

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17623-2018 (O&M)
Date of Decision:06.03.2020

M/s Grand Tower Private Limited and others

. Petitioners

Vs.

State of Haryana and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA

Present: - Mr.Aashish Chopra, Advocate,
Mr.Kanwal Goyal, Advocate, and
Ms.Gurpreet Randhawa, Advocate,
for the petitioners.

Mr.Samarth Sagar, Addl. Advocate General, Haryana.

Mr.Lokesh Sinhal, Advocate,
for respondent No.3-MC.

Mr.Mandeep Singh, Advocate, for
Mr.Ankur Mittal, Advocate,
for respondent No.6-HSIIDC.

Mr.Chetan Mittal, Sr. Advocate, with
Mr.Paritosh Vaid, Advocate, and
Mr.Rajiv Anand, Advocate,
Mr.Harsh Bungar, Advocate,
for respondent No.7-DLF.

RAKESH KUMAR JAIN, J.

This petition is preferred by four petitioners, who have made the following two prayers in this petition: -

- (i) *Issue a writ in the nature of mandamus for directing the respondents to demarcate the property of the petitioners, admeasuring 6 Bighas and 18 biswas located at Khasra No.2081/1/3/1 and/or (as earlier stated by the*

Government Department) 1985/3 in village Wazirabad Tehsil and District Gurgaon abutting the Sector Road of Sector 43-54 and restore the possession thereof to the petitioners.

- (ii) *Issue a writ in the nature of certiorari for setting aside the order dated 27.09.2007 (Annexure P-21) passed by the Financial Commissioner and proceedings of the Committee dated 01.06.2012 (Annexure P-19) and pleased to hold and declare that the petitioners are entitled to the said land and correction of the Khasra Nos. as prayed.*

In brief, the case of the petitioners is that the land in dispute bearing Khasra Nos.1985 and 2081 is situated in the revenue estate of village Wazirabad, Tehsil and District Gurgaon. The land falling in khasra No.1985 measuring 28 bigha 8 biswas and Khasra No.2081 measuring 36 bigha and 6 biswas is vested in the Gram Panchayat. It is alleged that there was an exchange of land by Muni Lal and others with the land of the Gram Panchayat. In the said exchange Muni Lal and others were given the land in Khasra Nos.2081 and 1947 and the mutations were sanctioned. Muni Lal and others sold the land measuring 6-18-0 falling in khasra No.2081/1/3/1 to the petitioners. The petitioners have raised an issue that Khasra No. 2081 be read as Khasra No.1985. The petitioners came to this Court by way of CWP No.5360 of 2005 which was disposed of vide order dated 01.05.2006 with a direction to the Financial Commissioner, Development and Panchayats Department to pass an order after hearing the parties. Thereafter, a detailed order was passed by the Financial Commissioner on 27.09.2007, after hearing the petitioners and taking the report from the Deputy Commissioner dated 07.07.2006, holding that "*I have carefully gone through the contents of the representations*

report submitted by Deputy Commissioner, Gurgaon and documents available on the record. After careful examination of the record. I have come to a conclusion that exchange of land of Gram Panchayat Wazirabad out of Khasra No.2081 min and 1947 min equal in area with that of the land of Sh. Muni Lal etc bearing Khasra No.745, 747, 748, 758 and 759 was allowed under Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 vide order dated 16.09.1996 issued vide endst. No. S-2-96/65293-96 dated 20.11.1996. Since the exchange of Panchayat land was allowed on the basis of Resolution No.1 dated 21.11.1995 passed by Gram Panchayat for exchange of its land bearing Khasra No.2081 min and 1947 min equal in area with that of land of private persons, valuation of both lands was determined by Tehsildar concerned to be equivalent lands bearing Khasra No.1985 cannot be given in exchange. In view of the above stated facts the claim of the petitioner is not maintainable and the representation is disposed of accordingly.”

Although a categoric order was passed by the Financial Commissioner on the direction issued by this Court on 01.05.2006, but that order was not challenged by the petitioners in any Court of law. They had rather submitted a representation in October, 2011 in respect of the said order. On their representation, a Committee was constituted of six officials namely, Deputy Commissioner, Gurgaon; District Revenue Officer, Gurgaon; Land Acquisition Officer, Town Planner, Gurgaon; District Development & Panchayat Officer, Gurgaon; District Town Planner (P), Gurgaon & STP, HSIDC, Gurgaon. The committee held a meeting on 01.06.2012 under the Chairmanship of the Director, Development of Panchayats, Haryana and decided that whatever land of Khasra No. 2081/1/3/1/2 was purchased by the petitioners from Muni Lal and others is not located on the road and thus, the said land cannot be given in Khasra No. 1985/3.

The said order dated 27.09.2007, having not been challenged by the petitioners, attained finality.

