

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

CWP No. 15224 of 2016
DATE OF DECISION : 01.08.2016

Bharti Rana and another

.... PETITIONERS

Versus

State of Haryana and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Anil K. Aggarwal, Advocate, for the petitioners.

* * *

RAMENDRA JAIN , J.

1. Bharti Rana and Anju Rana, minor daughter and widow, respectively, of late Hari Om Rana, being his legal heirs, staked their claim as coparceners in the ancestral immovable property left by him. However, respondent No.3 Ram Pal Singh Rana (father of deceased Hari Om Rana) did not acknowledge the rights and claims of the petitioners in the ancestral property as coparceners being legal heirs of deceased Hari Om Rana, and sold 4.268 acres of land, situated within the revenue estate of village Chauma, Tehsil and District Gurgaon, now falling in Sector 111 of Master Plan area of Gurgaon, to respondent No.2, vide sale deed dated 12.05.2010. Hence, the petitioners filed a civil suit for partition, rendition of accounts, permanent injunction and for declaration to declare the aforesaid sale deed as null and void having no binding effect on their rights. Along with the said civil suit, an application under Order 39 Rules 1 & 2 CPC was also filed. While deciding the said application vide order dated 06.10.2012 (Annexure P-2), though the civil court held that prima facie case and

balance of convenience are in favour of the petitioners, but declined to restrain respondent No.2 from constructing any building on the disputed site on the basis of license No. 87 dated 29.08.2012 (Annexure P-1) obtained by it under the Haryana Development and Regulation of Urban Areas Act, 1975 (for short "the Act"). Feeling aggrieved by the said order, the petitioners and respondents No.3 to 5 filed separate appeals, which were dismissed by the appellate court. On remaining unsuccessful, the petitioners preferred revision petition before this court, which too was dismissed vide order dated 23.07.2014 (Annexure P-3). However, while dismissing the revision petition, this court granted liberty to the petitioners to agitate the issues raised in the revision in their suit pending adjudication before the civil court. Accordingly, the petitioners filed another injunction application under Order 39 Rules 1 & 2 CPC read with Section 52 of the Transfer of Property Act, 1882 for restraining respondent No.2 from selling the flats constructed by it on the disputed land and from creating any third party interest therein, which too was dismissed by the trial court vide order dated 13.01.2015. Further appeal filed by the petitioners before the appellate court met the same fate vide order dated 21.03.2016. The petitioners filed third injunction application dated 03.09.2015 (Annexure P-8) under Order 39 Rules 1 & 2 CPC before the civil court for cancellation of the order dated 06.10.2012 (Annexure P-2) restraining respondent No.2 from carrying out construction activities on the disputed land. The said application is still pending.

2. In view of the above, by way of the present writ petition under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of mandamus directing respondent No.1 to

cancel license No. 87 dated 29.08.2012 (Annexure P-1) granted to respondent No.2 under the Act for development of colony on the disputed land, and further for issuance of a writ in the nature of certiorari to quash the impugned order dated 06.10.2012 (Annexure P-2) passed by the civil court depriving the petitioners of their property without adjudication under due process of law.

3. Learned counsel for the petitioners contended that respondent No.1 did not make proper enquiry qua title of the disputed land before granting license to respondent No.2 in the utter violation of sub-section (2) of Section 3 of the Act, and illegally granted the impugned license to respondent No.2, while relying upon the revenue record and ignoring the fact that the civil suit with regard to the disputed land was already pending adjudication between the parties, which has led to violation of fundamental rights of the petitioners under Articles 14 and 21 of the Constitution of India. The civil court also acted contrary to the settled principle of law that respondent No.2 being purchaser of the coparcener's undivided interest in the ancestral/joint family property had no equity in its favour and was not entitled to possession of what he had purchased. The civil court wrongly permitted respondent No.2 to raise construction over the disputed land, ignoring the fact that it will lead to multiplicity of litigation, in case respondent No.2 allots the flats constructed by it. In support of his contentions, learned counsel placed reliance upon a decision of the Apex Court in **Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass**, AIR 2005 Supreme Court 104.

4. We have given thoughtful consideration to the submissions made by learned counsel for the petitioner, and find no merit in this writ

petition.

5. The petitioners claim themselves to be coparceners in the disputed property. The rights, as claimed by them, can only be adjudicated by the civil court. A perusal of order dated 06.10.2012 (Annexure P-2) rejecting injunction application of the petitioners under Order 39 Rules 1 & 2 CPC shows that respondent No.2 has purchased the disputed land for a sale consideration of ₹ 16 crores approximately, and thereafter, it has raised construction over it. It is yet to be ascertained by the civil court as to whether the petitioners have any coparcenary interest in the disputed land purchased by respondent No.2 from respondents No.3 to 5, being legal heirs of deceased Hari Om Rana. Respondent No.1 – State has nothing to do with the inter-se dispute of partition and declaration of coparcenary interest of the petitioners in the disputed land, of which license has been granted to respondent No.2. The petitioners in the instant writ petition have sought quashing of order dated 06.10.2012 (Annexure P-2), refusing to restrain respondent No.2 from raising construction over the disputed land. The said order has been affirmed by the appellate court in appeal and by this court in the revision petition filed by the petitioners. The second injunction application under Order 39 Rules 1 & 2 CPC read with Section 52 of the Transfer of Property Act, 1882, has also been dismissed by the civil court vide order dated 13.01.2015, which has been upheld by the appellate court vide order dated 21.03.2016. Thus, in such a situation, prayer for quashing order dated 06.10.2012 (Annexure P-2) in writ proceedings is not maintainable. Further, in **Maharwal Khewaji Trust's case** (supra), relied upon by learned counsel for the petitioners, the appellants had sought injunction for restraining the respondent from alienating the suit property

and putting any construction thereon. In these circumstances, the injunction application of the appellants was accepted. In the instant case, respondent No.2 had already purchased the disputed land before filing the suit by the petitioners. Thus, the petitioners can not be given any benefit of the aforesaid citation, same being distinguishable from the facts of the present case.

6. In view of the above, we do not find any merit in this writ petition and the same is, therefore, dismissed.

**(RAMENDRA JAIN)
JUDGE**

August 01, 2016
ndj

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes