

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

LPA No. 1423 of 2016

DATE OF DECISION : 09.08.2016

Ved Pal Sharma

.... APPELLANT

Versus

The State of Haryana and others

..... RESPONDENTS

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

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sanjay Vij, Advocate,
for the appellant.

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RAMENDRA JAIN , J.

1. The instant appeal under Clause X of the Letters Patent has been filed against the order dated 21.07.2016 rendered by the learned Single Judge, dismissing CWP No. 12775 of 2016 filed by the appellant impugning the orders dated 27.01.2016 and 19.05.2016 (Annexures P-9 and P-11) passed by respondents No.3 and 2, respectively.

2. It is the case of the appellant that one Ram Swroop, a tenant of the respondent – Municipal Corporation, Gurgaon on the site in question, created a sub-tenancy in favour of the appellant. Resultantly, he (the appellant) came in possession of the disputed site. Apprehending his forcible dispossession at the hands of the respondent – Corporation, the appellant filed a civil suit for permanent injunction, wherein he was granted interim injunction. However, during the pendency of the said suit, when the

appellant was given to understand by the respondent – Corporation that he

would be inducted as a direct tenant, he withdrew the suit on 10.01.2004. Thereafter, vide receipts dated 20.05.2004 (Annexure P-1 and P-2), the respondent – Corporation charged transfer fee and arrears of rent from the appellant with regard to the site in question, and created a regular tenancy in his favour. Subsequent to the creation of regular tenancy, the appellant has been paying rent regularly, as is evident from the receipts placed on record of the writ petition by the appellant as Annexure P-3 (collectively). The fact regarding creation of regular lawful tenancy in favour of the appellant also finds mention in paragraph 1 of the information supplied by the respondent – Corporation under the Right to Information Act, 2005, vide communication dated 15.07.2010 (Annexure P-4). Along with the appellant, names of two other persons, whose sub-lease was stated to be regularised, were also mentioned in the said communication. Still, the respondent – Corporation issued notice dated 09.12.2015 (Annexure P-6) stating that the appellant had raised some unauthorised construction on the site in question and asked him to explain his position in this regard. The appellant submitted his reply dated 10.12.2015 (Annexure P-7) to the said notice, explaining that with regard to the site in question, regular tenancy has been created in his favour and no unauthorised construction has been raised thereon. Considering the reply of the appellant as unsatisfactory, the respondent – Corporation issued yet another notice dated 23.12.2015 (Annexure P-8) asking the appellant to appear in its office on 07.01.2006 for personal hearing. After giving opportunity of hearing to the appellant, Joint Commissioner – II, Municipal Corporation, Gurgaon, vide order dated 27.01.2016 (Annexure P-9), while holding the appellant to be in

unauthorised possession of the site in question and the alleged creation of tenancy in his favour to be incorrect and illegal, cancelled lease thereof, and all the receipts relied upon by the appellant were held to be given wrongly. Aggrieved by the said order, the appellant preferred an appeal dated 17.02.2016 (Annexure P-10), which was dismissed by the Appellate Authority-cum-Commissioner, Municipal Corporation, Gurgaon, vide order dated 19.05.2016. Both the aforesaid orders were challenged by the appellant by way of CWP No. 12775 of 2016, which has been dismissed by the learned Single Judge vide the impugned order dated 21.07.2016. Hence, the instant appeal.

3. Learned counsel for the appellant argued that once the respondent – Corporation accepted the transfer fee and arrears of rent from the appellant with regard to the site in question, vide receipts dated 20.05.2004 (Annexures P-1 and P-2) and continued to receive rent thereafter from the appellant, they cannot be allowed to initiate any action against him, by taking a plea that the regular tenancy created in favour of the appellant is unlawful. The appellant has not raised any kind of unauthorised construction on the site in question. Though the respondent – Corporation itself admitted in its communication dated 15.07.2010 (Annexure P-4) that tenancy in favour of the appellant along with two other persons was regularised, but no action is sought to be taken against the other two persons.

4. We have given our thoughtful consideration to the submissions made by learned counsel for the appellant.

5. Admittedly, the appellant has failed to produce any document

to show that tenancy in his favour was ever regularised. Moreover, it is the pleaded case of the appellant that apprehending his dispossession from the site in question, he had filed a civil suit against the respondent – Corporation, where interim injunction was granted in his favour. However, during the pendency of the suit, on arriving at a settlement with the respondent – Corporation that he would be inducted as a direct tenant, the appellant withdrew the said suit. It is highly unbelievable that any prudent person in such circumstances, without having executed any legal and valid document/settlement in writing from the Corporation, would withdraw such suit. Even otherwise, perusal of the order dated 27.01.2016 of the Joint Commissioner – II, Municipal Corporation, Gurgaon, shows that the appellant himself was not sure of the name of the person from whom he took the site in question on rent. Initially, he submitted that the said site was taken by him from one Ram Sarup son of Sukh Dayal. Later on, he changed his version and stated that he took the site in question on rent from Anand Prakash (respondent No.5). Thus, in view of this conduct of the appellant and absence of the alleged document regarding regularisation of tenancy in his favour as well as copy of the alleged settlement, mere acceptance of the transfer fee and arrears of rent and the subsequent rent by the respondent – Corporation from the appellant does not establish his tenancy rights, particularly in view of the findings recorded by the authorities below to the effect that there is cutting and tampering in the official record. The disputed site was given to Ram Swroop only for keeping a wooden stall. The respondent – Corporation never granted permission to raise any kind of construction on the same. Therefore, any construction raised on the disputed

site cannot be said to be legal. So far as the tenancy in favour of other two similarly situated persons is concerned, it is the case of the respondent – Corporation that the same was regularised under the orders passed by the Commissioner and Secretary to Government of Haryana, therefore, no action has been sought to be taken against those persons.

6. For the reasons recorded above, we do not find any ground to interfere with the impugned order, upholding the orders passed by the authorities below, directing the appellant to vacate the disputed site, on which he was found in unauthorised possession.

7. Dismissed.

**(RAMENDRA JAIN)
JUDGE**

August 09, 2016
ndj

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes