

CWP No. 8026-2003

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 8026-2003 (O & M)

Date of Decision:23.01.2015

Arya Pratinidhi Sabha Punjab (Regd.) and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. M.L.Sarin, Sr. Advocate with
Mr. Vikas Suri, Advocate for
the petitioners.

Dr. Deepa Singh, Addl. A. G. Punjab.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 15.06.1999 (Annexure P-5) passed by respondent no.3-Sub Divisional Magistrate, exercising the powers of Collector under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (in short, 'the 1973 Act'), Nawanshahr and the order dated 26.12.2001 (Annexure P-7) passed by respondent no.4-Deputy Commissioner exercising the powers of Commissioner, Nawanshahr.

Brief facts of the case are to the effect that respondent no.2-

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Tehsildar (Sales), Nawanshahr on behalf of the Central Government moved application for eviction of the petitioners under Section 4 of the 1973 Act. It was pleaded in the eviction application that Tehsildar (Sales), who is holding its office as public servant and authorized to deal with the cases of govt. land, is competent to institute the application for eviction of the present petitioners, who are in unauthorized and illegal possession of land measuring 28 kanals 17 marlas. Upon receipt of notice of eviction application, the petitioners put in appearance before respondent no.3 and filed written statement taking various preliminary objections and also contested the application on merit. It was pleaded that respondent no.2-Tehsildar (applicant) has no locus standi and authority to file the eviction application and the eviction application is bad for mis-joinder and non-joinder of necessary parties. The ownership of property in question vests in the Central Government. The petitioners have constructed school and play ground in the property in dispute since long. It is also the case of the petitioners that the school came into existence in the year 1911 and is the oldest school in the region. In the year 1910-11, land measuring 67 kanals 15 marlas was purchased and a primary school was started. The school was upgraded to middle standard in the year 1915, high school in 1923, higher secondary school in 1960 and senior secondary school in 1986. The petitioners have been in possession of the land in question since 1911. In 1950-53, substantial area of the land was purchased from the custodian of evacuee property

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and thereafter following institutions were set up:

- (i) R.K.Arya College
- (ii) Doaba Arya Senior Secondary School
- (iii) W.L.Arya Girls Senior Secondary School
- (iv) Dr. Asa Nand Arya Model Senior Secondary School
- (v) D.A.N.College of Education
- (vi) D.A.N.College of A.C.T.
- (vii) B.L.M.Girls College

After considering the material on record, application under Section 4 of the 1973 Act was allowed by respondent no.3 vide impugned order dated 15.06.1999 (Annexure P-5). Against that, the petitioners preferred appeal before respondent no.4 which has been dismissed vide impugned order dated 26.12.2001 (Annexure P-7). Hence, this writ petition.

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

Learned senior counsel for the petitioners contended that the property in question has been recorded to be the ownership of the Central Government in the revenue records, therefore, provisions of the 1973 Act would not apply, rather provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short, 'the 1971 Act') would be applicable. Learned senior counsel further contended that in view of provisions of Section 16 of the Punjab Package Deal Properties (Disposal) Act, 1976 (in short, 'the 1976 Act'), provisions of the 1973 Act would not be applicable to the package deal property. The provisions of the 1971 Act and 1973 Act are altogether different.

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Learned senior counsel further contended that in view of provisions of the 1973 Act, appeal lies to the Commissioner whereas under the provisions of the 1971 Act, appeal lies to the District Judge.

Per contra, learned State counsel submitted that possession of the petitioners is illegal and unauthorized. The land in question was given to the State Government by the Central government, as such the petitioners have been rightly ordered to be evicted and provisions of the 1973 Act would apply to the present case. The Central Government is no longer owner of the land and vide various notifications, the same has been handed over to the State of Punjab.

I have considered the rival contentions of learned counsel for the parties.

Before proceeding further, it would be apposite to reproduce relevant provisions. Section 2 (e) of the 1973 Act reads as under:

“2(e) “public premises” means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State Government and includes any premises belonging to, or taken on lease by or on behalf of-

(i) any Municipal Committee, Notified Area Committee, Zila Parishad, Panchayat Samiti, Panchayat or Improvement Trust;

(ii) any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent of the paid up share capital is held by the State Government and;

(iii) *any Corporation not being a Company as defined in section 3 of the Companies Act, 1956 (1 of 1956), or a local authority established by or under a Central Act as defined in clause (7) of section 3 of the General Clauses Act, 1897, or a Punjab Act owned by controlled by the State Government.”*

Section 2(e) of the 1971 Act reads as under:

2(e) “public premises” means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central -Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) xxxxx

(3) xxxxx”

Section 16 of the 1976 Act reads as under:

“16 Bar of jurisdiction and finality of orders – (1) Save as otherwise expressly provided in this Act, every order made by any officer or a authority under this Act shall be final and no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the State Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other

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authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Nothing in the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, shall apply to package deal property.”

