

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-848-1999

Date of Decision:-12.02.2020.

Jaswant Singh and another

.....Petitioners

Versus

Municipal Council, Yamuna Nagar, and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Ms. Balpreet Sidhu and Ms. Palak Jain,
Advocates, for the petitioners.

Mr. Rajesh K. Sheoran, Advocate, for the respondents.

SANJAY KUMAR, J. (Oral)

The petitioners assail Resolution No.23 dated 22.05.1997 (Annexure P-9) of the Secretary of the Municipal Council of Yamuna Nagar, whereby their plea for sanction of a building plan over a particular piece of land was rejected. They also assail the confirmation of the said rejection in appeal by the Collector, Yamuna Nagar, *vide* order dated 03.03.1998 (Annexure P-10).

The petitioners' case is that the land in question, being Plot No.603 situated at Santpura, Model Town, Yamuna Nagar, originally belonged to one Siya Nand Lal. He sold it under registered sale deed dated 17.09.1980 to one Rajesh Pal Nanda, who, in turn, sold it to one Veena Rani, *vide* registered sale deed dated 07.08.1987. The plot was then sold by Veena Rani to one Vinod Kumar, under registered sale deed dated 03.03.1990 (Annexure P-2). Vinod Kumar is the vendor of the petitioners. They purchased the plot from him under registered sale deed dated 03.02.1995 (Annexure P-1).

It is significant to note that Siya Nand Lal, the original owner, filed Civil Suit No.443 of 30.11.1972 before the learned Sub Judge 1st Class, Jagadhari, Haryana, seeking declaration of his ownership and possession over the subject plot and another plot. The Municipality, Yamuna Nagar, the predecessor-in-interest of the Municipal Council, Yamuna Nagar, was the 23rd defendant in the said suit. The Municipality's stand before the trial Court was that the subject plot was a park in its town planning scheme and that it had become the owner thereof by adverse possession. However, by judgment and decree dated 07.03.1975 (Annexure P-4), the trial Court rejected the Municipality's claim and declared the petitioner to be the owner and possessor of both the suit plots. The aforestated judgment and decree was confirmed in appeal by the learned Additional District Judge, Ambala, *vide* judgment and decree dated 24.11.1979 passed in Civil Appeal Nos.496 and 497/13 of 1978. Be it noted that Civil Appeal No.497/13 of 1978 was filed by the Municipality, Yamuna Nagar.

It may also be noted that Veena Rani, the subsequent purchaser, filed Civil Suit No.90 of 19.02.1988 before the learned Sub Judge 1st Class, Jagadhari, Haryana, for a permanent injunction restraining the defendants therein from interfering with her possession over the subject plot. The Municipal Committee, Yamuna Nagar, and its Chief Executive Officer were the defendants in the said suit. This suit was also decreed by the trial Court, *vide* judgment and decree dated 09.06.1990 (Annexure P-5), rejecting the claim of the Municipal Committee, Yamuna Nagar, that the plot in question was being maintained as a park and that the Municipal Committee had become the owner, by virtue of being in possession thereof for the last many years.

Interestingly, the immediate predecessor-in-title of the petitioners seems to have approached the municipal authorities seeking sanction of a building plan in relation to the subject plot in the year 1990 and by Memo dated 25.10.1990 (Annexure P-8), the Municipal Committee, Yamuna Nagar, granted approval for construction being made on the subject plot as per the provisions of the Haryana Municipal Building Bye-Laws, 1977.

It is in this background that the impugned orders, Annexure P-9 and P-10, would have to be examined. Significantly, Annexure P-9 does not even reflect any reasons for rejection of the petitioners' application for building sanction. However, in the appellate order, it is brought out that the Municipal Council, Yamuna Nagar, once again harped upon the very same claims that it had put-forth time and again before the trial Court without success but the appellate authority accepted the same.

It is not open to a State instrumentality, such as the Municipal Council, Yamuna Nagar, to abuse the powers vesting in it and usurp private properties even for a public purpose. The municipal authorities, having already canvassed their claim that they had been in possession of the subject plot for several years and had perfected their title through adverse possession, met with failure, not once, but three times over. Having allowed the judgments rendered against them in this regard to attain finality, it was not open to the municipal authorities to prevent the lawful owners of this private plot of land, viz., the petitioners, from enjoying their full ownership rights. Be it noted that the petitioners have effectively been deprived of the beneficial enjoyment of their own property since the year 1999.

The writ petition is accordingly allowed setting aside both the impugned orders, viz., Annexures P-9 and P-10. There shall be a direction to

the Municipal Corporation, Yamuna Nagar, the successor-in-interest of the Municipal Council, Yamuna Nagar, to forthwith consider the application of the petitioners for sanction of the building permission on the merits of such plan, without reference to its stale claim that the plot in question is a park or that it is owned by it.

In the light of the aforesaid facts, which clearly bring out flagrant violation of the property rights of the petitioners under Article 300-A of the Constitution and manifest sheer abuse of power by the municipal authorities, the Municipal Corporation, Yamuna Nagar, shall pay costs of Rs.50,000/- to the petitioners. These costs shall be paid within two weeks from the date of receipt of a certified copy of this order. The exercise with regard to grant of sanction shall be completed expeditiously and in any event, not later than two weeks from the date of completion of all formalities.

(SANJAY KUMAR)
JUDGE

February 12, 2020.

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Whether speaking/reasoned:-

Yes / No

Whether reportable:-

Yes / No.