IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.18409 of 2013
Date of decision : 09.02.2017

Parmod Kumar and another

...Petitioners

Versus

State of Haryana and others

..Respondents

2. CWP No.18673 of 2013
Date of decision : 09.02.2017

Sushil Kumar and others

...Petitioners

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate for the petitioners.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. Vinod S. Bhardwaj, Advocate for respondent No.5.

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two writ petitions, whereby the petitioners have knocked the door of this Court seeking quashing of the order dated 07.08.2003 (Annexure P-4) and as well as letter dated 12.06.2013 (Annexure P-15) issued by respondent No.2

directing the respondent No.4 to submit a report regarding the land in question by giving its present Collector rate and as well as market rate and with further prayer for mandamus directing the respondent Nos.1, 2 and 4 to allot the transfer of the land in the name of petitioners at the collector rate prevalent in the year 2003 in view of the fact that petitioners had already deposited a sum of ₹ 2,17,500/- with Gram Panchayat, Kharkhoda way back in the year 2001.

Mr. Gaurav Mohunta, Advocate and Mr. Gaurav Gogna, learned counsels appearing on behalf of petitioners submits that in the year 1996, Gram Panchayat initiated the proceedings under Sections 4, 5 and 7 of Haryana Public Premises & Land (Eviction and Rent Recovery) Act, 1972 against the petitioners. The aforementioned petition culminated into the order dated 18.04.2001 (Annexure P-1), whereby the Collector Sonepat, after appreciating the rival contention of the parties, directed the petitioners/respondent (therein) to deposit the value of land as per the demarcation report dated 29.08.2000 owing to the unauthorized possession at Collector rate within a period of three months in the account of Gram Panchayat failing which the order of eviction would prevail.

He submits that in pursuance to the aforementioned order, amount aforementioned had been deposited on 18.07.2001. The aforementioned order was assailed by Gram Panchayat by filing appeal. Appeal was allowed vide order dated 07.08.2003 (Annexure P-4). It was held that the petitioners shall be at liberty to pursue the matter with regard to the allotment at their level as per the Rules and provisions of law. Since petitioners had already deposited the amount, the procedure for allotment of the site continued to be pondered upon by the Tehsildar-cum-Special Supervisor, Municipal Committee.

He further submits that after filing of the eviction proceedings, land of Gram Panchayat was vested in the Municipal Committee Kharkhoda. He has drawn the attention of this Court to the letter dated 05.03.2007 (Annexure P-5), whereby land/shop/houses is not being used as "Rafai Aam" (i.e. not for common purposes) ultimately vide letter dated 14.09.2007 (Annexure P-7), Deputy Commissioner was informed that the rate fixed was at the rate of ₹ 4000/- per square yard. Yet the petitioners were not called upon to deposit the amount. It was Inter departmental correspondence/communication. However, vide letter dated 06.01.2009 (Annexure P-9) rate was increased from ₹ 8000/- per square yard and market value determined was at ₹ 12,000/- per square yard and the matter kept on being debated and pondered upon as late as in 2014, in essence, vide letter dated 07.03.2013 (Annexure P-13), market rate was assessed at ₹20,000/- per square yards i.e. ₹55,00,000/- per acre and in 2014, as ₹25,000/- per square yard. The case of the petitioners is covered as per the provision of Sub-Rule 2 of Rule 8 of Haryana Management of Municipal Properties and State Properties Rules, 2007, framed by exercising the powers under Section 257 of the Haryana Municipal Act 1973. The Resolution of the Municipal Committee though not challenged, owing to the promulgation of the aforementioned Rules 2007, would be totally inconsequential/ineffective. During the pendency of the writ petition, an affidavit dated 12.02.2015 on behalf of Joint Director, Urban Local Bodies, Department Haryana, Panchkula-respondent Nos.1 and 2 has been filed wherein in para Nos.4 and 5, following averments were made:-

> *"4. That the predecessor of the petitioner Sh. Nathu Ram and now the petitioners are in unauthorized possession upon the land in question. The petitioners are not entitled for sale of this land. However, the petitioners are in possession upon the land prior to the existence of Municipal Committee, Kharkhoda, but the Gram Panchayat, Kharkhoda has got deposited an amount of Rs.2,17,500/- vide receipt dated 18.07.2001 and keeping in view the above facts the proposal was submitted by the Deputy Commissioner, Sonipat to take decision in the matter by describing the collector rate of the land in question i.e. Rs.25,000/- per sq. yard and market rate Rs.45,000/- per sq. yard vide his letter No.2725/L.F.A. dated 19.02.2014.*
>
> *5. That the matter was considered by the Government for the sale of land in question to the legal heirs of Sh. Nathu Ram i.e. petitioners by granting relaxation in sub rule 8(2) of the Haryana Management of Municipal Properties and State Properties Rules 2007 and accordingly the memorandum was got approved from the then Hon'ble CM for placing it before the Council of Ministers, but it has been observed that the consent of the petitioners for purchase of land at the market rate as purposed may be obtained. Accordingly the Deputy Commissioner Sonepat was requested by the Government vide their letter No.8/8/2012-ICI dated 06.08.2014 to furnish/provide the above information."*

On reading of aforementioned averments, it is clear that Government had considered the case of the petitioners for granting the relaxation in the aforementioned Sub-Rule by allotting the land at the rate of

₹45,000/- per square yard.

