

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.2780 of 2015

Date of Decision: 17.03.2015

Mahinder Kaur

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rajesh K. Dadwal, Advocate, for the petitioner.

HEMANT GUPTA, J.

The petitioner has invoked the writ jurisdiction of this Court claiming writ of certiorari for quashing an order of eviction dated 14.09.2012 (Annexures P-12) passed against the petitioner under Section 46 of the Punjab Regional and Town Planning and Development Act, 1995 (for short 'the Act') as well as the orders passed in appeal and revision dated 24.12.2013 & 06.01.2015 (Annexures P-13 & P-16 respectively).

The petitioner claims to be a purchaser of 160 sq. yards plot vide sale deed dated 08.11.1993 from one Jaswinder Kaur wife of Jagjit Singh, as part of land comprising in Khasra No.50, Village Sahib Nagar @ Kheri, Tehsil & District Patiala said to be located within *Lal Lakir*. The petitioner is said to have raised residential building on the said land after raising loan from the Bank.

The respondent – Punjab Urban Development Authority (PUDA), now Patiala Development Authority, initiated proceedings by serving a notice under Section 46 of the Act on 06.06.2011 alleging therein that the petitioner is in illegal possession over its land. Pursuant to such

notice, husband of the petitioner submitted reply (Annexure P-11) inter alia asserting that he and his family is residing on the land in question for the last 25 years. It is pointed out that a demarcation was carried out in the year 2005 and that as per the said report, 44 kanals of land is surplus with Punjab Urban Development Authority (PUDA). It is also pointed out that the respondents have no concern or relation with the plot in question.

The Estate Officer, as an authority competent to exercise its jurisdiction under Section 46 of the Act, returned a finding that the land purchased by the petitioner could be of some other place and is not of the land purchased by PUDA.

An appeal against the said order was dismissed by the Additional Chief Administrator -cum- Appellate Authority, PDA/PUDA, Patiala on 24.12.2013 on the basis of demarcation conducted on 08.05.1982 and 19.01.1983. It has also been found that Punjab Housing Development Board / Punjab Urban Development Authority / Patiala Development Authority have purchased land measuring 256 kanals 1 marla within *Lal Lakir* in the year 1976. The survey plan and the demarcation report have been produced in respect of land in question. The revision against the said order was also dismissed on 06.01.2015 as not maintainable. The relevant extract from the order dated 24.12.2013 reads as under:

“I have heard both the parties at length and have gone through the entire record, Map. Latha and other relevant documents produced by the both parties. It is clear from the record that the demarcation has been cancelled by the Revenue Authorities and PHDB/PUDA/PDA has made full payment of YPS for the purchase of 60 Acres of land. The survey plan which was prepared and conducted by Sh. N.S.Kahlon on 19.01.1983 and demarcation report dated 08.05.1982 shows that after the purchase and getting the possession of the land, the appellants had encroached the valuable land which is shown in survey plan demarcation report. Estate Office PUDA/PDA has failed to protect valuable Government land,

as it is clear from the record produced by both the parties (survey plan and demarcation report) that at the time of warrant of possession of 60 Acres land, the appellant was not in possession thereof. PHDB/PUDA/PDA has purchased/acquired 256 kanal 1 marla within Lal Lakir. The respondent has shown the survey plan and demarcation report of the land in question. The registered sale deed of the appellant does not prove that it is of the land in question, but seems to be of some other land within Lal Lakir.”

Learned counsel for the petitioner has vehemently argued that many occupants of land purchased by Punjab Housing Development Board / Punjab Urban Development Authority from Yadvindra Public School filed a suit for permanent injunction restraining the respondents from dispossessing the plaintiffs. The said suit was decreed by the trial Court, however, in appeal, such decree was set aside and now the matter is pending before this Court in second appeal. It is contended that around 58 acres of land purchased by Punjab Urban Development Authority from Yadvindra Public School is subject matter of the said appeal in which Punjab Urban Development Authority has been impleaded as the additional respondent. Instead of taking possession from the occupants of the said land, the respondents have proceeded against the petitioner, who is in possession of the land in their own rights. Learned counsel for the petitioner also referred to a demarcation report dated 24.01.2014 on an application filed by the petitioner for demarcation of the land, wherein it has been recorded that the land purchased by the petitioner is situated inside *Lal Dora*. It is further argued that the respondents are relying upon the demarcation of the year 1982-83, whereas in the later demarcation, it has been found that the Punjab Urban Development Authority is in possession of the excess land. The land of the petitioner has been found to be located inside *Lal Dora*, therefore, the petitioner cannot be dispossessed on the basis of demarcation report of the year 1982-83.

Having heard learned counsel for the petitioner at length, we do not find any merit in the present writ petition. The argument of the petitioner is that the respondents are in possession of excess land based upon demarcation Annexure P-7. But, whether the respondents are in excess land or not is not a question arising in the present writ petition. The question is as to whether the petitioner is in possession of the land owned by the PUDA / Patiala Development Authority.

A concurrent finding of fact has been recorded by the Estate Officer and affirmed by the Additional Chief Administrator that the land is owned by PUDA over which the petitioner is an unauthorized occupant. Such finding has been given on the basis of demarcation report given in the year 1982-83. The finding is that the land of the petitioner is some other land than the land purchased by the PUDA. Whether the land is same or different is a finding of fact. In the absence of any demarcation report to hold that the petitioner is in possession of the land not owned by the respondents, we find that the finding that the petitioner is in unauthorized occupation cannot be permitted to be disputed in a writ petition relying upon subsequent report of the Tehsildar dated 24.01.2014. The petitioner has not produced such documents before the Estate Officer or before the Additional Chief Administrator. In the absence of any other document on record, we have no reason to entertain doubt about the findings recorded by the Estate Officer or the Additional Chief Administrator.

Consequently, we do not find any merit in the present writ petition. The same is dismissed.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

17.03.2015

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VIMAL KUMAR
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I attest to the accuracy and
integrity of this document
Chandigarh