

parties are in a position to approach the civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigations.

(32) It was further held by Hon'ble Supreme Court in ***Prakash Chand's case*** (*supra*), that normal rule is as stated by the Supreme Court in Puri's case. That was a suit based on title and that could be decided by civil Court only. That ratio cannot apply where there is not dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly or unlawfully and ask the other to act in accordance with law. It was further held that where the dispute is not on the right to possession but on the question of possession, the Magistrate is empowered to take cognizance under Section 145 Cr.P.C. There being no dispute of title between the appellant and respondent the only claim to be decided was if the appellant had been forcibly and wrongly dispossessed within two months next before the date on which the information was received by the Magistrate and the High Court instead of deciding this crucial aspect, failed to exercise its jurisdiction as the appellant has sought the remedy in civil suit without applying the mind if that decision was in any way helpful for dropping the proceedings. In the said case Hon'ble Supreme Court further held as under:-

“In equity and justice the appellant has still stronger case. On own showing of the respondent the property is ancestral. The behaviour of the son is cruel and unjust. The learned Counsel for the respondent during arguments stated that the son was willing to keep his father with him. What a charitably disposed son the respondent appears to be. He is willing to permit the father to live with him but not agreeable to permit him to occupy a separate portion which was in his possession. In the light of the averments made by the son in the affidavit filed in this Court and the alleged misbehaviour by him and his family members this appears to be only an excuse for preventing the father from living in peace in the end of his life.”

(33) So the aforesaid judgment would not support respondent's case because the pending suit before the trial Court is not only with regard to claim of possession but also for the title and injunction as already observed.

(34) In the light of facts of instant case also this Court would be inclined to quash the Calendars and the subsequent proceedings. It is apparent that application for setting aside *ex parte* divorce decree was filed after 17 years and that too without impleading the petitioner as a necessary respondent. Only the daughters of Gurdev Singh who are co-plaintiffs with Gurpal Kaur in the civil suit, were impleaded as LRs of deceased Colonel Gurdev Singh. The daughters admitted the claim for setting aside the *ex parte* decree of divorce. In view of the aforesaid discussion, I find that the proceedings under Section 145 Cr.P.C. is not but a sheer abuse of the process of Court. The appropriate remedy for redressal of grievances would have been to take recourse before the Civil Court with regard to appointment of receiver or to made an exact prayer for *ad interim* injunction specifically qua possession on making out a *prima facie* a case under the relevant provision of Code of Civil Procedure.

(35) It is pertinent to note that when the instant petition was listed on 16.02.2015, before a co-ordinate Bench, notice of motion was issued and learned Sub Divisional Magistrate, was directed to adjourn the case beyond the date fixed for awaiting further directions of this Court. The Sub Divisional Magistrate, Phagwara, passed an order dated 16.03.2015 (Annexure P-19) with the observations that he was unable to satisfy himself as to which party was in possession of the land in dispute and appointed Tehsildar, Phagwara as the receiver. When passing of the said order was brought to the notice of this Court on 07.04.2015, the operation of the same was stayed. With regard to passing of the order by the Magistrate, contempt proceedings bearing COCP No. 902 of 2015 have also been initiated against him at the instance of petitioner.

(36) In view of the aforesaid discussion, both the petitions are allowed and the impugned Calendars bearing Rapat No. 13 dated 10.12.2014 (Annexure P-1) at Police Station Sadar, Phagwara, District Kapurthala (in CRM-M-5134-2015) and Rapat No. 15 dated 27.01.2015 (Annexure P-1) at Police Station Mahalpur, District Hoshiarpur (in CRM-M-5840-2015) and the subsequent proceedings arising therefrom are quashed and consequently, the order dated 16.03.2015 (Annexure P-19) passed during the pendency of instant petition is also quashed.

P.S. Bajwa

Before Rajan Gupta, J

PANCHAYAT SAMITI, BATALA—*Petitioner*

versus

DEPUTY COMMISSIONER, GURDASPUR
AND ANOTHER—*Respondents*

CWP No. 22793 of 2010

June 2, 2015

Constitution of India, 1950—Art. 226—Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973—S.5 — Eviction of unauthorised occupant—Petitioner, a Panchayat Samiti, rented out plot to respondent—Respondent defaulted in payment of rent—He was declared an unauthorized occupant of premises—Collector directed eviction of respondent—Subsequently, application was filed stating that a compromise was executed between Panchayat Samiti and respondent—Collector dismissed case of Panchayat Samiti—Later on, Panchayat Samiti denied existence of any such compromise—Collector set-aside compromise and directed eviction of respondent—Appellate Authority set aside order passed by Collector observing that right course available to petitioner—Panchayat Samiti was to avail remedy before civil court—Held, that eviction proceedings culminated when Collector directed eviction of private respondents—No subsequent applications could be entertained by officer exercising powers under 1973 Act—A government authority or its officials cannot enter into any compromise with a private respondent with regard to lease of a 'public premises'—Officials of petitioner Panchayat connived with private respondent in defeating effort to evict him—Orders passed subsequent to eviction order are unsustainable in law.

Held, that there can be no manner of doubt that officials of the Panchayat Samiti in fact, connived with the private respondent in defeating the effort to evict private respondent from property belonging to Panchayat Samiti. The premises was leased out way back in the year 1977 and proceedings remained pending for last almost 40 years. Meanwhile, the private respondents enjoyed the usufruct of the premises. A perusal of application/orders passed after eviction order dated 4-2-1994, only show that the authorities concerned acted either without jurisdiction or for some extraneous consideration. It is borne on record that after petition under the Act was moved by Panchayat Samiti

on 24.3.1992, private respondent appeared and filed reply. On his failure to appear thereafter, *ex parte* proceedings were initiated. Collector thereafter considered the plea of Panchayat Samiti on merits and directed eviction of the private respondent.

(Para 7)

Further held, that private respondent tried to play hide and seek with various authorities thereafter. He moved an application for restoration of the application for setting-aside *ex parte* proceedings and also appeal impugning the main eviction order. On 21.4.1994, Collector accepted the application for setting-aside *ex parte* proceedings. Private respondent thereafter, withdrew the appeal pending before the Commissioner, Jalandhar Division. During the pendency of the proceedings, alleged compromise dated 13.2.1997 (Annexure P-7) was produced. In view of compromise, Panchayat Samiti withdrew the petition for eviction of the private respondent and order dated 28.10.1998 was passed. Later, application was moved for recalling the order dated 28.10.1998. Even this application was dismissed in default on 3.10.2003. Ultimately, it was allowed only on 3.3.2010, whereby Collector held that proceedings under Public Premises Act were required to be initiated. Against this order, directing initiation of proceedings under the Act, Commissioner entertained appeal relying upon the compromise and directed that Panchayat Samiti may approach the civil court of competent jurisdiction. I am of the considered view that orders Annexures P-6, P-9 and P-10 and compromise Annexure P-7 are against law and deserve to be set-aside. In fact, eviction proceedings had culminated on 04.02.1994 when Collector directed eviction of private respondent(s). It is inexplicable how subsequent applications were entertained by the authorities and various orders were passed. Such orders being quasi-judicial in nature, could not have been passed on whims and fancies of the officer exercising powers under the Act. The compromise entered into on behalf of the Panchayat Samiti by certain officials is non-est in the eyes of law. A government authority or its official(s) cannot enter into any compromise with a private respondent with regard to lease of a 'public premises'. Application for recalling orders dated 28.10.1998 passed on basis of alleged compromise was decided after more than a decade. It is manifest misuse of authority for benefit of individuals whether private or government officials. All parties ensured that government property is not vacated in a prompt manner. Various applications moved by Panchayat Samiti were dismissed either in default or delaying tactics. Even authorities exercising power under Public Premises Act played in

hands of private parties. Orders passed subsequent to eviction order dated 04.02.1994 do not make any head or tail and are unsustainable in law. This court cannot turn a blind eye to flagrant violation of norms and procedures. This court, thus, needs to interfere and direct appropriate action. Under the circumstances, all orders passed subsequent to order of eviction dated 4.2.1994 are hereby set-aside. Order dated 4.2.1994 is sustainable as private respondent was proceeded *ex parte* after following due procedure. Even otherwise, the order is informed by reasons. As the private respondent succeeded in delaying the proceedings for four decades and enjoyed usufruct of the property, this writ petition is allowed with Rs.5.00 lacs as costs. Deputy Commissioner is directed to get the premises vacated forthwith and submit a report within one month. He shall also initiate disciplinary and criminal proceedings against the delinquent officials and individuals due to whose connivance, interests of the Panchayat Samiti suffered for a period of four decades.

(Para 8)

R.D. Bawa, Advocate *for the petitioner*

V. Ramswaroop, Addl. A.G. Punjab

Arun Jain, Senior Advocate with Kushagra Mahajan, Advocate
for respondent No.2

RAJAN GUPTA, J.

(1) Petitioner is aggrieved by order dated 20.8.2010 (Annexure P-10), passed by Deputy Commissioner, Gurdaspur, exercising the power of Commissioner under the Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973 (hereinafter referred to as “the Act”).

(2) Learned counsel for the petitioner has argued that while passing the impugned order, the Deputy Commissioner has travelled beyond his jurisdiction while relegating the petitioner to the remedy of civil court against the order dated 28.10.1998, passed by Collector, Batala as jurisdiction of the civil court is specifically barred under Section 15 of the Act. He further submits that the alleged compromise is the result of fraud and collusion and is against the public interest.

(3) The plea has been opposed by learned State counsel as well as learned senior counsel appearing for respondent No.2. According to them, a written compromise dated 13.2.1997 had been executed between respondent No.2 and the petitioner Panchayat Samiti through

its Executive Officer, who had all power of the petitioner Panchayat Samiti. Compromise which was executed as per law was binding on the petitioner. Since both the parties at the relevant time, compromised the matter in writing, petitioner has no locus standi to question the same.

(4) I have heard learned counsel for the parties and given careful thought to the facts of the case.

(5) Brief facts are that petitioner Panchayat Samiti rented out the plot in question to respondent No.2 @ ₹50/- per month on 16.4.1977. As respondent No.2 defaulted in payment from very next month i.e. 16.5.1977, he was declared an unauthorized occupant of the premises. As a result, application was filed under relevant provisions of the Act, seeking eviction from the premises and also damages. Vide order dated 4.2.1994, Collector accepted the plea of the Panchayat Samiti and directed eviction of the private respondent from the plot and imposed damages of ₹1,80,000/-. It may be noticed that before impugned order was passed, private respondent filed reply but thereafter absented. Ex-parte proceedings were, thus, initiated. Consequently, order dated 4.2.1994 (Annexure P-3) was passed. Private respondent, moved application for setting-aside ex-parte proceedings. This application was, however, dismissed in default as applicant failed to appear before the Collector. It is important to notice here that private respondent had also challenged main order of eviction dated 4.2.1994 before the Commissioner, Jalandhar Division by way of appeal. Vide order dated 12.4.1994, Commissioner issued notice in the appeal and stayed operation of eviction order. Private respondent also filed an application before the Collector for restoration of application for setting-aside ex-parte order dated 4.2.1994. This application was allowed by the Collector vide order dated 21.4.1994. Private respondent, thus, withdrew his appeal pending before the Commissioner. Same was dismissed as withdrawn vide order dated 26.7.1995. During the pendency of proceedings before the Collector, a compromise dated 13.2.1997 is stated to have been executed by the Executive Officer of the Panchayat Samiti. Another official of the Panchayat Samiti namely, Lakhwinder Singh appeared before the Collector and acknowledged that compromise dated 13.2.1997 was duly signed by Executive Officer Malkiat Singh. On the basis of above statement the case was dismissed as withdrawn vide order dated 28.10.1998. Said order reads as follows:-

“The appellants counsel produced an agreement (Ex.C-1) and requested for the withdrawal of the case. The representative of

Panchayat Samiti supports the move. Hence, the case is dismissed as withdrawn.

Sd/- Collector Batala 28.10.98.”

(6) On 9.11.1998, Panchayat Samiti filed an application for setting aside the order dated 28.10.1998 in order to ensure that government property was not jeopardized. The Panchayat Samiti denied having executed any compromise in favour of respondent No.2 and submitted that the document was null and void, forged and fabricated. This application remained pending for considerable period. Ultimately, it was dismissed in default on 3.10.2003. Later, application dated 5.11.2003 was moved for restoration of aforesaid application. The application was ultimately restored on 29.10.2008. Thereafter, on one date, respondent No.2 appeared before the Collector but absented thereafter. Vide order dated 3.3.2010, the Collector allowed the application. He set-aside compromise entered into between Panchayat Samiti and private respondent and directed initiation of proceedings under the Public Premises Act. Private respondent challenged the impugned order by way of appeal before the appellate authority i.e. Deputy Commissioner, Gurdaspur. The appellate authority set-aside the order passed by the Collector relying upon compromise dated 13.2.1997 and observed that right course available to the Panchayat Samiti was to avail remedy before the civil court. Said order has been impugned before this court on the ground that the appellate authority had no jurisdiction to relegate the petitioner to civil court, as property in question is clearly government property and Public Premises Act is applicable. Besides, no appeal was maintainable against the order, Annexure P-9, passed by the Collector restoring the application under the Public Premises Act. The compromise in question is result of fraud, played by certain officials of the Panchayat Samiti and therefore, has no sanctity in the eyes of law. Neither Panchayat Secretary Lakhwinder Singh nor the Executive Officer was authorised to enter into any compromise on behalf of the Panchayat Samiti. It had been done in collusion with the private respondents.

(7) There can be no manner of doubt that officials of the Panchayat Samiti in fact, connived with the private respondent in defeating the effort to evict private respondent from property belonging to Panchayat Samiti. The premises was leased out way back in the year 1977 and proceedings remained pending for last almost 40 year. Meanwhile, the private respondents enjoyed the usufruct of the premises. A perusal of application/order passed after eviction order