

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

**Civil Writ Petition No.26849 of 2018
Decided on : 22.10.2018**

Vishnu Apartments Private Limited

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate for the petitioner.

Mr. Aashish Chopra, Advocate
for the caveator/respondent No.5.

G.S. Sandhawalia, J. (Oral)

The challenge by the petitioner is to the order of the Financial Commissioner dated 05.07.2018 (Annexure P-25), whereby the ROR filed was dismissed by coming to the conclusion that the partition proceedings were carried out at the back of respondent No.5-Growmore Buildtech Private Limited.

The Financial Commissioner had noticed the spot inspection carried out on 27.03.2018 (Annexure P-15) by the Commissioner regarding the possession of the private respondent and gone on to hold that the possession of the respondents had been badly violated and condition No.3 of the Mode of Partition was not complied with. Also on account of the respondents not being associated with the partition proceedings, the matter was remanded.

A perusal of the paper-book would go on to show that the

petitioner had filed the partition application on 16.08.2010 (Annexure P-2) for the land measuring 108 kanals 9 marlas, in which Growmore Buildtech Private Limited was arrayed as respondent No.1. On account of acquisition proceedings 38 kanal 2 marlas of land were excluded from the partition proceedings, vide order dated 26.08.2010 (Annexure P-3). The company address of respondent No.5 was shown as Ansal Chamber-2, 61 Bhikaji Kama Palace, New Delhi and in spite of that *Munadi* was done in the village and *ex parte* proceedings were conducted on 27.09.2010. As per the proposed Mode of Partition dated 12.10.2010 (Annexure P-4), two khewats were to be made and as per Clause-3 the land was to be partitioned keeping in view possession intact and for making good shortfall/excess possession could be dispossessed. The instrument of partition was prepared on 17.01.2011 (Annexure P-6) and as per the warrants of possession, the revenue official reached the spot on 21.01.2011, in the absence of present respondent No.5 and it was noticed that 52 kanal 15 marlas of land were lying vacant which is the allotted share of the present petitioner.

Initially, respondent No.5 filed an appeal which was allowed on 17.06.2011 by the Collector. The matter was taken to the Commissioner by the present petitioner and which led to the remand to the Collector, vide order dated 07.11.2013 for deciding the application for condonation of delay. Eventually, the order dated 02.02.2017 (Annexure P-11) was passed by Collector, Gurgaon, condoning the delay with the directions that after hearing the appellant and after inspection of

the spot, Taksim and action be taken on the basis of merits/demerits.

The matter was then, thereafter, taken in appeal by the petitioner before the Commissioner and during the pendency of the proceedings, the Commissioner inspected the spot on 27.03.2018 (Annexure P-15) and prepared a report, which reads as under:-

“Today, Commissioner, Division Gurgaon, in connection with Partition (Taksim) in the case Vishnu Apartment Private Limited versus M/s Growmore Build-Tel, Private Ltd. Village Tingra, District Gurgaon, in the presence of persons came present on the spot, inspected the spot. Attendance of persons on the spot of land, Killa no 34//6/1/1, 35//7/2/2/-8/2, 10/2/1, 11/2, 12/2-13-14/1, 14/2, 18/2 19-20-22 and 37/3 Killa 16 area 70K 7M situated in Village Tingra, was made on the spot, M/s Growmore Buildtech, Private Ltd. have made possession on Killa No.35//8/2 min east, 18/2 Min east, 23 min east and 37/3 by installing tin. Remaining Nos are lying vacant on the spot. Report is submitted to the Hon'ble Court for further action please.”

It is the grouse of the petitioner that the finding that possession of Growmore Buildtech Private Limited on Killa No. No.35//8/2 min east, 18/2 min east, 23 min east and 37/3 out of 70K 7M situated in Village Tingra, District Gurgaon, is unwarranted for, on the basis of the spot inspection, even though the order of the Collector was upheld, vide order dated 16.04.2018 (Annexure P-14) by the Commissioner.

As noticed the Financial Commissioner has already dismissed the revision petition of the petitioner also against the

remanding of the matter and, thus, upholding the orders of the Collector dated 02.02.2017 (Annexure P-11) and the Commissioner and the matter will firstly go back to Assistant Collector 1st Grade for further proceedings. The findings of the respondent being proceeded *ex parte* is fairly not objected to by the Senior Counsel for the petitioner due to above facts and circumstances, as no effort was made to serve the respondent at the registered address.

The petitioner as such has taken objection to the spot inspection, which is on account of the filing of **CWP No.19121 of 2011** (Annexure P-8) by the private respondent No.5, wherein it had challenged the acquisition of land and for quashing of the notification dated 12.12.2008 issued under Section 4 of the Land Acquisition Act, 1894 and consequent proceedings on the ground the land of the petitioner herein M/s Vishnu Apartments Private Ltd. had been released from acquisition. The same was shown in Pink colour in Annexure P-5, whereas the land shown in Blue colour owned by Growmore Buildtech Private Limited had not been released as per the plan attached. The writ petition was eventually allowed on 19.10.2015 (Annexure P-32) to the extent that release of land would have to be reconsidered, as the State has already considered and accepted in the case of similarly situated landowners. The averments made in paragraph No.29 of the said writ petition made by M/s Growmore Buildtech Private Limited reads as under:-

“29. That proposed acquisition is for utilization as commercial belt by Haryana Urban Development Authority under the Haryana Urban Development Authority Act, 1977. However, there is no planning by HUDA to set up a plotted colony or a commercial colony by itself. Private developers and colonizers are the only persons who are setting up residential and commercial colonies in Sectors 62, 65 and 66, Gurgaon and in fact the purpose of acquisition is to acquire land from public and allot the same to such persons. In one such case M/S Vishnu Apartment Pvt. Ltd., who were the co-sharer of the land at the time of Notification has been given the licence on the land that was included in the above notification. In attached Aksh Shajra land of petitioner is shown in Blue colour and land of M/s Vishnu Apartment Pvt. Ltd. released from acquisition in Pink colour is Annexure P-5. After release of land in Pink colour no development of alleged public purpose can take place.”

Senior counsel for the petitioner has referred to the site plan which was appended by the private respondent before this Court and the proposal given by the private respondent (Annexure A-3) (page No.189) to submit that possession of the petitioner as such has been fragmented as per the proposal of the private respondent. It is, thus, submitted that private respondent would be bound by the earlier pleadings and cannot claim a different set of land and different portion of land on the strength of the inspection report.

The argument raised by Mr. Chopra that it is undivided share as such that his appeal was pending against the partition proceedings and, therefore, he is not bound by his pleadings cannot be accepted. Once the

private respondent No.5 has specifically put down in black and white, as per paragraph No.29 reproduced above, which portion is in its possession and that pink portion was in possession of M/s Vishnu Apartments Private Ltd., it would be estopped to back out and to give a proposal/suggestion as per Annexure A-3 (page No.189) and claim possession for a different portion.

Even perusal of the said proposal would go on to show that the basic concepts and principles of partition have been thrown to the wind by fragmenting the land of the petitioner, as one portion shown in brown colour falling to its share is falling on the other side of the land shown in Green colour which will be possessed by respondent No.5. The whole purpose of consolidation and partition is, thus, frustrated and, therefore, the order of spot inspection cannot be sustained, as it is also against the proposed mode of partition also that possession was to be kept intact.

Accordingly, the writ petition is partly allowed to the extent that the spot inspection dated 27.03.2018 (Annexure P-15) is quashed. The Assistant Collector 1st Grade will proceed with the partition proceedings afresh by associating present respondent No.5. However, keeping in view the stakes involved in the litigation, which is on account of the land being used for commercial development, it would be appropriate if spot inspection is to be conducted, it will be done by an official not less than by a rank of the District Collector, on the basis of which the respondent No.4 shall proceed to partition the land as ordered

by the Collector.

Needless to say that any further orders passed by the authorities below will be open to challenge in accordance with law to both sides.

OCTOBER 22, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No