

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 3843 of 2014(O&M)

Date of Decision: September 16 , 2019.

Municipal Corporation, Faridabad and another APPELLANT (s)

Versus

Bed Ram and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Balwinder Kaur Chaudhary, Advocate
for the appellants.

Mr. M.L.Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellants – Municipal Corporation, Faridabad and the Joint Commissioner, Municipal Corporation, Faridabad are aggrieved of judgment and decree dated 11.03.2014 passed by the learned Additional District Judge, Faridabad whereby judgment and decree dated 25.01.2013 passed by the learned Additional Civil Judge (Senior Division), Faridabad has been set aside and the suit filed by the respondents/plaintiffs has been decreed in their favour.

Brief facts necessary for adjudication of the case are that, the plaintiffs/respondents filed a suit for permanent injunction for restraining the appellants/defendants from taking any action against the plaintiffs/respondents on the basis of a notice under Section 408A of the Haryana Municipal Corporation Act, 1994 in respect to the suit property. Further restraint upon the defendants from interfering in their peaceful possession and demolition of the suit property as described in the plaint, was sought. It is pleaded that the plaintiffs/respondents and their ancestors were residents and proprietors of village Unchagaon, Tehsil Ballabgarh. They claim to be owners of the agricultural land as described in the plaint. Plaintiffs and their ancestors claimed to be owners-in-possession of the portion of the land of Shamlat Deh meant for manure pits (Gadda Khad) bearing part of Khasra No.46/17/2 within the revenue estate of village Unchagaon for the last 60 years. It is pleaded that the land which was previously used by their ancestors, is now used by the plaintiffs for placing manure (Khad), tethering cattles and placing bongas, botoras etc. for the last so many years. The plaintiffs also constructed a room for parking the tractor and storing articles used for agricultural purposes. It is further pleaded that the suit land never vested in the Gram Panchayat of village Unchagaon. The land is outside Abadi Deh and was used as Gitwar for manure pits even before the commencement of the Punjab Village Common Land Regulation Act, 1961. The Municipal Corporation has no concern, whatsoever, with the suit property and the entries in the revenue record reflecting Municipal Corporation, Faridabad to be the owner of the suit land, it is stated, are wrong, illegal, null and void qua the rights of the plaintiffs. Mutation No.5759 is claimed to be illegal, null and void

and did not create any right or interest in favour of the appellants/defendants. It is pleaded that the Patwari and other officials of the Municipal Corporation came to the suit property and threatened the plaintiffs to vacate the same within two days. Hence, suit was filed.

Appellants/defendants contested the suit. Various preliminary objections were taken and on merits, it was denied that the plaintiffs or their ancestors were owners-in-possession of the land bearing part of Khasra No.46/17/2 which was Shamlat Deh, meant for manure pits. It is denied that mutation No.4759 is wrong and illegal. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial court on the basis of pleadings of the parties: -

1. Whether the plaintiffs are entitled to a decree of permanent injunction, as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the present suit is time barred and liable to be dismissed on this ground alone? OPD
4. Whether the jurisdiction of the civil court is barred under Section 408(c) of the Haryana Municipal Corporation Act, 1994? OPD
5. Whether the present suit is barred u/s 11 of CPC as resjudicata? OPD
6. Whether the plaintiffs have no cause of action to file the present suit? OPD
7. Whether the plaintiffs are estopped from filing the present suit due to his own act, conduct and acquiescence? OPD
8. Relief.

Evidence was led by both the parties in support of their respective claims.

Learned trial court on considering the evidence on record placed reliance upon the decisions in suits titled as 'Sham v. Municipal Corporation,

Faridabad' and 'Rajbir Singh v. Municipal Corporation, Faridabad'. It is observed that the suits wherein revenue entries in favour of the Municipal Corporation were challenged, had been dismissed, therefore, the suit filed by the plaintiffs was dismissed.

Appeal preferred by the respondents/plaintiffs was however allowed by the learned Additional District Judge, Faridabad while placing reliance upon decision dated 26.11.2012 in CWP No.14595 of 2011 (Municipal Corporation, Faridabad v. State of Haryana and others) as well as decision dated 02.07.2013 in LPA No.1139 of 2013 (Municipal Corporation, Faridabad v. State of Haryana and others). It is observed that the said decisions pertained to the land in Khasra No.46/17/2. Therefore, it cannot be held that the land in question vested in the Municipal Corporation. Consequently, judgment and decree of the trial court was set aside and suit filed by the plaintiffs has been decreed.

Aggrieved therefrom, defendants/appellants have filed this appeal.

I have heard learned counsel for the appellants and have gone through the file with their assistance.

Learned counsel for the appellants is unable to deny that Municipal Corporation, Faridabad had preferred CWP No.14595 of 2011 claiming to be the owners of the land in Khasra No.46/17/2 as per the Jamabandi for the year 2000-2001. Some of the respondents therein were claimed to have taken illegal possession of part of the land. An application under the Haryana Public Premises (Eviction and Rent Recovery) Act, 1972 was filed by the Municipal Corporation, Faridabad for eviction of the said respondents, which was allowed by the Collector on 18.12.2007 but the appeal against this decision was allowed by the

Appellate Authority on 08.01.2010. CWP No.14595 of 2011 was filed by the Municipal Corporation, Faridabad challenging the same which was however decided against the petitioner – Municipal Corporation. It is observed in order dated 26.11.2012 in CWP No.14595 of 2011 as under:-

“Respondent No. 5 has also filed the reply pleading that land measuring 60 sq. yards under khewat No. 935 min 1017 khatoni No. 1103 mustaili No. 46 Kila No. 17/2 is not a part of Shamlat Deh in the revenue record. The said land was reserved for manure pit for the villagers and it is covered under exception clause 2g(5)(vi) of the Punjab Village Common Lands (Regulation) Act 1961. It is, accordingly, stated that the petitioner can not be the owner of the said land and the application under the Haryana Public Premises Act was not maintainable. Reference is made to the case of **Jai Singh vs. State of Haryana, 2003(2) PLR 658** in support of submission that such land can not vest in Gram Panchayat and even mutations earlier entered in the name of Gram Panchayat have been cancelled. The observations made in this case are as under:-

“66. Insofar as all other cases are concerned, same shall stand disposed of in light of law laid down by us. Resultantly, if the mutations might have come into being on the dint of Act No. 9 of 1992 challenged herein in favour of the State or Gram Panchayat, the said mutations shall stand cancelled or set aside, leaving open for the Gram Panchayat to file an application for eviction under Section 7 or title suit under Section 13-A, as the case may be, if the lands are such which have since been earmarked for common purposes under the scheme and the proprietors are in unauthorized occupation and, the proprietors to file a title suit in case the lands are such which form part of Bachat land, having not been earmarked for any common purpose in the scheme of consolidation and yet the Gram Panchayat is asserting its title or is in possession thereof.”

I have considered the rival submissions made before me.

Counsel for the petitioner could not justify its claim over the land. Concededly the land in question was reserved for manure pit for the villagers and thus would not be a part of Shamlat Deh as noted above. The petitioner thus could not have title over land to seek eviction of the respondents.”

LPA No.1139 of 2013 challenging order dated 26.11.2012 in CWP No.14595 of 2011, was dismissed on 02.07.2013 by the Division Bench of this Court and it is observed as under:-

“It was specifically stated that in view of the provisions of Section 2(g)(5)(vi) of the Punjab Village Common Lands (Regulation) Act, 1961, such land will not become property of the Municipal Corporation. The appellant impugned the above said order in CWP No.14595 of 2011, which was dismissed by the learned Single Judge vide order under challenge dated 26.11.2012. It was noticed that in view of ratio of a Full Bench judgment of this Court in *Jai Singh v. State of Haryana*, 2003(2) PLR 658, land in dispute will not vest in the Gram Panchayat and consequently in the appellant Municipal Corporation.

Counsel for the appellant has failed to show anything to the contrary at the time of arguments. It is an admitted fact that at the time of consolidation proceedings, after imposing pro-rata cut, the land was kept reserved for the manure pits. Such like land will not vest in the Municipal Corporation as has been held by a Full Bench of this Court in *Jai Singh's case* (supra).

No case is made out for interference.”

Learned counsel for the appellants is unable to deny that the suit property in question also falls in the same Killa No.17/2, which was the subject-matter of the abovesaid writ petition and LPA, decided by the Division Bench of

this Court. In this view of the matter, learned Additional District Judge, Faridabad has rightly accepted the appeal filed by the plaintiffs and decreed their suit.

Learned counsel for the appellants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgment and decree dated 11.03.2014 passed by the learned Additional District Judge, Faridabad whereby appeal filed by the plaintiffs/respondents against judgment and decree dated 25.01.2013 passed by the learned Additional Civil Judge(Senior Division), Faridabad was allowed and their suit decreed, which warrants any interference by this Court.

No other argument has been raised.

Present appeal is, consequently, dismissed with no order as to cost.

September 16 , 2019.
'om'

(**LISA GILL**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No