

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

**CWP No.7061 of 2015
Date of decision: 20.4.2015**

Surinder Singh

.....Petitioner

Vs.

**Estate Officer, Haryana Urban Development Authority, Sector 6,
Panchkula and others**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHAR DHAWAN**

Present: Mr. Satish Grover, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of mandamus directing respondent No.1 – Estate Officer, Haryana Urban Development Authority, Sector 6, Panchkula not to transfer the allotted plots/houses to unauthorized public on the basis of fake documents.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner

approached respondent No.2 Mrs. Kanchan Chhabra for purchasing Plot No.16, Sector 21, Panchkula, which was duly allotted to her. She received ₹ 10 lacs from the petitioner and issued receipt of the said payment in the presence of witnesses. In the meantime, the petitioner came to know that the plot in question was allotted to her on the basis of fake documents. He filed complaint against respondent No.1, which is still under investigation. The petitioner also came to know that Mrs. Kanchan Chhabra further sold the said plot to respondent No.3, namely Dinesh Kumar who was selling the said plot to some other person on illegal documents. Mrs. Kanchan Chhabra also issued affidavit claiming that she was the sole and absolute owner and allottee of the plot in question. The petitioner approached respondent No.1 for taking necessary action but nothing has been done. Hence the instant writ petition.

3. We have heard learned counsel for the petitioner.

4. The primary grievance as raised in the writ petition relates to private dispute between the petitioner and respondent Nos. 2 & 3. From the perusal of the averments made in the writ petition, the present remedy of writ petition is not proper as the petitioner can approach the civil court for redressal of dispute between him and respondents No.2 and 3. Furthermore, disputed questions of facts are involved in the present case. In such a situation, we do not find justification to entertain this petition under Articles 226/227 of the Constitution of India.

5. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in *N.C.Mahendra v. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that

ordinarily a writ would not issue in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit.” (Emphasis supplied).

The Hon'ble Supreme Court in **State Cadre Authority and another v. K.S.Bajpal and others**, 1990(Suppl.) SCC 713, **Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others**, 2007(4) SCC 241 and **Mukesh Kumar Agrawal v. State of UP and others**, 2009(13) SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in ***Dwarka Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others***, AIR 2003 SC 2686, wherein it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of

India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

6. In view of the above, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

April 20, 2015
'gs'

(Shekhar Dhawan)
Judge