

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

Date of decision: 17.10.2018

CM Nos.6679-6680 of 2017 in/and
CWP No.8034 of 2003

Mukesh Kumar & others

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vineet Sehgal, Advocate, for the applicant/petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.6679 of 2017

For the reasons stated in the application, the same is allowed and the delay of 775 days in filing the application for restoration of the case is condoned.

CM No.6680 of 2017

Having heard Mr. Sehgal and keeping in view the facts mentioned in the application, the order dated 16.02.2015 is recalled and the main petition is ordered to be restored to its original number to be taken up for hearing today itself.

Application stands disposed of.

CWP No.8034 of 2003

The petitioners alleged that their land adjoining Police Lines, Gurgaon (now Gurugram) was encroached upon by the Police Department. Thereafter, in the year 1997, a suit was filed by the State against the

petitioners for declaration to the effect that Police Department had acquired the rights of ownership of the disputed land by way of adverse possession. In the said suit, the petitioners filed counter claim. That suit was dismissed, whereas the counter claim filed by the petitioners was decreed with costs to the effect that they are entitled to possession of land measuring 8 biswas comprising of Khewat No.34, Khata No.56, Khasra No.3673/452 situated in revenue estate of Village Hidayatpur Chhavni now forming part of Patel Nagar, Gurgaon, vide judgment and decree dated 24.10.2006. The first appeal preferred by the Police Department was dismissed. Whether second appeal was filed or not is not known nor is this material for deciding this petition.

Knowing that the counter claim filed stands decreed in their favour to the extent of rightful possession during the pendency of this petition, the petitioners did not resort to execution proceedings. The present writ petition was filed in the year 2003 with the prayer that a mandamus be issued directing the respondents to make the payment at the rate of ₹800/- per square yard along with interest at the rate of 18% per annum from 02.12.1993 for the land occupied by the respondents. The claim is based on a letter dated 22.11.1993 from Tehsildar, Gurgaon to the Deputy Commissioner, Gurgaon on the subject 'for the purchase of land area 8 biswas (tentative) 1200 sq. yards in Khasra No.3673/452 in Mauja Hidayatpur' in which in para. E, it has been mentioned that the market price of this land is about ₹800/- per square yard. Claim is also based on a letter dated 30.11.1993/01.12.1993 from the office of the Superintendent of Police, Gurgaon on the same subject asking the petitioners, if they are ready to sell the land to the police department at the rate of ₹800 per square yard,

then they could submit an affidavit in this regard so that further action may be taken. Pursuant thereto, affidavits (Annex P-7 to P-9) were submitted. However, no final decision of the Government of Haryana has been taken or placed on record accepting or rejecting the suggestion initiated by the Superintendent of Police, Gurgaon vide letter dated 30.11.1993/01.12.1993. In the absence of any decision made by the Government, no right emanates from this inconclusive offer to compel sale or change of ownership. On the basis of these documents, the petition has been filed claiming damages at the rate of ₹800/- per square yard. Thus, this is clearly a frivolous petition, as no mandamus can be issued to conclude an offer made by the Superintendent of Police, Gurgaon in favour of the petitioners, when he did not speak authoritatively for the State of Haryana and accordingly is only a private proposal issued from his office. Such letters would not bind the Government. The Deputy Commissioner, Gurgaon was not obliged to respond to the Superintendent of Police suggesting a via media without any direction from his superior authorities. Therefore, no ground for interference is made out in this frivolous petition.

Apart from the above, the petition also deserves to be declined by virtue of Section 10 of the Code of Civil Procedure, 1908 in view of the pendency of the suit till it was decided. The petitioners have never agitated this matter before the Civil Court. In the counter claim, the decree is only to the effect that they are entitled to possession of land. The petitioners are free to execute such decree or take such measures as are admissible in law or as advised.

In view of the above, the instant petition is dismissed as not maintainable in writ jurisdiction, the dispute being purely of a civil nature

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which requires evidence to prove disputed facts. Neither would a mandamus nor certiorari issue or any other order or direction in favour of the petitioners.

17.10.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>