

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 11, 2017

1. CWP No.16229 of 2016

Smt.Devi

...Petitioner

Versus

State of Haryana & others

...Respondents

2. CWP No.10756 of 2016

Daya Nand

...Petitioner

Versus

State of Haryana & others

...Respondents

3. CWP No.7423 of 2016

Devi

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Sunil Chadha, Senior Advocate with
Mr.Sharad Mehta, Advocate &
Mr.Johan Kumar, Advocate,
for the petitioner (in CWP No.16229 of 2016).

Mr.Vikram Singh, Advocate,
for the petitioners (in CWP Nos.7423 & 10756 of 2016).

Mr.Saurabh Girdhar, AAG, Haryana,
for the State.

Mr.Deepak Manchanda, Advocate,
for respondent No.4 in all the petitions.

AMIT RAWAL, J.

By this order, I shall dispose of three Civil Writ Petitions

bearing Nos. 16229, 10756 and 7423 of 2016 as the common questions of fact and law are involved. The facts are being taken from CWP No.16229 of 2016.

Owing to the pendency of the aforementioned writ petitions, notice dated 5.9.2011 (Annexure P-4 in CWP No.7423 of 2016) was passed by the Municipal Committee, Safidon-respondent No.4 ordering demolition of the house of the petitioners.

The pith and substance of the matter has narrowed down owing to the decision dated 31.1.2011 rendered by this Court in Regular Second Appeals No.1283 of 1985 (Municipality Safidon and another Versus Murli Ram and others) and 1328 of 1985 (Daya Nand and another Versus Murli Ram and others) and as per the decision, the suit titled as “Murli Ram and others Versus Daya Nand and others” , i.e., 308 of 1979 was dismissed and the appeal preferred by Municipality Safidon was allowed, wherein it has been held that the land belonging to the Municipal Committee, Safidon, which came into being in 1966, measuring 262 sq.yards and 173 sq.yards, was sold in public auction on 29.1.1979 after due publication. In fact, Daya Nand and Devi purchased the plots measuring 262 sq.yards and 173 sq.yards in Ward No.8, near Water Works Safidon from the Municipal Committee, Safidon and also made payment in this regard and having put into possession, constructed the houses and are living therein. Thereafter, some residents of the locality, namely, Murli Ram, Punjra Ram, Ranjha Ram and Sham Sunder, filed a suit for permanent injunction seeking restraint order against the Municipal Committee Safidon from alienating the plot measuring 262 sq.yards in favour of Devi and plot 173 sq.yards in favour of Dayanand (brother-in-law of petitioner-Devi). In the written statement filed

by respondent No.4-Committee, it had been admitted that the petitioners had purchased the plot in dispute in open auction and respondent No.4 has also received the payment.

Mr.Sunil Chadha, learned Senior Counsel assisted by Mr.Sharad Mehra and Johan Kumar Advocates and Mr.Vikram Singh, learned counsel representing the petitioners, have submitted that in the written statement filed by respondent No.4-Committee, it has been admitted that the suit land is a plot and not the shamlat deh and, thus, respondent No.4 is competent to transfer the ownership of the disputed plot in favour of the petitioners. In this regard, reference has been made to record of munadi, report dated 2.2.1979, letter dated 5.11.1979, civil suit, site plan, written statements and statement of the witness Annexures P-1 to P-8. They have further submitted that vide judgment and decree dated 27.5.1981, the trial Court dismissed the suit. However, in appeal preferred before the District Judge, Jind, the case was remanded back, but on remand was allowed vide judgment and decree dated 23.2.1983. Aggrieved against the aforementioned judgment and decree of the trial Court, Devi along with her brother-in-law Daya Nand and respondent No.4 preferred two separate appeals before the Additional District Judge, Jind. Vide judgment and decree 3.1.1985, appeals were dismissed and it is in this backdrop of the matter, the aforementioned Regular Second Appeals were filed. The Regular Second Appeals filed by the appellant (petitioner herein) and as well as the Committee were allowed by this Court vide judgment dated 31.1.2011 and Civil Suit No.308 of 1979 filed by Murli Ram and others was dismissed.

The grievance now raised in the present writ petitions is owing to the decision rendered in the Regular Second Appeals. Despite having

made representations, Annexures P-10, P-11 and P-12, the conveyance deed of the aforementioned plot in favour of the petitioners has not been done.

