

CWP No. 14362-2012

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

CWP No. 14362-2012 (O & M)

Date of Decision:11.02.2015

Satyawati and another

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr.Brijender Kaushik, Advocate,
for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. Vinod S. Bhardwaj, Advocate,
for respondents no.2 to 4.

Mr. Parminder Singh, Advocate,
for respondent no.6.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ of certiorari quashing the order dated 19.01.2012 (Annexure P-12) passed by the Commissioner, Municipal Corporation, Ambala-respondent no.2 and a writ of mandamus directing respondent no.2 to transfer lease of shop no.10, Palika Bazar, Ambala City (hereinafter to be referred as 'disputed shop')

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in the names of petitioners being legal heirs of deceased-Vinod Kumar, who was lessee of Municipal Corporation and further to evict respondent no.6-Ashok Kumar from unauthorized possession of the disputed shop.

In brief, facts of the case are to the effect that Vinod Kumar (now deceased) was given the disputed shop on lease in the year 1985 @ ₹ 360/- per month as rent. In the disputed shop, the deceased used to work as auto mechanic. Vinod Kumar expired on 22.04.1987 at the young age of 27 years leaving behind his mother (petitioner no.1), wife (petitioner no.2) and minor daughter, who have inherited his property being legal heirs. It is further pleaded that the petitioners were dependent on the earnings from the business being carried out by the deceased in the disputed shop. The nature of work being done in the disputed shop was male-oriented and it was not possible for the petitioners to carry out the same. The petitioners used to supervise the same. Respondent no.6, who had an evil's eye on the disputed shop, approached the petitioners with the request that he would work on the shop as an employee. Consequently, he started working as employee of the petitioners on monthly salary. Respondent no.6 was also entrusted with the job to pay the monthly rent of the disputed shop from the earnings. In the year 2006, the petitioners came to know that respondent no.6 had not paid the rent/lease money to respondent no.2 for the last many years and was not performing his duties diligently, rather with evil design he got installed telephone and electricity connections in his name.

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Thereafter, the petitioners approached respondents no.2 to 5 and came to know about the intention of respondent no.6 who intends to get the disputed shop transferred in his name. When information under the Right to Information Act was got from the authorities, it transpired that respondent no.6 was trying to claim the ownership. Complaint was made to the Hon'ble Governor of Haryana. Upon this, enquiry was conducted and direction was issued to the petitioners to make application to respondent no.4 for getting the shop transferred in their favour. As a result of it, the petitioners moved application. On the other hand, respondent no.6 also moved application claiming his title over the disputed shop. Ultimately, respondent no.4-Secretary, Municipal Corporation processed the matter vide letter dated 20.12.2011 (Annexure P-9). Thereafter, vide letter dated 28.12.2011 (Annexure P-10), case was processed for seeking opinion of District Attorney, Ambala. Thereafter one Sh. Dinesh Bajaj, Deputy District Attorney vide his opinion (Annexure P-11) submitted that Ashok Kumar has taken the possession of the disputed shop from the family members of deceased-Vinod Kumar and has paid all consideration for transfer of possession of the disputed shop to Mamta Rani, widow of Vinod Kumar, therefore, he has a better case for transfer of the lease of the disputed shop in his name. Thereafter, proposal was processed by Mukesh Ahuja on 19.01.2012 vide Annexure P-12 whereby it has been held that respondent no.6 has a better case for transfer of the disputed shop in his favour as lessee.

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Thereafter, the Secretary and Commissioner, Municipal Corporation, Ambala relying upon the legal opinion of the Deputy District Attorney directed transfer lease/tenancy of the disputed shop in favour of respondent no.6-Ashok Kumar vide order (Annexure P-13). The said orders have been impugned before this Court.

In pursuance of the notice of motion, respondents no.2 to 5 filed written statement admitting the fact that disputed shop was given on lease to deceased-Vinod Kumar, who was son of petitioner no.1 and husband of petitioner no.2. The original lessee died in the year 1987. The intimation of his death was not sent to the official respondents. An amount of ₹ 54,020/- was outstanding against the petitioners as on 31.03.2003. It has also come to the notice of the official respondents that shop had been sublet to respondent no.6 in violation of conditions of the agreement. Respondent no.6 was inducted into possession by the petitioners and he was not their employee. Due to disturbance of relationship between the petitioners and respondent no.6, application for transfer of lease in their name was moved by the petitioners.

Respondent no.6 filed separate written statement with the averments that he has been occupying the shop in question since 1997 and is running the business in the name and style of Pardhan Auto Care Centre. Respondent no.6 is regularly paying the monthly rent to the Municipal Corporation, Ambala. It is further submitted that as is evident from Annexures R-6/1 to R-6/3, the electricity and telephone

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connections have been installed in his name. Even, life insurance policies have been obtained by respondent no.6 and his family members at the address of the disputed shop. A case was also registered against the sons of petitioner for committing theft in the shop in question in which they have been convicted. Respondent no.6 is entitled to retain possession and disputed shop has rightly been transferred in his name.

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

Learned counsel for the petitioners vehemently contended that it is admitted fact that Vinod Kumar was allotted shop on lease by the Municipal Corporation at monthly rent of ₹ 360/- in the year 1985. Vinod Kumar died on 22.04.1987. Learned counsel further contended that there is no dispute that deceased-Vinod Kumar left behind petitioner no.1(mother) and petitioner no.2(widow) and a minor daughter. All the properties of deceased-Vinod Kumar have been inherited by the petitioners and minor daughter. Learned counsel further contended that as per settled proposition of law, transfer of lease should have been made in favour of legal heirs of deceased-Vinod Kumar and not in favour of respondent no.6. The opinion of the Deputy District Attorney is *mala fide* and is not based on the principles of succession, therefore, the same is *per se* illegal and arbitrary. All the officers of the Municipal Corporation and State are public servants. The District Attorney/Deputy District Attorney being public officers, were required to perform their

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duties with due diligence and in accordance with law. Learned counsel further contended that wrong and arbitrary legal opinion by the public servants, amounts to official misconduct. The Deputy District Attorney gave wrong opinion (Annexure P-11) with *mala fide* intention to pervert the cause of justice. By relying on wrong/*mala fide* opinion, the govt. officials i.e. Commissioner and others have given a benefit to a third person with ulterior motive. As such, they are liable to be prosecuted under the provisions of Prevention of Corruption Act.

Per contra, learned State counsel and learned counsel for respondents no.2 to 5 vehemently opposed the contentions of learned counsel for the petitioners and contended that application for transfer of possession was submitted by the petitioners as well as respondent no.6. The opinion was taken by the Municipal Corporation from the office of the District Attorney. The application for transfer of possession submitted by the petitioners is hopelessly time barred as the same has been filed after a gap of 23 years. Respondent no.6 has a better claim for transfer of the disputed shop in his favour as lessee. There is no illegality or perversity in the action taken by respondents no.2 to 5. Learned counsel further contended that shop was illegally sublet by the petitioners to respondent no.6 which is contrary to the terms and conditions of lease agreement (Annexure R-2/1) executed by deceased- Vinod Kumar. The wrong facts have been mentioned in the petition. An amount of ₹ 54,020/- was outstanding till 31.03.2003 with regard to the

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disputed shop. On 19.10.2010, the petitioners moved application that lease of shop be transferred in their favour as original lessee has died. Similarly, respondent no.6 also moved application for transfer of lease on the basis of possession over the disputed shop. Learned counsel further contended that after considering the material on record including legal opinion, the authorities concerned have rightly ordered transfer of lease of the disputed shop in favour of respondent no.6.

Learned counsel for respondent no.6 vehemently contended that he has been in possession of the disputed shop since 1997 and is running his business in the name and style of Pardhan Auto Care Centre. Learned counsel further contended that telephone and electricity connections are in the name of respondent no.6. He was never employee of the petitioners, rather he has been in possession over the disputed shop in individual capacity. Respondent no.6 has deposited the arrears of rent and disputed shop has rightly been transferred in his favour.

I have given my anxious thoughts to the rival contentions of learned counsel for the parties.

