

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

CWP No. 19738 of 2011 (O&M)

Date of decision: January 30, 2015

Harjit Singh

...Petitioner

Versus

Commissioner, Ambala Division, Ambala and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Paramvir Singh Sikand, Advocate,
for the petitioner.

Mr. Shivendra Swaroop, AAG, Haryana,
for respondents No. 1 and 2.

Mr. Naveen S. Bhardwaj, Advocate,
for respondent No.3.

K. KANNAN, J. (Oral)

1. The writ petition challenges an order passed by the authority under the Public Premises Act brought at the instance of the Municipal Corporation, Ambala. In respect of the very same subject matter, the petitioner appears to have filed a civil suit for injunction restraining the Corporation from interfering in his possession. The decree was sustained throughout upto this Court in decision in RSA No. 3149 of 2006. This Court, while disposing of the appeal filed by the Municipal Corporation, observed that the courts below have recorded a concurrent finding of fact that the plaintiff/Harjit Singh, who is petitioner here, has succeeded in establishing his ownership over the property, which is the subject matter of

the suit and that the municipality has not brought on record any material to establish that the open land was meant for use as the park.

2. The Municipal Corporation filed a petition for ejectment under the Public Premises Act. It was required to be shown that the property was the public property and the person who is sought to be ejected was in unauthorized occupation. The Municipal Corporation would have no documents of its own but would rely on a recital in the document purchased by the petitioner where the vendor had stated that the property adjacent to the property conveyed and which is shown as a park could be used for putting up construction by the purchaser subject to approval from the municipality and if the Corporation raised any objection, it should be the personal responsibility of the vendee and the vendor will not be liable in any manner. This, according to the counsel for the Municipal Corporation, means the vendee's recognition of the ownership of the property with the Municipal Corporation. This argument is distanced from any logic that could be rooted in law. No title of a property could ever be conferred by admission, as laid down by the Supreme Court in Ambika Prasad Thakur Versus Ram Ekbal Rai AIR 1966 Supreme Court 605. If the recital in the sale deed itself was to be taken that the sale by the vendor was sans recourse allowing for a purchaser to take such action as possible to fend off any objection from the municipality, it cannot be mean any admission of title in favour of the Municipal Corporation. This court's observations in the second appeal, the Municipal Corporation was not able to show its own right or ownership stands till date. It is axiomatic that the public authorities who seek for ejectment must show that the property is a public land and the person whose eviction is sought is in unauthorized occupation. A mere

description in a sale deed that the property is used as a park cannot be mean that it is used as a public park. The property now brought for adjudication is a small piece of land that is immediately adjacent to the the petitioner's shop. The lower appellate authority was clearly in error in reading a recital in a sale deed to mean as admission of the ownership of the Municipal Corporation which I pointed out is legally untenable.

3. The writ petition is allowed and the impugned order is quashed.

January 30, 2015
prem

(K.KANNAN)
JUDGE