They have also submitted that the Municipal Committee had an audacity of filing a review against the judgment rendered in the Regular Second Appeal, but the same was dismissed vide order dated 27.3.2015 (Annexure P-15) with costs of Rs.25,000/- and the Special Leave Petition preferred against the same was also dismissed by reducing the costs to Rs.10,000/-, in essence the decision in favour of the petitioners has been upheld. However, during the pendency of the writ petitions, the demolition notice (Annexure P-4 in CWP No.7423 of 2016) had been issued and, therefore, the occasion arose for filing of the writ petitions and this Court, while issuing notice of motion, had granted status-quo regarding the demolition of the house. It has also been brought to the notice of this court that the entire price of the plot has been deposited.

Per contra, Mr.Deepak Manchanda, learned counsel representing respondent No.4 submitted that the petitioners have not deposited the costs of the plot-cum-house measuring 262 sq.yards and 173 sq.yards. They are in unauthorised occupation of the land/plot. The judgment rendered by this Court in the Regular Second Appeal nowhere indicates any direction for ordering execution of the conveyance deed. Regarding the auction, no such sanction/approval was granted by the then Deputy Commissioner, Jind. The impugned order (Annexure P-19) declining execution of the conveyance deed is perfectly legal and justified and, thus, urges this Court for dismissal of the writ petitions.

In rebuttal, Mr.Chadha has submitted that the impugned order (Annexure P-19), whereby the case of the petitioners for execution of the

conveyance deed has been rejected, is bereft of any reasoning, much less against the findings rendered by this Court in Regular Second Appeal and, thus, it is contemptuous.

I have heard the learned counsel for the parties and appraised the paper book.

Shorn of the facts, noticed above, are not in dispute. I am of the view that the order dated 8.6.2016 has not been passed by keeping in view the judgment rendered by this Court in the Regular Second Appeal, therefore, is not sustainable. For the sake of brevity, the relevant portion of the order allowing the appeal preferred by the Municipal Committee and as well as of the petitioners against the judgments and decrees of the Courts below, whereby the suit filed by the local residents of the area for permanent injunction for restraining the Municipal Committee from alienating the property, has been dismissed, reads as under:-

“19. I also do not find any substance in the argument that the land was sold at a much cheaper rate than the rates prevalent at that time. Once it is proved that the land was sold after adopting due procedure, i.e., publication and munadi, the respondents are not body to determine the value of the plots in question. Moreover, after the land was sold to the appellants in the year 1978-79, they have raised their dwelling units and since then have been living there. It would amount to harassment to a person who has purchased the land as a bona fide purchaser, paid the full consideration and raised a small residential unit, to uproot him after more than three decades.

20. In the circumstances, the present appeals (RSA No.1283 of 1985 and RSA No.1328 of 1985) are allowed and the judgments and decrees passed by the learned Courts below are hereby set aside. Civil Suit No.308 of 1979 filed on 12.11.1979, titled as ‘Murli Ram and others Vs. Daya Nand and others’ is

hereby dismissed. No order as to costs”

The only thing, which is required to be done, is to issue a direction for execution of the conveyance deed as registered document confers a title. It can be used for execution, sale, obtaining loan etc. Resultantly, the impugned order, whereby demolition of the house has been ordered, is not sustainable and set-aside.

The writ petitions are disposed of with the following directions:-

- a) In case the petitioners have deposited the entire price of the plot, the Municipal Committee-respondent no.4 shall execute the conveyance deed regarding plot measuring 262 sq.yards and 173 sq.yards in favour of both the petitioners in one month;
- b) If there is short fall of the payment, the respondents shall raise the demand from the petitioners and subject to reconciliation, in case any amount is found outstanding, the same shall be paid by the petitioners within another one month and on deposit of the same, the conveyance deed shall be done within a period of 15 days.
- c) Mr.Chadha, on instructions from his client, has submitted that in case the petitioners are found in illegal occupation of the land, they shall hand over the possession to the Municipal committee. Thus, I deem it appropriate to hold that the grievance of the Municipal Committee can be redressed by ordering the demarcation of the property, which is stated to be in illegal possession of the petitioners and after demarcation, in

case or if it is found that the petitioners are in illegal occupation, they shall hand over the possession forthwith.

May 11, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No