

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

C.W.P. No.16648 of 2001 (O&M)

Date of decision: 11.02.2015

Daulat Ram & another

-----**Petitioner (s)**

V/s

State of Haryana & others

-----**Respondent(s)**

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

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. N.S. Shekhawat, Advocate
for the petitioner(s).

Mr. Lokesh Sinhal, Addl.A.G., Haryana.

HARI PAL VERMA, J.

Petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India challenging the order dated 23.3.2000 (Annexure P5) passed by the respondent no.3 i.e. Deputy Commissioner, Gurgaon, whereby the resolution dated 23.12.1999 passed in favour of the petitioners has been suspended. Petitioners have also challenged the letter dated 24.5.2001

(Annexure P6) whereby it has been conveyed that respondent no.2 i.e. the Commissioner, Gurgaon in exercise of his powers under Section 249 of the Haryana Municipal Act, 1973 (for short, "the Act") has confirmed the suspension of resolution dated 23.12.1999.

Briefly stated, the facts of the case are that the petitioners had purchased plots no.17 and 16, which are part and parcel of khasra Nos.3173/253, 3176/254, 3179/255 situated in Shivaji Nagar, Gurgaon, from Smt. Indra Wati vide registered sale deed dated 21.1.1972. In the year 1995, as the Municipal Council, Gurgaon tried to encroach upon the plots no.17 and 16 owned by the petitioners and therefore, the petitioners filed Civil Suit No.1628 datd 27.10.1990 titled as *Daulat Ram & Chokha Nand v. The Administrator, Municipal Committee, Gurgaon* seeking permanent injunction, restraining the defendant/Municipal Committee from encroaching upon the plots in question. In the said civil suit, the Municipal Council took the plea that the petitioners are not owners of the plots in question and the said plots were part and parcel of the Municipal park which was carved under unbuilt Town Planning Scheme No.6-C, Gurgaon Cantt. and the above scheme was approved by the Haryana Government in the year 1968. After examining the evidence, the Civil Court decreed the suit vide order dated

31.3.1995 (Annexure P1) and held that the petitioners are owners in possession of plots No.17 and 16 and the Municipal Committee has no concern with the said plots. The Municipal Committee challenged the aforesaid judgment and decree dated 31.3.1995 by way of Civil Appeal No.76 dated 27.4.1995 and the appeal was dismissed by learned District Judge, Gurgaon vide judgment and decree dated 19.3.1998 (Annexure P2). The said judgment and decree passed by the lower Appellate Court was further challenged by the Municipal Committee by filing RSA No.4314 of 2000 but the same was also dismissed by this Court vide judgment dated 2.7.2001 (Annexure P3) holding that the petitioners are owners in possession of the plots in question.

On the basis of the fact that the petitioners were owners in possession of the plots in question, they applied for sanction of the site plan for the purpose of raising construction of their house, which was registered as building site plan file No.5/99 and 5/100 of the year 1998-99. Despite removing all the objections, the site plan was not sanctioned by the Municipal Committee. However, vide resolution no.21 dated 23.12.1999, the building site plans were passed and when the resolution dated 23.12.1999 was put up for consideration of the Deputy Commissioner, respondent no.3, the said resolution was suspended vide

order dated 23.3.2000 (Annexure P5) with the observation that the building plans of the petitioners have been approved even though the area has been shown as open space in the Town Planning Scheme. The petitioners were served with two communications by respondent no.4, dated 24.5.2001, wherein they were informed that the respondent no.3 has suspended the resolution dated 23.12.1999 in exercise of his powers under Section 246 of the Act on the ground that the plots in question fall in open spaces of the Town Planning Scheme and the respondent no.2-Commissioner, Gurgaon has also approved the suspension order in exercise of his powers under Section 249 of the Act.

It is the case of the petitioners that upto High Court, the petitioners have been held to be owners in possession of the property and therefore, their case be reconsidered and the building plans be sanctioned, for which, the petitioners have submitted representation dated 1.8.2001 (Annexure P8), but no action has been taken on the said representation.

It is in the aforesaid circumstances, the petitioners have filed the present writ petition challenging the order dated order dated 23.3.2000 (Annexure P5) passed by respondent no.3, whereby the resolution dated 23.12.1999 passed in favour of the petitioners has been

suspended as well as the order dated 24.5.2001 (Annexure P6) whereby respondent no.2 in exercise of his powers under Section 249 of the Act has confirmed the suspension of resolution dated 23.12.1999.

On notice having been issued to the respondents, written statement has been filed, wherein it has been stated that plots No.16 and 17 were undoubtedly owned by Smt. Indrawati earlier, but the said plots are vested in the Municipal Council, respondent no.4, as per the provisions of Section 203(1)(c) of the Act and thereafter, a Municipal park was carved out of it under the unbuilt area town planning scheme No.6-C Gurgaon Cantt. in the year 1968 and these plots were part of the said Municipal park. The petitioners have no concern with these plots. Even the scheme was sanctioned by the Hon'ble Governor of Haryana on 19.12.1969 and Smt. Indrawati, from whom the petitioners have allegedly purchased the plots vide registered sale deed dated 21.1.1972, had no authority to alienate the land and therefore, the sale deeds were fictitious and confers no title upon the petitioners.

We have heard learned counsel for the parties.

Learned counsel for the petitioners argued that the matter has been settled by virtue of Civil Court decree which has further been affirmed by the lower Appellate Court as well as by this Court in RSA No.4314 of 2000 and

therefore, by virtue of Civil Court findings, the case of the petitioners is required to be considered in the light of resolution No.21 dated 23.12.1999 whereby the building plans have been sanctioned and thus, the building plans No.5/99 and 5/100 of the year 1998-99 deserved to be sanctioned. Consequently, the order dated 23.3.2000 (Annexure P5), vide which the resolution No.21 dated 23.12.1999 was suspended by respondent no.3, deserves to be set aside.

On the other hand, learned counsel for the respondents has argued that even though the plots no.16 and 17 were owned by Smt. Indrawati, but the same vest in the Municipal Council and even if there is a registered sale deed in favour of the petitioners, the same is fictitious and confers no title upon the petitioners.

Having considered the arguments raised on behalf of the parties, we are of the view that the present petition deserves to succeed on the short ground that the petitioners had filed an injunction suit against the Municipal Committee, Gurgaon titled as *Daulat Ram & Chokha Nand v. The Administrator, Municipal Committee, Gurgaon* and the said suit was decided vide judgment and decree dated 31.3.1995. The trial Court while decreeing the suit, passed injunction order against the respondents, permanently restraining them from interfering into the

plots of the petitioners bearing Nos.17 and 16, which form part of Khasra Nos. 3173/253, 3176/254, 3179/255 situated in Shivaji Nagar, Gurgaon, showing the boundary of these plots. The respondents filed an appeal against the judgment and decree dated 31.3.1995 of the trial Court and the said appeal was also dismissed by the lower Appellate Court, holding that the respondents have failed to establish that the plots of the petitioners form part of park, as provided in the Town Planning Scheme No.6-C, Gurgaon Cantt. It has been further held that the petitioners had purchased plots no.17 and 16 vide registered sale deed dated 27.1.1972 and the suit was filed on 9.12.1985, meaning thereby that upto 9.12.1985, the scheme for carving out of park had not been implemented as regard the suit property is concerned. It was further held that the petitioners continued to be owners in possession of the suit property, whereas the respondents forcibly wanted to interfere in their possession. Furthermore, the second appeal i.e. RSA No.4314 of 2000 preferred by the respondents against the judgment and decree of the lower Appellate Court was also dismissed by this Court vide judgment dated 2.7.2001. Thus, a categorical finding of fact has been recorded that the petitioners are owners of plots No.17 and 16 and the said plots were part of the Municipal park which was carved under unbuilt Town

Planning Scheme No.6-C, Gurgaon Cantt. Resultantly, the building plans of the petitioners were wrongly suspended despite passing of resolution No.21 dated 23.12.1999 by the Municipal Committee, Gurgaon.

Accordingly, the order dated 23.3.2000 (Annexure P5) passed by respondent no.3 and letter dated 24.5.2001 (Annexure P6), whereby the order of confirmation of order dated 23.3.2000 by respondent no.2 was conveyed, are set aside.

Consequently, the writ petition is disposed of with a direction to the respondents to reconsider the claim of the petitioners for sanction of building plans in the light of the findings recorded by the Civil Court which have been maintained upto this Court. The said exercise be completed within a period of six months from the date of receipt of a certified copy of this order.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 11, 2015
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