

CWP No. 14024 of 2008

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

CWP No. 14024 of 2008
Date of Decision: 10.9.2015

Kaka Singh

....Petitioner

vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: - Mr. Arun Jain, Sr. Advocate with
Mr. Brijender Kaushik, Advocate for the petitioner.
Mr. U.K.Agnihotri, Advocate for the petitioner
(in CWP No. 23518 of 2010)

Mr. P.S. Chahar, DAG, Haryana

Mr. Vinod S. Bhardwaj, Advocate
for respondent No. 4.

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This order shall dispose of six petitions bearing CWP No.14024 of 2008 titled as “Kaka Singh Vs. State of Haryana and others”, CWP No.15343 of 2008 titled as “Harbhajan Singh and another Vs. State of Haryana and others”, CWP No.15356 of 2008 titled as “Roshan Lal and others Vs. State of Haryana and others”, CWP No.20567 of 2008 titled as “Kulwant Singh and another Vs. State of Haryana and others”, CWP No.23518 of 2010 titled as “Sant Ram and others Vs. State of Haryana and others” and CWP No.15864 of 2008 titled as “Ram Babu and others Vs. State of Haryana and others” as the issues involved in all the six petitions are common. However, for the sake of convenience, the petition bearing CWP

No.14024 of 2008 is being kept as the lead case.

The brief history of this case is that the Municipal Committee, Ambala Sadar filed a petition under Sections 5 and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short 'the Act') against the petitioner alleging that the land in question vests in Haryana Government and is being looked after by the Municipal Committee, Ambala Sadar. It is alleged that the disputed land was given to the petitioner for agricultural purposes for a period of one year and the lease was thereafter extended from time to time upto 31.03.1982 by the Municipal Committee. The land was acquired by Municipal Committee for public welfare, lease deed was not renewed after 01.04.1982, notice was given to the petitioner for releasing its possession and since they had not done so, therefore, petition was filed for seeking possession by way of eviction and for recovery of damages of compensation for illegal use and occupation. The application was allowed by the Collector, Ambala on 28.02.1986. Aggrieved against the said order, a statutory appeal was filed before the Divisional Commissioner. The said appeal was allowed on 15.10.1986 and the order of the Collector was set aside. The matter was remitted back to the Collector, Ambala for reconsideration with certain directions. The respondent-Municipal Committee did not abide by the directions contained in the order dated 15.10.1986 and as such the proceedings before the Collector died its own death and become redundant. Again a controversy was raked up by the respondent, by an application dated 21.09.1984 filed under Sections 5 and 7 of the Act for eviction and recovery of compensation and this time an

application was filed by Municipal Committee, Ambala Sadar, through its Executive Officer. The application was contested by the petitioner but it was allowed by the Collector on 13.02.2008 holding that the land in question came to vest in the State Government in terms of letter dated 05.02.1977 issued by the Central Government and is under the management of the Municipal Committee, Ambala Sadar over which the petitioner has been found to be in possession since 1982. He was thus ordered to be evicted and was directed to pay lease amount with interest @ 8% to Municipal Committee since 1982.

Aggrieved against the said order, the petitioner filed the statutory appeal under Section 9 of the Act before the Commissioner, Ambala Division, Ambala. The said appeal was dismissed on 13.02.2008 and hence the present petition in which notice of motion was issued on 18.08.2008 and dispossession of the petitioner was stayed.

Learned counsel for the petitioner has argued that the land in question does not come under the control of the State or Municipal Committee on the basis of the letter dated 05.02.1977 and Government notification relied upon by the authorities below. In this regard, he has referred to a decision of this Court in RSA No.3824 of 2006 titled as "State of Haryana and another Vs. Tejinder Mohan Singh and another, decided on 09.11.2006 in order to facilitate appreciation of the facts and issues involved in the aforesaid second appeal. The petitioner has also placed on record the order passed in Civil Appeal No.105 of 2003/2005. These two appeals were filed i.e. one by State of Haryana and the other by Municipal Council,

Ambala Sadar, Ambala Cantt., both against the judgment and decree dated 12.11.2003 whereby Civil Suit No.121 of 2001 was decreed.

