

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Date of Decision: May 29, 2015

1. ESA 485 of 1995 with
XOBJ 43-C of 1997

M.C. Samana

.....Appellant

Vs.

Joginder Singh and others

.....Respondents

2. CWP 2177 of 2007

Joginder Singh and others

.....Petitioners

Vs.

M.C. Samana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate for the appellant in
ESA 485 of 1995 and for respondent No.1 in
CWP No. 2177 of 2007, as well as XObj. 43-C of 1997.

Mr. L.S. Saini, Advocate for respondents No.1 to 5 in
ESA No.485 of 1995; for petitioners in
CWP No. 2177 of 2007 and X-Obj. 43-C of 1997.

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M.M.S. BEDI, J.

Possession is one of the most difficult conceptions of the legal theory. It is an evidence of ownership as per Section 110 of the Indian Evidence Act. Possession, even if it is wrongful, is a good title against the whole world except the real owner. 'Possession being nine points of the law; long possession creates ownership by prescription. Possession can be protected by obtaining legal remedies called possessory remedies. Various philosophers of law like Rousseau, Kant, Hegel, Savigny, Windscheid, Ihering and Holland have propounded various theories of possession and have favoured law protecting possession but at the same time, the right of ownership has been considered superior to the right of possession though one right changes into another. Ownership tends to realize into possession and possession tends to become ownership.

This order will dispose of Execution Second Appeal No. 485 of 1995 M.C. Samana Vs. Joginder Singh and others with cross-objections No. 43-C of 1997 brought by respondents No.1 to 5 therein besides CWP No. No. 2177 of 2007- Joginder Singh and others Vs. M.C. Samana and others as vide order dated February 15, 2007 passed by Division Bench of this Court the civil writ petition has been ordered to be listed alongwith ESA.

Joginder Singh etc.- respondents in the present case being in possession of the property in dispute for a long duration, claim that their possession has converted into title and they are entitled to protect it even against the true owner. The scope of authority and right to retain possession

of the property in dispute by the respondents is to be determined in the present case by adjudication of ESA No. 485 of 1995-M.C. Samana Vs. Joginder Singh and others alongwith CWP No. 2177 of 2007-Joginder Singh and others Vs. M.C. Samana and others. The respondents in ESA No. 485 of 1995 are the petitioners in CWP No.2177 of 2007. ESA involves adjudication of the right of the respondents to remain in possession on the basis of their claim that they have become owners by way of adverse possession as the lower Appellate Court has held that they are not owners by adverse possession but on account of technical error i.e. for want of appropriate resolution, the appellant Municipal Committee, Samana cannot obtain possession in a decree obtained by it for possession, on the basis of ownership. So far as the writ petition titled Joginder Singh and others Vs. M.C. Samana and others, is concerned, the point to be determined is whether the Municipal Committee, Samana, the owner of the property in dispute, can take possession of the property from the respondents on account of its superior right of being owner of the property. The ESA would determine the title whereas the writ petition would determine whether the possession can be taken from the petitioners in writ petition by adopting the procedure under Public Premises Act.

The relevant facts necessary for the decision of the present controversy are that the appellant Municipal Committee, Samana had obtained a decree in a suit titled Municipal Committee, Samana Vs. State of Punjab and others decided by Sh.J.R. Singla, Sub Judge Ist Class, Patiala, on

January 24, 1986, directing that the State of Punjab should execute conveyance/ sale certificate in favour of Municipal Committee, Samana, regarding agricultural land measuring 36 kanals 6 marlas situated in revenue estate of Village Samana, and put the appellant- decree holder in possession of the land. The description of the property in dispute measuring 36 Kanals 6 marlas is specified in the judgment and decree. In compliance with the said decree dated January 24, 1986, a sale deed of the suit land was executed by the State of Punjab and other JDs in favour of the appellant decree holder. The decree holder Municipal Committee, Samana launched execution proceedings for the execution of the decree for taking possession of the land in dispute. The delivery of possession was resisted by respondents No.1 to 5. The decree holder filed an application under Order 21 Rule 97 CPC for issuance of warrant of possession as the earlier warrant of possession, had been received back unexecuted with a report that Joginder Singh, Puran Singh, Surinder Singh, Rajinder Singh and Gurjant Singh, the objectors/ their predecessor were in possession of the land in dispute and that the crops of wheat, barseen, Sarson and vegetable stood sown on the said property and that they had refused to deliver possession to the decree holder though they had no right to resist the execution.

It is pertinent to mention that the objectors resisted the execution on the ground that the decree holder was not entitled to take the possession of the disputed land as they were in actual, exclusive, peaceful, adverse, continuous possession of the property which was open, notorious,

visible and hostile since 1954 and they had perfected their title by adverse possession. It was claimed by the objectors that the decree was vague and was not a decree for possession and was only a direction issued by the Court to the judgment debtors i.e. State of Punjab and its officers to put the decree holder in possession of the suit land. The said direction is vague as the judgment debtors were not themselves in actual physical possession of the suit land. Claiming that the objectors had a right to protect their possession as such the decree could not be executed against them.

The Executing Court in order to determine the executability of the decree, passed in favour of the appellant, framed the following issues:-

- “1. Whether decree-holders are entitled to take possession of suit land in execution of decree?
OPDH
2. Whether the objectors have become owners in possession of land mentioned in reply to application U/O 21 Rule 97 CPC filed by D.H.?
OP Objector.
3. Relief.”

Both the issues were clubbed together. The Executing Court held that the appellant – decree holder is not entitled to take possession of the suit land in execution of decree against objectors as the objectors had become owner in possession of the suit land. Issue No.1 was decided against the decree holder and in favour of the objectors while issue No.2 was

decided in favour of the objectors and against decree holders vide judgment dated February 11, 1992.

Aggrieved by the judgment dated February 11, 1992, the appellant preferred an appeal before the first Appellate Court which was decided on September 29, 1994. The first Appellate Court held that the appeal having been filed through the Executive Officer of the Municipal Committee was not competent, but at the same time held that the finding of the Executing Court on issue No.2 was erroneous and that the objectors had not become owners by adverse possession rather they were in possession of the dispute land as the predecessor-in-interest of the objectors Hari Singh was a sub-lessee under Surinderpal Singh. Reliance was placed on the findings of the Rehabilitation authorities holding that Hari Singh was recorded as a tenant on payment of rent as such warrant of possession in execution of a decree for possession in favour of the appellant Municipal Committee could not be executed against the objectors. Findings on issue No.1 was, however, affirmed.

Aggrieved by the order passed by the first Appellate Court holding that the first appeal of the appellant was not maintainable for want of proper resolution and that it was not entitled to take the possession of the suit land, the appellant has preferred this execution second appeal.

For the convenience, this Court has opted to adjudicate the controversy between the parties by considering the facts and circumstances of the case under the following heads:-

- i) Brief facts and history as apparent from the documents placed on the record;
- ii) The status and title of the objectors being in possession of the property in dispute;
- iii) Effect of the resolution of Municipal Committee;
- iv) Right of the Municipal Committee, Samana to obtain possession and legality of the procedure adopted to seek possession by Municipal Committee, Samana under Public Premises Act.

i) BRIEF FACTS AND HISTORY

Brief facts which are apparent from the record of ESA are that Municipal Committee, Samana, had filed a civil suit against State of Punjab and others and obtained a decree of possession on November 24, 1986 from the Court of Sh.J.R. Singla, Sub Judge (Ist Class), Patiala, pertaining to 36 kanals 6 marlas of land mentioned in the plaint. Sale deed of said land was executed by State of Punjab and other judgment debtors in favour of decree holder. The objectors having resisted delivery of possession, appellant Municipal Committee, Samana filed application under Order 21 Rule 97 CPC and sought to take possession from the objectors. The objectors (respondents in ESA and petitioners in CWP) claimed that they were in actual physical peaceful possession which is hostile to the rights of the original owner and that they had become owners by adverse possession.

They claimed that the decree of possession in favour of Municipal Committee, Samana, cannot be executed against them.

