

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7112 of 2017 (O & M)
Date of decision: 10.08.2017

Harinder Dhingra

....Petitioner

Vs.

State of Haryana and others

.....Respondents

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

Present: Mr. Karanvir Singh Khehar, Advocate for the petitioner.

Mr. Surender Singh Pannu, DAG, Haryana for
respondent No.1.

Mr. Lokesh Sinhal, Advocate for respondent No.2.

None for respondent No.3.

Mr. M.L. Sarin, Senior Advocate with
Mr. Vikas Suri, Advocate for respondent No.4¹.

S.S.SARON,J.

Mr. M.L. Sarin, Senior Advocate with Mr. Vikas Suri, Advocate appearing for respondent No.4 M/s Metro Valley Business Park Pvt. Ltd. has submitted a photostat copy of the order dated 26.05.2017 passed by the learned District Judge, Gurugram. In terms of the said order, the learned District Judge has transferred 120 civil suits pending in three different Courts at Sohna to the Court of Civil Judge, Gurugram on the ground that all the suits pertain to the land of village Gwal Pahari and in almost all the suits, the Municipal Corporation, Gurugram had

issued notices under Section 408-A of the Haryana Municipal Corporation Act, 1994 which had been challenged by the plaintiffs of the said suits on the grounds of title.

Mr. Sarin, learned Senior Advocate submits that the issues raised in the present petition are in fact already subject matter of the Civil Court and that respondent No.4 has also filed a civil suit, which finds a mention at serial No.116 of the order that has been submitted.

The order dated 26.05.2017 passed by the learned District Judge, Gurugram on an application filed under Section 24 of the Code of Civil Procedure for withdrawing civil suits pending in different Courts and transferring them to the Courts of Civil Judges at Gurugram, is taken on record and marked as Mark 'X'.

The petition has been filed in the nature of a public interest litigation under Articles 226/227 of the Constitution of India seeking directions for handing over the enquiry/ investigation as ordered by Shri Y. S. Malik, the then Additional Chief Secretary and Financial Commissioner, Revenue, Haryana vide order dated 15.09.2014 (Annexure P-23) in the matter of sanction of mutation No.3110 dated 02.07.2012 in respect of land measuring 3717 kanals and 1 marla, which earlier vested in the Gram Panchayat, Gwal Pahari, since the year 1940-41 and which now vests in the Municipal Corporation, Gurgaon by virtue of notification dated 20.03.2010 (Annexure P-15) to the Central Bureau of Investigation, so that all those found guilty of various acts of omission and commission in the aforesaid land scam

including the Revenue officials/officers and Bureaucrats and even politicians by their inaction, action by passing orders without authority of law and jurisdiction and illegally interfering at the instance/behest of builders/property dealers are brought under the purview of the said enquiry/investigation. A further prayer has been made for designating a Financial Commissioner, duly competent, to decide the issue of mutation in respect of the land of erstwhile Gram Panchayat Gwal Pahari which now vests with the Municipal Corporation, Gurugram by virtue of notification dated 20.03.2010 (Annexure P-15), as the order dated 15.09.2014 (Annexure P-23) passed by Sh. Y.S. Malik, Addl. Chief Secretary and Financial Commissioner Revenue, Haryana is without jurisdiction and as such *nonest* in law being *coram non judice*.

At the time of motion hearing of the case on 04.05.2017, it was inter alia observed that it is accepted position that the land now vests with the Municipal Corporation, Gurugram since 2010 with the enlargement of the area of the Municipal Corporation, Gurugram.

Shri. M.L. Sarin, Senior Advocate appearing with Mr. Vikas Suri, Advocate filed CM No.9767-CWP of 2017 for impleading the applicant M/s Metro Valley Business Park Pvt. Ltd. as respondent No.4. The said CM has been allowed vide order dated 09.08.2017. Arguments were heard in part also on the said date. According to respondent No.4 - M/s Metro Valley Business Park Pvt. Ltd. various documents have been placed on

record from Anenxure A-1 to Annexure A-59. It has primarily been contended on the strength of the same that respondent No.4 - M/s Metro Valley Business Park Pvt. Ltd. has filed a civil suit for permanent injunction and declaration (Annexure A-58) on 14.12.2015. In the said suit, an interim injunction was granted by the learned Additional Civil Judge (Senior Division), Sohana on 17.12.2015, which reads as follows:-

“Power of attorney on behalf of defendant No.2 filed by Sh. R. A. Gupta. Sh. Tika Ram Sharma, registration clerk on behalf of defendants No.3 and 4 appeared and marked his presence. Ld. Government pleader appeared on behalf defendant No.1. Adjournment has been sought by learned counsel for defendant. Heard. Allowed.

Now, the case is adjourned to 14.01.2016 for filing of written statement and reply to stay application on behalf of defendant. Heard on granting stay.

After taking into consideration rival contentions of learned counsel for plaintiff and submissions made on behalf of defendants and further perusal of plaint and documents attached with the case file, I am of the considered view that interest of justice would be served if, defendants are restrained from

interfering in possession of the plaintiff over the suit land and from changing/altering the revenue entries except in due course of law and accordingly, defendants are restrained from interfering in possession of the plaintiff over the suit land and from changing/altering the revenue entries except in due course of law.”

However, despite the said injunction passed in favour of respondent No.4 - M/s Metro Valley Business Park Pvt. Ltd., mutation No.3249 was sanctioned on 18.12.2015 in favour of Municipal Corporation, Gurgaon, which, it is submitted, is despite the fact that the interim order had been served on the Municipal Corporation, Gurugram.

The civil suit was amended and the amended plaint dated 27.10.2016 (Annexure A-58) has been filed. In paras 3 and 4 of the amended plaint, the details of the land that is claimed by respondent No.4 - M/s Metro Valley Business Park Pvt. Ltd. is mentioned. The suit is against the State of Haryana; Municipal Corporation, Gurugram; the Assistant Collector Ist Grade, Tehsildar-cum-CRO, Tehsil Sohana, District Gurugram and Tehsildar, Tehsil Sohana, District Gurugram.

Therefore, serious objection has been raised by Shri M.L. Sarin, learned Senior counsel that a PIL is not maintainable in respect of a civil suit that is pending and that the PIL is motivated so as to interfere and stall the proceedings in the civil suit.

In response, Mr. Karanvir Singh Khehar, Advocate appearing for the petitioner has submitted that his intention was only to bring to the notice of the Court, the fact that despite the orders passed in respect of the land in the revenue estate of Gawal Pahari in favour of the Municipal Corporation, mutation of the land was sanctioned in favour of various private persons, however, the Municipal Corporation, Gurugram was taking no steps leave alone effective steps to get the mutations sanctioned in favour of private persons, cancelled and thereby colluding with the landowners who according to him were encroachers.

Mr. Lokesh Sinhal, Advocate for Municipal Corporation, Gurugram has submitted that in fact against the order sanctioning mutation No.3249 on 18.12.2015 in favour of Municipal Corporation, Gurugram, due process is being followed and the mutation now in favour of the Municipal Corporation, Gurugram is not liable to be invalidated on any ground whatsoever.

It is brought to our notice by Shri M.L. Sarin that independent of the suit filed in the present case by respondent No.4 - M/s Metro Valley Business Park Pvt. Ltd., there are 119 other suits also which are pending in the Civil Courts at Gurugram. He has submitted copy of order dated 26.05.2017 titled 'Devender Khanna and others v. State of Haryana and others', which is an application filed under Section 24 of the Code of Civil Procedure for withdrawing the civil suits pending in the different Courts and to transfer to the Courts of Civil Judge,

Gurugram. The said order has been taken on record and marked as Mark 'X'. In terms of the said order, various civil suits relating to village Gawal Pahari numbering 120 have been transferred and assigned to Civil Judges as mentioned in para 4 of the said order.

Therefore, in view of the pendency of the civil suits, a PIL is normally not to be entertained. The comments, if any, or even findings are likely to affect the decision of the civil Courts which is trying the suits in accordance with law. The order dated 26.05.2017 of the learned District Judge, Gurugram shows the number of suits that are pending and in case this petition is allowed to continue, it would have some effect or the other on the pendency of the civil suits.

The primary disputes raised in the case relate to correction of revenue entries and mutations for which the civil suit is the appropriate remedy. In fact an entry in mutation does not create or extinguish any right of a party. Hon'ble the Supreme Court in 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. Section 45 of the Punjab Land Revenue Act, 1887 relates to, 'suit for declaratory decree by persons aggrieved by an entry in a record'. The said Section reads as follows:-

"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 as suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877²."

In terms of the above, it is quite evident that the Civil Court has the jurisdiction for correction of revenue records including jamabandis and mutations; besides, even in respect of rights as to title, the Civil Court is the appropriate remedy, which

suit is already pending. Therefore, it would be inappropriate for this Court in a PIL to interject and scuttle the civil suits and thereby affect the rights of parties in as many as 120 suits .

Mr. Surender Singh Pannu, DAG, Haryana appearing for the State of Haryana, has also submitted that the civil suits have been distributed amongst various Civil Judges and the land is the same, which comprises of mutation No.3249 and different decisions are likely to be passed; besides, it is stated that the suits are liable to be decided by one Court and these in any case are liable to be entrusted to the Courts of the learned Civil Judges (Senior Division).

Be that as it may, in our view, it would not be proper for this Court to allocate the cases amongst the Civil Courts at Gurgaon. In fact it would be just and appropriate if the District Judge, Gurugram examines each of the civil suits and if possible group them in a bunch which have some commonality amongst them and then assign them amongst the Civil Courts, preferably that of the Civil Judges (Senior Division).

As regards the stay regarding the land, it is submitted, by Shri M.L. Sarin, Senior Advocate that he has already filed an affidavit of Shri Jagadeesh Taluri, Authorized Signatory of M/s Metro Valley Business Park Pvt. Ltd. (respondent No.4) before the Government of India in which it has been stated as follows:-

“10. That in the event of court giving the final non appealable verdict in favour of MCG, we shall hand over all the land owned by us, under

dispute to the MCG.

13. That the deponent shall not alienate the land in any manner nor shall create any third party interest therein and shall not change the nature of the land in any manner except as permitted under law applicable and in conformity with the due related approvals and shall maintain status quo regarding the possession till decision of question of title is decided on merits, either as directed by Division Bench of Hon'ble High Court in CWP 3442 of 2014 decided on 24.02.2014 or as per the decision of the Hon'ble High Court in CWP 16554 of 2010 decided on 08.11.2013 and decision of High Court in CWP 13145, 13147, 13915 of 2009 decided on 08.11.2013, whichever view is held as final and applicable in lands such as these."

It is stated that M/s Metro Valley Business Park Pvt. Ltd (respondent No.4) with respect to the land which is the subject matter of his suit, shall abide by the said undertaking till the disposal of the civil suit. It is also submitted that suit of M/s Metro Valley Business Park Pvt. Ltd (respondent No.4) has been pending since 14.12.2015 and directions may be issued to decide it in some time bound manner.

It may be noticed that in fact the determination of the land, as to whether it is 'shamlat deh' or not, is primarily to be considered on the basis of revenue records and entries. Oral evidence in such a case is not of much help or for that matter even necessary; besides, it may be noticed that the parties have filed voluminous documents in the shape of revenue records, which may not be connected with the land that is claimed in the Civil Suit and is detailed in paras 3 and 4 of the Civil Suit (Annexure A-58). It would in fact be just and proper if in each case, the parties confine their documentation to the land only that is claimed by them instead of attaching the revenue records of the entire village which not only creates confusion but makes the paper book unnecessarily voluminous. It would be prudent if the khasra numbers of the land which are claimed are identified and the synopsis of the same based on year wise 'Jamabandi' is given with details and the manner in which the transactions in respect of the same have been carried out, that would suffice for the proper adjudication of the case. It needs to be specifically determined as to whether the land would be 'shamlat deh' or not in accordance with law.

In view of the above, the writ petition is disposed of.

It is made clear that nothing observed herein or in any interim order passed in this case shall be construed as an expression of opinion on the merits of the controversies between the parties and the learned Civil Court shall consider and decide the cases pending before them in accordance with law on the

basis of evidence and material as adduced before it.

The civil suit shall be considered as expeditiously as possible and preferably within one year from the date of receipt of certified copy of the order.

It is made clear that wherever no interim order has been passed by the Civil Court or an interim order is subsequently passed in a civil suit which is filed hereafter; status quo regarding the alienation, construction, change of land use and creating third party rights or any encumbrances shall be maintained.

Mr. M.L. Sarin, Senior Advocate for respondent No.4 submits that in view of the order passed today in the main petition, the other civil miscellaneous applications i.e. CM No.9768-CWP of 2017 for modification of the order dated 4.05.2017 has become infructuous.

Accordingly, CM No.9768-CWP of 2017 is dismissed as infructuous.

(S.S. SARON)
JUDGE

(AVNEESH JHINGAN)
JUDGE

10.08.2017
A.Kaundal

Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes