

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

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Civil Writ Petition No.33846 of 2019
Date of Decision: November 21st, 2019

Surjit Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Deepak Goyal, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 15.04.2019 (Annexure P-4) passed by the Sub Divisional Magistrate, Sangrur, vide which petition under Sections 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, preferred by PWD Department through Executive Engineer, Provincial Division B&R Sangrur-respondent No.2, has been allowed and eviction of the petitioners from the house in their possession ordered and order dated 15.10.2019 (Annexure P-5) passed by the District Collector-cum-Additional Deputy Commissioner, Sangrur-respondent No.3 dismissing the appeal of the petitioners upholding the order passed by the Sub Divisional Magistrate, Sangrur.

2. It is the contention of learned counsel for the petitioners that respondents No.3 and 4 have failed to appreciate that with the efflux of time, petitioners being in possession of the property in dispute, have become owners of the same and, therefore, the order of eviction passed against them cannot sustain, which has been impugned in the present writ petition.

He contends that the principle of *res judicata* with regard to the ownership of the property would not be applicable to the present case, on which

ground the authorities have given a finding with regard to the PWD Department, Punjab, being the owner of the property in question. He, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

3. I have heard counsel for the petitioners and with his assistance, have gone through the records of the case.

4. It is an admitted position that the house, in which the petitioners are residing, was allotted to one Shri Bhag Singh, who was the husband of petitioner No.1 and father of petitioners No.2 and 3 while he was working in Punjab Police. After his retirement, he continued in possession of the said land and he filed a Civil Suit No.930 on 28.05.1991 titled as Bhag Singh Versus State of Punjab and others for permanent injunction restraining the defendants from dispossessing the plaintiff from the suit property situated at Sibian Street, Patiala Gate at Sangrur. It was asserted that the property/house was in his possession as owner since October 1954 and he has raised a *pucca* structure in November 1955. No objections were raised by the defendants regarding construction made on the property in dispute. Notice dated 15.05.1991 was illegally served upon him to hand over the possession of the suit property. He stated that the possession of Bhag Singh, the plaintiff therein, was continuous, hostile and adverse since 1955 and now that the defendants were threatening to dispossess him in the light of the notice, sought a decree of permanent injunction against the respondents.

5. On the basis of the pleadings, following issues were framed:-

“1. Whether the plaintiff is the owner in possession of the suit property? OPP

2. Whether the plaintiff is settled possession as alleged in

plaint? If so its effect? OPP

3. *Whether the defendants barred to take action against the plaintiff in regard to suit property by role of stopped as alleged in para No.2 of the plaint? OPP*
4. *Whether the defendants State let out the suit premises to the plaintiff as a tenant if so its effect? OPD*
5. *Whether the notice dated 15.5.91 is illegal, unauthorized, without jurisdiction, rights and title of plaintiff? OPD*
6. *Whether the plaintiff has no cause of action against the defendants? OPD*
7. *Whether the suit of plaintiff is not competent as alleged in para No.3 of legal objection of the written statement? OPD*
8. *Relief.”*

6. Issues No.1 and 2 were taken up together by the Court and the Court came to the conclusion that Bhag Singh had failed to prove his ownership over the suit property, although he has been able to prove the possession on the suit property. The issue of ownership was decided against Bhag Singh that he was not owner of the suit property. Issue No.3 was decided by holding that Bhag Singh was not the owner of the suit property and a tenant cannot deny the title of his landlord under Section 116 of the Indian Evidence Act, 1872. In issue No.4, it was held that the suit property belongs to the PWD Department and the same was let out to Bhag Singh as a tenant by the PWD Department when he was in service. On the basis of these findings, keeping in view the fact that Bhag Singh was in possession of the suit property, the suit was decreed to the extent that Bhag Singh would not be dispossessed from the suit property except in due process of law.

7. It is in pursuance to this judgment and decree dated 16.10.1995

eviction of Bhag Singh, the predecessor-in-interest of the petitioners, was sought by filing an application under Sections 5 and 7 of the Punjab Public Premises Act, 1973. In pursuance to the above referred to findings recorded by the Civil Court, the plea of the petitioners that they are owners in possession of the property, was not accepted as during the pendency of the said application, Bhag Singh had died and petitioners were impleaded as legal heirs. Collector vide order dated 15.05.2019 on the basis of the above, after framing the issues, came to the conclusion that the property was the ownership of the PWD Department, Punjab, and the petitioners were the tenants of the said property and thus, cannot deny the title of the property in the light of the findings of the Civil Court. Further the findings of the Civil Court that the predecessor-in-interest of the petitioners had occupied the property in question as a tenant was also established leading to a conclusion that the predecessor-in-interest of the petitioners and thereafter the petitioners are in unauthorised and illegal possession of the house/land, which is a subject matter of the writ petition and ordered their eviction. This order when carried in appeal before the District Collector-cum-Additional Deputy Commissioner, Sangrur, the appeal was dismissed vide order dated 15.10.2019 (Annexure P-5) by upholding the order dated 15.04.2019 (Annexure P-4) passed by the Sub Divisional Magistrate, Sangrur.

8. In the light of the findings which have been recorded by the Civil Court in its judgment dated 16.10.1995 (Annexure P-1), the findings as recorded by the authorities, which have passed the impugned orders, cannot be faulted with.

9. Petitioners, no doubt, are in unauthorised occupation of the

public property and, therefore, have been rightly ordered to be evicted. The orders as have been passed by the authorities, which have been impugned, being in accordance with law, do not call for any interference by this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India, especially when a finding has been returned by the Civil Court that the predecessor-in-interest of the petitioners namely Shri Bhag Singh, had been allotted the house/land being an employee and the said predecessor-in-interest of the petitioners has not only retired but has thereafter expired as well and, therefore, the petitioners have no right to occupy the said house/property.

10. The writ petition being devoid of merit, therefore, stands dismissed.

November 21st, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No