

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 01, 2018

1. R.S.A.No.1401 of 1996 (O&M)

Baljit Kaur & others

...Appellants

Versus

Yadvindra Public School, Patiala through its Principal & others

...Respondents

2. R.S.A.No.1905 of 1996 (O&M)

Majid Khan & others

...Appellants

Versus

Yadvindra Public School, through its Principal & others

...Respondents

3. C.W.P.No.18014 of 2008 (O&M)

Baljit Kaur

...Petitioner

Versus

Punjab Urban Development Authority, Patiala & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Vikas Singh, Advocate &
Ms.Sukhmani Tiwana, Advocate,
for the appellants in RSA No.1401 of 1996 &
for the petitioner in CWP No.18014 of 2008.

Mr.Arun Jindal, Advocate &
Mr.Arihant Jain, Advocate,
for the appellants in RSA No.1905 of 1996.

Mr.R.S.Khosla, Senior Advocate with
Mr.Sarvesh Malik Advocate for PUDA.

Mr.Kuldip Sanwal, Advocate,
for respondent Nos.1 & 2.

Dr.Puneet K. Sekhon, Advocate &
Mr.Satbir S.Katnoria, Advocate,
for respondent No.3.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals No.1401 and 1905 of 1996 and one Civil Writ Petition No.18014 of 2008, which, vide order dated 3.4.2018, was ordered to be tagged with RSA No.1401 of 1996 for the simple reason that this Court, vide order dated 12.11.2009 passed in CWP No.18014 of 2008, ordered the writ petition to be heard with RSA No.1401 of 1996, so the writ petition is also taken up for hearing as the controversy involved is identical.

RSA Nos.1401 and 1905 of 1996

Both the Regular Second Appeals have arisen out of the decision rendered in Civil Suit No.189 of 1988 filed by as many as 58 plaintiffs against Yadvindra Public School, Patiala and Managing Committee seeking permanent injunction, which was decreed by the trial Court, but reversed by the Lower Appellate Court and CWP No.18014 of 2008 has been filed by Baljit Kaur, who is also plaintiff and sought permission to withdraw the suit for challenging the order Ex.P21 dated 19.9.2008 passed by the Estate Officer, Punjab Urban Planning & Development Authority, Patiala while exercising the power under Section 46(1)(b) of Punjab Regional and Town Planning and Development Act, 1995 (for short "1995 Act").

The aforementioned suit was filed by the plaintiffs against the defendants, their servants etc. from interfering or causing to interfere or to disturb peaceful and lawful possession of the plaintiffs over the site marked as ABCD in the site plan, situated at Village Sahib Nagar alias Theri, Tehsil and District Patiala on the premise that number of houses had been constructed on the land for the last more than 50/60 years and the

possession had been continuous, long and settled. Defendants extended threat to dispossess them and cause of action arose to file the suit aforementioned when their request not to cause interference was not acceded to.

The aforementioned suit was contested by the defendants by filing written statement on the premise that the suit was liable to be dismissed as no cause of action accrued in favour of the appellant-plaintiffs, for, the defendants were/are owners in possession of the land measuring 159 kanals, situated within the revenue limits of village Theri. The land was meant for construction of the school building, but for one reason or the other, the construction could not be raised, for, the defendants were carrying on their business activity at Patiala and the possession of the plaintiffs was also denied.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. *Whether the plaintiffs are residents of village Sahib Nagar and have constructed their houses in the suit land for the last more than 50/60 years? OPP*
2. *Whether the plaintiffs have been in continuous possession as owner being undisturbed as alleged? OPP*
3. *Whether the plaintiffs are entitled to the injunction as prayed for? OPP*
4. *Whether the suit of the plaintiffs is mis-conceived? OPD*
5. *Whether the suit of the plaintiff is liable to be dismissed for want of mentioning of suit property? OPD*
6. *Whether the plaintiffs have no cause of action? OPD*
7. *Relief.”*

In support of their case, the plaintiffs examined Rajinder Singh approved Draftsman, Municipal Committee, Patiala as PW-1, who proved

the site plan Ex.P1, Nathu Ram Sarpanch of Sahib Nagar alias Theri, PW-2, Churu Ram PW-3, who deposed that the plaintiffs had constructed the house for the last 60 years, Majid Khan PW4, who deposed on the similar lines and Lal Singh as PW-5.

On the other hand, defendants examined Prem Singh son of Amar Singh, Assistant Office Superintendent as DW-1, who proved the acquisition of the land vide notification dated 20.10.1956 Ex.D1. He also proved notification dated 17.9.1956 Ex.D2, award dated 31.12.1958 Ex.D3 and jamabandi for the year 1988-89 Ex.D4.

On the basis of the evidence brought on record, the trial Court decreed the suit and restrained the defendants from dispossessing them from the suit land on the premise that the defendants did not bother to take possession of the site acquired way back in the year 1958. Appeal preferred by the defendants against the judgment and decree of the trial Court had been allowed by the Lower Appellate Court. Two Regular Second Appeals aforementioned have been filed by the plaintiffs.

Mr.Vikas Singh and Ms.Sukhmani Tiwana, Advocates, learned counsel appearing on behalf of the appellants in RSA No.1401 of 1996 and Mr.Arun Jindal, representing the appellants in RSA No.1905 of 1996 submitted that plaintiffs have been able to prove the long and settled possession over the suit property. The Lower Appellate Court partly allowed the appeal by protecting the possession of plaintiffs No.6, 17, 18, 29, 40, 57, 58, 47, 48, 50, 51 and 52 to the extent of their possession shown in the site plan Ex.CX/2 and Ex.CX/3, except in due course of law. However, the other plaintiffs have also been able to prove the long and settled possession. The testimony of the aforementioned witnesses have

been coherent and consistent. Nothing contrary in the cross-examination surfaced. The findings were passed upon appreciation of the documentary evidence. It had been categorically proved that all the plaintiffs were in possession of the property and the defendants failed to take possession despite acquisition. The report of the Local Commissioner was sketchy and had been done at the back of few of the plaintiffs and, therefore, could not be looked into for granting relief in part to the plaintiffs mentioned above. The Lower Appellate Court did not discuss the evidence at all and interfered without assigning any reason, therefore, there was no application of mind, thus, the judgment and decree is not sustainable in the eyes of law and liable to be set-aside.

An application, i.e., CM No.8460-C of 2002 was filed for impleadment of PUDA in RSA No.1401 of 1996. In pursuance to the notice issued, Mr.Rupinder Khosla, learned Senior Advocate had put in appearance on behalf of PUDA, whereas respondents No.1 and 2 are being represented by Mr.Kuldip Sanwal and respondent No.3 by Dr.Puneet K. Sekhon Advocate. They submitted that no person can be permitted to retain the possession in case he/she had not been able to fulfill the essential ingredients of long and settled possession. The Lower Appellate Court adjudicated the appeal by taking assistance of the Local Commissioner and found that the plaintiffs, referred to above, were only in possession and granted liberty to dispossess them except in due course of law. Against one of the plaintiffs, action had been taken under Section 46(1)(b) of 1995 Act, wherein the Estate Officer had ordered for his eviction and the said order is under challenge in the accompanying writ petition, where there is an interim stay and, thus, urged this Court for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the opinion/reasons expressed by the Lower Appellate Court are perfectly legal and justified and do not call for any interference as during the pendency of the appeal, Mr.K.S.Nagra, Advocate was appointed as a Local Commissioner with a direction to give report about the existence of the houses at the disputed place. The Local Commissioner visited the spot and gave the report that plaintiffs No.6, 17, 18, 29, 40, 57, 58, 47, 48, 50, 51 and 52 only had been in possession of the property, whereas the remaining plaintiffs were not found to be in possession. In my view, the finding of the trial Court in giving the blanket stay without adverting to the process of law had conferred a title as the title follows the possession, which is not correct appreciation of law. The Court was not alive of the aforementioned fact that the respondents were not having any title. No person having a title in the property, in the absence of long and settled possession, can seek the injunction. The law with regard to injunction in favour of the person, who has been found in long and settled possession, is no longer *res integra* in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Rame Gowda (D) by L.Rs Versus M.Varabappa Naidu (D) by L.Rs & another, 2004 (1) SCC 769**. For the sake of brevity, paragraphs 8 and 12 read thus:-

“8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner

shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

12. The learned counsel for the appellant relied on the Division Bench decision in Sri Dasnam Naga Sanyasi and Anr. Vs. Allahabad Development Authority, Allahabad and Anr. AIR 1995 Allahabad 418 and a Single Judge decision in Kallappa Rama Londa Vs. Shivappa Nagappa Aparaj and Ors. AIR 1995 Karnataka 238 to submit that in the absence of declaration of title having been sought for, the suit filed by the plaintiff-respondent was not maintainable, and should have been dismissed solely on this ground. We cannot agree. Sri Dasnam Naga Sanyasi and Anr.'s case relates to the stage of grant of temporary injunction wherein, in the facts and circumstances of that case, the Division Bench of the High Court upheld the decision of the court below declining the discretionary relief of ad-interim injunction to the plaintiff on the ground that failure to claim declaration of title in the facts of that case spoke against the conduct of the plaintiff and was considered to be