Admittedly, Vinod Kumar was a lessee vide lease deed (Annexure R-2/1). The date of death of Vinod Kumar is not in dispute. Now the question arises when a lessee dies, in whose favour rights are to be transferred. It is settled proposition of law that if lease is transferable, the same is required to be transferred in the names of legal heirs of the deceased. As such, it should have been transferred in the name of

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petitioners and minor daughter, who are stated to be the only legal heirs of deceased-Vinod Kumar. Section 161 of the Haryana Municipal Corporation Act, 1994 (in short, 'the Act) refers to the “property vested in the Corporation and management of public institutions”, Section 165 of the Act refers to “contracts by Corporation”, Section 166 of the Act refers to the “procedure for making contracts”, Section 167 of the Act refers to “mode of executing contracts” and Section 408-A of the Act refers to “power to evict persons from Corporation premises/land”. No specific provision has been shown to this Court by learned counsel for the respondents that in case lessee dies, how the Municipal Corporation will proceed to deal with the leased property. It is, however, agreed that lease is transferable, therefore, the principles of natural succession as enshrined in the Hindu Succession Act and Transfer of Property Act will apply. Being faced with this situation, learned counsel for the respondents could not deny that transfer in the name of respondent no.6 on the basis of report made by Deputy District Attorney is *per se* illegal, arbitrary, null and void. Resultantly, the impugned orders transferring the lease in favour of respondent no.6 are not sustainable in the eyes of law and are set aside accordingly. The authorities concerned are directed to proceed in the matter afresh in accordance with law.

Perusal of record summoned by this Court reveals that officials of the Corporation as well as Deputy District Attorney had acted in an illegal and arbitrary manner. The officials of Corporation and Deputy

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District Attorney are public servants and they are required to perform their duties strictly in accordance with law. If they are not performing their duties in accordance with law and are giving opinions with *mala fide* intentions and resultantly illegal orders are passed, then they are liable for their act under various provisions of relevant laws as may be applicable to the public servants, who perform their duties dishonestly, with *mala fide* intentions and give benefit to a party, which is not entitled for the same in accordance with law. Perusal of report made by the Deputy District Attorney clearly indicates that same is not based on settled principles of law of succession and transfer of property. If a person dies, Section 8 of the Hindu Succession Act, 1956 applies according to which property shall devolve upon class-I heir(s) at first instance. Here in this case, mother, widow and minor daughter left behind by deceased-Vinod Kumar are his class-I heirs. Therefore, the shop in question should have been transferred in their names. The legal opinion (Annexure P-11) given by the Deputy District Attorney, who is a public servant, is arbitrary, illegal and contrary to the provisions of Hindu Succession Act and the Act.

It appears that the Deputy District Attorney while occupying a public office, gave an advice just in order to pervert the course of justice. The perusal of opinion of the Deputy District Attorney reveals that it is not based upon law and apparently appears to be submitted with a purpose/intention to create lien in favour of respondent no.6, who is

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otherwise not entitled for the same in accordance with law. The opinion of the Deputy District Attorney is *per se* illegal and officials of Corporation too have blindly accepted it specifically the Commissioner without looking into the provisions of law which resulted in perverting the course of justice and transfer of lease in an illegal manner. Such an act of the Deputy District Attorney and officials of the Corporation including the Commissioner is required to be examined by the Govt. of Haryana and action is required to be taken against them. The officials of the Corporation from the lowest level upto the highest authority i.e. Commissioner have not followed the procedure established by law. Once it came to notice of the authorities that lessee-Vinod Kumar has expired, the disputed shop should have been transferred in favour of his legal heirs as lessees. If any person was in unauthorized possession, the authorities should have proceeded under Section 408-A of the Act which empowers the Municipal Corporation to evict a person from Corporation premises/land. In this manner, if any loss has been caused to the Corporation, the same should be recovered from the officers/officials found responsible for the same after completion of probe and copy of the same be sent to this Court. Needful shall be done by the Govt. of Haryana within six months from the receipt of certified copy of this order. The Municipal Commissioner, who may be presently holding the post, shall also inquire into circumstances at his own level with regard to the involvement of the officials of Corporation and submit report to this

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Court within a period of three months from the date of receipt of certified copy of this order. If need be further orders will be passed by this Court after perusal of the reports. The file be put up on 19.10.2015.

11.02.2015

parveen kumar

(Paramjeet Singh)
Judge