

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

**CWP No.25774 of 2016 (O&M)
Date of decision:06.03.2017**

Mubarak Singh and others ... Petitioners

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Sihota, Senior Advocate with
Mr. B.R.Rana, Advocate
for the petitioners.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kartik Gupta, Advocate
for respondent No.6.

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

AMIT RAWAL J.

The petitioners have knocked the door of this Court under Article 226 of the Constitution of India seeking quashing of the order dated 08.11.2016 (Annexure P-3) of respondent No.2 – Deputy Commissioner, Jind, whereby, the direction had been issued to respondent No.5 – Executive Engineer, DHBVN, Jind to provide police assistance to the private respondent No.6; with a further prayer for issuance of a writ in the nature of mandamus issuing directions to respondent No.1 – the Additional Chief Secretary to Government of Haryana, Revenue Department not to issue orders which do not emanate from the provisions of Punjab Land Revenue Act, 1889 (hereinafter referred to as “1889 Act”) on the premise that the land measuring 40 kanals comprised in Rect. No.69, Killa Nos.5, 6, 7, 14

and 15 situated in the revenue estate of Beer Bara Ban, Tehsil and District Jind had been taken on lease by petitioner No.1- Mubarak Singh from its owner Rani Hem Lata widow of Col. Raja Jagatbir Singh, vide registered lease deed No.2586 dated 05.10.1990 for a period of 99 years and similarly, one Baljit Singh son of Bhalle Ram had also taken the land measuring 44 kanals 13 marlas comprised in rect. No.68, killa Nos.11, 12, 13, 19, 20, 21 and Rect.No.69, Killa No.4, vide lease deed dated 1428, dated 29.06.1990, who subsequently leased out the same to petitioner No.2 -Krishan Chander, vide registered lease deed No.2679 dated 8.10.1990, for a period of 98 years.

Mr.R.S.Sihota, learned Senior Counsel assisted by Mr. B.R.Rana, Advocate for the petitioners submitted that respondent No.6 – Kartar Singh Saini was instrumental in getting certain sale deeds, reference of which has been given in paragraphs 3 and 3-A of the writ petition which are not subject matter in dispute. Having full faith in him was instrumental in fraudulently getting a lease deed bearing No.897 dated 31.05.2013 and got the same signed from the petitioners suggesting that they were signing the sale deed as witnesses. In fact, on the same very date, sale deeds bearing Nos.882 to 896 dated 30.05.2013, were got executed from Lakhanbir Singh as from perusal of the same, would reveal that respondent No.6- Kartar Singh Saini, Bhim Singh and petitioner No.1- Mubarak Singh, were the vendees/witnesses.

On the basis of the aforementioned lease deed, respondent No.6 moved an application to the Deputy Commissioner, Jind for making a

complaint against the petitioners along with his third brother, namely, Kuldeep Singh to the fact that SDO Sub Urban Sub Division DHBVN may be directed to install the electricity connection on the tube well of the complainant in the above said fields and the concerned police station may also be directed to give necessary help to the SDO concerned while installing the electricity connection. A copy of the complaint/application is dated 22.09.2016 (Annexure P-1). Having smelled foul play at the hands of respondent No.5, the petitioners instituted a civil suit bearing No.29 of 2014 on 28.01.2014 seeking declaration of lease deed dated 31.05.2013 executed in favour of the respondent being null and void, much less result of fraud and mis-representation with consequential relief of permanent injunction, which is, pending adjudication. The Deputy Commissioner on the basis of the complaint, wrote a letter dated 08.11.2016 to the Superintendent of Jind indicating that since respondent No.6 had submitted a complaint and having been put into possession of the same, the petitioners were not allowing to connect the tube well connection to the employees of the electricity department or to construct the roof over it. In fact, it indicated that the petitioners stopped the private respondent for constructing a *kotha* of tube well, rather erected wire fencing by raising pillars and thus, requested the SSP to provide the police help. The aforementioned order could not have been passed by the Deputy Commissioner as there is no provision under the Punjab Land Revenue Act. However, apprehensive of some action being taken, the petitioners had also filed another suit bearing No.981 of 2016 and 1353 of 2016 for declaration and permanent injunction and the injunction

application filed therein came to be dismissed on 29.11.2016 but the suit after filing of the writ petition had been withdrawn. In fact, the order under challenge is illegal, erroneous and cannot be allowed to sustain as respondent is not in possession of the disputed land, much less the application is not subject matter of the suit bearing No.29 of 28.01.2014 pending adjudication in the Court of Civil Judge (Senior Division) and the provisions of Land Revenue Act do not empower the Deputy Commissioner to issue such directions, in essence, the Deputy Commissioner has no jurisdiction to entertain such application and issue such directions to the local police and thus, urged this Court for setting aside the order under challenge by allowing the writ petition.

Per contra, Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr.Kartik Gupta, Advocate appearing on behalf of respondent No.6 submitted that the writ petition has been filed with sole *malafide* intention by concealing and misrepresentation of true and material facts, much less causing irreparable loss and injury on the premise that on 31.05.2013 (Annexure R6/1), petitioner No.1 - Mubarak Singh and petitioner No.2- Krishan Chander had sub-leased the land comprised in khewat no.10, khata no.11, rect. no.69, killa no.5(8-0), 6(8-0), 7(8-0), 14(8-0), 15(8-0), rect. No.68, killa no.11(8-0), 12(8-0), 19(4-4), 20(8-0) measuring 68 kanals 4 marlas situated in village beerbaraban, Tehsil and District Jind to respondent No.6 and his wife (Sushila Saini) vide registered deed No.897 dated 31.05.2013 (Annexure R6/1) for a period of 76 years and possession of the land was also delivered which fact is duly mentioned in

the lease deed, thereafter, lease amount to the tune of ₹7,87,500/- i.e., ₹10,500/- per year was duly paid to petitioners No.1 and 2, against the receipt of even date (Annexure R6/2).

On the basis of the aforementioned lease deed dated 31.05.2013, mutation bearing No.203 dated 07.06.2013/31.08.2016 (Annexure R6/3), jamabandi for the year 2012-13 (Annexure R6/4) and as well as khasra girdawari, (Annexures R6/5) w.e.f. 2013 till date showed that respondent No.6 was the owner in possession of the land in question. Moreover, in the same khewat No.10, respondent No.6 and his wife also purchased about 116 kanals 9 marlas of the land against a valid sale consideration and the mutation (Annexure R6/6) has been sanctioned.

Answering respondent, in order to cultivate the land by irrigating the same with the help of tube well applied for electricity connection in Rect. No.69, killa No.14(8-0) and the security amount of ₹5,450/- was also deposited with Uttar Haryana Bijli Vitran Nigam, Jind, vide receipt No.8PP/20907 AP dated 11.07.2013 (Annexure R6/7).

Thereafter, petitioners No.1 and 2 filed a civil suit No.29 dated 28.01.2014 and ad interim application invoking the provisions of Order 39 Rules 1 and 2 CPC, vide order dated 05.07.2014 (Annexure R6/9), had been dismissed, wherein, it has been held that the petitioners are not in possession of the land in dispute. Even the miscellaneous appeal preferred against the aforementioned order, vide order dated 30.07.2014 (Annexure R6/10) was also dismissed by the Lower Appellate Court .

On 16.04.2014 (Annexure R6/11), petitioner No.1 Mubarak Singh, moved an application dated 16.04.2014 to the SDO, Sub-Urban, Sub-Division No.2, UHBVN, Jind mentioning therein that registered lease deed dated 31.05.2013 had fraudulently been executed by answering respondent in his favour and therefore, the electricity connection to his tube well may not be released.

The SDO Jind on receipt of the application, aforementioned vide letter dated 16.04.2014 (Annexure R6/12) informed the answering respondent calling upon his comments to the allegations leveled by Mubarak Singh (petitioner No.1) in his application. A detailed reply dated 29.04.2014 (Annexure R6/13) was submitted.

The SDO, Jind informed petitioner no.1- Mubarak Singh of not causing any interference in the release of electricity connection of answering respondent in any manner. Even Amed Singh, contractor of DHBVN along with workers had gone to the spot for release of electricity connection. However, the petitioners along with other unsocial elements threatened, harassed and obstructed the workers in releasing the connection. In this regard, the aforementioned contractor submitted an application dated 15.07.2014 (Annexure R6/14) to the SDO, Sub-Urban, Sub-Division No.2, Jind regarding the intervention of the petitioners in causing obstruction in installation of electricity connection No.21907 in the land of Kartar Singh.

The SDO, DHBVN, Jind on receipt of the aforesaid letter, vide letter dated 16.07.2014 (Annexure R6/15) requested SHO Police Station Sadar, Jind for rendering police help, protection to the contractor and staff

of electricity department for installation of above said electricity connection.

Even the XEN (OP), Division DHBVN, Jind, vide letter dated 17.07.2014 (Annexure R6/16) requested SHO, Police Station Sadar, Jind for providing police assistance to the staff of SDO Sub-Urban Sub Division No.2, DHBVN, Jind. However, the pre-conceived notions of the petitioners is writ large, inasmuch as that once petitioner No.1, Mubarak Singh's request to the electricity department for not releasing the electricity connection failed, petitioner no.3 – Kuldeep Singh, moved an application dated 24.07.2014, (Annexure R6/17) to the Chief Secretary (Power), Haryana Government Panchkula for not releasing the electricity connection in Rect. No.14. The said complaint was marked to SDO, Sub-Division No.2, DHBVN Jind, who, vide letter dated 29.07.2014 (Annexure R6/18) asked Tehsildar, Jind to conduct a complete verification with regard to Rect. No.69 Killa No.14 and Tehsildar, further on 4.8.2014 directed Halqa Kanungo to inspect and visit the spot and thereafter submit report. The spot inspection was done in the presence of the parties. Halqa Kanungo submitted a detailed report which was forwarded by Tehsildar Jind to SDO Sub-Division No.2, Jind, vide letter dated 07.08.2014 (Annexure R6/19), wherein, it has been found that answering respondent was found to be owner in possession of rect. no.69, killa no.14 and tube well bore has been installed in the said killa no.14 which belongs to Kartar Singh Saini, respondent No.6. As a result thereof, the Executive Engineer (OP), DHBVN, Jind, vide letter dated 31.03.2015 (Annexure R-6/20) again wrote

a letter to the SHO, Police Station Sadar, Jind to provide police assistance to the staff of DHBVN.

He further submitted that the things did not rest here as petitioner no.2, Krishan Chander moved another similar complaint on 25.06.2014 (Annexure R6/21) before the Hon'ble Chief Minister Haryana regarding the installation of electricity connection for the purpose of supply of electricity to the tube well which was marked to the Deputy Commissioner, Jind for necessary action, who further deputed SDM Safidon for conducting inquiry into the alleged allegations leveled in the above complaint. The SDM Safidon submitted a detailed report dated 22.11.2014 (Annexure R6/22). The report reveals that both the parties were duly heard and their statements were also recorded.

As a result thereof, the Deputy Commissioner, Jind, vide letter dated 17.12.2014 (Annexure R6/23) informed petitioner no.2 - Krishan Chander that there was no force and merit in the complaint. The various representations have been made by respondent no.6 to the revenue and electricity officials but no action was taken and resultantly, respondent no.1 was constrained to move a complaint dated 22.09.2016 (Annexure P-1) before the Deputy Commissioner, Jind, who is the Administrative Head of the District informing about the sub-lease deed dated 31.05.2013, much less mutation, jamabandi and khasra girdawari. The Deputy Commissioner was also apprised about the orders passed by the Civil Court declining the ad interim stay in favour of the petitioners as the petitioners, who are the real brothers, in one way or the other were hellbent in installation of electricity

connection.

