

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.298 of 2013 (O&M)
Date of decision: 30.08.2018

Paras Mittal

..... Appellant

Versus

Municipal Committee, Kalayat and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. C.B. Goel, Advocate
for the appellant.

Ms. Nupur Chaudhary, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff who is respondent No.3 filed a suit for declaration with consequential relief of permanent injunction. It is the case of the plaintiff that in town Kalayat, District Kaithal, there is a temple of Kapil Muni with a pond attached thereto. The plaintiff claims that he and other villagers are worshippers of the aforesaid temple. The plaintiff in fact brought to the notice of the Court that in collusion with the officials of the Municipal Committee Kalayat, the defendant-appellant had wrongly got exchanged the plot measuring 150'x63' comprised in khasra No.485 with land measuring 1 kanal and 15 marlas comprised in khasra No.321 which was part of the temple with pond attached thereof. The plaintiff also claimed that the judgment and decree obtained by the defendant-appellant dated 13.01.2006 in civil suit No.403 of 2004 is also illegal, null and void. The plaintiff further pleaded that before the

exchange, permission of the competent authority had not been obtained.

The defendant-appellant contested the suit. A separate written statement was filed by Municipal Committee. However, defendant No.3 adopted the written statement filed by Municipal Committee. The locus standi of the plaintiff was challenged. It was claimed that the plot in question exist in khasra No.485 which vest with the Municipal Committee, Kalayat. The exchange of the property was admitted. It was claimed that the property which has been obtained in exchange by the Municipal Committee, a tubewell has been installed. It was claimed that due intimation was sent to the Director, Local Bodies, Haryana but the resolution as passed by the Committee has not been set aside.

In another reply filed by Municipal Committee, it was pleaded that no prior permission was obtained as required under the rules. It was admitted that letters sent seeking permission of the competent authority were rejected. However, collusion between the Municipal Committee and defendant No.1 was disputed.

Learned trial Court after appreciating the evidence available on the file held that action of the Municipal Committee was in violation of Haryana Municipalities Management of Municipal Properties and State Properties Rules, 1976. As per Rule 2 of the aforesaid Rules, prior sanction of the Deputy Commissioner and the State Government is required. The Court further found that the exchange of land amounts to mis-appropriation of the public property by the public servants in collusion with the private persons. Hence, the exchange as well as the judgment and decree was declared illegal, null and void and defendant No.1 was perpetually restrained from raising any construction over plot measuring 150'x63' comprising in Khasra No.485.

The appeal filed by defendant No.1 was also dismissed. Learned

First Appellate Court further noticed that the temple and the properties of the temple are managed by Department of Archeology, Union of India and therefore, the Municipal Committee had no jurisdiction to exchange the land.

Learned counsel for the appellant has made the following submissions:-

1. The plaintiffs had earlier filed CWP No.3523 of 2008 decided on 04.11.2008. Hence, the suit was not maintainable.
2. He further submitted that as per revenue record, the Municipal Committee is recorded as an owner and therefore, the exchange is correct as a decision was taken by the elected body to exchange the land. He further submitted that the judgment dated 13.01.2006 is not collusive and therefore, it has wrongly been declared illegal by the Courts.

On the other hand, learned counsel for the Municipal Committee has submitted that as per Rule 2 of the Haryana Municipalities Management of Municipal Properties and State Properties Rules, 1976, Municipal Committee could not exchange any piece of immovable property without permission of the Deputy Commissioner. She further drew attention of the Court to the revenue record which clearly proves that the total land of khasra No.485 is 240 kanal and 9 marlas which is under temple of Kapil Muni. To some effect is the Jamabandi for the year 2005-06. In 2005-06, it is clearly recorded that this old temple is being maintained by Archeology Department of India.

This Court has carefully heard the arguments of learned counsel for the parties and gone through the judgments passed by the Courts below and the record.

It is undisputed that prior permission of the Deputy Commissioner has not been taken before exchanging the land. Rule 2 of the Rules reads as

under:-

“2. A municipal committee proposing to alienate permanently or for a term exceeding ten years and land or other immovable property of which it is the owner shall apply to the Deputy Commissioner for sanction.”

Therefore, the exchange of the land which amounts to alienation is clearly against the rules. Still further, the argument of learned counsel is that the Division Bench of this Court had decided the writ petition is also without any substance as in the aforesaid writ petition, Hon'ble Division Bench had directed as under:-

“This negligence and apathy on the part of the Municipal Authorities is only the reason, why we consider it necessary to direct the Deputy Commissioner, Kaithal to personally look into the matter and if necessary visit the spot to determine the true nature of the land, namely, whether the same constitutes ponds meant for common use by the residents of the area, or private property. In case the Deputy Commissioner after verification of the record and site conditions comes to the conclusion that land in question is indeed municipal property, he ought to direct the Municipal Committee to take immediate steps for preventing any encroachment, sale, transfer or misutilisation of the same. He will also identify the officers employed within the Municipal Committee who could and ought to have taken steps for protecting the public property but who have failed to do so for whatever reasons. The petitioners can also be permitted to associate the Deputy Commissioner in this process who shall do the needful expeditiously but not later than six months from the date a copy of this order is produced before him. The Deputy Commissioner shall be free to hear the respondents No.6 to 9 to know their point of view. We make it clear that while the Deputy Commissioner is not the final authority to determine the title of the land, if on prima facie basis, he is of the opinion that the land actually belongs to the Committee, the Committee can initiate proceedings for eviction of the unauthorised occupants and

restore the land to its possession for such use as may be otherwise permissible in accordance with law. Needless to say that in the course of any such proceedings, the encroachers/persons in occupation, shall have an opportunity of being heard and establishing their right to stay in occupation of the land in question. The Municipal Committee shall cooperate with the Deputy Commissioner for compliance with all such directions regarding protection of public property under the unauthorised occupation of the private occupants, as may be issued by the latter pursuant to this order.”

Hence, the decision of the writ petition cannot be treated as a bar to the filing of the suit. Still further, the suit was instituted in the year 2007 whereas the writ petition was filed in the year 2008.

It is unfortunate that the defendant-appellant had made an attempt to usurp the property of the diety in collusion with the officials of the Municipal Committee. The effort has been made to circumvent the law and take over public property.

In view of the discussion made above, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

While dismissing the appeal, this Court directs the Chief Secretary, Haryana to hold an enquiry and award suitable punishment to the persons found accomplice of the defendant-appellant.

Appeal is dismissed with cost of Rs.1,00,000/-.

30.08.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No