

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

CR-2671-2021

Date of decision: 29.11.2021

Dalbir Singh and another

.....Petitioners

versus

M/s Krisam Properties Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashish Chopra, Senior Advocate with
Ms. Sugandha Kundu, Advocate
for the appellants.

Mr. V.K. Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate
for the caveator/respondent.

FATEH DEEP SINGH, J.

This civil revision petition under Article 227 of the Constitution of India seeks to set aside order dated 10.09.2021 (Annexure P-18) of the Court of the learned Additional District Judge, Gurugram, whereby, the Court below in the appeal over an application under Order 39 Rules 1 and 2 CPC of M/s Krisam Properties Pvt. Ltd., presently respondent, has allowed the appeal with no order as to costs.

Heard learned counsel for the parties and perused the records.

In light of what has been argued and is there in the records of the case of Dalbir Singh and his brother, Charanjit Singh @ Charanpal present petitioners initially filed before the Court of the Civil Judge (Senior Division), Gurugram, a suit for declaration that they were owners in possession of land measuring 3 Bigha 13 Biswa detailed and described therein by way of partition vide mutation No.810 and earlier stood acquired. It is claimed that the land, in question, was originally ancestral one and in possession of the family of the petitioners since forefathers more than 50 years ago. It is alleged that Land Acquisition Collector acquired part of this land measuring 02 Bigha 04 Biswa and 12 Biswansi out of Khasra No.446/1/1 for which Award No.18 dated 06.09.2000 was passed and mutation No.1588 was duly made. It is claimed that out of this Khasra, 08 Biswa and 08 Biswansi was acquired for the purpose of laying of road in the year 1997 and thus, that after acquisition, total land measuring 02 Bigha 04 Biswa and 12 Biswansi and 12 Biswa 08 Biswansi was made out of total land measuring 03 Bigha and 13 Biswa. The petitioners claim that they have been left as owner of this land measuring 01 Bigha and that even the land subject matter of Award No.18 dated 06.09.2000 is still in their

possession and occupation and thereby, claimed that they are owners of 01 Bigha and in possession of 03 Bigha 4 Biswa and 12 Biswansi out of this Khasra No.446/1/1 situated in a village Chakarpur, District and Tehsil Gurugram.

The dispute between the parties arose that out of the acquired land measuring 02 Bigha 04 Biswa and 12 Biswansi by Haryana Urban Development Authority (in short 'HUDA'), the same land was thereafter, given to respondent M/s Krisam Properties Pvt. Ltd., the then defendants by way of exchange which they claim is illegal and unlawful and did not bind the petitioners. The primary grouse of the petitioners is that since the HUDA had acquired the land for public purpose and, thus, could not exchange it without their consent and approval with the respondents. The petitioners claim that earlier they filed CWP No.12573 of 2003 which was dismissed by this Court vide judgment dated 21.05.2004 and against which order SLP bearing No.12297 of 2004 was filed in the Supreme Court. It is, thereafter, a memorandum of settlement dated 07.02.2011 (Annexure P-5) was executed between the petitioners and the respondent and one, Rakesh Kumar Garg. Subsequent thereto estrangement over the settlement (Annexure P-5) has brewed and it was settled that the plaintiff shall remove their possession from the acquired land measuring 02 Bighas 04 Biswa 12 Biswansi and

they had withdrawn the SLP on 06.09.2011, it was agreed by virtue of (P-5) that 27.5% share of the land by way of project shall be in favour of the plaintiff, the present petitioners. Perturbed over the averments that the respondents went back from the undertaking and to the dismay of the petitioners, it was found that by virtue of Mutation No.1588 dated 08.08.2008 managed by respondents which was at the back of the petitioners and in favour of the respondents and which led to the initiation of the suit in question. It is during the course of the pendency of the suit and application under Order 39 Rules 1 and 2 CPC, the Court of the learned Civil Judge (Junior Division), Gurugram, through findings dated 14.07.2021 ordered restraining the present respondent, then defendant-M/s Krisam Properties Pvt. Ltd. from dispossessing the plaintiff from the suit land except in due course of law and restraining them from demolishing any structure thereon. It is, thereafter, M/s Krisam Properties Pvt. Ltd. filed the miscellaneous appeal in which the impugned order dated 10.09.2021 was passed by the Court of Additional District Judge, Gurugram thereby, holding that the order of interim injunction passed by the learned Trial Court was not sustainable and setting aside the same and allowed the appeal which is subject matter of present revision petition.

