

(2011) 02 P&H CK 0458

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 14390 of 2009

Vijay Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Feb. 16, 2011

Acts Referred:

- Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 - Section 246

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

The Petitioner prays for direction to the Respondents to sell him land measuring 4330 Sq. Yards situated in municipal limits of Shahbad on the basis of a resolution dated 20.1.2003 on the ground that he is a lessee on the land, where he had raised construction after due sanction. As per the Petitioner, his predecessors are in possession of this land since 25.7.1968 and if he is now evicted, he would suffer an irreparable loss.

2. On the face of it, it may sound a very attracted submission but deeper analysis would show that how efforts are being made to usurp a public property. May be the Petitioner is in possession of this land, where he has raised the construction but it would be important to notice the manner in which the Petitioner has come to acquire possession of this property.

3. The Petitioner would claim that this land was leased to him vide resolution of the Municipal Committee and registered lease deed was executed on 18.4.1973 for a period of 99 years. The Petitioner has constructed a cold storage, an ice factory and a Bank locker besides having constructed an industrial training institute and some shops. The Respondents have issued notice to the Petitioner on 13.2.1989,

canceling the lease. The Petitioner was directed to restore the land within a period of five years. The Petitioner filed a civil suit, but the same was dismissed on 26.10.1998, against which he filed an appeal. During this time, another resolution dated 20.1.2003 is passed by the Municipal Committee for selling this land to the Petitioner at Collector's rate. The Petitioner accordingly withdrew his appeal.

4. The Municipal Committee had already initiated proceedings under Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short, "the Act") and the Petitioner had been ordered to be ejected from the premises on 12.12.2000. This order was upheld by the Appellate Authority on 22.11.2005. During the pendency of the proceedings before the Commissioner, the Petitioner again made a request for purchasing the property and has filed the present petition, when no response is received.

5. Primarily, the Petitioner would base his claim on the basis of two resolutions passed by the Municipal Committee, one vide which a lease was executed in his favour and the second one through which a decision was taken to sell this land to the Petitioner. How these resolutions came to be passed, can be seen from the reply filed in response to the notice issued in the writ petition. When resolution dated 20.9.1968 and another resolution dated 25.12.1970 were passed, father of the Petitioner was President of the Municipal Committee, Shahbad. Finding by the Civil Court in the suit filed by the Petitioner is that one Kharaiti Lal had got the lease deed sanctioned illegally in his favour but the same was not approved by the Deputy Commissioner, as per the rules. This led to the suit being dismissed. The lease deed was accordingly cancelled on 13.2.1989 and 5 years period was given to the Petitioner to vacate the premises. Unmindful of this, the Petitioner continued to raise construction and encroached the municipal land, being fully conscious of the legal position.

6. The Petitioner had also filed a civil suit, challenging the order canceling the lease, where again the civil suit is decided against him. The finding by the Civil Court is that the Petitioner is an encroacher of municipal land. This suit was, thus, dismissed. The Petitioner remained unsuccessful in appeal and so the order canceling the lease has acquired finality.

7. Not only that there is a judicial finding standing against the Petitioner, describing him as encroacher of municipal land. The Municipal committee, thus, was fully justified in moving an application for eviction of the Petitioner under the Act. This application was also allowed and the Petitioner has been directed to pay a sum of Rs. 1000/- per marla from 1983 onwards. Against this order, the Petitioner preferred an appeal, which was dismissed by Commissioner, Ambala Division, on 12.11.2005. A sum of Rs. 44,17,920/- is due against the Petitioner as mesne profits. Another sum of Rs. 21,882/- is pending against the Petitioner as a lease amount. The Respondents, therefore, would rather pray before this Court to direct the Petitioner to deposit this amount.

8. To explain the background in which resolution dated 20.1.2003 for selling this land to the Petitioner came to be passed, it is pointed out that during this period, real brother of the Petitioner was the President of the Municipal Committee and so this resolution was managed or got passed. This resolution again was required to be approved by the Deputy Commissioner u/s 246 of the Act but was never approved by the Deputy Commissioner. Accordingly, this resolution would have no sanctity in law and can neither be acted upon nor otherwise would be enforceable.

9. The state of affair, as would reveal from the pleadings, would make a rather disturbing reading. The Petitioner is an encroacher and is wanting to justify his illegal action in raising huge construction on a land, which belongs to a Municipal Committee and, thus, a public property. More than one attempt have been made by the Petitioner to legalise his illegal action and each time, such order was managed at a time when his close relatives like father and brother were the President of the Municipal Committee. Surely they had not got elected to legalise the illegal possession of the Petitioner ? One would wonder as to why no criminal action has been initiated against the father and brother of the Petitioner, who while being an elected representative of public have acted to advance favours for their near and dears and close relations like the Petitioner. One would receive a bit of satisfaction to notice that the Courts rose to the occasion and were able to stop this illegality from perpetuating forever. The then Administrator of the Districts have also taken care to perform their duties and functions strictly in accordance with law. It is because of this that this public property has not been usurped so far, though it continues to be in illegal possession of the Petitioner despite different judicial and administrative orders standing against him, requiring him to vacate the same. Rather than, allowing the prayer of the Petitioner, this would be a fit case to issue direction to the District Administration and the Deputy Commissioner to ensure eviction of the Petitioner within a time bound period, so that public property is restored to its rightful owners.

10. Let the Deputy Commissioner take immediate action to implement the order of eviction, if he has not done so far. The Deputy Commissioner would furnish report to this Court about the action taken in the matter within three months from the date of receipt of copy of this order. Let the copy of this order be sent to the Deputy Commissioner and the President of the Municipal Committee to ensure compliance.

The writ petition, however, is dismissed.