

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

LPA No. 2313 of 2016 (O&M)

Date of decision: 29.11.2016

Jyoti Rani and others

.....Appellants

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Aashish Chopra, Advocate, for the appellants.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellants under Clause X of the Letters Patent against the order dated 29.9.2016 passed by learned Single Judge in CWP No.20422 of 2016 dismissing the writ petition filed by them against the non-sanctioning of their building plans.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Appellant No.1 had been allotted on lease a land measuring 212 square yards comprising in Khasra No.290/1, situated at Solarahi near Housing Board colony, Rewari from Haryana Waqf Board i.e. respondent No.5 vide allotment letter dated 17.1.2008. Similarly, appellant Nos. 2 to 4 had been allotted on lease land measuring 500 square yards, 500 square yards and 212 square yards respectively from respondent No.5 vide their respective allotment letters

dated 17.1.2008. The appellants had been paying the lease amount against proper receipt. The lease period stood extended from time to time and continued to be valid till November 30, 2016. The appellants continued to be in possession. In October 2010, the appellants applied to the Municipal Council, Rewari for sanctioning of building plans for construction of their respective residential houses on the said land. They deposited the requisite fee in the office of respondent No.2. Separate reports were sought with respect to the site plans submitted by the appellants and the inspector had given his observation for sanctioning all the site plans. Even no objection certificates were issued by the Haryana Waqf Board for construction of residence as per the site plan given by the Board. Thereafter, the sanctioning of the plans was withheld by the competent authority and a legal opinion was sought regarding the same. It was opined that the site plans of the appellants may be sanctioned as per the rules framed by the Haryana Municipal Act, 1973 and its building byelaws. The building committee in its meeting held on 09.04.2012 also recommended for sanctioning of the building plans but the same were still not sanctioned and were kept pending. Vide an application dated 9.7.2014, one Ravi Yadav, Municipal Councillor, Ward No.22 raised an objection for sanctioning of the site plans averring that the same had not been approved by the committee. Thereafter, vide letter dated 31.7.2014, Shri Ajay Sikka, Municipal Councillor, Rewari submitted his letter clarifying that the land was approved and all the appellants were issued allotment letters by the Waqf Board and they had deposited the requisite fee. On November 4, 2012, meeting of the building committee was held but the cases of the appellants were kept pending. Thereafter, the Deputy Commissioner, Rewari sought report from Executive Officer, Municipal Council, Rewari vide letter dated 3.3.2015 directing

respondent No.3 to submit a report regarding the site plans submitted by the appellants. It was reported that the land was on the approved area. Despite the said report, no order was passed by the respondents for sanctioning the site plan. Aggrieved thereby, the appellants filed CWP No.24327 of 2015 which was disposed of by this court vide order dated 18.5.2016 directing respondent No.4 to take a decision over the site plans submitted by the appellants in accordance with law within a period of 15 days from the date of receipt of a certified copy of the order. The Deputy Commissioner did not comply with the orders dated 18.5.2016 passed by this Court (Annexure P.23). Instead, the Deputy commissioner vide order dated 15.6.2016, Annexure P.24 to the writ petition, inter alia, took note of the fact that an enquiry was got conducted by the Sub Divisional Magistrate, Rewari on the alleged complaint filed by Shri Ravi Yadav, Municipal Councillor wherein it had been alleged that the land pertaining to the residential site plans related to the graveyard and no objection certificate had been wrongly obtained by the land grabbers from Waqf Board. The appellants filed another CWP No.20422 of 2016 challenging the order dated 15.6.2015. The said writ petition was dismissed vide order dated 29.9.2016 holding that the appellants were intending to commit a calculated fraud with the Waqf Board while intending to raise construction on the plots which were on lease with them for a limited period of two or three years. It was further held that the motive of the appellants was to usurp the public property which was the absolute ownership of the Haryana Waqf Board. Respondent No.4 was also directed to hold an enquiry into the matter about the conduct of the officers/officials of the Haryana Waqf Board. Hence the instant appeal by the appellants.

3. We have heard learned counsel for the appellants.

4. After hearing learned counsel for the appellants and perusing the record, it has been categorically recorded by the learned Single Judge that the appellants are not the owners of the plots on which they are intending to raise construction. The owner of the plots is Haryana Waqf Board. The appellants are only lessees and their lease was expiring on 30.9.2016. Thus, how the respondent-Waqf Board could have issued no objection certificate in favour of the appellants allowing them to raise construction on the plots under lease particularly when the land was meant for graveyard. It has been further recorded that the appellants were intending to commit a calculated fraud with the Waqf Board while intending to raise construction on the plots which were on lease with them for a limited period of two or three years. It has also been noticed that the ulterior motive of the petitioners was to usurp the public property which was the absolute ownership of the Haryana Waqf Board. If the impugned order had not been passed by the Deputy Commissioner on the basis of the report sought from the concerned authority, the appellants might have already started construction on the plots leased out to them. The relevant findings recorded by the learned Single Judge read thus:-

“It is a matter of record that petitioners are not owners of the plots on which they are intending to raise construction. It is also not disputed by learned counsel for the petitioners that owner of the plots is Haryana Waqf Board-respondent No.5. Petitioners were only lessees and their lease, as per stand taken by learned counsel for petitioners, is expiring tomorrow i.e. 30.9.2016. In such a situation, it does not appeal to reason as to how the respondent Waqf Board could have issued no objection certificate in favour of the petitioners allowing them to raise construction on the plots under lease, particularly when the land was meant for graveyard. It is also very surprising as to how the Municipal Council, Rewari, would have recommended case of

the petitioners for sanctioning the building plans. After a careful perusal of the record of the case, it becomes crystal clear that the petitioners were intending to commit a calculated fraud with the respondent-Waqf Board, while intending to raise construction on plots which were on lease with them for a limited period of two or three years.

Officers/officials of the Haryana Waqf Board as well as of Municipal Council, Rewari seem to be in connivance with the petitioners. The ulterior motive of the petitioners was to usurp the public property which was the absolute ownership of the Haryana Waqf board. Had the impugned order not been passed by the Deputy Commissioner, Rewari, petitioners might have already started construction on the plot leased out to them by the Haryana Waqf Board.

In view of the above, while dismissing the present writ petition as a totally frivolous litigation, the Deputy Commissioner, Rewari respondent No.4 is directed to order an enquiry into the matter about the conduct of offices/officials of Municipal Council, Rewari. Since the officers/officials of the Haryana Waqf Board would not be working under the control of the Deputy Commissioner, Rewari, their conduct would be got enquired by the Chief Executive officer of Haryana Waqf Board, Ambala Cantt by ordering an enquiry forthwith.

Let an effective and expeditious enquiry be conducted. Thereafter, the Deputy Commissioner, Rewari, as well as Chief Executive Officer, Haryana Waqf Board, Ambala Cantt. shall file their respective affidavits alongwith action taken reports before this Court within a period of six months from the date of receipt of copy of this order. It is also made clear that if the Deputy Commissioner, Rewari deems it appropriate to get the criminal case registered, he would be at liberty to do so.”

5. Learned counsel for the appellants has not been able to produce any material on record to show that the findings recorded by the learned Single Judge are erroneous. Thus, the writ petition has been rightly dismissed by the learned Single Judge. Consequently, we do not find any

error in the view taken by the learned Single Judge warranting interference by this Court. Finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

November 29, 2016
‘gs’

(Sneh Prashar)
Judge

Whether speaking/reasoned
Whether referred to reporter or not

Yes/No
Yes