

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

CR No. 2578 of 2015 (O&M)

Date of decision: 10.03.2016

Ripjot Kaur

... Petitioner

versus

Sub Divisional Engineer and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. J.S Brar, Advocate, for the petitioner.

Mr. Deepak Sharma, Advocate for respondent No.1.

Mr. Harsh Tandon, Advocate for respondent No.3.

K.Kannan, J. (ORAL)

The revision petition is against the order of the Appellate court at an interlocutory stage seeking for water connection. The petitioner is admittedly a purchaser of 20% share of the land and building that original belong to J.S. Sodhi since deceased. He had left behind two daughters and the contesting respondent is one of the daughters. Yet another daughter Nandini Sayal who had a 50% share has sold 20% share to the present petitioner and retained to herself 30% of the share. Prior to the sale there had been an agreement of mutual settlement which refers to some tenancy rights in the 1st floor. The Appellate court has declined the relief of water connection accepting the plea of the plaintiff that the petitioner is not in possession of the

property and that she is not entitled to the water connection. At the time when I ordered notice of motion, I had in consideration of the fact that water was a basic necessity/amenity directed the competent authority of the Municipal Corporation of Chandigarh to take an appropriate decision for grant of water connection to the petitioner discarding any objection coming from the plaintiff who admittedly was residing at the ground floor. The authority has now passed an order rejecting the water connection on the ground that the petitioner is only in temporary occupation and hence not entitled to a regular water connection. The said order sets out the water supply byelaws which are as under:

1. Application on prescribed form duly filled in triplicate.
2. Copy of the ownership proof (self attested)
3. Copy of the Registered proof GPA (in case of GPA holder).
4. Certificate from licenced plumber for separated plumbing system on application form.
5. Receipt of payment of Road Cut Restoration charges, if involved.
6. If house on share percentage basis then an affidavit duly attested by magistrate is required for floor clarification.
7. Copy of the last water bill paid.

If the purchase by the defendant in respect of a fractional share from one of the owners is an admitted fact, the consideration for a restraint order as sought by the plaintiff shall only be to assess whether the defendant who has applied for water connection is in actual possession of any portion of the building. The authority has rejected the

plea on the ground that she is in temporary occupation and hence water connection cannot be given. The order of rejection is erroneous and is not supported by any of the relevant rules which are enumerated above. The order passed by the authority is untenable but the authority seeks to derive its own strength from the objection caused by the plaintiff that the petitioner is not even in possession of the property. This contention is also raised vociferously by counsel on behalf of the plaintiff-respondent. Counsel for the petitioner cites before me the copy of the plaint instituted by the plaintiff herself where it is admitted by her that the sister of the plaintiff sold her share to defendant Nos. 1 & 2 giving them possession of “incomplete 1st floor only”. Elsewhere in the same plaint it is stated that “defendant No.1 has purchased 30% share out of 50% of Nandini Syal in question and 20% share of 50% has been purchased by defendant No.2”.

The plaint makes reference to show-cause-notice as having been issued by certain building bye laws violations. According to the plaintiff, there is no building violation at the ground floor in which she is residing. If the petitioner is in possession of the 1st floor, it shall not be open to municipal authority to characterize such possession as either unlawful or temporary. The authority will not associate itself with an inter se dispute between the plaintiff and the petitioner and use it as a ruse for denying the water connection. It shall be guided by any more than rules which govern the issue of water connection. The counsel refers to Clause No.6 which according to him is crucial. The clause

requires a share percentage to be vouched through an affidavit duly attested by the Magistrate for clarification. The petitioner is at liberty to give such an affidavit in the manner that the Municipal authority wants and if such an affidavit is filed, the water connection shall be issued within a week from the date of submission of the relevant records.

I am informed that there is a temporary water connection issued and the same is ordered to be retained till the completion of trial and the final decision regarding the continuance of such connection will abide by the directions given by the trial Court at the conclusion of its proceedings.

The order already passed by the Lower Appellate Court is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

10.03.2016

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