

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

Date of decision: 10.08.2017

(1) CWP No. 23641 of 2015.

M/s ASF Buildwell Pvt. Ltd. and another Petitioners.

Versus

State of Haryana and others Respondents.

AND

(2) CWP No. 7544 of 2016.

M/s ASF Buildwell Pvt. Ltd. and another Petitioners.

Versus

State of Haryana and others Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Soli Sorabjee, Senior Advocate, and
Mr. Puneet Bali, Senior Advocate, with
Mr. Vaibhav Jain, Advocate,
Mr. Devadatt Kamat, Advocate,
Mr. Arun Gupta, Advocate, for the petitioners.

Mr. Ashok Singla, Additional Advocate General, Haryana,
for respondents No. 1 to 6 in CWP No. 23641 of 2015 and
for respondents No. 1 to 5 in CWP No. 7544 of 2016.

Mr. Lokesh Sinhal, Advocate,
for respondent No. 7 in CWP No. 23641 of 2015 and
for respondent No. 6 in CWP No. 7544 of 2016.

S.S. SARON, J.

This order will dispose of CWP No. 23641 of 2015 titled 'M/s
ASF Buildwell Pvt. Ltd. and another v. State of Haryana and others' and
CWP No. 7544 of 2016 titled 'M/s ASF Buildwell Pvt. Ltd. and another v.

State of Haryana and others', as the parties in both the petitions are common.

In CWP No. 23641 of 2015, the petitioners have made the following substantive prayers:-

- “(i) Set aside the order dated 9 September 2015 passed by the
Ld. Financial Commissioner;
- (ii) Declare the title of the land in question in favour of the
petitioner as not being Shamlat deh;
- (iii) Issue a writ in the nature of mandamus, declaring that
order dated 05.02.2010 passed in L.P.A. No. 106 of 2006
(Annexure P-33) does not bind or affect the proprietary
rights of the petitioner or their predecessor-in-interest.”

By way of CWP No.7544 of 2016, the petitioners seek quashing of the order dated 18.12.2015 passed by the Tehsildar, Sohna, exercising the powers of the Assistant Collector 1st Grade, whereby mutation No.3249 has been sanctioned in favour of the Municipal Corporation, Gurugram.

According to the petitioners, the order dated 18.12.2015, which is assailed in CWP No. 7544 of 2016, in fact, overreaches an earlier order passed by the Financial Commissioner, Haryana, whereby mutation No. 3110 in respect of the same land, which was in favour of the Municipal Corporation, Gurugram, was set aside on 15.09.2014. The Municipal Corporation, Gurugram filed a revision petition against the said order dated 15.09.2014, which was dismissed on 21.10.2015. It is submitted that the

Tehsildar, Sohna could not invalidate the order passed by the Financial Commissioner.

The dispute in the present petitions relates to part of the land in the revenue estate of village Gwal Pahari, Tehsil and District Gurugram. The land, which the petitioners claim, is comprised in Khewat No. 447/497, Rect. No. 18, Killa No. 19/2 (2-0), 20/2 (3-14), Khewat No. 448/498, Rect. No. 17, Killa No. 4/2 (2-19), 5/2 (6-9), Rect. No. 18, Killa No. 1/2 (5-14), Khewat No. 452/502, Rect. No. 18, Killa No. 20/3 (2-4), 21/1 (3-12), Rect. No. 23, Killa No. 1/1 (2-8), Khewat No. 449/499, Rect. No. 17, Killa No. 15/2 (1-11), 16 (8-0), 25/2 (1-8), Rect. No. 24, Killa No. 5/2 (0-19), Khewat No. 451/501, Rect. No. 17, Killa No. 14/2 (2-8), 15/1 (6-9), Rect. No. 18, Killa No. 11/1/1 (2-0), Khewat No. 498/521, Rect. No. 23, Killa No. 2 (7-2), Khewat No. 519/544, Rect. No. 23, Killa No. 1/3 (2-2) situated in the revenue estate of village Gwal Pahari, Tehsil and District Gurugram. The petitioners claim to have purchased the above-said land from private individuals.

Insofar as the dispute with regard to revenue entries is concerned, the provisions of Section 45 of the Punjab Land Revenue Act, 1887 ('Act' - for short) provide for suit for declaratory decree by persons aggrieved by an entry in a record. Section 45 of the Act reads as under:-

“45. Suit for declaratory decree by persons, aggrieved by an entry in a record: - If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record,

he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877¹.”

The question whether the parties have any dispute with regard to title or the entries in the revenue records is liable to be settled in the Civil Court in terms of the above provision as also by way of seeking a declaration in terms of Chapter VI of the Specific Relief Act, 1963.

Therefore, the petitioners, if so advised, may avail their remedy before the Civil Court at Gurugram. Till such time, in order to avoid deterioration and misappropriation of the property, *status quo* shall be maintained by both the parties with respect to the said land. The *status quo* shall be in relation to alienation, construction, possession and change of nature of the land.

In fact, Shri Shyamal Misra, learned Commissioner, Gurgaon Division, Gurgaon, vide his order dated 20.07.2015 (Annexure P41 in CWP No. 7544 of 2016), has already relegated the parties to the Civil Court. This has been upheld by the learned Financial Commissioner, Haryana, in her order dated 09.09.2015 (Annexure P1 in CWP No.23641 of 2015). It may also be noticed that the question of title as to whether the land vests in the Gram Panchayat or the land-owners in terms of the Punjab Village Common Lands (Regulation) Act, 1961, as applicable in Haryana. However, with the land merging in the Municipal Corporation, the Civil Court is to determine the same in view of the Division Bench Judgment of this Court in Anar Singh v. Commissioner, Rohtak Division, Rohtak and others, (2014-2) PLR 136.

As regards the legal position in respect of mutation entries, Hon'ble the Supreme Court Balwant Singh v. Daulat Singh, (1997) 7 SCC 137 held that mutation of properties in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Reliance was placed on an earlier decision in Sawarni v. Inder Kaur, (1996) 6 SCC 223 wherein it was held as follows:-

“Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.”

Therefore, civil suit is the proper remedy for determination of title as also for correcting the revenue entries in case a person is aggrieved against them.

Both the writ petitions are disposed of accordingly leaving the parties to avail their remedies of filing a civil suit, if so advised.

This order shall, however, not in any manner be construed as an expression of opinion on the merits of the controversy between the parties and the learned Civil Court shall consider and decide the civil suit, if any filed, as expeditiously as possible in accordance with law. The District

Judge, Gurugram shall assign the case to a learned Civil Judge (Senior Division), Gurugram.

(S.S. SARON)
JUDGE

(AVNEESH JHINGAN)
JUDGE

10.08.2017
Ramesh

Note:

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes