

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

1. RSA No.1842 of 2016 (O&M)
Date of decision : 10.12.2018

Rajesh and others

...Appellants

Versus

Municipal Corporation, Faridabad and others

...Respondents

2. RSA No.1843 of 2016 (O&M)
Date of decision : 10.12.2018

Krishan Pal and others

...Appellants

Versus

Municipal Corporation, Faridabad

...Respondent

3. RSA No.4298 of 2017 (O&M)
Date of decision : 10.12.2018

Municipal Corporation, Faridabad

...Appellant

Versus

Jagdish and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Parunjeet Singh, Advocate
for the appellants (In RSA Nos.1842 & 1843 of 2016)
for the respondents (In RSA No.4298 of 2017)

Mr. B.R. Mahajan, Advocate General, Haryana alongwith
Mr. D. Khanna, Advocate and
Mr. Saurabh Girdhar, AAG, Haryana and
Mr. Saurabh Mago, AAG, Haryana
for the appellants (In RSA No.4298 of 2017)
for the respondents (In RSA Nos.1842 & 1843 of 2016)

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

By this judgment, three appeals bearing RSA Nos.1842, 1843 of 2016 and RSA No.4298 of 2017, shall stand disposed of, as all the appeals are arising from a suit filed for declaration with consequential relief of permanent injunction. In the considered view of this Court, the following substantial questions of law arise for determination:-

1. Whether a decree for permanent injunction can be granted by the Courts against a public authority in favour of encroacher of a land used for public purpose, once it is established that encroacher has no right, title or interest in the property encroached upon?
2. Whether a decree for declaration challenging the mutation of the land in favour of the Municipal Corporation, can be set aside even after recording a finding that the plaintiffs have no right, title or interest in the property?

These three appeals, two filed by the different plaintiffs separately and one filed by the Municipal Corporation, Faridabad (defendant) have come up for final disposal. During the pendency of the appeals, keeping in view that the question was whether the property in

dispute is owned by the plaintiffs, this Court permitted the parties to lead additional evidence. Sufficient opportunities were given to the parties to lead the evidence and the counsel for the parties have made a statement on 03.10.2018 that they do not wish to lead any further evidence.

FACTS:-

The plaintiffs claiming to be the owners in possession of the number of shops situated at Patwari Road, near Government Girls High School, Ballabgarh for the last 25 years, have challenged a notice served upon the plaintiffs under the Haryana Municipal Corporation Act. It is claimed that the property is shamlat deh and the change of ownership in favour of Municipal Corporation vide Mutation No.5866 dated 22.09.2005 is illegal. The plaintiffs had claimed in the suit that against the notices issued under the Haryana Municipal Corporation Act, 1994, the previous suits for permanent injunction filed were dismissed by the Additional Senior Sub Judge, Faridabad vide judgment dated 08.01.1985 against which the appeal was also dismissed by the Additional District Judge. However, the second appeal is pending in the High Court. The property in dispute is comprised in Killa No.183/2, Khata No.1224, Khewat No.1034 as per jamabandi (records of rights) for the year 2001-2002.

The defendant-Municipal Corporation, Faridabad, contested the suit and apart from other technical objections, it was pleaded that the plaintiffs are in unauthorized and illegal possession of the public land and the land vests with the defendant assigned for the public purposes i.e. for the stay/halting of animals during consolidation of holdings and the plaintiffs or

their predecessor have no right, title or interest in the property.

Unfortunately, the Municipal Corporation did not produce the relevant documents on the file of the trial Court. Anyhow, both the Courts after examining the evidence, produced by the plaintiffs did not grant declaration in favour of the plaintiffs, however, granted the injunction in their favour. That is how, these three appeals have been filed.

It is undisputed between the parties that city of Ballabgarh was never a village on the basis of whatever record is available. However, in additional evidence, the Municipal Corporation has produced on record the jamabandi for the year 1945-46 which establishes that the major part of the entire property i.e. 2298 bighas, out of total land of 2776 bighas and 13 biswas, was owned by Maharaja Harinder Singh (King of the area). Some land was owned by various Government Departments and the area owned by the other landowners (apart from Maharaja Harinder Singh) was only to the extent of 75 bighas and 12 biswas.

The consolidation of holdings took place between the years 1952 to 1954 and as per the consolidation scheme which has been produced on file in additional evidence, it is proved that the land in dispute was reserved for common purpose i.e. Gora deh during the consolidation of holdings. The land for gora deh is normally used for stay/halting of cattles for the time being and located adjoining to the existing abadi (residential area) so that the land later on can be utilized for extending the abadi.

Learned counsel for the appellants-plaintiffs has laid stress on the fact that before consolidation of holdings, there was no shamlat deh in the city. Learned Senior Counsel has clearly misread the consolidation

scheme. What has been provided in the consolidation scheme is that there is no khewat of shamlat deh.

As per the record of the consolidation of holdings, previous khasra number of the land comprised in Khasra No.183/2 was Khasra No.911 which was ownership of Maharaja Harinder Singh as per the jamabandi for the year 1945-1946.

After consolidation of holdings, the land was recorded in the jamabandi as *Shamlat Deh Hasab Rasad Kabja Jameen* and as per the copies of jamabandies for the years 1954-55, 1961-62, 1966-67, 1971-72, 1976-77, it is recorded to have been used as gair mumkin gora deh. However, for the first time in the year 1981-82, in the column meant to depict who is in possession, the factum of sale by Harish Chand has come to be recorded although in the ownership column, the entry continues as *Shamlat Deh Hasab Rasad Kabja Jameen*. Subsequent jamabandies, thereafter record the property to be in the cultivation column in possession of Harish Chand and vendees from him, however, in the column meant for ownership, entry continues to depict the land as *shamlat Deh Hasab Rasad Kabja Jameen*.

The plaintiffs have not produced any cogent evidence to prove that Harish Chand or their predecessors-in-interest (Vendors) were proprietors of the area or what was their share in the joint khewat.

Before Faridabad Municipal Corporation came into existence, the property was regulated by the provisions of the Haryana Municipal Act, 1973 (hereinafter to be referred as “the Act of 1973”). Section 2 (22B) of the Act of 1973 defines “shamlat deh” which is extracted as under:-

“2(22B). Shamlat Deh includes-

- (1) lands described in the revenue records as Shamlat Deh or Shamlat Tikkas ;*
- (2) lands described in the revenue records as Shamlat Tarafs, Pattis, Pannas or Tholas and used according to revenue records for common purposes or for the benefit of the community or a part thereof ;*
- (3) lands described as Banjar Qadim and used for common purposes according to revenue records ;*
- (4) lands used or reserved for the benefit of the community including streets, lanes, playgrounds, schools, drinking wells or ponds ; and*
- (5) lands belonging to the Gram Panchayat of village the Abadi Deh of which has been included in a municipality and where the Panchayat consist of more than one village, the lands belonging to the Panchayat in respect of that village or villages, the Abadi Deh of which has been included in a municipality,*
but does not include land which-
 - (i) has been allotted on quasi-permanent basis to a displace persons;*
 - (ii) has been acquired under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Central Act 44 of 1954) or has been treated as evacuee property under the Administration of Evacuee Property Act, 1950 (Central Act 31 of 1950) or is of composite nature in which evacuee and non-evacuee shares have not yet been separated;*
 - (iii) has been partitioned and brought under cultivation by individual land holders before the 26th January, 1970;*
 - (iv) having been acquired before the 26th January, 1970, by a person by purchase or in exchange for proprietary land from a co-sharer in the Shamlat Deh, is so recorded in the Jamabandi or is supported by a valid deed ;*

(v) is described in the revenue records as Shamlat Tarafs; Pattis, Pannas or Tholas and is not used according to revenue records for common purposes or for the benefit of the community or a part thereof ;

(vi) lies outside the Abadi Deh and is used as Gitwar, Bara, Manure-pit or house or for cottage industry;

(vii) was Shamlat Deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in it on or before the 26th January, 1970 ;

(viii) is used as a place of worship or for purposes subservient thereto; and

(ix) belongs to the Gram Panchayat of a village the Abadi Deh of which has not been included in a municipality and where the Panchayat consists of more than one village, the lands belonging to the Panchayat in respect of that village or villages, the Abadi Deh of which has not been included in a municipality;]”

Before the Act of 1973 came into force, the Punjab Municipal Act, 1911 was governing this field.

The plaintiffs have themselves stated in their plaint that the property is *Shamlat Deh Hasab Rasad Kabja Jameen*. The character of the land as shamlat deh in the revenue record is not in dispute.

Learned counsel for the appellants has submitted while referring to the Gazette produced in additional evidence that since the year 1869, the area is falling in the municipal limit. He further submitted that before consolidation, there was no shamlat deh in the area and the entire land was carved out by imposing a pro rata cut on the land holdings of the proprietors. Hence, he submitted while referring to the Rule 16(ii) of the

East Punjab Holdings (Consolidation and Prevention of Fragmentation), Rules, 1949 (hereinafter to be referred as “the Rules of 1949”) that the proprietorship of the land in question which has been carved out by imposing a pro rata cut vests with the proprietors. He further submitted that the land does not vests with the Municipal Committee now the Municipal Corporation. He further submitted that since Municipal Corporation has no right, title or interest, therefore, the Municipal Corporation has no locus standi to issue notice. He further submitted that the transfer of the land is on the basis of the Act No.17 of 1999 (Haryana Municipal (Amendment) Act 1999) has been declared to be unconstitutional. Hence, he submitted that the mutation in favour of the Municipal Corporation is illegal. He relied upon a Five Judge Bench judgment of the Court in the case of **Suraj Bhan and others Vs. State of Haryana and another, 2017(2) RCR (Civil) 934**, in support of his submissions.

He further submitted that as per the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred as “the Act of 1948”), the land which vests with the Government is only the land as defined in by Section 2(bb)(iv) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948. Hence, he submitted that there is no vesting of the land in the Municipal Corporation. He further submitted that in a similar case filed by one Bihari Lal, who was similarly situated, the dispute has been decided upto the Hon'ble Supreme Court, recording a finding that the Municipal Corporation has nothing to do with the land in question.

On the other hand, learned Advocate General appearing for the respondents has submitted that no doubt, there is no evidence that there was any village or there was any Gram Panchayat, however, he submitted that it is apparent from the revenue record that the major chunk of the land was owned by Maharaja Harinder Singh. While referring to the jamabandi for the year 1945-1946, submitted that Maharaja Harinder Singh was owner of 2298 bighas of land, out of total land measuring 2776 bighas and 13 biswas. The total land owned by the other owners was only to the extent of 75 bighas and 12 biswas. Thus, Maharaja Harinder Singh was owner of more than approximately 95% of the total land in the area.

He further submitted that it is nowhere established on the file that Harish Chand was co-owner in the khewat or was a member of the proprietary body. He, while referring to the sale deed produced on file by way of additional evidence executed by Harish Chand, has submitted that in the sale deed itself, it has been written that in the revenue estate of Ballabgarh, there is a common land and he is co-sharer to the extent of land measuring 2 kanals 13 marlas, however, no evidence in support thereof has been produced. He further submitted that there is no evidence that any contribution was made by the owners to prove the applicability of the Rule 16(ii) of the Rules of 1949. He in the alternative submitted that the plaintiffs in order to succeed, were required to prove that their Vendor was owner of the property and has transferred valid title in their favour.

I have considered the respective submission of learned counsels and with their able assistance perused the record.

It is proved on file that Maharaja Harinder Singh was owner of

approximately 95% of the total land in the revenue estate. The old Khasra No.911 was owned by Maharaja Harinder Singh. In place of old Khasra No.911, new khasra number, assigned post consolidation of holdings, is Khasra No.183/2. The consolidation scheme produced on the file proves that the aforesaid land was reserved for common purpose.

Learned Senior Counsel appearing for the appellants has placed heavy reliance on the judgment passed by the Larger Bench of this Court in the case of Suraj Bhan and others (Supra). In the aforesaid case, Larger Bench was considering the constitutional validity of the amendment carried out in the Act of 1973 and Act of 1994 with respect to the land owned by the proprietors in the village, which later on, comes within the municipal limits. The Larger Bench of this Court held that since area having fallen within the municipal limits, the land reserved for common purposes do not fall within the definition of the words "Agrarian Reforms", therefore, Municipal Committee/Councils/Corporation shall be liable to compensate the owners before they are permitted to claim the ownership over the property.

In the considered view of this Court, the aforesaid judgment has no applicability in the facts of the present case, particularly in view of the fact when it is not being disputed that previously there was no Gram Panchayat, the area whereof has now fallen within the municipal limits, therefore, the reliance placed by the learned counsel on the judgment of the Larger Bench in the case of Suraj Bhan and others (Supra), is misplaced.

The consolidation scheme also proves that fact wherein the land comprised in Khasra No.183 has been reserved for gora deh. It has also

come on record that the land was actually put to use for the purpose it was reserved which would be clear from the jamabandies since the years 1954-55 till 1976-77. The Municipal Corporation, by filing an affidavit, has submitted that only a small piece of land i.e. 19 marlas is subject matter of dispute in the present litigation whereas another piece of land measuring 3 kanals is subject matter of RSA No.4456 of 2002. The land measuring 2 kanals 3 marlas has been donated by the Municipal Corporation for construction of Dharamshala (place normally used for residence of religious tourists) and land measuring 17 kanals is still in possession of the Municipal Corporation, Faridabad. It is not disputed by the learned counsel for the appellants that the ownership of the vendor of the plaintiffs has not been proved on record.

