

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.1911 of 2014
Date of Decision: March 08, 2017

Dr.Kanshi Nath Verma & another

...Petitioners

Versus

Sub Divisional Officer (Civil)-cum-Collector, Narnaul & others

...Respondents

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

Present: Mr.Vijay Sharma, Advocate,
for the petitioners.

Mr.Sandeep Singh Mann, Sr.DAG, Haryana,
for the State.

Mr.M.S.Sindhu, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

The petitioners have approached this Court seeking vindication of their grievance with regard to the proceedings initiated by one Daya Nand under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short “1972 Act”) and the Municipal Committee, Narnaul, during the interregnum, has transposed as petitioner on the premise that on 23.8.1978, the petitioners had purchased building constructed over a plot measuring 1842 sq.yards, situated at Mahendergarh Road, Narnaul vide registered sale deed bearing No.749 from Capt.Jagmal Singh son of Ghamandi Lal, a co-sharer of khasra No.1622, Khewat No.1438, Khatoni No.1969, which was a big khewat having total area of 6 Bighas 13 Biswas, i.e., 20116.25 sq.yards.

Mr.Vijay Sharma, learned counsel for the petitioners submits that in February, 1979, the petitioners have submitted building plan to the Municipal Committee, Narnaul for making alterations, which, vide order No.433 dated 2.2.1979, informed that the construction proposed falls within the controlled area and forwarded the same to the Director, Town and Country Planning, Haryana, Chandigarh vide letter No.3708 dated 11.12.1979 for sanction. The Town and Country Planning, Haryana accorded the sanction to construction proposed by the petitioners vide order dated 17.1.1980. The factum of sanctioning of the construction is not disputed, much less is a conceded fact.

He further submits that in March, 1980, the Municipal Committee, Narnaul threatened to interfere in the construction, resulting into filing a Civil Suit No.115 dated 15.3.1980, which was decreed vide judgment and decree dated 8.10.1980 (Annexure P-1) in favour of the plaintiffs and against the defendants, whereby the Municipal Committee was restrained from demolishing any part thereof. The construction was completed. However, in February, 1989, one Daya Nand son of Ram Lal, resident of Narnaul, who, according to the averments in the petition, is a habitual complainant and black-mailer, filed a complaint to the Municipal Committee regarding the encroachment. Resultantly, the Municipal Committee, Narnaul issued a notice No.4664 dated 3.2.1989 (Annexure P-2) to the petitioners. The petitioners filed an execution application bearing No.14 dated 9.3.1989 seeking execution of the judgment and decree purportedly under the provisions of Order 21 Rule 32 CPC. The aforementioned execution was contested by the Municipal Committee.

However, in the year 1993, Daya Nand filed a false petition by invoking the

provisions of 1972 Act, which according to Mr.Sharma, could not have been entertained by a private individual as it is the domain of the authorities, which has power and control to manage the area, illegal construction, much less obstruction on the premise that Capt.Jagmal Singh was recorded owner of only 1050 sq.yards and, therefore, he was not competent to sell. He submits that at the best, Capt.Jagmal Singh could have been effected person in assailing the aforementioned act, but not Daya Nand. The aforementioned proceedings were challenged and ultimately affirmed time and again. During the interregnum, Municipal Committee, Narnaul transposed. The Commissioner, vide order dated 9.2.2007, remanded the matter to the Collector for fresh decision after getting demarcation. However, the demarcation could not be effected, but the building of the petitioners was measured and it was found to be in conformity to the sanctioned plan, yet the eviction order has been passed by recording area of 761 sq.yards to be in excess.

He further submits that there was no occasion for the authorities to hold the excess possession, for, the sanctioned plan has not been cancelled at any point of time. The construction has been found to be raised according to the same, thus, the orders under challenge are liable to be set-aside on the ground that the same have been passed basically without any evidence or substantiated with any documentary evidence.

Per contra, Mr.M.S.Sindhu, learned counsel for respondent No.3-Municipal Council, Narnaul submits that the orders under challenge are perfectly legal and justified. The encroachment of 761 sq.yards has been found to be justified on the basis of the measurement report as indicated in the writ petition, much less Annexure P-13, thus, the writ petition deserves

to be dismissed.

I have heard the learned counsel for the parties, appraised the paper book and of the view that Daya Nand had no locus-standi to move an application under the 1972 Act as it is in the domain of the authorities, which are in power and control the area for the purpose of management etc. Even the Municipal Committee, on transposition, has not been able to establish the alleged encroachment as the site plan sanctioned on 17.1.1980 has never been cancelled. The measurement has been found to be in conformity with the sanctioned site plan, therefore, it did not lie in the mouth of the Municipal Committee to arrive at a finding that the petitioners were in possession of excess area of 761 sq.yards by taking into consideration the ownership of the previous owner as 1050 sq.yards. If there was some grievance, it could have been on behalf of Capt.Jagmal Singh, who has also not come forward. All these factors have not been taken into consideration.

In my view, the orders under challenge are not sustainable in the eyes of law being devoid of merit. Resultantly, the same are set-aside. Writ petition stands allowed.

March 08, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No