

LPA No.302 of 2022 (O&M)

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

**LPA No.302 of 2022 (O&M)
Date of decision : 18.04.2022**

Mahabir

.....Appellant

VERSUS

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Shekhar Verma, Advocate, for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this intra Court appeal is to the judgment and order dated 01.04.2022 passed by the learned Single Judge, whereby the writ petition preferred by the appellant challenging the notice issued to him by the Secretary, Municipal Committee, Jhajjar, dated 27.04.2011 (Annexure P-7), order dated 27.05.2014 (Annexure P-13) passed by the Collector, Jhajjar, allowing the application for eviction under Section 3, 5, 5-A and 11 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (hereinafter referred to as '1972Act') preferred by the Municipal Committee, Jhajjar, ordering eviction of the appellant and order dated 29.06.2017 (Annexure P-17) passed by the Commissioner, Rohtak Division, Rohtak, dismissing his appeal, stands dismissed.

2. Learned counsel for the appellant has asserted that the orders

of eviction passed by the Collector, Jhajjar, as well as the Appellate Authority are based upon the demarcation report dated 22.03.2011, which was prepared *ex parte* and on the verbal order of the Tehsildar without associating the appellant. During the hearing of the petition for eviction of the appellant, he had placed on record another demarcation report dated 06.05.2011, which was obtained on the orders of the concerned Tehsildar. His contention is that although as per the initial demarcation report dated 22.03.2011, encroachment was found at the hands of the appellant, but in the subsequent report, no encroachment on his part has been found and he has been said to be in possession of the Waqf Board land, which is on lease with him. Assertion has, thus, been made for setting aside the orders passed by the Collector, Jhajjar as well as the Commissioner, Rohtak Division, Rohtak.

3. On a question being asked by the Writ Court as to why there has been delay of almost five years in approaching the Court in challenging the order passed by the Appellate Court, which is dated 29.06.2017 and the writ has been filed on 21.03.2022, explanation put forth by the learned counsel for the appellant was that an execution petition was preferred by the Municipal Committee, Jhajjar, on 31.08.2017, in which the appellant had filed his objections. During the pendency of the objections, which were based upon the demarcation report, the Executing Authority had proceeded to issue warrants of possession and it is, at this stage, the appellant had filed the writ petition.

He, on this basis, contends that the Writ Court had failed to appreciate

that the explanation, which has been given by the appellant, was fully justified and therefore, should have entertained the writ petition instead of dismissing the same on the ground of delay and laches. Counsel for the appellant asserts that the impugned order passed by the learned Single Judge cannot sustain as the Court had failed to appreciate that there were conflicting demarcation reports and without getting a fresh demarcation report, which has indeed been ordered by the Collector, the said authority instead of getting the same, has proceeded to order of eviction of the appellant, which is not sustainable.

4. His further contention is that the eviction order could not have been passed by the authority on the basis of an earlier demarcation report which is *ex parte* and therefore, the said order of eviction is not sustainable. To the question of delay, only explanation which has been put forth is that an order, which is illegal, can be challenged at any stage and delay alone cannot be a ground for rejecting the writ petition especially when the explanation has been given that the orders of taking possession have been passed without deciding the objections of the appellant to the execution petition.

5. Counsel for the appellant has placed reliance upon the judgments of the Hon'ble Supreme Court in **State of U.P. and others Vs. Manohar** (2005) 2 SCC 126 and **Tukaram Kana Joshi and others Vs. Maharashtra Industrial Development Corporation and others** (2013) 1 Supreme Court Cases 353 and asserted that delay and laches cannot be a sole ground for not entertaining the petition. Reliance has also been

placed upon the judgment of the Hon'ble Supreme Court in **Bajranga (Dead) by LRs Vs. State of Madhya Pradesh and others** (2021) SCC Online SC 27, to contend that the right to property may not be a fundamental right but still is a constitutional right under Article 300A of the Constitution of India and thus, the said right cannot be deprived of except for in accordance with the procedure established by law. On these basis, counsel has contended that the impugned order cannot sustain and deserves to be set aside and the writ petition of the appellant allowed.

