

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

CWP No.6843 of 1994
Date of decision : 26.04.2017

Haryana State Industrial and Infrastructural Development Corporation Ltd.

...Petitioner

Versus

Radhey Shyam (deceased) through LR's and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Kamal Sehgal, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the order dated 21.01.1994 rendered by the Commissioner, Gurgaon Division, Gurgaon in appeal preferred by Radhey Shyam against the order dated 13.09.1993 rendered by the Collector, Palwal in proceedings initiated under Haryana Public Premises Act.

Mr. Kamal Sehgal, learned counsel appearing on behalf of petitioner submits that concededly the ownership of the land measuring 6 bighas 7 biswas against Khasra No.5565, 5569, 5570, 5564, 5573, 5572, 5563/1, 5575, 5567 and 5568 whole or part owned by the Industries Department had been acquired and the possession thereof has been taken in the year 1963. The respondent had taken illegal possession on Government land measuring 3 marla in khasra No.1611/2 and had built up a house without any permission from the petitioner or got any plan sanctioned.

During the course of hearing in the matter before the Collector, there is candid admission of the ownership of the land. No encroachers can raise the construction and grab the land of Government. Against the aforementioned order, the Deputy Commissioner has set aside the order by holding that since respondent has raised the construction and, therefore, directed the petitioner to allot the land.

He submits that such powers cannot be exercised by the Commissioner in a proceedings under Public Premises Act. In support of his contention, he has relied upon judgment rendered by Division Bench of this Court in *Charan Singh Vs. State of Punjab and others*, 1994(3) RRR 74 and also referred to para No.8 of the same, which reads thus:-

“8. Apart from this, we find that the petitioners have successfully thwarted the attempt of the State Government to recover possession of the disputed land from them under the provisions of the Act. Notices under Section 4 of the Act were issued to the petitioners. The Collector passed order unknown to law. Indisputably, the disputed land belongs to the State of Punjab and falls within the definition of public premises and the State Government was fully competent to evict the unauthorized occupants under the provisions of the Act. The Collector could not issue directions that the petitioners are entitled to remain in possession of the disputed land till it was allotted to them under the Government Rules/instructions. He did not refer to any Rules or instructions under which the unauthorized occupant was entitled to retain possession of the Government land. He also did not refer to any Rules under which the State Government can be compelled to transfer the land to the unauthorized occupants. The petitioners got

the land on lease from the State Government for a period of ten years. After the expiry of the lease, they did not surrender its possession to the State Government or got the lease renewed. They did not pay the lease money to the State Government. On the expiry of the lease, it was imperative for them to surrender possession of the lease hold land to the owner if they wanted to set up a title hostile to the true owner. They adopted a course which was impermissible at law and succeeded in retaining the amount for more than two decades without paying any lease money or mesne profits to the State Government. This Court ordered at the motion stage that the petitioners should deposit mesne profits of the leased land. The Revenue Officer who is present in Court says that no such deposit was made by the petitioners. We do not want to express any opinion with regard to the petitioners' conduct for non-complying with this Court's direction. The concession of ad interim stay order staying their dispossession was obtained by them. That order was partially modified when they were directed to deposit the mesne profits/lease money, but they failed to comply with the later part of the Court's order. It is unfortunate that revenue officers of the State did not move this Court for vacating the order which the petitioners were allowed to retain possession of the disputed land till disposal of the writ petitions.”

As per office report, LR's of respondent No.1 have been served but there is no representation. Accordingly, I proceed to decide the matter and the factum of service is also noticed by this Court vide order dated 05.09.2016, which reads thus:-

“As per office report, service on legal representative(s) of

respondent No.1, in compliance of the previous order dated 28.3.2016, is complete. However, nobody has come present on behalf of legal representative(s) of respondent No.1.

In the interest of justice, adjourned to 17.1.2017.”

I have heard learned counsel for the petitioner and appraised the paper book and of the view that order of the Commissioner directing the petitioner to allot the land is totally without jurisdiction and such power cannot be exercised as it tantamounts to exercise the power under Article 226 of the Constitution of India, which is not vested in him.

Aforementioned view of mine is being reiterated from the para No.8 of the judgment cited (Supra).

Resultantly, order dated 21.01.1994 (Annexure P-1) is hereby set aside and that of the Collector is restored.

Writ petition stands allowed.

26.04.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No