

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

213

**CR No.363 of 2016 (O&M)
Date of Decision:19.12.2018**

PREM CHAND

.....Petitioner

Versus

STATE OF HARYANA AND ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.Kulwant Singh, Advocate
for the petitioners.

Mr.Siddharth Sanwaria, DAG, Haryana.

Mr.Vijay Saini, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.(Oral)

Petitioner is aggrieved of the order dated 15.10.2015 (Annexure P-8) and the order dated 1.12.2015 (Annexure P-9) passed by the Civil Judge (Sr.Divn.) Safidon, whereby the Executing Court has declined the relief of handing over the possession of the shop to the petitioner by removing the encroachment made by respondents No.1 and 2.

Perusal of the record would show that a civil suit was filed by the plaintiff-petitioner for a decree of possession of land measuring 1½ marla being part of total land measuring 15 marlas comprised in Khewat No.1323, Khata No.1565, Rect.

No.68, Killa No.9/1/1 situated within the revenue estate of Safidon, District Jind. Alternative relief for mandatory injunction was also sought. The suit was dismissed by the trial Court vide judgment and decree dated 2.3.2012, however, in appeal filed by the plaintiff- petitioner before the lower Appellate Court, ownership of the plaintiff-petitioner in respect of land comprised in killa No.9/1/1 was admitted by defendants No.1 and 2. They did not dispute about taking of forcible possession of the suit property from the plaintiff. Lower Appellate Court by taking cognizance of the aforesaid facts, accepted the appeal of the plaintiff-petitioner by reversing the judgment and decree of the trial Court. Respondents No.1 and 2 were directed either to remove the construction within six months and if not possible, to pay compensation to the plaintiff-petitioner at the market rate prevailing at the time of incroachment in the year 2004 with interest @ 9% per annum till its payment.

Perusal of the site plan attached with the revision petition (Annexure P-3) would show that the shop in question is described by letters ABCDEFA in red colour, which is outside the boundary of the workshop of the bus stand, which is marked by yellow colour and is having defined configurations in terms of area of bus stand, open lawn of bus stand and workshop of bus stand. The shop is situated towards western side of the

workshop in a populated area where adjoining shops are also owned and possessed by different proprietors and the back portion of the shops is a residential plotted area of different owners. There is no denial to the aforesaid site plan by the respondents.

The Executing Court vide impugned order dated 15.10.2015 dismissed the application for execution of decree by taking note of second option recorded by the lower Appellate Court and the judgment debtors were directed to make payment of compensation as per the calculations ordered by the lower Appellate Court. The second application filed by the petitioner was also dismissed on the ground that the amount of compensation has already been deposited as per order dated 15.10.2015, therefore, the execution was held to be satisfied vide order dated 1.12.2015. Both the said orders have been assailed in this revision petition.

Perusal of the judgment and decree passed by the lower Appellate Court would show that respondents No.1 and 2 were first required to remove the construction within six months and if not possible then to pay compensation as per the order. The second option would arise only when first option was not possible. In order to record grounds of impossibility, satisfaction of respondents No.1 and 2 was to be recorded.

Perusal of the record produced by learned State counsel would show that respondents No.1 and 2 have taken decision qua second option without adhering to the first option at any point of time. The only ground taken in the official communication is that the area of the shop would be utilised in future towards extension of workshop. Admittedly, the land was never acquired by the State. Title to the property in favour of the plaintiff has already been admitted before the lower Appellate Court. No award has ever been passed in respect of shop in question. It is not understandable as to how one shop would be required for future possibility in extending the area of workshop. The shop is only 11'-3" in front and 16'- 6" at the back. By not adhering to the first option given by the lower Appellate Court, respondents No.1 and 2 have committed a legal error without recording satisfaction with regard to impossibility to implement the first option. The first option has to be given preference, particularly when there was no acquisition of the shop in accordance with law.

I am of the considered opinion that the owner of the property cannot be deprived of its fruits in the manner as suggested by respondents No.1 and 2. The State is supposed to act by transparent and lawful mechanism to acquire

individual's property. Admittedly they intruded in the shop of the petitioner without there being any lawful justification and order of the court. It is so recorded by the lower Appellate Court in para No.15 of the judgment dated 10.12.2014 that the respondents have admitted ownership of the plaintiff in respect of Killa No.9/1/1 and they further did not dispute about taking of forcible possession of the suit property. The lower Appellate Court in view of the aforesaid admission decided issues No. 1 and 2 in favour of the plaintiff. The judgment and decree dated 10.12.2014 passed by the District Judge, Jind was unsuccessfully assailed by the respondents in RSA No. 240 of 2015, which was dismissed by the High Court on 21.1.2015.

For the reasons recorded herein above, I deem it appropriate to accept this revision petition.

Accordingly, the present revision petition is allowed. Impugned orders are set aside. Respondents are directed to resort to the first option given by the lower Appellate Court in its judgment and decree dated 10.12.2014.

December 19, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No