Next argument of the learned counsel for the plaintiffs-appellants that Municipal Corporation has no right, title or interest in the property, is also without any basis because the land in consolidation scheme is proved to have been reserved for common purpose and it is proved on file that thereafter it was continuously used by the Municipal Committee or Corporation for the purpose it was reserved. No doubt, in the jamabandi for the year 1981-82, Harish Chand is recorded as a co-sharer in the cultivation column, however, his name nowhere figures in the ownership column. The list of proprietors and their respective shares have not been produced. In absence of these documents, no finding can be returned that Harish Chand or his predecessors were proprietors of the revenue estate and he was co-owner in the joint khewat.

Next argument of the learned counsel for the appellant is with

reference to Section 2(bb) of the Act of 1948, wherein he has submitted that the land covered by Clause (iv) of Section 2(bb) would only vest with the State.

Section 2(bb) of the Act of 1948, is extracted as under:-

“2(bb) "common purpose" means any purpose in relation to any common need, convenience or benefit of the village] and includes the following purposes:-

(i) extension of the village abadi

(ii) providing income for the Panchayat of the village concerned for the benefit of the village community;

(iii) village roads and paths; village drains, village wells, ponds or tanks, village watercourses or water-channels; village bus stands and waiting places; manure pits; hada rori; public latrines; cremation and burial grounds; Panchayat Ghar; Janj Ghar; grazing grounds; tanning places; mela grounds; public places of religious or charitable nature; and

(iv) schools and playgrounds, dispensaries, hospitals and institutions of like nature, water-works or tube-wells, whether such schools, playgrounds, dispensaries, hospitals, institutions, water-works or tube-wells may be managed and controlled by the State Government or not.]”

On careful reading of the aforesaid provisions, it is apparent that the definition of common purpose is wide and open. Its inclusive definition which clearly suggests that common purposes as defined in Section 2(bb) of the Act of 1948 are not exhaustive and it can be for any other common purposes. Here in the present case, we are not dealing with a situation where vesting of the property in the State Government is being decided. The dispute in the present case is whether a local body i.e.

Municipal Committee/Corporation is entitled to manage the property or not which has been reserved during consolidation of holdings for common purpose.

Last submission of the learned counsel for the appellants with reference to the judgment passed in the case of Bihari Lal, is also without any substance because in the aforesaid case, the land in question was comprised in khasra No.548 which is not the land in question in the present case. In the present case, the land is comprised in Khasra No.183/2. The judgment in case of Bihari refers to Khasra No.548. Hence, the aforesaid judgment has no relevance for deciding the dispute with respect to different parcel of land. Still further, the Regular Second Appeal in the case of Bihari Lal filed by the Municipal Committee was dismissed in limine which order was affirmed by Hon'ble the Supreme Court by dismissal of the Special Leave Petition in limine.

Since plaintiffs-appellants have failed to establish any right, title or interest in the property, they cannot be held entitled to any relief. The plaintiffs have to stand on their own legs. They are not entitled to relief merely on account of weakness in the evidence of the defendants. Once it is proved that major chunk of the land out of khasra number in dispute is being used for common purposes of the residents of the area, encroachment by the plaintiffs cannot be protected. Encroacher of a land reserved for public purpose deserves no sympathy. If such injunction decrees are granted in favour of the encroachers, the Courts would be flooded with the litigations and people after encroaching upon the land would seek injunction from the Court and thus, prolong their encroachment.

In view of the aforesaid discussions, the questions of law framed in the previous part, are answered in favour of the Municipal Corporation. Resultantly, RSA Nos.1842 and 1843 of 2016 are dismissed whereas RSA No.4298 of 2017 shall stand allowed and the decree of injunction passed in favour of the plaintiffs by the Courts below is also set aside.

As a word of caution, this Court has not decided or granted any declaration that Municipal Corporation, Faridabad is the owner of the land or the land vests in it. Whenever, such dispute is raised by the owners/proprietors, after established their rights in the land, the Court would decide the same. Only entitlement of the plaintiffs to the land in dispute has been decided.

In view of the above, all the pending applications for leading additional evidence in all the three appeals are also allowed.

The Municipal Corporation shall be entitled to take the possession of the property in accordance with the provisions of the Act of 1994.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.12.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**