

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.2897 of 1996
Date of decision:22.11.2016**

Union of India

...Petitioner

Versus

Vijinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Varun Issar, Advocate for the petitioner.
None for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order/judgment dated 20.10.1995 (Annexure P-1), whereby appeal of the respondent, against a direction to him to pay an amount of Rs.41432/-, on account of damages due to alleged unauthorised use and occupation of the defence land, was allowed by the learned Additional District Judge, Ambala, petitioner-Union of India has 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 order.

The writ petition was admitted by a Division Bench of this Court vide order dated 26.2.1996. However, petitioner-Union of India failed to serve the sole respondent because of which nobody has put appearance on behalf of the respondent.

Heard learned counsel for the petitioner.

It is not in dispute that the respondent was ordered to be evicted from the defence land. He filed appeal against the said order, taking the plea that he never remained in unauthorised possession over the suit land,

because of which he was not liable to pay damages to the Union of India, on account of his alleged unauthorised occupation. The learned District Judge, vide his earlier order dated 10.8.1993, ordered that the appellant-respondent herein, would be at liberty to take the plea that he was not in possession of the land in dispute and was thus not liable to pay damages.

When this issue came up for consideration before the learned Additional District Judge, Ambala, he arrived at a conclusion that the petitioner has failed to bring on record any material, which may suggest that respondent-Vijinder Singh ever remained in unauthorised possession of the suit land. The case of petitioner-Union of India was based on adverse inferences only. Petitioner also could not place on record any rent receipt, which might even remotely suggest that the respondent, as a matter of fact, remained in unauthorised possession of the defence land.

The learned Additional District Judge recorded his cogent findings, before arriving at a conclusion that petitioner miserably failed to prove its case. The relevant observations made by the learned Additional District Judge, in paras 6 to 9 of his judgment, which deserve to be noticed here, read as under:-

“The very perusal of the file of Defence Estate Officer, Ambala Cantt, shows that initially the notice dated 30-1-1990 was issued by the Defence Estate Officer to Ram Chander, Charan Singh, Data Ram, Sukhai, Satpal and Som Dutt. The said letter is dated 30-1-1990. In this notice it has been mentioned that it was reported by the Field Staff that they were cultivating the defence land in dispute unauthorisedly and hence, they asked to pay the arrears of damages for unauthorised use and occupation. However, they filed Affidavits photocopies of which are attached with the file wherein they took the plea that the defence land in dispute was

given to them by Parkash Singh and Wajinder Singh son of Parkash Singh i.e. the appellant and that they had been paying rent of the land to them. However, there is no receipt of rent. Statement of any other neighbour has also not been recorded by the Defence Estate Officer in the enquiry proceedings. Only on the basis of Affidavits of the persons who were found to be in possession of the land, it has been held that the appellant remained in possession of the defence land.

It has been vehemently argued by the learned counsel for the appellant that the appellant never remained in possession of the defence land in dispute and that hence, he cannot be directed to pay the damages for alleged unauthorised use and occupation of defence land in dispute. The plea taken by the Defence Estate Officer while passing the impugned order is that previously an order of eviction of the appellant from the defence land was passed and that against the said order an appeal was filed by the present appellant. It has also been mentioned that if the appellant was not in possession, there was no occasion for him to file the appeal. However, a perusal of the judgment of the learned District Judge, in appeal shows that it has been mentioned that the appellant had taken the plea that he never remained in possession of the defence land in dispute and that hence, question of his being in unauthorised occupation did not arise. It has also been mentioned that the appellant apprehended that he would be asked to deposit the arrears for the unauthorised occupation of the appellant of the Defence land in dispute and that hence, he filed the appeal. Learned District Judge, vide order dated 16-8-93 had ordered that the appellant would be at liberty to take the plea that he was not in possession of the land in dispute and was thus not liable to pay damages. Hence, the fact that he filed the appeal against the order of dispossession does not mean that he cannot challenge the impugned order requiring him to pay damages for unauthorised use and occupation.

Defence Estate Officer was to prove that the appellant

remained in unauthorised occupation of the defence land in dispute for the disputed period and only then he can be asked to pay arrears for alleged un-authorised use and occupation of defence land. The field staff found Ram Chander and five others in actual possession of the defence land in dispute. Merely on the basis of their Affidavits, the appellant cannot be called upon to pay arrears of damages. Ram Chander and five others could not produce any receipt for alleged payment to Wajinder Singh appellant. The defence land in dispute was not taken on lease by the appellant. The same was taken on lease by Surinder Singh. Wajinder Singh appellant is not related to Surinder Singh. Hence, there is no evidence to prove that Wajinder Singh appellant ever remained in unauthorised possession of defence land in dispute. Hence, it cannot be said that he is liable to pay any amount for alleged unauthorised use and occupation of the defence land in dispute.

As a sequel to my discussion, the present appeal is accepted with costs and the impugned order of the Defence Estate Officer, is set-aside.”

During the course of hearing, when confronted with the above-said factual as well a legal aspect of the matter, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It goes without saying that once the petitioner-Union of India was seeking to impose financial liability on the respondent, it was least expected from the petitioner-Union of India, to bring on record sufficient material to enable this Court to record this finding against the respondent, that he remained in unauthorised possession of the defence land. However, petitioner remained unsuccessful in discharging its onus in this regard. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge committed no error of law, while passing the impugned order and the same deserves to be upheld.

Learned counsel for the petitioner could not refer to any relevant material available on record, which may even remotely suggest that the learned Additional District Judge committed any error of law, while passing the impugned order. The impugned order (Annexure P-1) dated 20.10.1995 has not been found suffering from any patent illegality or perversity. Further, no prejudice of any kind, whatsoever, has been pointed out, which might have been caused to the petitioner, by passing the impugned order (Annexure P-1), warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

22.11.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No