'unusual'. In Kallappa Rama Londa's case, the learned Single Judge has upheld the maintainability of a suit merely seeking injunction, without declaration of title, and on dealing with several decided cases the learned Judge has agreed with the proposition that where the suit for declaration of title and injunction is filed and the title is not clear, the question of title will have to be kept open without denying the plaintiff's claim for injunction in view of the fact that the plaintiff has been in possession and there is nothing to show that the plaintiff has gained possession by any unfair means just prior to the suit. That is the correct position of law. In Fakirbhai Bhagwandas and Anr. Vs. Maganlal Haribhai and Anr. AIR 1951 Bombay 380 a Division Bench spoke through Bhagwati, J. (as his Lordship then was), and held that it is not necessary for the person claiming injunction to prove his title to the suit land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof. We respectfully agree with the view so taken. The High Court has kept the question of title open. Each of the two contending parties would be at liberty to plead all relevant facts directed towards establishing their titles, as respectively claimed, and proving the same in duly constituted legal proceedings. By way of abundant caution, we clarify that the impugned judgment shall not be taken to have decided the question of title to the suit property for or against any of the contending parties."

I am of the view that appellant-plaintiffs No.6, 17, 18, 29, 40, 57, 58, 47, 48, 50, 51 and 52 had been in possession. The judgment and decree of the Lower Appellate Court is based upon appreciation of the report of the Local Commissioner being the last Court of fact and law and the same does not call for any interference or fall within the realm of perversity enabling me to form a different opinion than the one arrived at.

Resultantly, the judgment and decree of the Lower Appellant

Court is upheld. Appeals stand dismissed.

I cannot remain unmindful of the fact that this Court, while admitting the appeal, had granted the interim stay. The interim stay vis-a-vis the appellant-plaintiffs, who had been found in possession, stands vacated. However, the condition of resorting to legal process as ordered by the Lower Appellate Court vis-a-vis the persons referred therein shall remain intact.

Civil Writ Petition No.18014 of 2008

Petitioner has challenged the order dated 19.9.2008 (Annexure P-21) passed by the Estate Officer, Punjab Urban Planning & Development Authority, Patiala (for short "PUDA") on the premise that she, vide sale deed dated 7.5.1990 (Annexure P-1), purchased land measuring 3 bighas and 10 biswas, situated within the abadi of Village Sahib Nagar alias Theri, Tehsil and District Patiala. Another piece of land measuring 3 bighas situated in the same village was purchased for a consideration of Rs.80,000/- vide registered sale deed dated 5.4.1991 (Annexure P-2). There was one tubewell with electric motor and electric connection was also issued in the name of the petitioner.

Punjab Housing, Town & Country Planning Department allegedly claimed that it acquired the land as per the provisions of erstwhile Land Acquisition Act by promulgating the notification dated 28.9.1968 under Section 4 read with Section 17(4) of the Act. The notification was challenged by the landowners vide CWP No.3602 of 1971. Vide order dated 22.11.1971, the aforementioned notifications were quashed by this Court and the mutation sanctioned in favour of the State was cancelled. Punjab Government having failed to acquire the land, got a conveyance deed in

respect of land measuring 456 kanals 9 marlas comprising of Khasra No.50//1/4 (159-6) and 50//7 (0-5). Khasra No.50 or Rect.No.50 referred to the Abadi (within Lal Lakeer) of the village measuring about 900 kanals. In essence, there was no identification regarding the land, which was purchased out of Khasra No.50.

Yadvindra Public School (for short “YPS”) sold the land to PUDA vide conveyance deed mentioned above, being owner of the land in possession of the petitioner. The petitioner along with 57 other persons filed Civil Suit No.189 of 1988, which was decreed on 29.1.1991, but the appeal preferred by the YPS was allowed in part. The petitioner was respondent No.47 in the judgment of the Lower Appellate Court. However, certain other persons had filed Regular Second Appeal in this Court, wherein interim stay was granted.

In the meantime, PUDA and its officials attempted to interfere in the possession of the petitioner, necessitating her, Prabhjot Singh, Balwant Singh, Harbans Kaur and Bhupinder Singh to file Civil Suit No.287 of 1995 seeking declaration and permanent injunction. The trial Court granted the temporary injunction, but in appeal the same was modified. Civil Revision No.5778 of 1999 was preferred before this Court and vide order dated 11.12.2002, the same was allowed, whereby the order of Additional District Judge, Patiala was set-aside and that of the trial Court restored, but during the pendency of Suit No.189 of 1988, officials of PUDA submitted an application on 14.1.2005 for demarcation of the land as they were not sure about the identity of the land. The demarcation was done on 25.2.2005 and again on 4.4.2007. As per demarcation report dated 25.2.2005, the demarcator found 45 kanals 16 marlas as excess area with the

PUDA. The PUDA filed certain objections against the report of the demarcator, but despite that, PUDA officials perpetually extending threat to interfere into the possession of the petitioner.

On 13.9.2005, a fresh demarcation was conducted by the Kanungo and the Assistant Collector Ist Grade submitted report on 20.10.2005 vide Annexure P-10. Having dissatisfied with the aforementioned report, PUDA officials approached Deputy Commissioner, Patiala. Vide order dated 2.3.2006, a special demarcation committee was constituted, which conducted the demarcation on 4.4.2007 (Annexure P-13). The petitioner was advised to withdraw the unnecessary suit and, therefore, the same was withdrawn on 31.10.2007. The petitioner felt aghast when received a notice dated 18.8.2008 calling upon her to appear before the Estate Officer on 28.8.2008. Detailed reply was filed before the authority, but the Estate Officer passed the impugned order, which is not sustainable in the eyes of law as no notice in respect of the plot in dispute was received and, therefore, the order could not have been passed under Section 46(1)(b) of 1995 Act as the provisions of the aforementioned Act clearly envisage grant of 30 days time to vacate the premises.

The aforementioned writ petition has been contested by raising preliminary objections. It was alleged that the encroachers had been in unauthorised possession of the suit land. Their status was nothing beyond that of encroachers. After withdrawal of the suit, PUDA re-initiated eviction proceedings against the encroachers, including the petitioner and effective opportunity of hearing was provided to the aforementioned encroachers, who participated in the eviction proceedings, which eventually culminated in pronouncing of eviction orders in the open court on 8.9.2008, which was

subsequently released on 19.9.2008 (Annexure R-1).

Ms.Sukhmani Tiwana, Advocate for Mr.Vikas Singh, learned counsel for the petitioner submitted that respondent No.2 failed to take into consideration that already a civil suit was pending and in Regular Second Appeal, which was pending in this Court, stay had already been granted. Respondent No.2 presumed that the land in dispute belonged to PUDA without any basis and evidence. Even the question of title was involved. In these circumstances, the issues were required to be framed by granting opportunity to parties to lead evidence and, thus, urged this Court for setting-aside the impugned order.

Mr.Rupinder Khosla, learned Senior Counsel assisted by Mr.Sarvesh Malik, Advocate, representing PUDA submitted that the writ petition deserves to be dismissed, for, the petitioner could not prove the title in the aforementioned property. The conveyance deed does not carry presumption of truth and prayed for dismissal of the writ petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Vikas Singh.

The petitioner has placed on record conveyance deed, which is a registered document. The Estate Officer summarily initiated proceedings under the aforementioned provisions of the Act, for, without assigning any reasons and whether the petitioner had been able to prove herself to be owner or not. The question with regard to the framing of the issues in summary proceedings came to be debated upon in a judgment rendered by the Single Bench of this Court in **Sarjiwan Tiwari Vs. PSEB, 1998 (2)**

RCR (Civil) 2.

In such circumstances, the Estate Officer was required to frame the issues by affording opportunity to the parties to lead evidence as the question of title was involved. For the purpose of claiming title, the parties can always be relegated to the civil court. The Estate Officer was not prevented to take decision regarding the title of the property. The order is bereft of the reasoning with regard to the title of the property and, therefore, the same is not sustainable in the eyes of law and hereby quashed. The matter is remitted to respondent No.2 to decide the controversy afresh as expeditiously as possible after framing the issues by affording effective opportunities to the parties, in accordance with law.

Till then, status-quo granted by this Court is ordered to be maintained. It is expected that the parties to the lis shall not endeavour to delay the disposal of the proceedings before respondent No.2.

With the aforementioned observations, the writ petition stands disposed of.

May 01, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No