The Executing Court under the mandate of Order 21 Rule 101 CPC was bound to decide the contesting claims in execution like a civil Court as such issues mentioned hereinbefore were framed. Parties were given opportunity to lead evidence. The Executing Court allowed the objections and held that on account of objectors having become owners by adverse possession, the decree holder is not entitled to take possession of the suit land in execution of the decree. Municipal Committee, Samana, through its Executive Officer and its Administrator preferred an appeal. The learned Additional District Judge, Patiala, Sh. Beant Singh Bedi, vide order dated September 29, 1994 held that the objectors have not been able to establish their title by adverse possession but at the same time observed that the Administrator of Municipal Committee, Samana, was not authorized to file the appeal as the Municipal Committee had not been delegated the authority to the Executive Officer, Samana to file an appeal as the authority given to the Executive Officer was to do 'Pairvi' of the case. Though the appeal was dismissed on technical ground but finding of the Executing Court on issue No.2 has been reversed holding that the objectors are not owners by way of adverse possession. The ESA was consequently filed before this Court. Joginder Singh and others filed cross-objections claiming that they have been able to establish their possession which has perfected their title by adverse possession.

So far as the averments in CWP No. 2177 of 2007- Joginder Singh and others Vs. Municipal Committee, Samana and others are concerned, the petitioners in writ petition have challenged order annexure P-6 dated September 12, 2006 passed by the Commissioner and order dated December 30, 2005 (P-7) passed by the Collector under Section 4 of the Punjab Public Premises and Land (Rent Recovery and Eviction) Act, 1973, for short the 'Public Premises Act', directing the ejectment of the petitioners from the land measuring 21 kanals 15 marlas on the ground that it had been purchased by the State from the Rehabilitation Department through conveyance deed dated August 20, 1987 and that the land was a public premises and the petitioners were not authorized occupants. Municipal Committee, Samana, had claimed its right for possession on the ground that the Municipal Committee, Samana, had become owner of the property after having purchased the same from Rehabilitation Department and as such it is a public premises which is in illegal occupation. The petitioners in the writ petition claimed that they had become owners of the property in dispute by way of adverse possession. The claim of adverse possession had been allowed by the Executing Court whereas the plea of adverse possession had been dismissed by the first Appellate Court vide order dated September 29, 1994. The petitioners resisted the claim of Municipal Committee on the ground that as per the order dated September 9, 1992 passed by Sh.G.K. Rai, Additional Senior Sub Judge, Samana, a mutation has been sanctioned in favour of the petitioners and that on account of finding having been reserved

by the Appellate Court, and on account of the pendency of the controversy in Execution Second Appeal, dispossession under Public Premises Act cannot be ordered. The Collector took into consideration the revenue entries and held that the petitioners are unauthorized occupants in the property in dispute as such they were liable to vacate public premises. The said order was upheld in appeal by the Commissioner holding that the petitioners have failed to establish their title as such possession could be taken from them under the provisions of the Pubic Premises Act.

In these circumstances, the appeal of Municipal Committee, Samana, and the claim of Joginder Singh and others regarding their possession having been ripened into the title by adverse possession taken in their cross-objections and the writ petition have been taken up for simultaneous adjudication.

ii) **Status and title of the objectors as per material available on the record:--**

Status of the petitioners in writ petition and respondents in ESA has been considered by the Additional District Judge, Patiala while deciding appeal on September 29, 1994 by observing as follows:-

“21. However, a survey of the documentary evidence on record does not sustain the plea of adverse possession taken by the objectors. No doubt, they have been in possession since long. But long possession by itself does not amount to adverse possession. The objectors have foundly relied on the revenue record. Ex.O-8 is certified copy of Kh. Girdawari of the suit land for the harvest kharif 1950 to Rabi 1954. In this document, Wazir Singh son of Shri Kaku Singh is recorded as Gair Marusi in the suit land under one Surinderpal Singh son of Shri Fateh

Singh, on payment of 1/3rd Batai. It may be mentioned that said Wazir Singh is grand-father of present objectors. Therefore, these entries do not suggest that Wazir Singh was in adverse possession of the disputed land at that time.

22. Ex.O-9 is copy of Kh. Girdawri for the harvest kharif 1954 to Rabi 1956. In this document, similar entries showing Wazir Singh Dardi exist.

23. Ex.O-10 is copy of Khasra girdawri from harvest kharif, 1967 to Rabi 1977 and Ex.O-11 for harvest kharif 1981 to Rabi 1982. In Ex.O-10 Hari Singh is recorded as tenant on payment of Rs.100/- per year as rent, and similar entries continued in Ex.O-11. In the ownership column, the entry is Arazi Matruka Bila Allot. Obviously, these entries do not show adverse possession of Hari Singh at the relevant time.

24. Ex.O-12 is the copy of kh. Girdawri from Kharif 1982 to Rabi 1989. In this document, Hari Singh was recorded as Gair Marusi upto Rabi 1987. After that, he was recorded as Gair Marusi Bila Lagaan. However, even this entry which is of a comparatively recent origin does not prove the adverse possession.

25. Ex.O-13 is kh. Girdawari for Kharif 1987 to Rabi 1991. It also records Hari Singh as Gair Marusi Bila Lagaan. But in Kharif 1988, there is some entry that as per the order of Assistant Collector II Grade dated 18.1.1991, the cultivation during Rabi 1989 was changed as that of Surinder Singh Gurjant Singh, Rajinder Singh sons of Hari Singh ½ share and Joginder Singh and Puran Singh of ½ share.

26. Ex.O-14 is copy of jamabandi. In ownership column No.5, the entry is Arazi Matruka Bila allot. In column No.6 Hari Singh is recorded as Gair Marusi. In column No.11, the entry is Bila Lagaan Ba Wajeh Najaij Kaashat.

27. Ex.P-15 is khatauni Pamaish which shows that in lieu of the pre-consolidation khasra numbers now in dispute, were mapped.

28. Ex.O-16 is copy of jamabandi for the year 1962-63. In this document, the ownership is that of Arazi Matruka Bila allot. The cultivation entries are Hari Singh Billa Lagaan Najaij Kashat. However, in certified copy of jamabandi for the year 1966-67 Ex.P-17 it is shown that Hari Singh was paying chakota @ Rs.100/- per year. The same entry exists in the jamabandi for the year 1971-72 Ex.O-18 and 1976-77 Ex.O-19. Again in the jamabandi for the year 1981-82, Ex.O-20 the entry of cultivation is Hari Singh Bila Lagaan. In the jamabandi for the year 1986-87. Ex.O-21 the cultivation entry is Hari Singh Bila Lagaan Ba Wazah Kabza.

29. The ingredients of title by adverse possession are well known, and all the conditions of *nac vi*, *nac clam*, *nec precario*, must be fulfilled by the person who asserts adverse title. However, the survey of the entries in the revenue record which has been attempted above fail to show that these conditions have been fulfilled by the objectors. The objectors have also placed on record Ex.O-2 which is certified copy of the application of Municipal Committee, Samana for permission to be impleaded as a party in a revision petition pending before the Chief Settlement Commissioner, Punjab. The learned counsel for the objector has referred to the following part of this application:-

“That as it appears one Shri Hari Singh Shri Wazir Singh, who is unauthorized occupant of a part of the land applied for the transfer of the land. His request was turned down and now revision petition submitted by him is pending before your honour”.

30. Ex.O-4 is certified copy of amended plaint in Civil Suit Municipal Committee, Samana versus The State of Punjab for a decree of specific performance for sale of the suit land. This amendment was based on the application of the Municipal Committee Ex.O-3.

31. Ex.O-5 is certified copy of the order dated 25.5.1976 of the Financial Commissioner, Punjab in revision petition filed by Hari Singh against the Chief Settlement Commissioner and Executive Officer, Municipal Committee, Samana. These observations made in this revision petition suggests that Hari Singh alleged that he was sub lessee, under head lessee

Surinderpal Singh and, therefore, he was entitled to purchase the disputed evacuee land from the Rehabilitation Department. However, the Financial Commissioner held that Surinderpal Singh himself was a trespasser and, therefore, Sh. Hari Singh could not be sub-lessee. It is submitted by the learned counsel for the objectors that since Hari Singh had been declared as a tenant under Surinderpal Singh, trespasser. Therefore, Hari Singh was also trespasser in adverse possession. I shall presently advert to this argument.

32. Ex.O-6 is the order of Chief Settlement Commissioner whereby he refused to review his earlier order. Ex.O-7 is the order of Chief Settlement Commissioner dated 24.2.1972. Out of this order, the revision petition arose which was dismissed by the Financial Commissioner by his order dated 25.5.1976 Ex.P5 referred to above.

33. Now coming to the adverse possession of Hari Singh or the objectors it may be stated that from the documents Ex.O-2 to Ex.O-7, it transpires that his plea, inter-alia, was that he was a sub-lessee under Surinderpal Singh so he was entitled to the transfer of the evacuee land now in dispute, to his name from the Rehabilitation Department. However, the Rehabilitation authorities ruled that Surinderpal Singh was trespasser and so Hari Singh could not be placed on the pedestal of a sub-lessee and consequently he was not entitled to the transfer of the land. However, the concept of the adverse possession is technical and it carries special connotations. A person who pleads adverse possession must assert himself to be the owner of the suit land to the knowledge of the entire world. To put it otherwise, the adverse possession is both subjective and objective. The person pleading adverse possession must believe in his mind that he is in possession of the suit land as owner, and he assert and proclaim the same effect to the world at large. However, as demonstrated above, the plea of Hari Singh, predecessor-in-interest of the objectors was that he was a sub-lessee under Surinderpal Singh. Therefore, at least at that time, he did not believe, nor did he assert, his ownership by adverse possession nor he asserted his adverse possession. Consequently, the plea of adverse possession cannot be sustained. The findings of the Rehabilitation Authorities at a much later stage of

litigation would not provide subjectivity to Hari Singh with retrospective effect that he was in adverse possession. This is especially more so, when in the revenue record referred to above, at all material points of time, he was recorded as a tenant on payment of rent.

34. On the analysis presented above, it cannot be said that the objectors have fulfilled the conditions *nec vi, nec clam, nec precario*. Therefore, the findings of the learned trial Court on issue No.2 are reversed. This issue is decided against the objectors and for the DH.

35. However, the objectors are in possession of the disputed land and not through the state of Punjab and other JDs, nor they are their agents. Therefore, the warrant of possession in execution of decree, cannot be executed against the objectors. Therefore, the findings of the learned trial Court on issue No.1 are affirmed.”

With the assistance of counsel for both the parties, I have gone through the revenue record produced by Joginder Singh and others to establish that Joginder Singh, Puran Singh, Surinder Singh, Rajinder Singh and Gurjant Singh were sons of Hari Singh, son of Wazir Singh to establish that it was Wazir Singh, the grand-father of the objectors and then it was Hari Singh who was in possession of the land for the last more than 39 years. A perusal of Ex.O.5, an order passed by the Financial Commissioner, Revenue, exercising the powers of the Central Government under Section 53 of the Displaced Persons Compensation and Rehabilitation Act, 1951 indicates that the land at one stage was transferred in the name of Hari Singh on account of his status as sub-lessee but vide order dated February 24, 1972, it was cancelled. The said order was upheld vide order dated September 8, 1975 by Commissioner. The Financial Commissioner has dismissed the revision petition. The Executive Officer, Municipal

Committee, Samana, was a party to the litigation before the Assistant Settlement Commissioner, Chief Settlement Commissioner and Financial Commissioner as is apparent from Exs.O.7, O.6 and O.5. Hari Singh, the predecessor-in-interest of respondents in ESA and petitioners in CWP could claim ownership in the property in dispute only on the basis of any conveyance deed or at least any lease rights which culminated into ownership or any transfer deed by the original owners i.e. State of Punjab or Municipal Committee or by establishing their adverse possession. It is settled principle of law that when a defendant claims ownership by adverse possession, prima facie admits the ownership of the plaintiff on the basis of possession. The pre-requisite for claiming adverse possession is an admission of ownership of any person. For the above said proposition, reference can be made to the following judgments:-

1. **Murti Shri Durga Bhawani (Hetuwali) Trust Vs. Harbhajan Singh and another**, 1988 (1) CLJ (C,Cr.&Rev.) 105;
2. **K.V.Swamynathan and ors. Vs. E.V. Padmanabhan and ors.**, JT 1991 (1) SC 83;
3. **Gurcharan Singh Vs. Gram Panchayat, Jagral and another**, 1999 (2) PLJ 320.