There is a categoric finding recorded by the Collector, vide impugned order dated 15.06.1999 (Annexure P-5) that Central Government has been recorded in the revenue record as owner of the property in question. A relevant extract of the impugned order dated 15.06.1999 (Annexure P-5) reads as under:

“I have also examined fard jamabandi for the year 1968-69, 1978-79, 1988-89, Exs.R4, R5, R6 and R7 respectively, produced by the respondents. The said jamabandis also vouch for the ownership of the Central Govt. in the ownership column of all these jamabandis. Similarly, Ex.R8 is khasra girdawari, wherein column No.3, Central Govt. is recorded as owner of the property. The said jamabandi coupled with the statement of the applicant and jamabandi, Ex.A1 prove that the Central Govt. is the owner of the land and that the respondents are in illegal and unauthorized possession of the same. The respondents have utterly failed to substantiate their pleas taken by them in the written statement, by leading any cogent and convincing evidence.”

Vide impugned order dated 26.12.2001 (Annexure P-7), the Commissioner affirmed the findings recorded by the Collector. A

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relevant extract of the order dated 26.12.2001 reads as under:

“After hearing and going through the written statements tendered by the both learned counsels, I am of the considered opinion that there is no infringement of Section 4 of the P.P.Act, it is incorrect to say that the appellants purchased this land as per entries in jamabandis in 1968-69, 1978-79 and 1988-89. The learned counsel for the respondent has rightly gone through these documents and mentioned usefully that column no.4 i.e. ownership column explicitly makes a Central Government property. The appellants could not perhaps read the property entry in column no.5 when they say that they had purchased the land in question in fact column no.5 shows only possession of the College and not the sale. They could not perhaps understand the word M-aqbooja in Urdu which means possession. Therefore, no concession can be given to them in this regard. It is only in the jamabandis 1993-94 that Arya Priti Nidhi Sabha, Punjab, Jalandhar has been shown as owner. There is no document available on file to show how all of sudden column No.4 was altered when the khasra girdawari from khariff 1993 to rabi 1994 clearly shows them as in possession as cultivators only.

The Collector is fully competent and authorized to take cognizance of such illegal encroachments and take action under Public Premises Act. It is also wrong to say that Sh. A.K.Sikka, Collector decided the case as A.C.Ist Grade which has been alleged by the appellants. I

have not been able to understand how these words came in the mouth of the appellants when they have themselves written the order as exercising the powers of A.C.Ist Grade. Moreover they did not raise this issue in the written statements. They also did not raise this question at any stage of the proceedings in the lower court. This arguments should rather go to this advantage against the appellants. This plea has also been taken up by the learned counsel for the respondent in para no.1 when he says that the present appeal is not maintainable as it only a revision, in a order of eviction. The order has been pursued by me and it has been passed as a Collector (page 15 of the lower court file). Incidentally this order also falsifies the arguments of the appellants that the Collector has gone ahead to decide the issue of title in this case. A perusal of last lines, para 5 of the said order shows that the learned Collector has passed orders regarding eviction of the appellants from the said land and there are no orders as to the title.”

Otherwise also, if the property would have been given to the State Government, then as per note appended on the documents annexed with written statement of respondents no.1 to 4, detailed lists of the property should have been placed on record. Even, at this stage, no list has been placed on record.

Perusal of the 1973 Act clearly reveals that it is applicable to the “public premises belonging to the State Government” whereas the 1971 Act provides that it is applicable to the “public premises belonging

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to the Central Government”. Admittedly, Central Government has been recorded to be the owner of the property in dispute as is very much evident from the revenue records and jamabandi on record. In this manner, the provisions of the 1973 Act would not apply, rather provisions of the 1971 would apply. Besides this, even if the property in dispute is considered as package deal property, then in view of Section 16(2) of the 1976 Act, provisions of the 1973 Act would not be applicable.

In view of above, the instant petition is allowed and impugned orders (Annexures P-5 and P-7) are set aside.

However, liberty is granted to the State to proceed with the matter afresh in accordance with law. If any subsequent proceedings are taken up, then it will be open for the petitioners to raise all the objections available to them in accordance with law.

No order as to costs.

23.01.2015

parveen kumar

(Paramjeet Singh)
Judge