

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

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Date of Decision: 23.04.2018

KALPANA CHAWLA (CITY PARK) BACHAO SANGRASH SIMITI

....Petitioner(s).

Versus

STATE OF HARYANA AND ORS.

...Respondent(s).

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Sandeep Moudgil, Addl. A.G., Haryana
for respondents No.1 to 5.

Mr. M.L. Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate
for respondents No.6 to 11.

ANUPINDER SINGH GREWAL, J.

The petitioner-Society through the instant petition, which is in the nature of public interest litigation, is seeking a direction to respondents No.1 to 3 to protect the public park from the hands of private respondents, who are constructing commercial complex thereon.

2. The petition is stated to have been filed on behalf of Kalpana Chawla (City Park) Bachao Sangrash Simiti by its President, who has been authorized to do so vide Resolution dated 05.09.2014. It is also stated that the aims and objectives of the Society are to save the land of City Parks within the State of Haryana from unauthorized encroachments and to supervise and maintain the parks of all cities; to promote social activities like

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organizing social functions, celebrations of important movements, education to people with debates among the children etc.; to promote environmental awareness among the public and in the surrounding areas; to function as an avenue for exchange of ideas among various organizations (Associations) of the residents of different areas/places and to accept gifts, grants, donations endorsements for the purpose of holding and organizing social functions, lecture series, workshops on child education and environment etc. While issuing notice of motion in the petition on 24.02.2015, status quo regarding possession, construction and ownership of the “alleged” public park namely, Kalpana Chawla (City Park) Ballabgarh was ordered till further orders.

3. Learned counsel for the petitioner has contended that the Kalpana Chawla (City Park) Ballabgarh was constructed in the year 1987 for the use of general public of the Ballabgarh City. They had been using the park without any interruption and due to the efforts of the Municipal Corporation, Faridabad, a number of trees had been planted in the park, which has now fully developed. A reference has been made to the photographs annexed as Annexure P/1-A. It is stated that the total area of the park measures 85 kanals comprising of Khasra No.120 (32-16), Khasra No. 76 (42-12) and Khasra No. 137 (8-6). The part of the land which falls in Khasra No.137 (8-6) was earlier gair mumkin pond and with the passage of time, Municipal Corporation, Faridabad has developed it as a park for the use of general public. This part

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of the land which falls in Khasra No.137(8-6) is being encroached upon by the private respondents in connivance with the officials of the Municipal Corporation.

4. Learned counsel for the petitioner also contends that the private respondents by fraudulent means including suppression of facts, obtained judgments and decrees concerning the aforementioned land, in their favour, and therefore, they cannot be relied upon being nullity and non est in the eyes of law. In support of his submission, he cited judgments titled as **S.P. Changalvaraya Naidu (dead) by L.Rs. Versus Jagannath (dead) by L.Rs.** reported as **1994 (1) SCC 1**, **A.V. Papayya Sastry & Ors. Versus Government of A.P. & Ors.**, reported as **2007(4) SCC 221**, **Santosh Versus Jagat Ram and anr.** reported as **2010 (3) SCC 251**, **Badami (deceased) by her L.R. Versus Bhali** reported as **2012(11) SCC 574** and **Meghwal Samaj Shiksha Samiti Versus Lakh Singh and Ors.** with **State of Rajasthan & Ors. Versus Lakh Singh and Ors.** reported as **2011 (11) SCC 800**.

5. Learned counsel appearing for the respondents has, however, contended that the part of Khasra No.137 (8-6) had earlier been under litigation, which has attained finality. The suits as well as execution petitions have been decided in their favour and the matter has attained finality. The petitioner has not fully disclosed this aspect, therefore, the petition deserves to be dismissed on this ground itself.

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6. In the reply filed on behalf of respondents No.6 to 11, the details of the civil litigation between the private respondents and the Municipal Corporation, Faridabad have been set out.

7. Heard.

8. It is apparent that the land in dispute comprises Khewat No.518, Khata No.651, Khasra No.137, measuring 8 Kanals and 6 Marlas situated in the revenue estate of Village and Tehsil Ballabhgarh, District Faridabad. Bihari son of Faten (father of respondent No.6) filed case No.167 on 04.06.1980, against the then Faridabad Complex Administration for permanent injunction as he had received notices under Sections 208 and 209 of the Haryana Municipal Act, 1973. The Trial Court, decreed the suit of Bihari son of Faten and restrained the Faridabad Complex Administration from demolishing any construction and also held the notices under Sections 208 and 209 to be illegal. The Faridabad Complex Administration filed CA No.97 of 1981 on 05.05.1981 against the judgment and decree dated 31.03.1981 (Annexure P-8). The lower Appellate Court allowed the appeal filed by the Faridabad Complex Administration and set aside the judgment and decree of the Trial Court. Respondents No.6 to 11 were forcibly dispossessed by the Faridabad Complex Administration for building a park on the disputed land.

9. Bihari Lal (father of respondent No.6), Bhulli, Bhajni, Devi Ram, Bhim Singh (father of respondent No.9), Khem Chand (father of respondent No.10), Chameli, Dharampal (Respondent

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No.9), Raj Kumar (Respondent No.6), Rajesh Kumar (Respondent No.10), Sumer Singh and Om Parkash (Respondent No.7) filed another civil suit for permanent injunction and mandatory injunction for putting them in possession of the suit land against the Faridabad Complex Administration from which they were forcibly dispossessed. The Trial Court decreed the suit of respondents No.6 to 11 and their predecessors vide judgment and decree dated 28.04.1995 and held: (i) The ownership of respondents No.6 to 11 was not disputed by the Faridabad Complex Administration (ii) the Faridabad Complex Administration has failed to produce any evidence to prove its ownership (iii) the suit land being Shamlat of the proprietors, could not have been acquired by the Faridabad Complex Administration without making payment of compensation (iv) Respondents No.6 to 11 and their predecessors were co-sharers in possession until their dispossession in 1987, which is illegal and hence a decree of possession by way of mandatory injunction was passed. Municipal Corporation, Faridabad (which was formerly the Faridabad Complex Administration) filed any appeal against the judgment and decree dated 28.04.1995 (Annexure R-6/1). The lower Appellate Court dismissed the appeal filed by the Municipal Corporation, Faridabad vide judgment and decree dated 20.03.1999 holding: (i) Possession of respondents No.6 to 11 and their predecessors was admitted by the Faridabad Complex Administration to be since May 1980 (now Municipal Corporation,

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Faridabad). (ii) Respondents No. 6 to 11 and their predecessors were in possession of the suit land at the time of institution of the suit and the story of the Municipal Corporation, Faridabad that they had already developed a park on the disputed property was incorrect. Therefore, the findings of the Trial Court in its judgment and decree dated 28.04.1995 (Annexure R-6/1) were affirmed. Against the judgment and decree dated 20.03.1999 (Annexure R-6/2) Municipal Corporation, Faridabad filed RSA 3026 of 1999 before this High Court. A Single Bench of this Court dismissed RSA 3026 of 1999 vide judgment dated 16.08.1999 holding (i) the Municipal Corporation, Faridabad never challenged the entries of the jamabandis in any competent Court (ii) that there is a presumption of truth u/s 44 of the Punjab Land Revenue Act. However, an observation was made that "it will be always open to the appellant (Municipal Corporation, Faridabad) to prove separately the entries of the Jamabandi in favour of the respondents as illegal". Aggrieved by the judgment dated 16.08.1999 (Annexure R-6/3) in RSA 3026 of 1999, Municipal Corporation, Faridabad filed an SLP before the Supreme Court, bearing number CA 6291 of 2001. The Supreme Court dismissed the Civil Appeal No. 6291 of 2001 thereby affirming the judgments and decrees dated 28.04.1995 (Annexure R-6/1), 20.03.1999 (Annexure R-6/2) and 16.08.1999 (Annexure R-6/3) decreeing the suit of the Respondents no. 6 to 11. Respondents no. 6 to 11 filed Execution Petition No. 33A of 2008 before the executing Court.

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The Municipal Corporation, Faridabad filed its objections to the said execution petition. The executing Court considered the objections filed by the Municipal Corporation, Faridabad in the execution application and dismissed the same. Against the order dated 17.04.2010, dismissing the objections, Municipal Corporation, Faridabad filed an appeal before the District Judge, Faridabad which was dismissed.

10. The Municipal Corporation, Faridabad filed a civil suit against respondents No. 6 to 11 (and others, i.e. relatives) seeking a declaration that the entries in the jamabandis are bad, illegal etc. Along with the said suit, they filed an application for ad-interim injunction praying that respondents No. 6 to 11 and others be restrained from taking possession of the suit property from the Municipal Corporation, Faridabad which they had taken in consequence to execution of judgment and decree dated 28.04.1995 (Annexure R-6/1). The Trial Court dismissed the application filed by Municipal Corporation, Faridabad against respondents No. 6 to 11 for grant of ad-interim injunction vide order dated 19.03.2013. In execution of the judgment and decree (Annexure R-6/1) secured by respondent No. 6 to 11 and others, possession of the land in dispute was handed over to respondents No. 6 to 11. The Halqa Patwari / Kanungo was present at the spot and possession was handed over. Respondents No. 6 to 11 started constructing a boundary wall around their property i.e. the property in dispute and they were met with resistance from the

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Municipal Corporation, Faridabad (they forcibly and illegally caused interference in the matter of raising construction). They filed an application in the execution proceedings seeking an order that the Tehsildar be appointed and directed to get boundary wall constructed over the suit property. The executing Court while deciding the application filed by Respondents No. 6 to 11 (for construction of boundary wall) allowed the same and deputed the Tehsildar for getting constructed the boundary wall over the land in dispute. It was further ordered that the Municipal Corporation, Faridabad will not cause any interference in the construction of the boundary wall and in case any hindrance was caused, the then SHO of the police station concerned, was to provide necessary police help. The Municipal Corporation, Faridabad filed an appeal against the order dated 19.03.2013 (Annexure R-6/7). The lower Appellate Court, while deciding the appeal noticed that possession had been delivered to respondents no. 6 to 11 and others. The appeal, therefore, was dismissed by lower Appellate Court vide judgment dated 22.04.2014. The Municipal Corporation, Faridabad filed Civil Revision No. 4962 of 2014 before this Court impugning the aforementioned order dated 22.04.2014 (Annexure R-6/10). In CR No. 4962 of 2014, a Single Bench of this Court issued notice of motion and also stayed construction of the wall in dispute, which was later dismissed on 17.11.2015 while recording that the respondents (herein) had taken possession by way of a decree

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dated 28.04.1995 (Annexure R-6/1) affirmed right up to the Supreme Court on 06.08.2009 (Annexure R-6/4).

11. The judgments relied upon by the learned counsel for the petitioner are distinguishable on facts from the instant case. There is no denying the proposition laid down by the Supreme Court in **S.P. Changalvaraya Naidu (dead) by L.Rs. Versus Jagannath (dead) by L.Rs. (supra), A.V. Papayya Sastry & Ors. Versus Government of A.P. & Ors. (supra), Santosh Versus Jagat Ram and anr. (supra) and Badami (deceased) by her L.R. Versus Bhali (supra)** that judgment/decreed obtained by playing a fraud on the Court would be a nullity and non est in the eyes of law. However, this Court, especially, while deciding the petition in the nature of public interest litigation, would not be in a position to set aside the judgments which are stated to have attained finality. The pleadings of the petitioner would, at best, raise disputed questions of fact, which cannot be decided without recording evidence in that regard.

12. In the case of **Meghwal Samaj Shiksha Samiti Versus Lakh Singh and Ors. with State of Rajasthan & Ors. Versus Lakh Singh and Ors.** reported as **2011 (11) SCC 800**, it has been held that mere pendency of civil suit for similar relief would not affect the maintainability of public interest litigation. This judgment is also clearly distinguishable on facts from the instant case as the civil suit and execution petition, which had been filed in the matter, had already attained finality right till the Supreme

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Court. Therefore, the petitioner cannot derive any benefit therefrom.

13. Consequently, we are of the considered view that the relief as sought by the petitioner cannot be granted in a public interest litigation. The petition stands dismissed. It shall, however, be open to the petitioner to seek recourse to the remedy available to him under the law. We hasten to clarify that nothing whatsoever which we may have observed hereinbefore shall be construed as an expression on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

23.04.2018

SwarnjitS

Whether speaking/reasoned :	YES
Whether reportable :	YES