

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 18, 2017

1. CWP No.17011 of 2014

Vijay Kumar

...Petitioner

Versus

The State of Haryana & others

...Respondents

2. CWP No.17360 of 2014

Radha Ram

...Petitioner

Versus

The State of Haryana & others

...Respondents

3. CWP No.17464 of 2014

Chabeel Dass

...Petitioner

Versus

The State of Haryana & others

...Respondents

4. CWP No.17501 of 2014

Mohan Lal

...Petitioner

Versus

The State of Haryana & others

...Respondents

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

Present: Mr.S.K.Garg Narwana, Senior Advocate with
Mr.Karan Garg, Advocate,
for the petitioners in all the petitions.
Mr.Rajbir Singh, AAG, Haryana,
for the State.
Mr.Vivek Gupta, Advocate,
for respondent No.4 in all the cases.

AMIT RAWAL, J. (Oral)

Costs of Rs.25,000/-, imposed vide order dated 26.4.2017, has

been handed over by the learned counsel for respondent No.4 to the learned

counsel for the petitioners.

This order of mine shall dispose of four Civil Writ Petitions bearing No.17011, 17360, 17464 and 17501 of 2014 as the common questions of law and fact are involved. The facts are being taken from CWP No.17011 of 2014.

The petitioner is aggrieved of the orders dated 7.10.2010 (Annexure P-6) passed by the Collector, Kalayat and 11.4.2014 (Annexure P-8) of the Commissioner, Ambala Division, Ambala, whereby in the eviction proceedings filed under Sections 5 and 7 of the Haryana Public Premises and Land (Eviction and Recovery) Act, 1972 (for short “1972 Act”), the petitioner has been ordered to be evicted.

Mr.S.K.Garg Narwana, learned Senior Counsel assisted by Mr.Karan Garg, representing the petitioners in all the petitions submits that on 1.4.1991, an open auction was conducted by the Municipal Committee, Kalayat, whereby total 31 plots were auctioned on lease, out of which 16 are situated at Railway Road and 15 at Kapilmuni Road, Kalayat. After the auction, possession of the plot was given to the petitioner and he was granted permission to construct the shop thereon at his own expenses. Petitioner is in possession of Plot No.82, on which he is running his shop.

He further submits that a rent agreement was executed between the Municipal Committee and the petitioner and thereafter the respondent No.4 started receiving the rent and the same was also increased @ 20%. The petitioner kept on paying the rent till the year 2000. Even the electricity meter was also installed in his shop. Respondent No.4 filed an application under Sections 5 and 7 of 1972 for eviction of the petitioner on the ground of non-payment of the arrears of rent, whereas the petitioner continued to

pay the rent regularly.

He also submits that Detailed reply was filed. However, during the course of the hearing, it was apprised that the Government had cancelled the allotment vide communication dated 25.4.1994 (Annexure P-14). However, petitioner was never given any intimation regarding the cancellation. It was a communication from the office of Director, Local Bodies, Haryana to the Municipal Committee, Kalayat and the Municipal Committee has not sent any letter/intimation to the petitioner, thus, no cause of action accrued in favour of the Municipal Committee to seek the eviction of the petitioner. In this regard, he has drawn the attention of this Court to the order dated 28.8.2014 passed in CWP No.17360 of 2014 regarding noticing of the contention with regard to non-communication of the letter Annexure P-14.

Mr.Vivek Gupta, learned counsel representing respondent No.4 submits that the petitioner has not come to the Court with clean hands. He has concealed the factum of receipt of the communication. As per the original record shown to this Court, communication was to sent to petitioner Vijay Kumar on 18.5.1994, which has been received on 23.5.1994. He further submits that there is internal noting of the Municipal Committee of 2012 informing the Government about the fate of the eviction petition owing to the auction proceedings and raising of the construction on the land belonging to the Municipal Committee, but the Government has not taken any action.

Mr.Rajbir Singh, learned Assistant Advocate General, Haryana submits that the authorities below, while entertaining the application, have passed the orders in accordance with law and, therefore, no interference is

called for.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Narwana, for, the contents of the letter Annexure P-14 reveal that it is an inter-department communication and the petitioner, before taking the decision of cancellation of allotment, has not been heard either by the Government or even the Municipal Committee has not bothered to inform the Government of affording any opportunity. The noting portion of 2012 is after filing of the ejection petition in 2005, i.e., after delay of seven years. The noting portion does not reveal that any letter/decision was communicated to the Government. It appears that the officials of both the Local Government and the Municipal Committee have not followed the provisions of *audi alteram partem*. They dealt with the matter in a most callous and casual manner. The approach is totally tardy.

An opportunity of hearing was required to be visited by the officers, before cancellation of the auction. Between 1994 to 2005, the Municipal Committee has not even sent one letter to the Government regarding creation of third party right and the decision for initiating proceedings is also not forthcoming. In view of the aforementioned act of the respondents, the petitioner has been made to suffer for no fault of his. Third party right has been created in a most callous manner.

The contents of the letter show that the Government had formed an opinion, which has not seen the light of the day. The Government should not pass such orders compelling the Courts to reprimand the officers without communication of any further action of the State. I am of the view that the State was not within its right to say that the auction was not

conducted. An Opportunity of hearing was/is required to be given to the petitioner.

Resultantly, the orders under challenge are hereby set-aside. Even letter Annexure P-14 is also set-aside. The writ petitions are allowed.

The petitioners are permitted to continue to pay the rent with 20% increase and will also clear all the arrears of rent, if due, within a period of two months from the receipt of certified copy of this order. If at all, the Government thinks fit, they shall hold an enquiry against the concerned officials.

May 18, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No