He submits that since petitioners had already deposited the amount way back in the year 2001, at the best, rate prevailing in the year 2007 would be applicable and not of 2014 and thus urges this Court for allowing the writ petition.

Mr. Vinod S. Bhardwaj, learned counsel appearing on behalf of respondent No.5-Municipal Committee, Kharkhoda submits that writ is barred by delay and latches as order of the Commissioner passed in the year 2003 has been assailed after 10 years, therefore, writ is liable to be dismissed. Even otherwise, no vested rights accrued in favour of the petitioners as they are encroachers. In view of Resolution of the year 2008, Municipal Committee cannot allot the land. It has to be auctioned in accordance with the Rules. At the best in case the petitioner's case is to considered, it has to be at the market rate determined in the year 2014 as per the decision of the Government, in case, the petitioners lay emphasis on. The resolution of the year 2008 has not been challenged, thus, writ petition is liable to be dismissed.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana has not disputed the contents of the affidavit referred above, much less, allotment letter vide Annexure P-19 issued to one Balbir Singh Mor, whereby District town Planner, Urban Development Haryana had directed the Executive Officer, Municipal Council, Sonepat to withdraw the proceedings initiated under P.P. Act.

He submits that respondents have been following pick and chose policy which is not permissible being discriminatory in nature.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Mohunta, Advocate.

On co-joint reading of para Nos.4 and 5 of the affidavit, indicates that the petitioner's case for allotment has been considered. Only question was to be debated whether market rate of 2014 or of 2007 would apply. No explanation has come forth in the reply as to why the case of the petitioners was not considered in essence was not called upon to pay the price prevailing in the year 2007, in view of the letter dated 14.09.2007 (Annexure P-7). The contents of the letter, reads as under:-

> *"From*
>
> *Tehsildar*
>
> *Kharkhoda*
>
> *To*
>
> *The Deputy Commissioner,*
>
> *Sonepat.*
>
> *No.293/O.K. dated 14/9/07*
>
> *Subject:- Regarding selling of land of the Municipal Committee, Kharkhoda under unauthorized possession, to Shri Nathu Ram.*
>
> *In reference to your office letter No.1232/FLA dated 12/9/07.*
>
> *On the above noted subject, it is requested to you that as per spot measurement report of the Patwari Halqa, Nathu Ram son of Har Sarup has constructed shops and residential house towards east upto depth-from North to South 40 karams (220 feet) and East to West 9 Karams (44 feet) over Killa No.238/1/1 on the main road, area of which is 02 kanals 0 marla and in the back side of the residential house, after depth of 50 feet from the main road, vacant*

land is lying at the spot which is from West to East 10 karams (54 ½ feet) and North to South: 40 karams (220 feet), area of which comes to 2 kanals 5 marlas. In this way, Nathu Ram is in possession of total land measuring 4 kanals 5 marlas.

After 50 feet depth from the main road, the Collector has fixed the rates @ Rs.4000/- per sq. yards which is entered at page No.2 and photo copy of the same – report of Patwari – Copy of jamabandi – Aks Shajra and site plan as per site are enclosed. So, report is submitted for further action.

Sd/-
Tehsildar, Kharkhoda
14.9.07"

The authorities kept on increasing the rate but did not communicate to the petitioners. It is also conceded position on record that a sum of ₹2,17,500/- which is lying deposited yielded interest and has not been returned so far to the petitioners, thus, right of the petitioners for consideration cannot be taken away. The Rules aforementioned have also been promulgated in the year 2007. For the sake of brevity, relevant Rules reads as under:-

"(2) A municipality may sell a site/building by allotment with the prior approval of the State Government to the occupier of the site/building, on an application made in this behalf, if-

(a) he is occupying it for more than 20 years;

(b) it was allotted either on rent, lease or tehbazari initially;

(c) the municipality is earning only nominal revenue from it;

(d) it is difficult to take back the possession or to

increase the rent/lease money;

Provided that if the present occupier is other than the original allottee, he shall have to pay 25% of the sale price as additional amount;

(e) it is not a part of street/road and its disposal shall not hinder the smooth movement of the traffic/people."

It is conceded position on record that petitioners occupying the land for more than 20 years. In fact, the right of consideration for allotment cannot be said to be in dispute in view of the contents of the affidavit, indicated above.

I am of the view that the petitioners cannot be made to suffer for the lapse of respondents in not allotting the plot, in essence, giving an offer at the rate prevailing in the year 2007 particularly when they had deposited an amount in the year 2001. Even after allowing of the appeal, amount aforementioned has been retained. Municipal Council must have earned the interest thereon. In my view, case of the petitioners is squarely covered by Sub Rule 2 of Rule 8 of the aforementioned Act and petitioners cannot be called upon to pay rate at the prevailing market rate as mandamus has also been sought for allotment of the plot therefore, the arguments of learned counsel, seeking quashing of the order of the Commissioner is wholly misplaced. There is reason for declining the arguments as right of consideration cannot be taken away being recurring one.

Resultantly, writ petitions are allowed.

Mandamus is issued and respondents are directed to allot the plot/shop to the petitioners at already considered rate i.e. rate prevailing in the year 2007 in view of the contents of letter dated 14.09.2007 (Annexure

P-7).

Let this exercise be undertaken within a period of two months from the date of receipt of certified copy of this order.

09.02.2017 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**