

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

RSA No.1279 of 2013 (O&M)

Date of Decision.10.08.2016

Shiv Kumar and others

.....Appellants

Vs.

Municipal Corporation, Faridabad and others

.....Respondents

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Ranjit Saini, Advocate
for the appellants.

Mr. Mohnish Sharma, Advocate
for respondent Nos.1 to 3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J. (ORAL)

The appellants-plaintiffs are aggrieved of the concurrent finding of fact whereby the claim in the suit seeking for declaration that they are owners in possession of the suit property detailed and described in para 1 of the plaint as well as further relief of correction of revenue record seeking relief of permanent injunction qua forcible dispossession and demolition of the house in question, had been dismissed by both the Courts below.

Mr. Puneet Bali, learned Senior Counsel assisted by Mr. Ranjit Saini, Advocate submits that the aforementioned suit was filed on the premise that the plaintiffs are owners in possession of the house constructed by their ancestors over khasra No.18/4, bearing Municipal No.576 as shown in red colour by letters ABCD. Even electric connection had also been installed. The said house after coming into force of the Faridabad Complex

Administration was subjected to levy of house tax bearing Municipal

No.419 in the year 1984-85 and 514 in the year 1994-95. Khasra No.18/4 was *shamlat deh*, owned by the plaintiff-Chander Bhan and other proprietors over which the plaintiffs constructed their house. Nobody objected to their peaceful possession. However, the defendants started giving threats of forcible dispossession/demolition and as such, the aforementioned suit was filed. The defendants contested the suit on the premise that the land in the revenue record vested in the Gram Panchayat and on account of vesting as per the provisions of Section 164 of the Faridabad Municipal Corporation Act, 1994, vested in the Municipal Corporation.

He submits that prime contention of the appellant/plaintiff before the Court below was that as per the record, the property belonged to the proprietor and therefore, could not have been vested in the Gram Panchayat and subsequent in favour of Municipal Corporation and particularly when in the revenue record, prior to the vesting, it was shown as manure pit, ownership of the same would always rest with the proprietors. He submits that both the Courts below have placed reliance upon the judgment rendered by full Bench of this Court in **Jai Singh Vs. State of Haryana 1995 PLJ 83.** However, during the interregnum, the matter has been referred to the larger Bench and the larger Bench rendered a finding that in case where the nature of land like manure pit, abadi deh etc. were in ownership of proprietor, it would continue to be remained in their ownership and in case, Municipal Corporation had to take possession, they will take the possession in accordance with law by i.e. by acquisition and on payment of compensation. The possession of the suit property has already been established and therefore, the respondents-defendants could not take

the possession forcibly in view of the ratio decidendi culled out by the larger Bench of this Court in **Jai Singh Vs. State of Haryana (2003) 134 PLR 658.**

He further submits that there is already a finding qua manure pit in the order passed in **Municipal Corporation Faridabad Vs. State of Haryana and others** passed in CWP No.14595 of 2011 decided on 26.11.2012 wherein it has been held that Gram Panchayat, much less, the Municipal Corporation could not justify their claim over the land reserved for manure pit for the villagers and it would, thus, not form a part of *shamlat deh* and would not fall within the definition of Section 2(g) of the Punjab Village Common Land (Regulation) Act, 1961. Both the Courts below have committed illegality and perversity by not taking into consideration the aforementioned facts and thus, urges this Court for setting aside of judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal and accordingly, I formulate the following substantial questions of law for consideration:-

- (i) Whether the suit land is covered under the definition of *shamlat deh* as provided in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana ?
- (ii) Whether the finding of the Courts below holding Municipal Corporation Faridabad as owner of the suit property are perverse and result of misreading of evidence ?

Mr. Mohnish Sharma, learned counsel appearing for the Municipal Corporation disputes the ratio decidendi culled out from the judgment of Full Bench of this Court in **Jai Singh's case** (supra) and submits that the same would apply prospectively and not retrospectively.

The plaintiffs did not challenge the revenue record viz-a-viz the vesting, much less, vires of the provisions of Section 164 of the Faridabad Municipal Corporation Act, thus, urges this Court for confirming the judgments and decrees passed by the Courts below by dismissing the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that once there is already a larger Bench decision as noticed above that the manure pit cannot be part of the *shamlat deh*, much less, would not fall within the definition of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961, the land would remain with the proprietor. Although the government property vest in the Faridabad Municipal Corporation, the proprietors of the land i.e. manure pit, would also be owners as per the ratio decidendi culled out from the judgment of Full Bench of this Court in Jai Singh's case (supra). In case the Municipal Corporation is in need of land, they can always acquire the same in accordance with law by acquisition but cannot take possession forcibly, much less, claim any right or ownership of the same.

In view of the aforementioned, judgments and decrees passed by the Courts below are hereby set aside and the questions of law as formulated above are answered in favour of the appellants-plaintiffs and against the respondents-defendants. The second appeal is allowed. Decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

August 10, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No