In **Teji and others Vs. Municipal Committee, Hodal**, 1998 (1) PLJ 591, it has been clarified that once a person was inducted as a lessee, he would not be able to substantiate his claim for adverse possession. A

person in possession, no doubt, has got a right that he should not be dispossessed except by due course of law. There is no dispute regarding the similar proposition of law as laid down in **Walter Louis Franklin (dead) through LRs. Vs. George Singh (dead) through LRs**, (1997) 3 SCC 503. The predecessor-in-interest of the petitioners, namely, Hari Singh had claimed title on the basis of his possession as a sub-lessee but said claim had been rejected by the Financial Commissioner as is apparent from Ex.O.5. The moment the petitioners claimed adverse possession it would imply that they admit the ownership of the other party i.e. State of Punjab and then the Municipal Committee, Samana, which had acquired rights of ownership on the basis of a decree of the Court.

It is a settled proposition of law that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. In **T. Anjanappa Vs. Somalingappa**, (2006) 7 SCC 570, it was held as follows:-

“20.....the classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor

actually informing the real owner of the former's hostile action.”

In **P.T. Munichikkanna Reddy and others Vs. Revamma and others** , (2007) 6 SCC 59, it was held as follows:-

“5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See *Downing v. Bird* 100 So. 2d 57 (Fla. 1958), *Arkansas Commemorative Commission v. City of Little Rock* 227 Ark. 1085 : 303 S.W.2d 569 (1957); *Monnot v. Murphy* 207 N.Y. 240 : 100 N.E. 742 (1913) and *City of Rock Springs v. Sturm* 39 Wyo. 494: 273 P. 908, 97 A.L.R. 1 (1929).]

6. Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for

the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title. (See American Jurisprudence, Vol. 3, 2d, Page 81). It is important to keep in mind while studying the American notion of adverse possession, especially in the backdrop of limitation statutes, that the intention to dispossess can not be given a complete go by. Simple application of limitation shall not be enough by itself for the success of an adverse possession claim."

The above said principle was followed in **Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and others**, (2009) 16 SCC 517.

Since the petitioners have not been able to establish that their possession is open, hostile and ripened into title, there is no ground to set aside the findings of the lower Appellate Court reversing the finding of the

Executing Court on issue No.2 holding that the objectors have not become owners by adverse possession.

iii) **Effect of Resolution authorizing the Executive Officer:-**

The resolution of the Municipal Committee, Samana, dated March 9, 1992 approved by the Administrator of the Municipal Committee, is not a valid authorization.

I have carefully gone through the copy of the resolution and the approval dated March 9, 1992 which reads as follows:-

“The copy of the proceedings which were approved by the Administrator of the Municipal Committee, Samana on 9.3.1992 that the Court Clerk has reported that execution entitled M.C. Samana Vs. State of Punjab was dismissed by the Court of Shri G.K. Rai, Addl. Senior Sub Judge, Samana. The appeal was to be filed to the Court of Sessions Court, Patiala. A report is hereby submitted relating to the appeal, engaging of counsel and the expenditure to be incurred on it.”

Sd/-E.O.

The Resolution No.15- Approved. The E.O. is delegated authority for pairvi of this case. The expenditure to be incurred on it is approved.”

Sd/-Administrator, MC, Samana.”

The above said resolution has been rejected by the lower Appellate Court holding that authorization is only to the extent of doing ‘pairvi’ of the case and cannot be treated as an authority, authorizing him to file an appeal or to engage a counsel. The Municipal Committee had filed an appeal on the basis of said resolution through the Administrator. The learned first Appellate Court has placed reliance on **Garib Chand Vs. Municipal Committee, Budhlada**, 1979 (81) PLR 527. The said judgment was distinguished by a Division Bench of Punjab and Haryana High Court in **Municipal Committee, Bhatinda through its Executive Officer Vs. Sadhu Singh**, XC (1986-2) PLR 1, on the ground that in **Garib Chand’s** case (supra), there had been absence of any resolution by the Municipal Committee deciding to file the appeal. It was observed in **Sadhu Singh’s** case (supra) that separate authorization on behalf of Municipal Committee in favour of Executive Officer to file the appeal is not necessary as the Court was of the opinion that as soon as the Municipal Committee decides by a resolution to file an appeal on its behalf it becomes the administrative duty of the Executive Officer under Section 4 of the Punjab Municipal (Executive Officer) Act, 1931, to carry out the decision taken in the resolution and it is wholly unnecessary for the Municipal Committee to confer a separate authorization upon the Executive Officer to carry out his administrative function which he is otherwise bound to do, clothed with the statutory powers by virtue of Section 4 of the aforesaid Act.

In the present case, giving authority to Executive Officer for 'pairvi' of the case would certainly included right to file appeal and pursue the same. The lower Appellate Court committed an error in misconstruing the word 'pairvi' which would mean a delegated authority to not only pursue the appeal but also to file the appeal. The finding of the lower Appellate Court that Executive Officer did not have authority to file appeal is hereby set aside and it is held that the appeal filed by the Municipal Committee, Samana, before the lower Appellate Court was maintainable as per law.

iv) **Right of the Municipal Committee, Samana to obtain possession and legality of the procedure adopted to seek possession by the Municipal Committee, Samana under Public Premises Act:-**

Joginder Singh and others have challenged the authority of the Municipal Committee, Samana to claim possession under Public Premises Act. As held hereinbefore, the objectors and writ petitioners have not been able to establish that they are either allottees or owners by adverse possession or licensee or lessee over the suit property. They are continuing in unauthorized possession. They have got a right not to be dispossessed except by due process of law. The petitioners being in possession of the property in dispute have got a better claim against all except the real owners. No doubt, the possession is said to be 'the nine points of law'. It means that person in possession of an object has better claim over it against the whole world except the real owner. This principle has been very well illustrated in **Armorie vs. Delamirie**, 1 Stra (1722) 505. It was a case where a chimney

boy found a jewel and took it to the shop of the defendant to know its value. The defendant refused to return it to the boy on the ground that the boy was not the owner. The boy was allowed by the court to recover it from the shopkeeper. The boy being the prior possessor had a better claim to it against the whole world except the real owner, and as the shopkeeper's claim was not on behalf of the owner, the claim of the boy prevailed against him.

The Municipal Committee is an admitted real owner of the property which is in possession of the writ petitioners. The long possession of the petitioners has not ripened into title. The possession can be termed as an unauthorized possession. A person in authorized possession can be dispossessed by State authority under the provisions of law. The Municipal Committee has issued notices under Public Premises Act and sought eviction of the petitioners. Due procedure has been followed. The only claim of the petitioners that they have become owners by way of adverse possession having been rejected, they cannot claim immunity to the right of the owner to seek possession.

In view of the above discussion, the Execution Second Appeal is allowed. Finding on issue No.2 passed by the first Appellate Court that the objectors had not become owners of land is affirmed but the finding that the appeal was not maintainable and that the decree holder is not entitled to take the possession of the land in execution of the decree is hereby set aside. The appellant is held entitled to execute the decree against the judgment

debtors as well as objectors or their successors-in-interest. The cross-objections arising therefrom are consequently dismissed.

In view of the above finding, there is also no force in the writ petition. The decision of the writ petition hinges on the decision in **ESA which having been allowed** holding that Joginder Singh and others have not become owners by adverse possession, they can well be ejected with due process of law, which has been followed by appellant Municipal Committee, Samana, no ground is made out for interference in the writ petition as well, and the same is also dismissed.

May 29, 2015
sanjay

(M.M.S.BEDI)
JUDGE