On the basis of the aforementioned complaint, the Deputy Commissioner, Jind, vide order dated 08.11.2016 (Annexure P-3) which is under challenge, directed the Superintendent of Police to provide the police assistance for joining the electricity connection of tube well. As a result thereof, on 25.11.2016 (Annexure R6/24), SDO Sub Urban Sub Division No.2, DHBVN, Jind, once again wrote a letter to the police officials that necessary police assistance and protection be provided to the staff of electricity department.

He further submitted that the civil suit claiming the identical relief against electricity department by arraying the Superintendent of Police and ad interim application moved therein, vide order dated 29.11.2016 (Annexure P-4) was rejected. Instead of preferring the appeal, the petitioners have chosen to file the writ petition and thereafter, obtained the stay order and got the suit dismissed as withdrawn on 15.12.2016 (Annexure R6/26). The District Magistrate was/is well within his responsibility to maintain peace, law and order in the society, therefore, there is no force in the submissions of Mr.Sihota and urged this Court for dismissal of the present writ petition.

Mr. Sihota, in rebuttal has drawn the attention of this Court to the reply filed on behalf of respondent No.3 – Assistant Superintendent of Police, Headquarter Jind by referring to the averments made therein to contend that as per the intimation received from the Station House Officer, Police Station Sadar, Jind in pursuance to the impugned order dated

08.11.2016 issued by the Deputy Commissioner, Jind, no police assistance sought by any authority or police assistance has been provided to anyone, thus, there is no force in the contentions of learned counsel for respondent No.6. In fact, respondent No.6 is the official of DSP, Haryana. The respondents No.1, 2 and 4, namely, Additional Chief Secretary, Deputy Commissioner and District Revenue Officer Jind, filed a joint written statement and in paragraph 5 of the preliminary objections averred as under:-

“5. That after perusing the report of District Revenue Officer, Jind. The respondent No.2 was convinced that the petitioners are causing hindrance in peaceful cultivation of the land of respondent no.6 and his wife and being the Administrative Head of the District and on receipt of a complaint by respondent No.6, it was the utmost and burdened duty of the respondent No.2 to issue necessary directions to the S.P. Jind to provide police help for installing the electricity connection of tube well in the agricultural land of respondent no.6 for constructing a Kotha of tube well and erecting wire fencing by raising pillars so that the respondent no.6 could cultivate his land. It is pertinent to mention here that S.D.O, Sub-Urban, Sub-Division No.2, DHBVN Jind had written once again to Police Officials vide his letter No.25.11.2016 (Annexure P-3) that necessary police protection may be provided to the employees of the Electricity Department, so

that the electricity connection to the tube well installed in the land of respondent no.6 could be released at the earliest. Hence order dated 08.11.2016 (Annexure P-3) was passed by the respondent no.2 to maintain law and order and to avoid any untoward incident.”

Reference to the letter, Annexure R-3 has also been made.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Sihota, for, on the basis of complaint made by petitioner No.3-Kuldeep Singh, the factum of Halqa Kanungo having visited the spot, vide Annexure R-6/18 and the report submitted on 07.08.2014, is evident from Annexure R-6/19 at page 192 of the paper book which reveals that the land comprised in khasra no.69//14 has been taken on lease by respondent no.6 Kartar Singh Saini and his wife for a period of 76 years which is valid upto 24.06.2090. Even the enquiry report dated 22.11.2014, Annexure R-6/22, conducted by Sub-Divisional Magistrate (Civil), Saffidon, reveals that both the parties were summoned and record was perused, wherein, it has been found that there was no force in the complaint of the petitioners. The fact remains that the petitioners have already challenged the factum of lease deed before the Civil Court, which is seized of the matter and have lost in seeking the ad interim injunction alleging themselves to be in possession, is evident from the orders dated 05.07.2014 (Annexure R6/9) and 30.07.2014 (Annexure R6/10). The relevant portion of the order dated 05.07.2014 passed by the trial Court rejecting ad interim injunction in the civil suit seeking setting

aside of the aforementioned sub-lease deed dated 31.05.2013, reads as under:-

“Furthermore, it has been submitted by learned counsel for the applicants that the applicants are in possession of the land in dispute and that the respondents should be restrained from dispossessing the applicants from the suit land forcibly. However, prima facie there are no such circumstances which can help to establish the possession of the plaintiffs. The impugned lease deed is a registered document which was duly registered on 31.05.2013 and it contains clear recital that the present plaintiffs have delivered the possession of the suit land to the defendants. Furthermore, a mutation bearing no.203 was also sanctioned on 07.06.2013 on the basis of the lease deed in dispute which further gives impetus to the assertions of the respondents. It is relevant to mention that the said mutation has been duly placed on record which further contains recital that the plaintiff/applicant no.1, i.e., Mubarak Sikngh was present at the time of sanction of the said mutation. Withal, the entries in the jamabandi 2012-13 have also been incorporated which reflect the possession of defendants. Furthermore, the khasra girdhawari prepared by Revenue Department as well as the Girdhawari prepared by the Irrigation Department of year 2013-14 gives strength to the assertions of the respondents regarding they being in possession of the suit property. This

Court regrets its inability to accept the submissions of learned counsel for the applicants that the report of DSP concerned is in favour of applicants as the available circumstances certainly reflect in a prima facie manner that the possession of the property in dispute on the basis of the lease deed was handed over to the respondents/defendants. The authority relied upon by learned counsel for applicants is distinguishable from the peculiar facts of the present case. Therefore, this Court is convinced that the applicants have failed to establish any prima facie case in their favour. Balance of convenience also does not lie in their favour. Furthermore, this Court is convinced that the applicants will not suffer any irreparable loss and injury, if the present application is disallowed. In view of above stated reasons, and in the interest of justice, the present application for ad-interim injunction stands dismissed.”

The submission of Mr.Sihota that District Magistrate without any jurisdiction passed the order under challenge is wholly misplaced and un-tenable. The District Magistrate is the Administrative Head of the District and is duty bound to ensure that the life and liberty of the residents is protected, much less the element of vandalism and hooliganism is prevented. Even the legislature in its wisdom has empowered the Deputy Commissioner to protect the life and liberty of the senior citizens ensuring them to live without fear and dignity. Even wide powers have been given to

the Deputy Commissioner to ensure the compliance of the order under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

The argument of Mr. Sihota that Punjab Land Revenue Act does not empower the Deputy Commissioner to issue such directions would also not be of any help as it is not a case of any partition or any other provisions of Act being invoked by the private respondent. Reference to paragraph 2 of merits of written statement filed on behalf of respondent No.3 is immaterial, for, in case, reply of respondents No.1 and 2 extracted supra. Respondent No.3 has only denied the factum of not providing any police help in pursuance to the impugned order on the premise that by that time, the petitioners had filed a civil suit and during the pendency of the same, had approached this Court and after granting the interim order, had withdrawn the suit in the month of December, 2016 (Annexure R6/26).

From the perusal of the events narrated above, all the three petitioners on three different occasions submitted applications against the authorities of DHBVN in not installing the electricity connection of the tube well bore installed in rect. No.69 killa no.14 but did not yield any result and filing of the civil suit, much less its withdrawal is nothing but is an attempt to cause all possible hindrances, impediments, stumbling blocks and myriad circumstances.

It is strange that once the petitioners having failed to succeed in getting ad interim injunction, much less the complaints submitted to three different authorities despite the pendency of the civil suit, have invoked the

jurisdiction of this Court challenging the order of the Deputy Commissioner.

I would be restraining myself to comment and delve further as it would not prejudice the rights of the parties in pending civil suit no.29 of 2014, wherein, the lease deed dated 31.05.2013 is under challenge. As of today, I am of the view that there is no illegality and perversity in the order under challenge, whereby, the Deputy Commissioner had requested the police to provide police assistance to the officials of DHBVN for the purpose of installation of transformer connection/raising *kotha* on the tube well.

Resultantly, there is no merit in the writ petition and the same is hereby dismissed.

(AMIT RAWAL)
JUDGE

March 06, 2017

savita

Whether Speaking/Reasoned

Whether Reportable

Yes/No

Yes/No