

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

***CWP No.29193 of 2017***

Date of Decision: 02.02.2018

Ram Singh and another

....Petitioners

Versus

Commissioner, Gurugram Division,  
Gurugram and others

....Respondents

***BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY***

Present:- Mr. Anil Kumar Rana, Advocate  
for the petitioners.

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**DAYA CHAUDHARY, J.**

The present petition has been filed for issuance of a writ in the nature of *certiorari* for setting aside the impugned order dated 07.09.2017 (Annexure P-4) passed by the Commissioner, Gurugram Division, Gurugram and order dated 27.01.2017 (Annexure P-2) passed by the S.D.O-cum-Collector, Gurugram, whereby, the order passed by S.D.O-cum-Collector has been upheld and order of eviction of the present petitioners from the property, in dispute, was passed. A further prayer has also been made for issuance of direction to respondents No.1 to 3 not to take any action against the petitioners for ejection from the property, in dispute.

Briefly, the facts of the case, as made out in the present petition, are that respondent No.3-Zila Parishad, filed a petition under Sections 3, 4, 5 and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (here-in-after to be referred as 'the Act,

1972) for ejectment of the petitioners and respondents No.4 and 5 from the property, in dispute, comprised in *Khewat no.1461, Khatoni no.1562, Khasra no.774/72 (0-10-0), 775/72 (0-0-12)* situated in Village Hidayatpur Cantt., Tehsil and District Gurugram. The ejectment petition filed by respondent No.3 was allowed by the Collector and Zila Parishad was declared as owner of the property, in dispute vide order dated 27.01.2017. Said order dated 27.01.2017 was challenged in the appeal before the Commissioner, Gurugram Division, Gurugram, which was also dismissed and the order passed by the Collector was upheld. The impugned orders dated 27.01.2017 passed by the Sub Divisional Officer-cum-Collector, Gurugram and order dated 07.09.2017 passed by the Commissioner, Gurugram Division, Gurugram are subject matter of challenge in the present petition.

Learned counsel for the petitioners submits that the impugned orders are contrary to the facts and also violative of Article 14 of the Constitution of India. The Commissioner has not taken into consideration that the learned Collector had exceeded its powers in passing the order of eviction from the property, in dispute and also the fact that the property, in dispute, was neither owned by Zila Parishad nor it has any concern with the same. Learned counsel also submits that the Zila Parishad had failed to produce on record any documentary evidence to show its ownership over the property, in dispute, whereas, the petitioners are residing in said property for the last more than 40 years and they are regularly paying the house tax and electricity bills. Learned counsel further submits that at any point of time, the Zila Parishad has ever claimed ownership over the property, in dispute. At the end, learned counsel for the petitioners submits

that both the Courts below have failed to consider the fact that respondents have failed to prove on record that the property, in dispute, belongs to the public and the petition filed under the Act, 1972 is applicable with regard to the property, in question, over which the petitioners are in possession. Even there was no demarcation report on the record to prove that the house, in dispute was part and parcel of that khasra number. Earlier also, the respondent/Zila Parishad initiated similar proceedings against father of the petitioners on same grounds but it was dismissed in the year 1969. Thereafter, in the year 2008, similar case was filed against the petitioner and the same is still pending.

Heard the arguments of learned counsel for the petitioners and have also perused the impugned orders as well as other documents available on the file.

On perusal of impugned orders, it appears that the Zila Parishad is the owner in possession of the property, in dispute as comprised in *Khewat no.1461, Khatoni no.1562, Khasra no.774/72 (0-10-0), 775/72 (0-0-12)* as per Jamabandi for the year 2002-03. Thereafter, the Zila Parishad became owner of the Zila Board's moveable and non-moveable property as Zila Board was merged into Zila Parishad, Gurugram. Vide order dated 20.05.2010 passed in Civil Revision No.7693 of 2009 titled as ***Bholu Ram vs Asha Devi and others***, it was held that the Zila Parishad is the owner of the disputed property and the petitioners have no concern with the land, in dispute. On the basis of directions issued in the said Revision petition, the Collector has passed the order of eviction of the petitioners by declaring them to be the un-authorized occupants. Said order passed by the Collector has been upheld by the Commissioner. The petitioners are

claiming their right only on the basis of long possession, whereas, they cannot draw any benefit for having illegal possession for a long period till they are declared owner by adverse possession over the property, in dispute. Even it cannot be said as to from which point of time, they are in adverse possession, therefore, they cannot take benefit even on the basis of adverse possession. To prove adverse possession, they have to plead and prove by positive evidence that they were in possession of the property, in dispute, and their possession was open and hostile to the true owner.

In view of the above, no interference is required in the findings recorded by both the Courts below and the petition is accordingly dismissed.

02.02.2018  
gurpreet

**(DAYA CHAUDHARY)**  
**JUDGE**

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |