

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

CWP No. 738 of 2017 (O&M)

Date of decision : 2.2.2017

Harnarain Saini

.. Petitioner

versus

State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Rajiv Kataria, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 22.9.2016 (Annexure P-11) passed by the Joint Commissioner (Competent Authority) Municipal Corporation, Gurgaon, and the order dated 21.11.2016 (Annexure P-13) passed by the Additional Commissioner, Municipal Corporation, Gurgaon.

Learned counsel for the petitioner submitted that one plot bearing no. 21, measuring 516 square yards, was initially allotted to one Chaudhary Uday Bhan vide *sanad* dated 29.10.1955 by the Central Government under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The *sanad* was for three plots bearing nos. 17, 18 and 21 in village Jharsa, Hadbast no. 94, Tehsil and District Gurgaon.

In 1966, late Smt. Chandro, mother of the petitioner purchased plot no. 21 from Chaudhary Uday Bhan vide registered sale-deed dated

8.9.1966. By mistake the area was mentioned as 305 square yards, though the entire plot was purchased. As one of the neighbours tried to encroach upon the part of plot no.21, suit was filed by late Smt. Chandro for possession, which was decreed. The judgment and decree was upheld upto this Court. Possession of the portion encroached upon by the neighbour was got delivered to Smt. Chandro. Thereafter, neighbour Chunni Lal instigated the Panchayat to file ejectment proceedings against the petitioner under Section 7 of the Punjab Village Common Land (Regulation) Act, 1961 (for short, 'the 1961 Act'). The predecessor-in-interest of the petitioner lost in that litigation upto this Court. The possession of the petitioner being unauthorised, he was directed to be evicted.

Learned counsel for the petitioner further submitted that after the merger of Gram Panchayat in Municipal Corporation, Gurgaon, notice has been issued to the petitioner under Sections 408 and 408A of the Haryana Municipal Corporation Act, 1994 (for short, 'the Act'). The eviction of the petitioner was ordered finding him to be in unauthorised possession vide order dated 22.9.2016 (Annexure P-11) passed by the Joint Commissioner (Competent Authority) Municipal Corporation, Gurgaon, and the appeal against the same was also dismissed vide order dated 21.11.2016 (Annexure P-13) by the Additional Commissioner, Municipal Corporation, Gurgaon.

The submission is that once the Civil Court had recorded a finding that the predecessor-in-interest of the petitioner had purchased plot no. 21, measuring 516 square yards and recital in the sale-deed regarding the area being only an error, the petitioner could not be said to be in unauthorised possession to the extent of 255 square yards of land. He

further submitted that the provisions of Section 408 of the Act are ultra vires, as there is no procedure to determine the issue of ownership of the person, who is alleged to be in unauthorised possession of the portion of the land.

After hearing learned counsel for the petitioner, we do not find any merit in the present petition. For the same portion of land eviction proceedings were initiated against the predecessor-in-interest of the petitioner on an application filed by the Gram Panchayat under Section 7 of the 1961 Act. The Assistant Collector 1st Grade passed eviction order on 30.5.1986. The same was confirmed by the Collector on 22.7.1986 and in the revision by the Revisional Authority on 30.1.1987. Civil Writ Petition No. 763 of 1987, Harnarain Singh and others vs Commissioner, Ambala Division, Ambala and others, challenging the aforesaid order was dismissed on 21.2.2011. While dismissing the writ petition, this Court had noticed the findings recorded by the Assistant Collector. The predecessor-in-interest of the petitioner was found to be in actual possession of 457 square yards of land as against 305 square yards purchased by them. It was 152 square yards in excess. The case sought to be set up by the petitioner was that the purchase was of 516 square yards of land. The passage extracted from the order passed by the Assistant Collector in the earlier round of litigation, as noticed in the order dated 21.2.2011 passed by this Court, is extracted below:-

“After hearing both the counsels and perusing the case file and the documents including the revenue record and also after personal inspection of the site of the land in dispute, I have come to the conclusion that Ahata No.777 is a

thoroughfare and Gram Panchayat is the owner of this land and the defendants are in illegal possession of this area. The fact of illegal possession is further clarified from the personal inspection of the site in dispute. There is a big ground on the sought of the mosque which is on Ahata No.301, and a passage passes along the village abadi from the southern and western sides of this ground. This area is on a higher level than the adjoining areas. The houses stand on this higher level. The exit-slopes of the passages and houses opens in the ground from the southern side of the mosque and the rain water flows down towards the ground through these slopes and through the southern sides water goes to the fields through Rasta No.777. This place is used as Rasta No.3 because the said village passage is used for reaching the main road connecting Jharsa and Wazirbad. There is no other road except this passage to reach the main road from the village. The land purchased by the defendants is 305 sq. yards and the land actual in possession with them has been found to be 457 sq. yards which is 152 sq. yards in excess of the area shown in the registration deed. It is thus clear that the defendants are in possession of excess area than mentioned in the registration deed, and they by constructing houses and flour mill on Rasta No.777 are in unauthorized occupation of the area. As such the Gram Panchayat is the owner of the land in dispute which is in Ahata No.777 and is a thoroughfare. I have come to the conclusion that defendants are in illegal possession of the land and I order for their eviction.”

The writ petition was finally dismissed finding that the portion of the land was a common passage, which is owned by the Panchayat.

The judgment and decree of the Courts below in the earlier round of litigation were also noticed and were not found to be of any help, for the reason that the Gram Panchayat, which was found to be recorded owner of the property, had not been impleaded as a party. Once the predecessor-in-interest of the petitioner was found to be in unauthorized possession of land measuring 152 square yards and had lost upto this Court in the proceedings initiated by the Gram Panchayat under the provisions of the 1961 Act, we do not find any reason to re-examine the same, especially when the Gram Panchayat had been merged in the Municipal Corporation, Gurgaon, way back in the year 2008, and the writ petition filed by the petitioner was decided thereafter.

After the petitioner had been found in unauthorized possession of the portion of the land, he has no right to retain the possession thereof. The writ petition being misconceived, deserves to be dismissed. Vires of Section 408A of the Act, are not required to be gone into as it does not arise in the facts of the present case.

The writ petition stands dismissed.

(Rajesh Bindal)
Judge

2.2.2017
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No