

Civil Writ Petition No. 126 of 1996

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

Civil Writ Petition No. 126 of 1996

Date of Decision: 22.11.2016

Ram Kanwar and others

.....Petitioners

Vs.

State of Haryana through Chief Secretary Haryana, Civil Secretariat
Chandigarh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sanjay Mittal, Advocate
for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the appellate order dated 28.9.1995 (Annexure P-5) passed by the Commissioner, Guragon Division, Gurgaon, whereby ejectment order dated 18.4.1995 (Annexure P-3) passed by the Collector, Narnaul, against the petitioners, was upheld, dismissing the appeal of the petitioners, they have approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned orders.

Notice of motion was issued and dispossession of the petitioners

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was stayed. Written statement was filed on behalf of the respondents. Thereafter, writ petition was admitted for regular hearing, vide order dated 6.5.1996 passed by a Division Bench of this Court. That is how, this Court is seized of the matter.

It has gone undisputed before this Court that original owner of the land in question was Smt. Surji widow of Late Sh. Jhutha son of Sh. Cheta. Smt. Surji, true owner of the land in question, entered into an agreement to sell with the petitioners on 22.12.1975, for an amount of ₹2,500/-, for the land measuring 5 kanal 3 marla. Out of total sale consideration of ₹ 2,500/-, an amount of ₹2,300/- was received by Smt. Surji and the remaining amount of ₹ 200/- was to be received by her, at the time of execution of the sale deed. Sale deed was to be executed within a period of six months, i.e. on or before 25.6.1976. Possession was handed over to the petitioners at the time of agreement to sell. It was recorded in the column of cultivation in the jamabandi for the year 1977-78 (Annexure P-1) that the petitioners were in possession, because of agreement to sell. It is also pertinent to note here that column No.5 of the jamabandi (Annexure P-1) would show that petitioners were, as a matter of fact, coming in cultivating possession from earlier point of time as tenants at will.

It is also a matter of record that sale deed did not materialise within the stipulated period and Smt. Surji died somewhere in the year 1979. Since Smt. Surji was having no legal heir, escheat proceedings were initiated regarding total ownership, which was 25 kanal 15 marla, including the suit land measuring 5 kanal 3 marla. Mutation No. 1631 was sanctioned in favour of the State Government. On the basis of the said mutation, an ejectment application was filed by the State Government against the

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petitioners, under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act 1972, ('the Act' for short). The land in question was claimed to be as public premises and the petitioners were alleged as unauthorized occupants. After hearing learned counsel for both the parties and going through the evidence brought on record, Collector, Narnaul, vide order 18.4.1995 (Annexure P-3), ordered ejectment of the petitioners from the land in question.

Feeling aggrieved against the impugned ejectment order, petitioners filed their appeal vide Annexure P-4, which was also dismissed by the learned Commissioner, Gurgaon Division, Gurgaon, vide impugned order dated 28.9.1995 (Annexure P-5). Hence this writ petition.

Relying on the provisions of Section 53-A of the Transfer of Property Act, 1882 ('TP Act' for short), learned counsel for the petitioners submits that in the facts and circumstances of the case, petitioners are entitled to protect their possession and they could not have been treated as unauthorised occupants in the land in question. He also places reliance on the judgment of the Hon'ble Supreme Court in **Raj Kumar Devindra Singh Vs. the State of Punjab, 1973 AIR (SC) 66** and a judgment of this Court in **Haryana State through the Chief Secretary to Haryana Government Vs. Chander Singh (deceased) and others, 2005 (2) RCR (civil) 122**, to contend that neither the ejectment application was maintainable, nor the petitioners could have been treated as unauthorised occupants. He prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for the State submits that since the petitioners did not get the sale deed executed within the stipulated period by paying remaining amount of ₹200/- to Smt. Surji-true owner, possession of

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the petitioners would become unauthorised. He further submits that after the death of Smt. Surji, land in question was rightly escheated to the State and the impugned orders do not suffer from any patent illegality or perversity, thus, deserve to be upheld. He seeks dismissal of the present writ petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the peculiar facts and circumstances of the case, present writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

Section 53-A of the TP Act, reads as under:-

*“[53A. **Part performance.**—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,*

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2 where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued

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in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

In view of the abovesaid undisputed fact situation obtaining on record of the present case, this Court is of the view that petitioners are entitled to invoke the provisions of Section 53-A of the TP Act. It is so said, because they had partly performed the agreement to sell, by paying major amount to the true owner. Under these circumstances, it can be safely concluded that neither the land measuring 5 kanal 3 marla would be falling within the definition of public premises, nor the petitioners could have been termed as unauthorised occupants and they were entitled to protect their possession.

The view that has been taken by this Court also finds support from the judgment of this Court in **Hans Raj and others Vs. Banta Ram and others, 2007 (4) RCR (Civil) 400**. Once the land in question could not have been brought within the ambit of public premises, ejectment application of the respondent-State would not be maintainable against the petitioners. Almost identical question fell for consideration of the Hon’ble Supreme Court, in its Constitution Bench judgment, in Raj Kumar Devindra Singh’s case (supra), which was rightly followed by this Court in Chander Singh’s case (supra).

To avoid repetition, observations made by this Court in para 7 of its judgment in Chander Singh’s case (supra), referring to the judgment of the Hon’ble Supreme Court in Raj Kumar Devindra Singh’s case (supra),

which can be gainfully followed in the present case, read as under:-

*“The position which, therefore, emerges is that Chander Singh had entered into possession of the suit land as a tenant much before the appellant-State became its owner and he continued to remain in its possession even after it was mutated in the name of the appellant. In other words, he was in authorised possession of the land when the ejectment order under Section 4 of the Act was passed against him. As such, by no stretch of imagination, he could be termed as an unauthorised occupant over it, at the time ejectment proceedings were started against him. That being so, the provisions of Section 4 of the Act could not be made applicable to him for seeking his ejectment on the ground of being in unauthorised occupation of public premises. Reference in this connection may be made, with advantage, to **Raj Kumar Devinder Singh and another v. State of Punjab and others, 1972 R.C.R.(Rent) 780 : AIR 1973 Supreme Court 66** wherein it was held that if a person was in possession of the property, before the date of the sale of the property to the government, it could not be said that he entered into possession of public premises, for, at the time when he was in occupation of the property, the property was not public premises and clause (a) of Section 3 of the Punjab Act No. 31 of 1959 cannot obviously apply. The ratio of this case is fully applicable*

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to the facts of the present case, as the definition of unauthorised occupation of public premises in the Punjab Act and the one in the Haryana Act is the same. It was also held in the case of Raj Kumar Devinder Singh and another (supra) that the Collector would get jurisdiction to issue a notice under Section 4(1) of the Act only when the person to whom notice is given is in unauthorised occupation of the property in question and not otherwise and that the issue of notice by the Collector to the person who is not in unauthorised occupation of the public premises, as defined in Section 3 of the Act, is without jurisdiction and is liable to be quashed. This case applies on all fours to the facts of the case in hand.”

So far as escheat proceedings are concerned, learned counsel for the State could not point out, referring to any relevant material on record, as to whether any notice was issued to the petitioners during the escheat proceedings or not. In fact, neither any of the parties have raised that issue, nor this Court has been called upon to deliberate on the issue of escheat proceedings. In view of the abovesaid discussion, it can be safely concluded that neither the ejectment application was maintainable against the petitioners, nor they could have been treated as unauthorized occupants. Since the Collector as well as Commissioner failed to appreciate this material aspect of the matter, while passing their respective impugned orders, the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

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noted above, coupled with the reasons aforementioned, this Court is of the considered view that since both the impugned orders dated 18.4.1995 (Annexure P-3) passed by the Collector, Narnaul as well as 28.9.1995 (Annexure P-5) passed by the Commissioner, Guragon Division, Gurgaon, have been found suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, the impugned orders (Annexures P-3 and P-5) are hereby set aside. The writ petition deserves to be accepted.

Resultantly, with the abovesaid observations made, present writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

22.11.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No