

(2014) 07 P&H CK 0284

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 20008 of 2011

Municipal Committee

APPELLANT

Vs

The Collector

RESPONDENT

Date of Decision: July 18, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Constitution of India, 1950 - Article 226, 227
- Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 - Section 4, 5, 7

Citation: (2015) 1 RCR(Civil) 285 : (2015) 1 RCR(Rent) 13

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: K.C. Rajput, Advocate for the Appellant; Sandeep S. Mann, Sr. DAG and Alok Jain, Advocate for the Respondent

Final Decision: Allowed

Judgement

Paramjit Singh Patwalia, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 03.08.2010 (Annexure P-3) passed by Collector, Gaur and the order dated 26.05.2011 (Annexure P-4) passed by Commissioner, Rohtak Division.

2. Brief facts of the case are that petitioner-Municipal Committee-instituted a petition under Sections 4 and 5 read with Section 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short "the Act") on the ground that petitioner is the owner of land comprised in khewat No. 816 min, khata No. 1242, new khewat No. 914/816, khata No. 133, rectangle and killa No. 209 min (7 kanals 17 marlas) and this land is reserved for a "johar" from the time of consolidation of land. The land is being used for common purposes and respondent

No. 3 has encroached upon 2 kanals out of total land measuring 17 kanals 7 marlas of rectangle and killa No. 209. Notice regarding eviction was given to the respondent to which reply was filed. In the reply stand of respondent No. 3 is that petitioner is not the owner of the land in dispute. A number of other residents have also constructed houses at the spot. Spot was inspected and report was submitted on 31.10.2006 wherein it was clarified by Tehsildar that land in dispute in revenue record has been mentioned as "mustarka jumla malkan", however, the kind of land has been mentioned as "johar". It was pleaded that, in fact, there is no "johar" in existence, it is only mentioned in the revenue record. The application for eviction is not maintainable until question of title is decided.

3. It needs to be mentioned here that respondent No. 3 had earlier filed a civil suit titled as "Daya Nand v. Municipal Committee, Ganaur", wherein declaration and permanent injunction was sought.

4. In the said suit, following issues were framed:-

1. Whether the plaintiff is owner in possession as co-sharer in the suit property mentioned in para No. 1 and 2 of the plaint? OPP

2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP

3. Whether the suit filed by the plaintiff is not maintainable in the present form? OPD

4. Whether the suit is bad for want of notice? OPD

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Whether the plaintiff has no cause of action to file the present suit? OPD

7. Whether the plaintiff has suppressed the true material facts from the court? OPD

8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

9. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD

10. Whether the suit of the plaintiff is liable to be rejected under Order 7 Rule 11 of the CPC? OPD

11. Relief.

5. The Court of first instance after considering the evidence of the parties has recorded following finding on issue No. 1:-

16. On the basis of my aforesaid discussion, I have come to the view that the Municipal Committee, Ganaur is the owner of the suit property which is being used

for common purposes in the shape of Johar of the village, therefore, the plaintiff cannot be declared to be its owner in possession as prayed for. Resultantly, I decide this issue against the plaintiff and in favour of the defendant.

6. Ultimately, suit of respondent No. 3 was dismissed. Respondent No. 3 preferred an appeal before the lower appellate Court against the judgment and decree of the Court of first instance, which was partly allowed on 05.11.2005 and following finding was recorded:-

In view of the foregoing discussion, the present appeal stands accepted partly with no order as to costs. The relief regarding the declaration in favour of the appellant is declined. However, a decree for permanent injunction is passed in favour of the appellant restraining the respondent from dispossessing the appellant from the suit land forcibly and illegally except in due course of law. The judgment and decree of the learned trial court dated 9-9-2005 stand modified to this extent. Decree sheet be prepared. Lower Court record be sent back alongwith the copy of the judgment and the record of the appeal be consigned.

7. Lower appellate Court directed that respondent No. 3 cannot be evicted forcibly and illegally except in due course of law. In view of this direction, an application under Sections 4 and 5 read with Section 7 of the Act was filed before the Collector, who after considering the evidence dismissed the application for eviction as not maintainable till question of title is decided. Appeal preferred by the petitioner also failed. Hence, this writ petition.

8. I have heard learned counsel for the parties and perused the record.

9. Learned counsel for the petitioner vehemently contended that question of title stands decided in the civil proceedings. Learned counsel for the petitioner made reference to the judgment of civil Court, specifically para No. 6, reproduced herein above, to contend that a specific finding has been recorded that Municipal Committee is the owner of the property in question. It has been pointed out that in appeal relief qua declaration has been specifically declined and the only relief granted was with regard to restraining the petitioner from taking possession illegally and forcibly. Learned counsel for the petitioner contended that petitioner is not taking possession illegally and forcibly rather proceeding in accordance with law. The findings of both the authorities below i.e. Collector and the Commissioner are not sustainable in the eyes of law as they have wrongly recorded a finding that question of title is involved. Once the issue of ownership has been decided by the civil Court, the findings are binding on the authorities in summary proceedings. It is further contended by learned counsel for the petitioner that Hon"ble Supreme Court in [Jagpal Singh and Others Vs. State of Punjab and Others](#), has specifically ordered that where land has been unauthorizedly encroached upon by the encroachers, they should be summarily evicted from public lands. The said authority is applicable not only to the State of Punjab but to the entire country.

10. On the other hand, learned counsel for respondent No. 3 contended that lower appellate Court has rightly set aside the findings of Court of first instance with regard to declaration, as suit for declaration is not maintainable. Learned counsel further contended that findings recorded by both the authorities below with regard to question of title are legal and valid and cannot be agitated in the writ petition. Learned counsel further submitted that demarcation is required to be carried out to ascertain whether respondent No. 3 is actually in possession.

11. I have considered the contentions raised by learned counsel for the parties.

12. There is categorical finding by the civil Court that the petitioner is owner of the disputed land. The land is "johar" and being used for common purposes. The said finding has not been set aside. Lower appellate Court has set aside the finding on issues No. 4 and 5 wherein it is specifically mentioned that relief of declaration is declined, meaning thereby finding of the civil Court with regard to ownership has been maintained. So far as demarcation is concerned, once respondent No. 3 is claiming possession over the land in question and issue is with regard to encroachment and illegal possession, he cannot raise this plea. This is not the case of the respondent that he is owner of the other land which may be independently demarcated at the spot, rather categorical stand of the respondent before the authorities as well as the civil Court was that he is in possession of the land in dispute. There is no dispute that land in revenue record is mentioned as "jumla mustarka malkan" whereas in the column of cultivation possession name of respondent No. 3 has been shown but kind of land has been shown as "johar", which is a place for common purposes. The authorities should also take into consideration observations of Hon"ble Supreme Court in Jagpal Singh's case (supra).

13. In view of above, present writ petition is allowed with costs of Rs. 5,000/- and the impugned orders of the authorities below are set aside. The Collector shall pass fresh order on merit. The parties through their counsel are directed to appear before the Collector on 18.08.2014.