

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 13527 of 2000

Date of Decision: 28.01.2015

Brij Mohan

....Petitioner

Versus

Haryana Urban Development Authority and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Mr. C.B. Goel, Advocate and
Mr. Manoj Sharma, Advocate for the petitioner.

Mr. J.P. Bhatt, Advocate for the respondents.

HEMANT GUPTA, J.(Oral)

Petitioner has sought a writ of prohibition, prohibiting the respondents not to demolish the premises or any part thereof (Booth No.30 CC-III Hans Market, Fatehabad) and for issuance of a writ of mandamus, directing respondent No.2 to decide the appeal pending before it since August, 1996.

It is pleaded that Booth No.30 CC-III Hans Market, Fatehabad, was purchased by one Bhagwan Dass son of Chanan Dass from the Colonization Department Haryana, in December 1977. Said Bhagwan Dass raised construction of three storeyed building on the booth/site in question. Subsequently, he sold/transferred the said building along with the site in favour of the petitioner and his real brother, namely, Ishwar Dass. It was in 1985-86 after the merger of Colonization Department with Haryana Urban Development Authority, a notice was issued for payment of excess area measuring 11.5 sq. meters. The petitioner claims to have deposited all the due amount in respect of the site in question

including in respect of the excess area in his possession, therefore, he claims that he has not encroached upon any part of the land now vesting with Haryana Urban Development Authority. However, considering the stand of the petitioner, an order was passed by the Estate Officer, HUDA, while performing the functions of the Collector under HUDA Act, 1977, calling upon the petitioner to vacate the premises measuring 11.37 sq. yards of the site in question as he is in unauthorized occupation thereof. Thereafter, the petitioner claims to have filed an appeal against the said notice before the Chief Administrator, HUDA, which is stated to be still pending.

Mr. Bhatt, has pointed out that the appeal could not be taken for final hearing as the entire record of the allotment of booth/site, is not available in the office of HUDA. Therefore, the appeal can be decided as per the available records with HUDA or the records which may be made available by the petitioner including the documents of his title.

In the present writ petition, the stand of the respondent-authorities is that land measuring 11.5 sq. meters was the additional space allotted to the Bhagwan Dass on deposit of an amount of Rs. 3768.25 paisa i.e. pro-rata amount on the basis of the price of the plot. Therefore, the assertion of the respondents is that the petitioner is in authorized possession of the land measuring 11.5 sq. meters, is not tenable in law.

The question whether the petitioner is owner of the site-in-question or is an unauthorized occupant of the site as well as encroacher on the land of the Haryana Urban Development Authority or has raised unauthorized construction over the site, said to be reserved for single storey, are all questions of fact.

Therefore, we dispose of the present writ petition with a direction to the learned Chief Administrator, HUDA before whom the appeal is stated to be pending, to decide the appeal, on merits, in accordance with law expeditiously, on the basis of the record available with the respondents or the record which may be made available to the respondents by the petitioner within one month from today. The appeal be decided within six months from today including the period given to the petitioner to submit all the documents in his possession in respect of the booth in question after granting an opportunity of hearing to the petitioner.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

January 28, 2015
Anjal