Appreciating the submissions on behalf of both the

sides, the parties appeared to have been at loggerheads over a small tract of land part of which was initially acquired by HUDA and it is claimed, subsequently, against the policy had given the same to the present respondents. It is worthwhile to refer here that during the pendency of the suit, present respondents were proceeded *ex parte* on 10.09.2008 and when most of *ex parte* evidence has already been recorded and it is subsequent thereto, they had moved an application therein under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to arbitration which is still under adjudication. Though, the claim of the revisionists' counsel Mr. Ashish Chopra, Senior Advocate assisted by Ms. Sugandha Kundu, Advocate that the matter though needs to be referred to the Arbitrator in terms of agreement (P-5) but in light of the fact that the revisionists are *ex parte* before the Trial Court and, therefore, a debatable issue arises if the respondent-M/s Krisam Properties Pvt. Ltd. has *locus standi* to file such an application under Section 8 of the Arbitration and Conciliation Act, 1996 and this Court refrains from commenting on the same as the matter is subjudice before the Lower Court. Though, on behalf of the petitioners, reliance has been placed on the judgments titled as 'Tarlok Singh versus Financial Commisisoner, Corporation, Punjab' 2004 (3) RCR (Civil) 548; 'Sat Parkash

alias Satpal versus The Financial Commissioner, Revenue, Punjab' 2009 (4) RCR (Civil) 357 and 'Booz Allen and Hamilton Inc. versus SBI Home Finance Limited' 2011 (5) SCC 532 and to controvert these submissions, Mr. Vijay Kumar Jindal, Senior Advocate with Mr. Gopal Soni, Advocate had cited judgments titled as 'A.Ayyasamy versus A.Paramasivam' 2017(2) RCR (Civil) 518; 'Chloro Controls (I) P. Ltd. versus Severn Trent Water Purification Inc.' 2013(2) CivCC 539; 'Usha Drager Private Ltd. versus Draegerwerk Aktiengesellschaft' 2006(128) DLT 764; 'Niranjan Lal Todi versus Nandlal Todi' 2010(Sup1) ArbiLR 41 and 'Firm Ashok Traders versus Gurumukh Das Saluja' 2004(1) RCR (Civil) 725. It needs to be reiterated here that the Punjab Land Revenue Act stood amended and Haryana Land Revenue Act, 1887 had been incorporated by virtue of which under Section 45 provides that if any person considers himself aggrieved as to the right of which he is in possession by an entry in a record of rights or in only record may institute a suit for declaration of his right under chapter VI of the Specific Relief Act, 1997 and so is the well settled proposition of law that any entry of mutation or any *jamabandi*, only a Civil Court has jurisdiction in the matter for rectification/correction of the same and, therefore, jurisdiction of the Revenue authorities is specifically barred and so that of the arbitrator which nullifies

claim that has sought to be laid by Mr. Vijay Kumar Jindal, Senior Advocate and so is the law laid down in judgments titled as 'Tarlok Singh versus Financial Commissioner, Corporation, Punjab' 2004 (3) RCR (Civil) 548; 'Sat Parkash alias Satpal versus The Financial Commissioner, Revenue, Punjab' 2009 (4) RCR (Civil) 357 and 'Booz Allen and Hamilton Inc. versus SBI Home Finance Limited' 2011 (5) SCC 532 cited by Mr. Ashish Chopra, Senior Advocate for the petitioners. The ratio cited on behalf of the opposite side are factually at much variance and do not advance their case in any manner.

The Apex Court vide its order dated 06.09.2011 had ordered *status quo* for the parties in the SLP giving strict interpretation to Clause B of memorandum of settlement (Annexure P-5). This document apparently on the face of it shows that it has not been signed by the second petitioner-Charanjit Singh nor it finds mention if Dalbir Singh, the petitioner is his duly authorized person and, therefore, whether Charanjit Singh-petitioner is bound by P-5 is a matter to be decided at the trial of the suit. The revenue records, before this Court Ex. P-9, P-10 and P-11 shows that Dalbir Singh and Charanjit Singh to be owners and possession of this dispute property which casts its shadow on the claim of the respondents side and the claim of M/s Krisam Properties Pvt. Ltd. is subject to

adjudication by the Civil Court in the Civil suit. Moreover, it is an unpartitioned joint property of all the owners further makes the matter worse for the respondent side and therefore, the claim of Mr. Vijay Kumar Jindal, Senior Advocate for the respondent stands nullified. It is sad to note that in the impugned order, the learned First Appellate Court has spent much energy and time on deprecating the orders of the learned Civil Judge rather than dispensing justice between the parties. The Court below in the impugned order has wrongly and to the contrary, as per the settled proposition of law, has held that the arbitrator was competent to decide all disputes between the parties and thus, has wrongly observed that application under Section 9 of the Arbitration and Conciliation Act, 1996 was maintainable and, thereby trying to over run what was there for adjudication before the Trial Court. Keeping in view that apparently, as is discernible to this Court the land in question having never been partitioned by the Revenue Authorities and that even as was required by virtue of (P-5) no schedule 'A' has been prepared lands the dispute between the parties more in a mess. Even otherwise, since apparently the land is under acquisition any such exchange by HUDA prior to completion of formalities would be contrary to the spirit of the law of acquisition. In light of what has been detailed and discussed above, it would sub-serve the ends of justice if both

the parties are directed to maintain *status quo* over the disputed property till the disposal of the suit.

The present revision petition stands allowed and the impugned order/judgment dated 10.09.2021 is hereby set aside.

The petition stands disposed off accordingly.

29.11.2021
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No