

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

C.W.P. No.6513 of 2001
Date of decision: 02.02.2015

Munshi Ram

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

V/s

Deputy Commissioner, Mahendergarh & 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. Sanjay Mittal, Advocate
for the petitioner.

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

HARI PAL VERMA, J.

Through the instant writ petition, filed under Articles 226/227 of the Constitution of India, the petitioner has sought quashing of resolution No.11 dated 24.10.2000 (Annexure P9) passed by respondent no.3-Municipal Committee, Mahendergarh, with a further direction to the respondents to allot and to give possession of shop No.2/44 to the petitioner.

Briefly stated, the facts of the case are that in the year 1990, respondent no.3-Municipal Committee, Mahendergarh had earmarked 44 sites for construction of small shops (9"x12"), which were to be allotted to general public on rent basis. These shops were required to be constructed by respondent no.3 from the money to be taken in advance from the lessee/tenants. Every allottee of the shops was required to pay Rs.40,000/- in advance, as security of the rent. The monthly rent of these shop was fixed at Rs.350/-, out of which, half of the rent was to be paid monthly and the remaining half was to be adjusted from the advance payment. Every allottee was also required to deposit Rs.3,000/- as initial security and Rs.40,000/- was to be deposited after construction of the shops by the Municipal Committee. The petitioner was allotted site of shop No.2/44. He paid Rs.3,000/- on 22.5.1990, as initial security. Respondent no.3 completed the construction of the shops in the year 1997 and thereafter, the petitioner deposited Rs.40,000/- in cash on 9.4.1997. After that, the shop in question was to be allotted to the petitioner, but respondent no.5 objected to the allotment of the said shop on the ground that the petitioner had agreed to sell his right to him and therefore, as per agreement dated 31.5.1991, the shop in question was to be

allotted to him i.e. respondent no.5 and not to the petitioner.

When respondent no.3 confronted the petitioner to the objection of respondent no.5, the petitioner explained that at one point of time, the petitioner had agreed to sell his rights as far as the plot in question is concerned and a writing in the form of a letter to the Administrator was also prepared, but subsequently, the transfer deal was not finalized. The said letter about transfer of the shop in question in favour of respondent no.5 was not given to the authority. Copy of such letter dated 31.5.1991 has been placed on record as Annexure P2. It has been further averred that the original letter is with the petitioner and the same has never been handed over to the respondent-Municipal Committee at any point of time. Though the respondent - Municipal Committee did not transfer the shop in question in favour of respondent No.5 but at the same time, possession of the same was also not handed over to the petitioner. On 29.10.1999, the respondent-Municipal Committee issued notice to the petitioner about non-payment of the rent of the shop in question from April, 1997 to October, 1999. The said notice was replied by the petitioner stating that the petitioner is not liable to pay the rent of the shop in question, as he has not been handed over the possession of the same, despite repeated requests.

In his reply, the petitioner also requested for handing over the possession of the shop in question to him. But, after the said reply, the Municipal Committee had neither demanded any rent from the petitioner nor possession of the shop was handed over to him.

The petitioner submitted representation dated 25.3.2000 (Annexure P5) regarding non-delivery of the possession to the Sub Divisional Officer-cum-Administrator, Municipal Committee followed by another representation to the Deputy Commissioner, but no action was taken on the representations and possession of the shop in question was not delivered to him. Meanwhile, in the month of April, 2000, the elections of the Municipal Committee took place and mother of respondent no.5 namely Smt. Shakuntla Devi, respondent no.4, was elected as President of the Municipal Committee, who allegedly started manipulating the records of the Municipal Committee. On 24.10.2000, the respondent Municipal Committee stated to have passed a resolution in connivance with respondents no.4 and 5, whereby it has been decided that the shop No.2/44 may be transferred in favour of respondent no.5 and possession of the same be given to him, as the petitioner had no objection in transfer of the said shop. On coming to know about the said resolution, the petitioner applied for certified copy of said

resolution, vide application dated 6.12.2000 (Annexure P7), but as all the employees of the Municipal Committee were under the influence of respondent no.4, being President. Therefore, the certified copy of said resolution was not supplied to the petitioner. The petitioner filed an application for copy of resolution before respondent no.2 i.e. SDM-cum-Administrator, Municipal Committee, Mahendergarh, whereupon copy of the resolution dated 24.12.2000 (Annexure P9) was supplied to the petitioner, but copy of the transfer order dated 15.11.2000 was still not supplied to the petitioner. Through the contents of the resolution, the petitioner came to know that he had allegedly given 'no objection' for transfer of the shop in question in the name of respondent no.5. The petitioner disputed the contents of the resolution (Annexure P9) and applied for certified copies of the documents namely (i) No Objection Certificate allegedly given by the petitioner in favour of respondent no.5, (ii) Copy of order of transfer of the shop in question from petitioner to respondent no.5 and (iii) copy of receipt of security regarding the shop in question, vide application dated 12.2.2001 (Annexure P10), so as to challenge the illegal and malafide action of the respondent-Municipal Committee. On 13.2.2001, respondent no.2 directed the respondent no.3 to supply certified copies of the same. Thus, the petitioner has

pleaded that he has not given any 'No Objection Certificate' for transfer of the shop in question to the respondent-Municipal Committee and thus, the petitioner is legally entitled to get the possession of the shop in question which was allotted to him and is still lying vacant and actual possession of the same was not given to respondent no.5 and the respondent no.5 is adamant to further transfer the said shop to another person by charging the premium.

On notice having been issued to the respondents, respondents no.3 and 4 as well as respondent no.5 have filed their separate written statements.

In the written statement filed on behalf of respondents no.3 and 4, the averments made in the writ petition have been denied. It has been stated that the petitioner has not deposited Rs.40,000/- with the Municipal Committee in cash on 9.4.1997, rather, the said amount of Rs.40,000/- was deposited by respondent no.5 through cheque No.095102 dated 8.4.1997, as certified by the State Bank of Patiala, Mahendergarh vide certificate dated 28.5.2001 (Annexure R1). The letter of allotment was issued in the name of the petitioner but was dispatched care of Sanjay Kumar, respondent no.5, who had made the application to the Committee that as per the agreement dated 31.5.1991, the petitioner had agreed to sell his all rights in the shop in question in favour of respondent no.5.

As regards the claim of the petitioner that original letter dated 31.5.1991 was lying with him, it has been stated that the petitioner could prepare as many as such originals as he likes, because such document was signed by him only. In fact, respondent no.5 had applied for possession of the shop in his name and had appended the application dated 31.5.1991 signed by the petitioner and on the basis of the instructions issued to the Haryana Government, as contained in letter dated 7.7.1993/20.1.1994, the shop in question was transferred in the name of respondent no.5 after obtaining a sum of Rs.10,000/- from respondent no.5 Sanjay Kumar. However, it has not been disputed that in the elections of the Municipal Committee, which took place in April, 2000, respondent no.4 Shakuntla Devi was elected as the President of the Municipal Committee and she is the mother of respondent no.5. It has been specifically denied that the record of the Municipal Committee was ever manipulated. In fact, the petitioner had given 'No Objection' dated 31.5.1991 much before the election of the mother of respondent no.4 as President of the Municipal Committee. The petitioner is conspicuously silent about the deposit of Rs.40,000/-, which amount was deposited by respondent no.5 through a cheque, which is proved on record and the petitioner cannot wriggle out from the No Objection Certificate dated 31.5.1991 given by him in favour of

respondent no.5 and accordingly, respondent no.3 has legally transferred the shop in question in the name of respondent no.5.

Similarly, respondent no.5 while submitting his separate written statement, has disputed the claim of the petitioner that an amount of Rs.40,000/- was ever deposited by him in cash on 9.4.1997. Rather, the said amount of Rs.40,000/- was deposited by respondent no.5 with the Municipal Committee through cheque dated 8.4.1997 and on this count, the letter of allotment issued in the name of the petitioner was dispatched care of the respondent no.5, because the petitioner had agreed to sell his rights in the shop in question in favour of respondent no.5, as per agreement dated 31.5.1991.

Learned counsel for the petitioner has disputed the execution of the agreement dated 31.5.1991 and has argued that the plot in question cannot be transferred in favour of respondent no.5. It has been stated that the petitioner had not given any No Objection Certificate about the transfer of the shop in question to respondent no.3. Rather, on 15.2.2001, the petitioner had made a request for cancellation of resolution dated 24.10.2000 passed by respondent no.3 under Section 246 of the Haryana Municipal Act, 1973, as the same was passed in an illegal manner, but no action was taken on the said application by

respondent no.1, compelling the petitioner to approach this Court.

Counsel for the petitioner has further argued that the resolution dated 24.10.2000 passed by respondent no.3, transferring the shop in question, which was allotted to the petitioner, is wholly illegal and arbitrary. The Shop in question bearing No.2/44 was allotted to the petitioner by respondent no.3 and the petitioner deposited the amount of security, as the shop was allotted to the petitioner in the record of the Municipal Committee, but the possession of the same was illegally retained on frivolous objections of respondent no.5.

On the other hand, learned Additional Advocate General, Haryana has argued that the petitioner executed the agreement dated 31.5.1991 and he cannot deny execution of the said document and thus, he is estopped from challenging the authenticity of the said document and cannot dispute its execution through the instant writ petition.

Having heard learned counsel for the parties and considering the fact that on the one hand the petitioner has disputed the execution of document dated 31.5.1991 whereas on the other hand the respondent no.5 has disputed the claim of the petitioner that an amount of Rs.40,000/- was ever deposited by the petitioner in cash on

9.4.1997 and rather, the said amount was deposited by him, we propose to dispose of this writ petition with liberty to the petitioner to avail an alternative remedy, as provided under law, as such like disputed facts cannot be adjudicated upon by this Court in writ jurisdiction.

Accordingly, without expressing any opinion on merits of the case, the present writ petition is disposed of with liberty to the petitioner to avail an alternative remedy as provided under the law, as the petitioner has pleaded that he has not given any no objection whereas the respondents have relied upon the agreement dated 31.5.1991.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 02, 2015
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