

CWP-8102-2015

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

**CWP-8102-2015 (O & M)
Date of Decision: 03.09.2015**

Gurgaon Club, Gurgaon

... Petitioner(s)

Versus

Zila Parishad Gurgaon and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- | | |
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| 1) Whether Reporters of the 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. P.R.Yadav, Advocate,
for the petitioner.

Mr. Rakesh Gupta, Advocate,
for respondent No.1.

Mr. Rajneesh Chadwal, DAG, Haryana.

Paramjeet Singh, J.

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Allowed, as prayed for. Annexure P-7 is taken on record.

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Instant writ petition has been filed under Article 226 of the Constitution of India for setting aside the order dated 05.11.2014 (Annexure P-6) passed by respondent No.3-Commissioner, Gurgaon Division, Gurgaon whereby appeal filed by the petitioner has been

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dismissed on merit at his back.

Brief facts of the case as borne out from the record are to the effect that the petitioner is a registered society and came into existence somewhere in 1930. The Government officials, Judicial Officers, Senior Advocates and respectable persons of the Gurgaon city were enrolled as its members but subsequently the Government provided separate land to the Government officials and Judicial Officers and now the Senior Advocates and respectables of the City are its members. The petitioner-Club is a registered body and is in existence over the Government land on payment of a token rent which was revised to ₹5/- per annum on 10.10.1959 and since then, the petitioner has been paying the rent regularly. The petitioner is in continuous possession of the disputed land as tenant. Earlier the property was shown to be ownership of District Board, Gurgaon which was dissolved in the year 1999-2000 and Zila Parishad, Gurgaon came into its place. On 11.09.2000, office bearers of the Zila Parishad, Gurgaon made an attempt to dispossess the petitioner-Club from the disputed land. Thereafter, on 12.09.2000, the petitioner filed a suit for permanent injunction through its authorized representative against the above illegal action of the Zila Parishad. Vide judgment and decree dated 20.03.2006 (Annexure P-1), suit of the petitioner was partly decreed holding that the petitioner-Club was not in illegal possession of the disputed land and it can only be dispossessed in due course of law. Thereafter, respondent No.1-Zila Parishad, Gurgaon

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filed an application under Sections 4, 5 and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (in short, 'the Act') for eviction of the petitioner on the ground of non-payment of rent. In response to the same, the petitioner herein filed reply to the effect that it was not in illegal possession and it was ready to deposit the rent. Vide order dated 26.09.2011 (Annexure P-4), respondent No.2-Collector, Gurgaon ordered eviction of the petitioner from the disputed land on the ground that rent was not paid since 10.09.1999. Against that, the petitioner filed an appeal before the Commissioner, Gurgaon Division, Gurgaon which has been dismissed on merit vide impugned order dated 05.11.2014 (Annexure P-6) despite the fact that none was present on behalf of the petitioner. Hence, this petition.

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

Learned counsel for the petitioner vehemently contended that the appeal could not have been decided by respondent No.3-Commissioner, Gurgaon Division, Gurgaon on merit in the absence of counsel for the applicant (petitioner-Club herein), rather it could have only dismissed the appeal for non-prosecution. He further contended that vide judgment and decree dated 20.03.2006 (Annexure P-1), the petitioner was held not to be in illegal possession. The petitioner has been paying the rent and is in possession of the disputed land for more than 75 years. He further contended that impugned orders are not

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sustainable in the eyes of law. It was the duty of respondent No.2-Collector to afford opportunity to the petitioner-Club to make payment of rent due, if not already paid. The petitioner cannot be held to be in illegal possession. The petitioner has been paying the rent regularly and had already paid the rent for sufficient long time. The petitioner should have been afforded opportunity to make the payment of remaining rent.

Per contra, learned State counsel and learned counsel for respondent No.1 vehemently opposed the contentions of learned counsel for the petitioner and contended that the petitioner is in unauthorized possession of the property which vested in Zila Parishad which is a statutory body. The petitioner claims that the disputed land was taken on rent, but no such document has been placed on record either before the Collector or the Commissioner or even before this Court to indicate that it came into possession over the disputed land on the basis of lease deed which is alleged to have been executed in 1930. Learned counsel further contended that provisions of the Civil Procedure Code are not applicable in the present case, as proceedings under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 are summary in nature. Only the relevant issue before the Civil Court in civil suit was whether the plaintiff-Club is entitled to the relief of permanent injunction as prayed for. In the civil suit, no issue was framed that the petitioner is a tenant over the disputed land.

I have considered the rival contentions of learned counsel

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for the parties.

Admittedly, the petitioner-Club is on the land of District Board, now the same vests in Zila Parishad with the abolition of District Board. The rent was initially fixed @ 50 paise per month and thereafter it has been increased to ₹5/- per month on 10.10.1959 and thereafter to ₹50/- per month. Vide order dated 26.09.2011, the Collector has recorded a finding that the petitioner-Club and others are continuing as tenants over the disputed land, but they have not paid the rent since 1999 and they have not handed over possession to the Zila Parishad. It has also been recorded that the petitioner-Club and others are occupying the disputed land without payment of rent and, therefore, eviction of the petitioner-club and recovery of the amount as arrears of land revenue has been ordered.

Earlier, the petitioner-Club along with its Secretary has filed suit for permanent injunction restraining Zila Parishad, Gurgaon from taking forcible possession of the dispute land. The said suit was decreed by the Civil Court vide judgment dated 20.03.2006 (Annexure P-1) with the following findings:

“16. In view of the above discussion and after careful perusal of the case file, this Court is of the considered opinion that so far as the rulings as relied upon by the learned Law Officer appearing on behalf of the defendants are concerned, they have no applicability as in the rulings titled as Mangat Ram's case (supra) and Sri Hanumanthappa case (supra), a proposition has been laid down while deciding stay application that

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trespasser cannot seek injunction against the true owner. In ruling Mohan Lal's case (supra) also, it has been held that the person is in unlawful occupation of public property cannot claim any right whatsoever. In the case in hand, the plaintiff Club is not in unlawful possession over the site in dispute. The defendant cannot take the benefit of this fact that the plaintiffs have failed to show any lease agreement on the case file in their favour but the court cannot ignore the fact that once chairman of the defendant by letter Ex.P2 has demanded the arrear of rent back in the year 1697 (sic. 1999), then defendant now cannot deny that it did not enter into any agreement with the plaintiff club. The rent receipts and letter dated 30.07.59 from District Board to Gurgaon Club, Gurgaon demanding rent Ex.P4 and all other documents show that not only the suit property was rented out by District Board, rather the rent was even enhanced Rs.5/- per annum vide resolution No.38 dated 10.10.59 Ex.P-14. Other correspondence and electricity bills as well as municipal records adduced from the side of the plaintiffs leaves no doubt that the plaintiff club is not in unlawful possession over the same. Now so far as the non-payment of rent by the plaintiff club to the defendant is concerned, if it is the case, then the defendant's club can resort to legal course prescribed by law in this behalf but it cannot take law in its own hands in dispossessing the plaintiffs from the suit property. The defendants can seek eviction of the plaintiff club only in due course of law and not otherwise. The plaintiffs certainly entitled to the relief of permanent injunction as prayed for by it and accordingly findings over this issue are returned in favour of the plaintiffs.”

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Perusal of the judgment dated 20.03.2006 passed by the Civil Court clearly reveals that no document regarding alleged lease was brought on record by the petitioner-Club and it only relied upon the letter written by Chairman of the Zila Parishad, who had demanded the arrears of rent in the year 1999. Moreover, the findings recorded by the Civil Court do not affect the merit of the case because the petitioner-Club failed to produce any document before the authorities below to show upto to which date and year, lease had to remain in operation. No document was produced on record to show that lease was perpetual in nature and was a registered/lease deed. It appears that the petitioner has occupied the premises illegally, not in pursuance of extension of the term of alleged lease, express or implied, granted by the competent authority. The best evidence available with the petitioner to substantiate its claim is lease deed which has not been produced on record, therefore, adverse inference has to be drawn against the petitioner. The petitioner has become an unauthorized occupant of the public premises and the amount, if any, deposited by it represented the damages for unauthorized use and occupation thereof. It is settled law that after passing of the order, payment of rent subsequently does not give any right to the petitioner. In ***Punjab State Electricity Board vs. State of Punjab*** 2003 (1) R.C.R.(Civil) 48, a Division Bench of this Court held as under:

“17. From the above noted decisions of the Supreme Court and the Full Benches of this Court, the following propositions can be culled out:

(i) Lawful possession cannot be established without

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the concomitant existence of a lawful relationship between the landlord and the tenant which necessarily postulates positive consent of the landlord except when, in view of a special law, the consent of the landlord is necessary.

(ii) Litigious possession cannot be equated with lawful possession.

(iii) A tenant of the public premises, who retains possession after expiration of the term of the lease without the consent of the landlord, is a tenant-at-sufferance and he is liable to be evicted by adopting summary procedure.

(iv) The deposit of an amount equivalent to monthly rent by the erstwhile tenant/lessee after expiration of the term of lease represents damages for unauthorized use and occupation of public premises and acceptance thereof by the owner during the pendency of proceedings in a Court of law or before an authority constituted under the Act or otherwise cannot give rise to a presumption that the owner has agreed to revive the lease or create a new one in favour of the erstwhile tenant/lessee and the Court cannot protect such unauthorized possession of public premises.”

Before advertng to the impugned orders, it would be apposite to reproduce Section 8 of the 1972 Act which is *pari materia* to the provisions of CPC for deciding the suit. Section 8 of the 1972 Act reads as under:

“(8) Power of Collector :- *The Collector shall for the purpose of holding any enquiry under this Act, have the*

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same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents ;*
- (c) any other matter which may be prescribed.”*

The contention of learned counsel for the petitioner that the appeal could not have been decided on merit by the Commissioner when the petitioner remained unrepresented and at the most it could be dismissed only in default, is concerned, the same is not tenable on the ground that proceedings conducted under the 1972 Act are summary in nature. The orders passed by the authorities under the 1972 Act are without any elaborate trial like in a civil suit. In this case, ownership of the respondent-Zila Parishad is admitted and the petitioner claims tenancy on the basis of some lease deed which is not on record. Respondent-Zila Parishad claims unauthorized possession of the petitioner-Club. It was for the petitioner-club to prove that it is a tenant on the basis of lease deed. Since the provisions of CPC are applicable to the limited extent in this case, the petitioner cannot take the plea that the Commissioner could not have decided the appeal on merit. Even if, the appeal would have been dismissed in default, then the petitioner would have moved application for recalling the order of the Commissioner by showing sufficient cause for non-appearance of its representative. The petitioner even failed to show to this Court that its representative was

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prevented by any sufficient cause to appear when the appeal was called for hearing before the Commissioner. Assuming that the order of the Commissioner deciding the appeal of the petitioner on merit was not proper and treating the order to be an order dismissing the said appeal in default, I do not find any reason to recall the order dismissing the appeal in default exercising jurisdiction under Article 226 of the Constitution of India as no sufficient reason for non-appearance before the Commissioner has been mentioned even in the grounds of writ petition. Furthermore, even if the contention of learned counsel for the petitioner that appeal could not have been dismissed on merit and provisions of the Civil Procedure Code would be applicable in this case is accepted, then the only option before the petitioner was to move application for recalling the order before the Commissioner which has never been exercised. This Court has repeatedly requested learned counsel for the petitioner to show the document of lease from which it can be determined for how long, lease was in operation, but he has failed to produce the same.

Otherwise also, when provisions of CPC are not applicable strictly, the Commissioner can decide the appeal in the absence of the appellant by looking into the grounds of appeal. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution. The impugned order has been passed by the statutory authority under the provisions of 1972

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Act and no fundamental right of the petitioner has been violated.

This writ petition is otherwise also not maintainable as the petitioner prays for setting aside of the orders passed by the statutory authorities, which are performing quasi judicial function.. Expression 'Tribunal' as used in Article 227 of the Constitution of India has been explained in ***AIR 1985 SC 364 titled 'Manmohan Singh Jaitla Vs. The Commissioner, Union Territory, Chandigarh***, wherein in para 7, it has been held as under :

“7. The High Court declined to grant any relief on the ground that an aided school is not 'other authority' under Article 12 of the Constitution and is therefore not amenable to the writ jurisdiction of the High Court. The High Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 1969 Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehended in the expression 'Tribunal' as used in Article 227 of the (Constitution) which confers power of superintendence over all courts and tribunals by the High Court throughout the territory in relation to which it exercises jurisdiction. Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review namely a writ of certiorari by the High Court under Article 227 of the Constitution. The decision questioned before the High Court was of the Deputy Commissioner and the Commissioner exercising powers under Section 3 of the 1969 Act and these statutory authorities are certainly

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amenable to the writ jurisdiction of the High Court.”

The Hon'ble Supreme Court in ***Manmohan Singh Jaitla's case (supra)*** has specifically held that Deputy Commissioner and Commissioner are statutory authorities and function as quasi-judicial authorities. The remedy against the order passed by such authorities while functioning in quasi-judicial capacity lies under Article 227 and not 226 of the Constitution of India.

Further, in view of principle of law laid down in ***Radhey Shyam and another Vs. Chhabi Nath and others, 2015(2) RCR(Civil) 606 and Sh. Jogendrasinhji Vijaysinghji Vs. State of Gujarat and others, 2015(3) RCR(Civil) 801***, the writ petitions under Article 226 are not maintainable. However, remedy is available to the petitioners under Article 227 of the Constitution.

Since the present writ petition has been filed under Article 226 of the Constitution of India, therefore, the same is not maintainable.

In view of above, I do not find any illegality or perversity in the impugned orders.

Dismissed being devoid of merit as well as not maintainable.

Before parting with this judgment, it is pertinent to mention that Article 40 of the Constitution of India talks about organization of village Panchayats which are constituted under Part IX Articles 243-A to 243-O. Article 47 of the Constitution of India talks about duties of the State Government to raise the level of nutrition and the standard of

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living and to improve public health. The Part IX of the Constitution of India provides that panchayat system in India would be three tier (i) Gram Panchayats at village level, (ii) Panchayat Samitis at Block Level and (iii) Zila Parishads at District Level. Panchyati Raj and Nagar Palika system are grass-root level democracies. Public health is one of the primary duties of the State Government who shall make an endeavour to raise level of nutrition, standard of living of its people and improvement of public health. The club in question appears to have come into existence in 1930 and was source of recreational and leisure activities etc. Now Gurgaon has developed many folds and is a well-developed city. Many multi-national companies have established their offices in its municipal limits. Keeping in view the development that has taken place in Gurgaon, community facilities and relevant programmes to meet their recreational and leisure time activities are necessary. Children, youth, adults and old aged people require regular exercise, recreational and leisure activities. The regular exercises, sports, entertainment and leisure activities are important for healthy life-style and to achieve the constitutional goals also, it is necessary to establish these facilities. It is primary duty of the State Government, Panchayati Raj and Municipal Institutions to promote and develop various types of recreational, sports, entertainment and leisure activities for the general public which can at least run in a Club under the supervision and control of these institutions.

The petitioner-Club was providing recreational and leisure

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activities to its members, but it is now under the control of Zila Parishad which is part of Panchayati Raj system. In the light of the above, it is directed that the Government or the Zila Parishad would not change the nature of activities of the Club but will set up a Club under its control. Its already existing members would as matter of right will be included in the list of the members, subject to payment of fee which may affixed by the management/Board of the Club and other terms and conditions which will be framed by the concerned authorities after due deliberations. However, a new Board of the Club consisting of elected or appointed members shall be constituted by the District Administration/State Government/Zila Parishad in accordance with law. The constitution of the Club shall be framed and responsibilities of Club management and its members shall be fixed. It shall be ensured by the Zila Parishad and Government that Club would run smoothly and effectively and management of the Club shall be constituted within a period of four months from the date of receipt of certified copy of this Court.

The planning and goals of the Club shall be set up keeping in view all sections of the society including the low income group. The management would make an effort to frame a long term planning and strong commitment to continue and achieve the role of Club for recreation and wellness. It is made clear that every section of the society would be permitted to be member of the Club and a reasonable fee structure, even within the reach of the poorest section of the society, shall be fixed. It would also be ensured that while constituting a Board,

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every section of the society would be represented and membership of the Club will be open to all walks of the society. For a club to run efficiently and fairly, a standard system of administration should be created so that it may run in a coordinated way.

The Deputy Commissioner, Gurgaon shall take initiatives in consultation with Zila Partishad and other concerned authorities. The officers of the Youth and Cultural Affairs, Sports and other concerned departments may also be involved for achieving the purpose of the Club.

This Court hopes that an enthusiastic and dedicated Club Management will come up and ensure that activities already running at the Club are maintained and effort would be made that further facilities are created keeping in view the needs of children, youth, adults and old aged people. To bridge the gap between different age groups, an inter-generational centre be also set up/created to encourage inter-action between them. The compliance status/report shall be submitted by the Deputy Commissioner, Gurgaon by the adjourned date.

List for compliance report on 15.02.2016.

03.09.2015

parveen kumar

**(Paramjeet Singh)
Judge**