

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: October 07, 2016

1. R.S.A.No.36 of 2012 (O&M)

Prem Lata Bhandari & others

...Appellants

Versus

Municipal Council (Now Municipal Corporation, Panchkula & others

...Respondents

1. R.S.A.No.37 of 2012 (O&M)

Prem Lata Bhandari & others

...Appellants

Versus

Puran Chand & another

...Respondents

3. C.W.P.No.6289 of 2016

Narinder Pal (since deceased) through L.Rs

...Petitioner

Versus

State of Haryana & others

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ashwani Talwar, Advocate,
for the appellants in RSA Nos.36 & 37 of 2012.

Mr.Mrigank Sharma, Advocate,
for the petitioners in CWP No.6289 of 2016.

Mr.Punit Malik, Advocate &
Mr.Partap Singh, Advocate,
for the respondent in RSA No.36 of 2012 &
for respondent No.2 in RSA No.37 of 2012.

Mr.Jatinder Singla, Advocate,
for respondent No.1 in RSA No.37 of 2012.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeals No.36 and 37 of 2012 and one CWP No.6289 of 2016 as the common questions of law and fact are involved.

In RSA No.36 of 2012, the appellants are aggrieved of the dismissal of the suit seeking injunction, in essence the suit partly decreed by the trial Court qua injunction, has been set-aside by the Lower Appellate Court.

RSA No.37 of 2012 is also at the instance of successors of Narinder Pal against the findings of the Lower Appellate Court, whereby the appeal of Puran Chand, being third party to the lis, has been accepted by holding that the property in dispute was given in gift by the ancestors of Puran Chand to the erstwhile Gram Panchayat (now merged with Municipal Council, Panchkula

CWP No.6289 of 2016 is again at the instance of Narinder Pal through L.Rs challenging the order of the Commissioner passed in proceedings initiated under Sections 4 and 5 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short “1972 Act”).

Mr.Ashwani Talwar and Mr.Mrigank Sharma, learned counsel appearing on behalf of Narinder Pal and others submit that the Civil Suit bearing No.466 of 2005 seeking declaration and consequential relief of injunction was filed, on the premise, that plaintiff-Narinder Pal and others were owners in possession of the house marked as ABCDEFGH shown in red colour in the site plan, situated within the abadi deh of Village Majri (Panchkula) since the time of their forefathers. In support of the

aforementioned case, placed on record copy of the ration card and voter list. The Lower Appellate Court did not grant the injunction, but allowed the appeal of third party.

During the pendency of the suit, Puran Chand had moved an application under Order 1 Rule 10 CPC, but the same was dismissed and the aforementioned order became final. However, by seeking leave of the Court, filed an appeal against the judgment and decree of injunction which was allowed. Even Narinder Pal has also filed the appeal qua the non-grant of relief of declaration. Both the appeals came to be decided together.

The appeal of plaintiff Narinder Pal was dismissed, but that of Puran Chand has been allowed by holding that ancestors of Puran Chand had given the property in gift to the erstwhile Gram Panchayat. They submit that the aforementioned finding is without any basis as appeal of third party was not accompanied by any evidence, much less application under Order 41 Rule 27 CPC as the sole, basis, was a resolution of the Gram Panchayat dated 2.2.1996, but the fact remains that the gift deed had not been proved, thus, submit that the findings given by the Lower Appellate Court allowing the appeal of Puran Chand are not sustainable.

It is a matter of record that when the appeal was filed in this Court, this Court vide order dated 4.1.2012 while issuing notice of motion had passed the following interim order:-

The appellants shall not be dispossessed from the suit property at the instance of Puran Chand-respondent. However, the Municipal Council is free to dispossess the appellant in accordance with law since admittedly, proceedings under the Public Premises Act, 1971 are pending before SDO (C)-cum-Collector, Panchkula and the Trial Court had also granted similar protection only.”

The aforementioned order was modified/clarified on an application, vide order dated 12.3.2013, which reads thus:-

“ The present application has been filed for modification/clarification of the interim order dated 04.01.2012, passed by this Court. The applicant is aggrieved against the observations made therein that the Municipal Council, Panchkula was free to dispossess the appellant in the proceedings under the Public Premises Act, 1971, in accordance with law, which was pending before the SDO (C)-cum-Collector, Panchkula. The trial Court had also granted protection to that extent against the forcible dispossession and the Council could always take possession, in accordance with law.

In the application, it has been averred that the proceedings under the Public Premises Act, 1971 have been decided on 26.10.2012 and the applicant had preferred statutory appeal before the Commissioner, Ambala. Along with the appeal, application for stay had also been moved, however, in view of the orders passed by this Court, the appellate authority was not deciding the said stay application and therefore, the applicant is prejudiced.

Notice of this application was issued to the Municipal Council, Panchkula. Office report shows that the service is complete. No one has put in appearance on behalf of the respondent.

Accordingly, it is clarified that the Commissioner, Ambala shall decide the appeal and the application, on merits, in accordance with law and based on the facts as brought out before the said authority, without being influenced by the observations made in the order dated 04.01.2012.

Application stands disposed of.

The occasion to modify the order arose as the plaintiff (petitioner in the writ petition) had challenged the order of the Collector in

proceedings initiated under the 1971 Act. However, in the Misc.Application bearing No.2107-C of 2013, it was specifically stated that Narinder Pal and others were dispossessed. Despite the specific directions in the subsequent order modifying the interim order, the Commissioner heavily relied upon the interim order dated 4.1.2012. In fact, the Commissioner remained oblivious of the subsequent order and dismissed the appeal without noticing the fact that there being a specific ground that the Municipal Council failed to establish its ownership and unless and until the same is proved, proceedings under the 1972 Act could not have been initiated.

Mr.Punit Malik, Advocate and Mr.Partap Singh, Advocate, for the respondent in RSA No.36 of 2012 and for respondent No.2 in RSA No.37 of 2012 submits that no cause of action survives in favour of the petitioners in the writ petition, as they have already been dispossessed on 1.8.2013 as per the findings given by the Commissioner, in the order dated 13.5.2015. He further submits that there has been compliance of provisions of Sections 4 and 5 of 1971 Act. Petitioners in the writ petition have failed to prove their ownership and possession since the time of their forefathers, therefore, they were in illegal possession and rightly so, proceedings under the 1971 Act were initiated.

Mr.Jatinder Singla, learned counsel for respondent No.1 in RSA No.37 of 2012 submits that the ancestors of Puran Chand had gifted the property to the erstwhile Gram Panchayat and the resolution mentioned above acknowledges the aforementioned fact, therefore, it was sufficient for the Court to form an opinion regarding the gift. The status of Narinder Pal and others was of a trespasser and they have rightly been dispossessed. In fact, the land was given for the purpose of running a school and, thus, urges

this Court for affirming the findings of Lower Appellate Court while allowing the Civil Appeal bearing No.41 of 2011.

The aforementioned contention of Mr.Singla has been controverted by Mr.Mrigank Sharma on the premise that Municipal Council did not lead any evidence with regard to the gift to show that they had acquired the ownership on account of vesting/merging of the Gram Panchayat. Unless and until the ownership is established, no proceedings under the 1971 Act could be initiated.

I have heard the learned counsel for the parties and appraised the paper book.

As regards the plea of injunction, I am of the view that the said grievance has been rendered infructuous as admittedly the plaintiffs have been dispossessed in the month of August, 2013 and even the order dated 4.1.2012 and subsequent/modified order dated 12.3.2013 never intended that the petitioners will not be dispossessed except in due course of law. In fact, the dispossession is by way of resort to the provisions of law, therefore, no cause of action survives in RSA No.36 of 2012. The same is, thus, rendered infructuous.

As regards the findings in Civil Appeal No.41 of 2011, out of which RSA No.37 of 2012 has arisen, I am of the view that the Lower Appellate Court without any evidence both oral and documentary could not have given the findings that the property was gifted by the ancestors of Puran Chand to the erstwhile Gram Panchayat. In my view, the findings are without any evidence and should not come in the way of the petitioners in the proceedings under the 1971 Act. Accordingly, the same is allowed.

As regards the impugned order Annexure P-1 dated 13.5.2015

in CWP No.6289 of 2016, I am of the view that the Commissioner, despite specific directions given by this Court, has only relied upon the order dated 4.1.2012, but had remained totally ignorant of the subsequent order. The Commissioner was enjoined upon an obligation to call upon the parties to establish their respective cases. The ejectment proceedings under the 1971 Act cannot be decided in such a fallacious manner. It is the bounded duty of the petitioners in a petition filed under the 1971 Act to establish their ownership and unless and until the same is established, the property cannot be described as public property and the person in occupation thereof can be dispossessed as per procedure prescribed therein.

Thus, the finding of the Commissioner, in my view, is erroneous. The same are accordingly set-aside. The matter is remitted back to the Commissioner, concerned, to decide the appeal afresh giving liberty to the parties to produce any additional evidence if necessity arises. The Commissioner shall decide the appeal in a most pragmatic and reasonable manner by taking into consideration the findings of this Court regarding the proof of ownership of Municipal Committee. In case, the petitioners succeed in the aforementioned appeal, they shall be entitled to seek restitution of the possession in accordance with law.

This Court is sanguine of the fact that the Commissioner shall make an endeavor to decide the appeal within a period of four months from the date of receipt of certified copy of this order. The Commissioner shall decide the appeal uninfluenced with the findings rendered in Civil Appeal No.41 of 2011 and as well as keeping the observations of this Court vis-a-vis the alleged gift by the ancestors of Puran Chand.

The parties are directed to appear before the Commissioner

concerned on 11.11.2016 in person or through their counsel.

Writ petition stands disposed of.

October 07, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No