

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

**Crl. Misc. No. M-9909 of 2014 (O&M)
Date of Decision: July 03, 2019**

Shiv Parkash @ Shiv Parkash Kapoor

.....PETITIONER

VERSUS

State of Haryana and another

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S.Narula, Advocate
for the petitioner.

Ms. Dimple Jain, A.A.G., Haryana
for respondent No. 1.

Mr. Vaibhav Narang, Advocate
for respondent No. 2.

SURINDER GUPTA, J.(Oral)

On 16.02.2008, Halqa Forest Guard, Forest Department
Haryana Circle, Gurgaon conducted a survey of the forest, Sohna Division,
Sohna and made report as follows:

*“While patrolling in Farm No. D-30, the trees of different
breeds of 26V and 54 under size belonging to Arawali
Plantation have been destroyed and one pucca water tank has
(been) constructed. Fencing has been erected all around by
using angle iron picket whereby an area of 820 sq. mtrs. has
been affected. On enquiry the name and address of the accused
was known. This work is about 2-3 years old.”*

A notice was issued to the petitioner calling him to appear
before the Forest Block Officer to clear his position and thereafter,
complaint (Annexure P-7) was filed against him before the Presiding

Officer, Special Environment Court, Faridabad. Vide order dated 18.07.2008, the learned Magistrate ordered the summoning of petitioner for commission of offence punishable under Section 19 of Punjab Land Preservation (for short PLP) Act

Learned counsel for the petitioner has argued that the petitioner was provisionally allotted a Orchard No. D-13 in the proposed Golden Heights Scheme near Sohna Gurgaon by respondent No. 2-M/s Ansal Housing Finance & Leasing Company Limited. As per clause of allotment letter, the possession of the Orchard was to be delivered to the petitioner before or after the execution and registration of the sale deed. On 11.06.2004, petitioner sold the said orchard to Vinod Kumar, who further sold the same to Ritu Mehta on 22.07.2004 and sale deed (Annexure P-4) was executed in his favour by M/s Ansal Housing and M/s C.Layal Construction Company.

From the above facts, it is apparent that petitioner had no concern with the orchard in question after 11.06.2004 and Forest Department without checking the record of respondent No. 2 filed challan against the petitioner with the allegations that about 2 or 3 years before the alleged inspection in February 2008, some trees were destroyed and water tank had been erected at the spot.

Learned State counsel representing respondent No. 1 has argued that in the record and on enquiry petitioner was disclosed as owner/allottee of the disputed site. Any change in the title was not reported or brought to the notice of the department.

From the documents on record, it is evident that Orchard No.

D-30 which is about 2 acres in area was initially allotted to the petitioner and later on vide sale deed dated 22.07.2004 (Annexure P-4) it was transferred in the name of Ritu Mehta and she was also handed over the possession of this orchard, meaning thereby that the petitioner had no concern with this orchard after 2004. As per inspection report carried out by Halqa Forest Guard in February, 2008, some trees of different varieties were found destroyed and a pucca water tank had been constructed at the spot in Farm No. D-30. He was of the opinion that the destruction/construction was carried out about 2-3 years ago i.e. somewhere around in the year 2005-06. On enquiry, he came to know of the name of petitioner. However, this fact is not disclosed from where he made enquiry regarding title of petitioner over the disputed site.

I have gone through the reply filed by respondent No. 1 which contains no denial of the fact that orchard in question was transferred in the name of Ritu Mehta. The only plea taken by respondent No. 1 is that transfer of the land was not disclosed to it. Once the petitioner has raised plea that he is having no title over the property over which violation of provisions of PLP Act has taken place, it was incumbent on respondent No. 1 to come up with the specific reply after making enquiries from the office of respondent No. 2 and Sub-Registrar.

The vague reply filed by respondent No. 1 tantamounts to the admission of plea raised by petitioner, which is otherwise supported by documents produced on record, which have not been rebutted. As the petitioner is not the owner of Orchard No. D-30 near Sohna, Gurgaon (Now Gurugram) in the area of proposed Golden Heights Scheme floated by

complaint and consequent summoning order are sheer misuse of the process of Court.

In these circumstances, I deem it appropriate to invoke the powers vested under Section 482 Cr.P.C. to quash the complaint and summoning order.

This petition has merits and same is allowed. The complaint along with summoning order passed by Special Environment Court, Faridabad dated 18.07.2008 against petitioner are quashed.

July 03, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No