However, the petitioners have filed present petition on 27.11.2018 in order to challenge the validity of the order dated 27.09.2007 and the minutes of the meeting dated 01.06.2012, after the gap of 11 years and 6 years respectively. During the pendency of the writ petition, an order was passed on 22.05.2019, which is reproduced as under:-

“After hearing Counsel for the parties at length, it transpires that the dispute primarily relates to identification and location of 06 Bighas 18 Biswas-0 Biswansi a separate parcel of land comprised in Khasra No.2081/1/31 situated in village Wazirabad, District Gurugram at the time of bifurcation/partition in the year 1997 and 11.05.1999 respectively, coupled with the demarcation conducted in the year 2001 qua the same land, which subsequently was/is shown/claimed to be part of Khasra No.1985.

The Deputy Commissioner, Gurugram is directed to file an affidavit and explain the following:-

He must explain the aforesaid factual position, in specific reference to the land of the petitioner-company based on an area and specific Khasra numbers allotted to Muni Lal and others (vendors of petitioner-company) after exchange, as also its location by meets and bounds;

The affidavit should also explain as to what was the total area of Khasra No.2081

and 1985 along with details of its various sub-divisions from time to time in reference to specific area owned, exchanged and possessed by the petitioner-company/its vendors in the following manner:-

- (a) The land allotted to Muni Lal and Others after they got the same partitioned vide mutation no.6990 dated 11.05.1999.*
- (b) The land bought by the petitioner-company in pursuance to the sale deeds executed in its favour by Muni Lal etc.*
- (c) The factual position with regard to demarcations conducted, if any, of the aforesaid Khasra Numbers thereafter*

Finally, the status of acquisition vis-a-vis the land in question, especially when it is not clear as to whether the land of the petitioner-company/private individuals were acquired by HSIIDC or not;

Adjourned to 11.07.2019 to enable the Deputy Commissioner, Gurugram to file the said affidavit.”

Apropos, the Deputy Commissioner, Gurugram has filed his affidavit dated 07.08.2019.

Learned counsel for the respondents has raised the preliminary objections that the writ petition in the present form is not maintainable in order to grant both the prayers made by the petitioners. In respect of the 1st prayer, it is submitted that the mandamus cannot be issued for demarcation of the land as the petitioners have themselves averred in the petition that they are in possession of

the specific khasra numbers. In this regard, the averment made in the petition is reproduced as under: -

“That after taking possession of the entire land, the Petitioners' Companies had again fenced their property and had even constructed a room for the purpose of installing a tube well. In fact, even the staff of the Petitioner Companies used to live on the site to protect the property. Thus, the Petitioners' companies were in continuous possession of the land in Khasra No.2081/1/31 which was abutting the Sector Road till their land was taken in an illegal, arbitrary, unlawful and unauthorized manner, thus, depriving the petitioners of their property and their valuable rights in law. Since then, the petitioners have not been able to yield any benefits of the land belonging to them in any manner whatsoever.”

In respect of the 2nd prayer for the issuance of a writ of certiorari, it is submitted by the counsel for the respondents that the writ petition has been filed after a huge delay without any explanation, therefore, it suffers from delay and latches.

Counsel for the petitioners however, has submitted his prayer in regard to the identification of khasra numbers which has been purchased by the petitioners from Muni Lal and it is also submitted that in the writ jurisdiction, the

Court can ignore the delay, if any, in order to provide substantial justice to the parties to the *lis*.

On the other hand, counsel for the respondents has referred to the affidavit filed by Amit Khatri, IAS, Deputy Commissioner, Gurugram, pursuant to the order passed by this Court on 22.05.2019, based upon the report of the Tehsildar, Wazirabad, District Gurgram. It is submitted that as per the report, the land purchased by the petitioners out of Khasra Nos.2081/1/3/1/1 (0B-18B-0B) and 2081/1/3/1/2 (6B-0B-0B) is away from the road where the petitioners claim to have been situated, as per revenue record like *Massavi* and *Aks Lattha*. It is also submitted that the delay in approaching this Court, on the part of the petitioners, is not marginal rather a huge delay has been caused because the petitioners have challenged the orders dated 27.09.2007 after a gap of 11 years and 01.06.2012 after a gap of 6 years.

We have heard counsel for the parties and perused the record with their able assistance.

Insofar as the 1st prayer of the petitioners is concerned, it cannot be granted for the obvious reasons that the petitioners themselves have averred in the writ petition about their categoric possession over the land which was purchased by them, therefore, it does not require demarcation.

Insofar as the 2nd prayer for the issuance of a writ of certiorari is concerned, the writ petition has been filed in the year 2018 in order to challenge the order dated 27.9.2007 and the minutes of the meeting dated 01.06.2012 after a huge gap of 11 years and 6 years, respectively, which in any way cannot be condoned as even a civil suit for declaration of the rights of the parties cannot be filed after a period of 3 years after accrual of the cause of action.

Thus, in view of the aforesaid circumstances, we are of the considered opinion that there is no merit in this petition and hence, the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

06.03.2020
Vivek

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