

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

Date of decision:23.03.2015.

Smt.Chander Pati

.....Petitioner

v.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Ajay Jain,Advocate for the non-applicant/petitioner.

Mr.Sandeep Singh Mann,Sr.DAG Haryana

Mr.Chetan Mittal,Senior Advocate assisted by
Mr.OP Sharma,Advocate for the applicant/DH

Jaswant Singh,J.(Oral)

CM No.3888/2015

This application has been moved by the petitioner for placing on record rejoinder to the written statement filed by State-respondents 1 to 3 and also reply to the application bearing No.2997/2015 filed by decree holder-Delhi Cloth Mill Limited (hereinafter referred to as DCM) under Order 1 Rule 10 CPC for being impleaded as a party in the present writ petition.

CM allowed. Aforesaid replies taken on record.

CM No.2997/2015

This application has been filed by DCM-DH for being impleaded as a party in the present writ petition challenging the notice under Section 4(1) by the competent authority under the Haryana

Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short the 1972 Act) seeking to eject the present petitioner from her unauthorised possession of land to be handed back by the State to DCM pursuant to the final order passed by Hon'ble the Supreme Court on 16.8.2013.

The admitted facts are that 400 acres of land situated in Village Beer, Hisar was allotted by the composite Punjab on 17.11.1953 to DCM for setting up of a Cloth mill. Written conveyance deed was executed in favour of the Mill on 3.9.1956. Subsequently due to the strike of the workers the Mill was shut down on 3.6.1984 and 253 acres of vacant land was resumed and taken in possession on 12.4.1989 by the Collector, Hisar in terms of the conveyance deed. The said resumption order was challenged by the Mill by filing CWP NO.6237/1989 and the same was allowed on 29.6.2010 by a learned Single Judge of this Court. The Letters Patent Appeals filed against the said order by the authorities were dismissed by a learned Division Bench of this Court on 4.10.2012. The SLP filed by the State was finally dismissed on 16.8.2013. Consequently the Mill filed execution proceedings before this Court for handing back the possession of 253 acres of land. It is a matter of record that possession of an area of 251 acres and 3 kanals has since been restored to the Mill in execution proceedings. Since on the remaining 13 kanals (about 1.5 acres) there were encroachers including the present petitioner, the possession could not be handed back. Hence the authorities resorted to eviction

proceedings under the 1972 Act.

Petitioner has been issued a notice under Section 4(1) of 1972 Act qua 67 square yards upon which it is stated that the petitioner has constructed a dwelling unit. The petitioner instead of filing her reply before the Collector,Hisar/respondent no.2 filed an application raising issue of maintainability in view of the asserted fact that that the land was not covered under the definition of “public premises”. The said application was dismissed by the Collector,Hisar vide impugned order dated 6.1.2015 (P-5) by holding that the aforesaid 13 kanals including land in possession of the petitioner was being unauthorisedly occupied by them and therefore, fell within the definition of “public premises”.

In the main writ petition notice was issued to respondents who have filed their separate replies. In the meanwhile since the interest of the decree holder-DCM was jeopardized it has filed aforesaid application for its impleadment.

In the reply filed by the petitioner it is stated that since the challenge is only to the notice under the 1972 Act, no stage of jeopardizing any rights of the Mill has reached so as to permit them to be impleaded as a party.

After hearing learned counsel for the parties this Court is of the opinion that for the effective assistance and decision of the *lis* impleadment of the Mill is necessary being a proper party. Accordingly CM No.2997/2015 is allowed and application is arrayed as respondent

no.4 in the present writ petition. The documents annexed with the application are taken on record. Learned counsel for the applicant states that he adopts the written statement filed by the State.

CWP 1006/2015

Learned counsel for the petitioner has argued that after execution of the conveyance deed dated 3.9.1956, the State had lost all title, right or interest in the said 400 acres of land including the land in dispute in the present writ petition and therefore after setting aside of the resumption order dated 12.4.1989, the position existing prior to the resumption would be restored and title would vest with DCM Mills and therefore the present proceedings cannot be initiated by treating the same as “public premises”.

Next argument raised is that the petitioner is in possession of dwelling unit comprised in 67 square yards out of aforesaid total land since many decades and therefore, it cannot be accepted that the petitioner had entered into unauthorised possession after the possession had been resumed by the State from DCM Mills so as to permit the initiation of proceedings under the 1972 Act.

On the other hand, learned counsel for respondents have argued that for initiating action under the 1972 Act for evicting the unauthorised occupants from any public premises, the title/ownership of the State keeping in view the definition provided under Section 2(e) of “public premises” is not the *sine qua non*. It has also been stated that as regards the factual position, it is pleaded case of the petitioner

herself that she has entered into unauthorised occupation around 20-22 years back when concededly the title and possession vested with the State.

After giving anxious consideration to the rival submissions of the learned counsel for the parties this Court finds no merit in the present writ petition.

It cannot be disputed that the petitioner has entered into possession of the aforesaid portion of the land otherwise than under and in pursuance of any allotment, lease or grant and is thus in unauthorised possession of the said 67 square yards of land during the lawful possession of the State Government.

The question to be determined is as to whether the said portion of the land would be covered under the definition of “public premises” or not, so as to permit the initiation of eviction proceedings under the 1972 Act.

Ordinarily this issue would have been required to be addressed by the Collector, Hisar while finalising the eviction proceedings, however, the petitioner instead of filing a reply to the notice under Section 4(1) of the 1972 Act chose to raise the issue of maintainability, which the Collector, Hisar decided against her and thus raised before this Court in the present writ petition, therefore, it is being decided by this Court.

Before proceeding further it would be appropriate to reproduce the relevant provisions of Section 2(e) of the 1972 Act.

which reads as under:-

“(e)”public premises” means any premises belong to, or taken on lease or requisitioned by, or on behalf of, the State Government, or requisitioned by the competent authority under the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, and includes any premises belonging to any (Local authority or District Soldier', Sailors and Airmen's Board) (or any university established by law)(or any Corporation or Board owned or controlled by the State Government).”

A bare reading of the aforesaid definition makes it explicit that for a premises to be “public premises”, the title of such premises being vested in the State Government is not the only requirement. The said premises may be owned by the Government or can be owned by somebody else but taken on lease or requisitioned on behalf of the State Government, meaning thereby that the possession of the State should be lawful, when an occupier enters into unauthorised occupation of such possession of the State Government for the premises to be held to be “public premises” permitting initiation of eviction proceedings under the 1972 Act.

In the present case from the pleaded case of the petitioner herself it cannot be denied that she has entered into unauthorised occupation after the land had been resumed and possession taken by the Collector, Hisar in the year 1989 from DCM Mills and before such lawful possession could be restituted/restored back to decree holder- DCM Mills by the State. It also has to be accepted that although the title vested with DCM Mills on finalisation of the proceedings on

16.8.2013 after the decision by Hon'ble the Supreme Court, however, the management and legal control of State Government continues till it is restituted/restored back to DCM/ Decree Holders.

A similar issue has already been decided by a learned Single Judge of the Delhi High Court in a case reported as **Lady Irwin College Society v Union of India**, 1996(1) RCR (Rent)590. In the cited case a residential bungalow had been requisitioned by the authorities under the Requisition and Acquisition of Immovable Property Act, 1952 (for short "the 1952 Act) and handed over for use to Lady Irwin College Society. Subsequently, in the year 1970 an amendment was made to the 1952 Act which provided that the property requisitioned was required to be released back to the owners on or before the expiry of period of 17 years from the date of the amendment made in the year 1970. The premises were not handed back to the owners on or before 10.3.1987. The owners filed a writ petition before the Delhi High Court seeking possession in terms of the provisions of the amended Act of 1952. The matter went upto the Hon'ble Supreme Court whereby the Lady Irwin College Society was granted time to handover vacant possession. The undertaking was not honoured by the said Society. Proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the PP Act) were initiated and the Estate Officer vide order dated 27.8.1990 ordered the eviction and the same was upheld by the Appellate Authority vide order dated 14.11.1996, passed under Section 9 of the PP Act. The matter went to

Hon'ble the Supreme Court. One of the arguments raised on behalf of Lady Irwin College Society was that the Estate Officer did not have any jurisdiction to pass an order under Section 5 of the PP Act as after the expiry of 17 years from the commencement of the amendment Act of 1970 (to the 1952 Act) the premises in question ceased to be public premises and were not covered under the definition of "Public Premises" under Section 2(e) of the PP Act. The said argument was repelled by holding that despite the fact that the premises are required to be released after the expiry of the specified period of time (i.e. 17 years) under the Act of 1952 does not mean that the property which has been requisitioned and not released would cease to be a Public Premises, since the PP Act was a special Act dealing with the specific problem of taking speedy action against unauthorised occupants of the public premises. By further opining that it was only after securing the eviction of an unauthorised occupant under the PP Act that the Central Government or the competent authority would be in a possession to handover possession of the property to its owner(s) in accordance with the provisions of the Act of 1952. This Court also in **Mange Ram v Collector, Sonapat**, 1086 PLJ 406 held that in a case of eviction of an unauthorised occupant or a member of a proprietary body from the land recorded as *jumla mushtarka malkan* whose ownership vested with the proprietary body but the management and control vested with the Panchayat was fully competent to maintain eviction proceedings under the Punjab Public Premises and Land (Eviction and Rent

Recovery) Act, 1973. The ratio of the said judgment was subsequently followed by another Single Judge in the case reported as **Gram Panchayat, Village Bashamberpura v Sardara Singh and another**, 1988(2) RRR 207.

Applying the ratio of the law laid down by the aforesaid judgments to the present case, it can be safely concluded that the land in dispute whose management and control at least vested with the Government even after finalization of the title in favour of DCM Mills/Decree Holders by Hon'ble the Supreme Court till the same was restituted/restored back to the said Decree Holder, and therefore, the land in dispute would fall within the definition of Public Premises as defined under Section 2(e) of the 1972 Act. Accordingly the question posed is decided in favour of the State Government and against the petitioner.

In view of the aforesaid discussion the present writ petition is thus dismissed with no order as to costs.

23.03.2015.
joshi

(Jaswant Singh)
Judge