Counsel for the petitioner has submitted that on the pleadings of the parties, as many as 11 issues were framed and the issues relevant for the case are as under:-

- “5. Whether the defendants No.1 and 2 became the owner on the basis of letter dated 05.02.1977 written by under Secretary, addressed to Director, Military Land and Cantonment? OPD
6. Whether after excision of the area, Cantonment Act and other Central Act without delegation/adoption can be applied to the excised area by the defendants? OPD”

Both these issues No. 5 and 6 were decided by the Appellate Court against the respondent. Therefore, the learned trial Court concluded that it could not be said that the excised area was transferred in favour of State of Haryana. It is further argued that in the second appeal also categorical finding has been recorded that even Yashpal Singh (DW5) had admitted in his cross-examination that there was no conveyance deed or notification regarding transfer of ownership from the Government of India to the State of Haryana. This witness also admitted that no power of resumption has been given or conferred or mentioned in the letter Ex. DW2/2 and there was no power of cancellation of lease conferred in favour of the State of Haryana in the said letter. It is also submitted orally that order passed in second appeal against the said observation dated 9.11.2006 has been upheld as the SLP filed by the State of Haryana before the Apex Court has been dismissed.

Counsel for the petitioner has thus argued that it has been held by this Court, in the second appeal, on the basis of evidence both oral as well

as documentary, that the land in question was not excised and transferred to the State of Haryana and the respondent had no locus standi to maintain the petition under Sections 5 and 7 of the Act in order to seek eviction and recovery of compensation for alleged illegal occupation of the petitioner.

In reply, counsel for the Municipal Committee has referred to the notification dated 05.02.1997 (R-4/1). A copy of letter dated 06.10.1983 and letter dated 05.02.1977 issued by Government of India, attached as Annexures R-4/1 and R-4/4 with the reply to CWP No. 23518 of 2010. It has been argued that it is not necessary for this Court to rely upon the findings of the Civil Court because it is only based upon the statement of Yashpal Singh (DW5) otherwise the Government of Haryana is the owner of property in dispute which is evident from the letter dated 05.02.1977 (Annexure R4/1) and the notification of the same date (Annexure R4/5).

In reply thereto, counsel for the petitioner has argued that these documents have already been considered. It is submitted that the respondent had no locus standi to maintain the petition. During the hearing of this case, an order dated 26.11.2012 was passed imposing Rs. 2,000/- as costs to be deposited by the Municipal Committee in the accounts of Legal Services Authority, Haryana because the relevant notification could not be placed on record despite repeated adjournments.

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

The short issue involved in this case is as to whether the land in question has vested in the State of Haryana by virtue of a letter dated

05.02.1977 and the notification, issued by the Government of India and Municipal Committee, Ambala Cantt., Ambala has the control to manage the said property in order to seek eviction of the petitioner from the land in question which is in their possession since long? The State of Haryana and Municipal Committee have taken categorical stand that the land in question came to vest in the State Government in terms of letter dated 05.02.1977 issued by the Central Government and the notification of the same date but lost before the Civil Court. This matter, therefore, cannot be re-agitated for the purpose of claiming the title over the said land. The matter, in fact, came to an end when the second issue was decided by this Court in second appeal. It has been decided by the Civil Court that the petition filed by the respondent under Section 5 and 7 of the Act, was not maintainable and therefore the order of eviction and recovery of compensation based upon the application filed by the respondent under Sections 5 and 7 of the Act at the instance of the respondents, may be State of Haryana or Municipal Committee are illegal.

In view thereof, the present petitions are allowed and the impugned order is set aside.

(RAKESH KUMAR JAIN)
JUDGE

10.9.2015
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