

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5953 of 2017 (O&M)

Date of Decision: 29.9.2017

Gram Panchayat, Korali

..Petitioner

Vs.

Murti Devi (deceased) through LRs and others

..Respondents

CORAM: HON'BLE MRS.JUSTICE REKHA MITTAL

Present: Mr.Shiv Kumar, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 19.5.2017 (Annexure P-5) passed by the Civil Judge (Junior Division) Faridabad whereby application filed by the petitioner under Order 7 Rule 11 Section 9 read with Section 151 of Code of Civil Procedure (in short 'CPC') has been dismissed.

Counsel for the petitioner has submitted that Murti Devi respondent No.1 (since deceased) and now represented by her legal representatives filed a suit for declaration and mandatory injunction to stake her claim for 100 square yards plot on the basis of policy framed by the Haryana Govt. in the year 2008 under the name of **Mahatama Gandhi Gramin Basti Yojna (in short 'the Yojna')**. She has also directed challenge against order dated 14.5.2015 passed by the Deputy Commissioner, Faridabad being illegal, unlawful, null and void etc.

The petitioner/defendant filed the written statement (Annexure P-2) raising certain preliminary objections including challenge to jurisdiction of the civil Court on the premise that remedy of appeal against the order of Deputy Commissioner was available to the plaintiff. Later, the instant application was filed by the petitioner for rejection of plaint on the same premise that the respondent-plaintiff has specific remedy to get the order passed by the Deputy Commissioner, Faridabad set aside by filing appeal before the Commissioner Division, Gurgaon as per the Govt. instructions dated 31.12.2012. It is argued with vehemence that the learned trial Court by relying upon judgments of Hon'ble the Supreme Court of India in **Dhulabhai etc. Versus State of M.P. and another AIR 1969 SC 78** and **Abdul Gafur and another Vs. State of Uttarakhand and others 2008(10) SCC 97** has wrongly held that the Civil Court has jurisdiction to decide the present suit.

Counsel would argue that the Yojna regarding allotment of 100 square yard plots to eligible families belonging to Scheduled Caste, Backward Classes and living below poverty line was challenged before this Court but the scheme was upheld in the judgment **Rajbir Singh Vs. State of Haryana and others 2010(1) RCR (Civil) 243**. Further argued that in Civil Writ Petition No.26857 of 2014, Murti Devi and others Vs. Haryana State and others, this Court passed order dated 24.12.2014 that representation of respondents No.2 and 3 therein may be disposed of within a period of four months on receipt of certified copy of the order and in pursuance thereof, order Annexure P-3 was passed by the Deputy Commissioner, Faridabad. Still later, in continuation of the instructions

issued to implement the Yojna, the Government of Haryana in the department of Development and Panchayats issued memo No.DFA4-2012/75883-77 dated 31.12.2012 (Annexure P-6) whereby the Government of Haryana had taken the following decision.

“(1) Any complaint in respect of eligibility or ineligibility of an applicant under the scheme shall be made to the Deputy Commissioner of the District who will get the matter enquired into by an officer of the District and after examining the inquiry report, the complaint shall be decided by the Deputy Commissioner itself by passing a speaking order.

(2) Any person aggrieved by the decision/order of the Deputy Commissioner, may file an appeal before the Divisional Commissioner concerned within 30 days of the order. The Divisional Commissioner after affording an opportunity of hearing to the parties shall dispose of the appeal. The orders of the Divisional Commissioner will be final.”

It is argued with vehemence that in view of instructions dated 31.12.2012, a forum has been provided to file appeal against the decision/order of the Deputy Commissioner within 30 days of the order, therefore, the suit filed by Murti Devi challenging the order passed by the Deputy Commissioner is liable to be dismissed with liberty to avail appropriate remedy in pursuance to the instructions Annexure P-6. According to counsel, the instructions issued by the Government of Haryana providing remedy of appeal excludes jurisdiction of the civil Court to entertain and try the present suit. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India **Punjab State Electricity Board Vs. Ashwani Kumar 1997(3) RCR(Civil) 147; Abdul Gafur and another Vs. State of Uttarakhand and others 2009 AIR (SC)**

413; Chloro Controls (I) P Ltd. Vs. Severn Trent Water Purification Inc. and others 2012(6) Law Herald (SC) 4544 and Chandrakant Tukaram Nikam Vs. Municipal Corporation of Ahmedabad, 2002 AIR (SC) 997.

I have heard counsel for the petitioner, perused the paper book and the judgments cited at bar.

Perusal of the judgment passed by this Court in **Rajbir Singh's case (supra)** would substantiate plea of the petitioner that the aforesaid Yojna providing for carving out plots measuring 100 square yards out of Shamlat deh for allotment to certain classes was held to be valid with the observations that implementation of the Scheme is a step towards achieving social goal set up for the Gram Panchayats under the provisions of Article 243 G of the Constitution of India. However, nothing has been said in the judgment that the Yojna was framed under any statutory provision.

I have gone through the judgments referred to by counsel for the petitioner dealing with question of jurisdiction of the civil Court and exclusion of jurisdiction of the Civil Court either expressly or by necessary implication by a Statute. **In Abdul Gafur's case (supra)** relied upon by the trial Court, it has been held that in all types of civil disputes, civil Courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on other Tribunal and Authority. Further held that law confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, however, frivolous the claim may be, unless it is barred by a Statute.

Counsel for the petitioner is not in a position to point out as to which statutory power has been invoked by the Government of Haryana in the department of Development and Panchayats providing for filing an appeal before the Divisional Commissioner against the order passed by the Deputy Commissioner much less excluding jurisdiction of the Civil Court. In absence of any statutory provision creating a bar against jurisdiction of the civil Court either expressly or by necessary implication, the petitioner cannot derive any advantage to its contention from the referred authorities in order to contend that the order passed by the trial Court suffers from any patent or jurisdictional error warranting intervention in exercise of supervisory jurisdiction of this Court. In this view of the matter, contention raised by the petitioner is not meritorious and liable to be rejected.

For the foregoing reasons, the petition fails and is accordingly dismissed.

29.9.2017
Meenu

(Rekha Mittal)
Judge

Whether speaking/reasoned - Yes/No
Whether Reportable - Yes/No