additional Commissioner in Revision No. 135/2003-04. However, the Additional Commissioner, Meerut, vide order dated 29th December, 2006, dismissed the review application upholding the factual findings recorded by the authorities below.

9. Being dissatisfied and aggrieved by the judgments and orders passed by the authorities, as recorded in the preceding paragraphs, the respondent preferred Writ Petition No.9192 of 2007 before the High Court. The order passed therein is impugned in these proceedings.

10. The High Court allowed Writ Petition No.9192 of 2007 by order dated 17th January, 2013 and set aside the orders of the Additional District Magistrate/ Additional Collector and Additional Commissioner which were based on the concurrent findings of law and facts, and observed that the disputed land was mistakenly recorded as "Johad (pond)", in revenue records due to some confusion, while it should have been treated as "Usar".

11. The appellant herein filed Civil Review Petition No.118411 of 2013 against the judgment and order dated 17th January, 2013 in Writ Petition No.9192 of 2007 on the ground that the respondent suffered an ex-parte decree permanently restraining him from interfering with the disputed land passed by the Civil Judge (Junior Division) at Ghaziabad.

12. The High Court dismissed the Civil Review Petition stating that the decree passed by the Civil Judge (Junior Division) is based on the findings of order dated 27th August, 2004 passed by the Additional District Magistrate/Additional Collector in Case No.05 of 2003-04, which was set aside vide judgment dated 17th January, 2013 meaning thereby that since the basis of the order of the Civil Judge no longer stands, the said decree also becomes non est in law.

13. The principal question that falls for our determination, in this case, is whether the concurrent findings recorded by the Additional District Magistrate/ Additional Collector and Additional Commissioner that the disputed land was recorded as a Johad (Pond) in the revenue record, could have been interfered by the High Court in a writ jurisdiction under Article 226 of the Constitution of India.

14. In the adjudication of this question, we find that the record speaks to the fact that the document annexed as Annexure P-1 in the present appeals stated that in 1970, the disputed land was found to be Johad (Pond) at serial No.257, mentioned as Khasra No.84 in revenue records.

15. The authorities below had concurrently held that as per the revenue record, the disputed land had been shown as Johad (Pond). Further, it was held that a valid patta was never executed in favour of the respondent and that there was no record of allotment entry regarding the said patta. No such entry was available in Tehsil in this regard. Thereafter, they further observed that the entries made in Khatauni 1385 to 1390 Fasli are fictitious as Lekhpal and Kanungo signed it on contradictory dates, i.e., 06.08.1982 and 06.05.1982, respectively.

16. The said finding of facts was reversed by the High Court in writ proceedings only on the ground that at all relevant times, the disputed land was recorded as 'Oosar' in the revenue records and under some confusion it was entered as Johad (Pond). The High Court further said that the writ petitioner could not be responsible for the non-availability of allotment files in the tehsil office.

17. It is a well-established principle that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot reappreciate the evidence and arrive at a finding of facts unless the authorities below had either exceeded its jurisdiction or acted perversely.

18. On the said settled proposition of law, we must make reference to the judgment of this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram5. The relevant portion thereof reads as under:

> "16. ... It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the courts below have come or in other words a finding which was perverse in law. This principle is well settled. In D.N. Banerji v. P.R. Mukherjee [(1952) 2 SCC 619] it was laid down by this court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should (1986) 4 SCC 447 refrain from interfering with such findings made by the appropriate authorities. ..." (Emphasis Supplied)

19. The above said proposition of law was reiterated in Shamshad Ahmad v. Tilak Raj Bajaj6, wherein it was observed that:

> "38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law."

20. Observations similar in nature were made in Krishnanand v. Director of Consolidation7, wherein it was held that:

> "12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. ..." (Emphasis Supplied)

21. In our considered view, the High Court has committed an error of law and facts in setting aside the concurrent findings in both the impugned judgment and order. There was no basis for the High

Court to ignore the findings of the 6 (2008) 9 SCC 1 7 (2015) 1 SCC 553 authorities and come to its own conclusion by appreciating the evidence on record. The same was outside the purview of Article 226 of the Constitution of India in the absence of any perversity or illegality afflicting the findings of the authorities.

22. A plain reading of the impugned judgment shows that the High Court has exceeded its jurisdiction in reappreciating the evidence and substituting the factual findings recorded by the authorities below. The conclusion that the disputed land should be treated as "Oosar" land is unsupported by the evidence on record. Further, the authorities below rightly observed that the disputed land was Johad (Pond) and was kept out of the consolidation scheme, as it was being used as a water reservoir by the villagers for their daily needs. Given the ex-parte decree passed in favour of the appellant by the Civil Judge on 7th November, 2005, whereby the respondent was permanently prohibited from disturbing the villagers' right to use the land as Johad (Pond), the High Court erred in disturbing the orders of the lower authorities.

23. In regard to the order passed in the civil review petition, we are constrained to make certain observations. In the said order it was observed that by virtue of order passed in the writ petition, the order of the Collector dated 27 th August, 2004 was set aside and, therefore, the permanent injunction granted by the Civil Judge, Junior Division, Ghaziabad, dated 7th November, 2005 automatically rendered ineffective. We find the said observation of the High Court to be problematic on at least two counts. One, that the order of the Collector formed only one part of the basis for seeking a permanent injunction and was not the raison d'etre of the permanent injunction so issued. Second, that an order granting a permanent injunction, with the authority having given its independent and anxious consideration, cannot be set aside in such a cursory and callous manner, more so under the supervisory jurisdiction of the Court. A permanent injunction is an order of substance and ought to be treated as such. This manner of setting aside the permanent injunction has to be deprecated.

24. Accordingly, we allow the appeals. The impugned judgment and orders dated 13th May, 2013 in Civil Review Petition No.118411 of 2013 in Writ Petition (C) No.9192 of 2007 and the final order and judgment dated 17th January, 2013 in Writ Petition (C) No.9192 of 2007 by the High Court of Judicature at Allahabad, are set aside. The findings of the authorities declaring the disputed land as Johad (pond), are restored.

Pending application if any, shall disposed of.

.....J. (C.T. RAVIKUMAR) .....J. (SANJAY KAROL) 2nd January, 2025;

New Delhi.