6. We have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the pleadings, records of the case as well as the judgments on which reliance has been placed but do not find ourselves in agreement with what has been asserted by him.

7. The admitted position on facts is that there are two demarcation reports on the record. The authorities under the 1972 Act have taken into consideration the said aspect and proceeded to accept the demarcation report dated 22.03.2011, wherein the appellant had been found to be in illegal possession of the land of the Municipal Committee, Jhajjar. The order passed by the Collector, Jhajjar, ordering eviction of the appellant and the order of the Commissioner in appeal are dated 27.05.2014 and 29.06.2017 (Annexures P-13 and P-17 respectively). In case the appellant was aggrieved of the order of his eviction and dismissal of the appeal, no one had stopped him from challenging the said orders forthwith especially when the execution petition had been

preferred by the Municipal Committee, Jhajjar, on 31.08.2017. Appellant having failed to exercise its right of challenge to the above referred to orders of eviction and having rather found it appropriate to file objections to the execution petition, the findings as recorded by the Collector as well as the Commissioner having attained finality because of non-challenge thereof, the Executing Authority has rightly proceeded to issue the order of possession.

8. It would not be out of way to mention here that the appellant had approached this Court after a period of an inordinate delay of almost five years and that too, taking his chance to file objections to the execution petition rather than challenging the order of eviction. It was a conscious decision taken by the appellant to not challenge the substantive orders of eviction. Once the choice has been exercised, he cannot now turn around to say that the delay has been explained and the execution proceedings were pending.

9. Waiting till the end of the execution proceedings and then proceeding to challenge the order of eviction as well as the Appellate Authority, which is belated, cannot be justified to be an act on the part of the appellant to be just, reasonable and *bona fide*, rather it is an act on the part of the appellant, which is with an intention to delay the proceedings of eviction by one mode or the other. Had the appellant been sincere in challenging the order of eviction, he should have immediately approached this Court and challenged the said orders. We, therefore, do not find any ground for accepting this plea of the counsel for the

appellant and therefore, reject the same.

10. The contention of the learned counsel for the appellant with reference to the judgments passed by the Hon'ble Supreme Court in the cases of *Manohar* and *Tukaram Kana Joshi and others* (supra), both these cases pertain to the acquisition of land, where the authorities have not proceeded to conclude the acquisition proceedings and had taken possession of the land without completing the acquisition as laid down in law and no compensation had been paid to the land owners. It is, under those circumstances that the Courts have asserted that delay and laches do not extinguish the right to put forth their claim. Possession of the land cannot be taken by the authorities without following the procedure as has been laid down in law. Taking over of such possession would be, therefore, challengeable even after some delay. Present is not a case of acquisition rather it is case, where procedure has been followed by the Competent Authority as has been prescribed under the law. What has been asserted by the appellant is that the eviction order is not sustainable as has been passed by the authorities as there is no proper appreciation of the facts on record.

11. Similar is the position with regard to the judgment of the Hon'ble Supreme Court in *Bajranga (Dead) by Lrs's* case (supra), where again the Court had proceeded on the factual aspects to come to a conclusion that the claim as laid down under the Act had not been followed, rather breached by the respondents and the statutory provisions have not been complied with. It is, under those circumstances, that the

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Court had come to a conclusion that the Article 300A cannot be violated. The position again in this case is not of such a nature. Merely because certain observations have been made by the Hon'ble Supreme Court in a particular judgment, the same would not be *ipso facto* applied to the case unless it can be said to be applicable to the facts and circumstances of the case as also the issue involved therein. Reliance on the above said judgment by the counsel for the appellant is misplaced and therefore, no benefit can be claimed by the appellant on the principles as have been laid down therein.

12. Finding no merit in this appeal, the same stands dismissed.

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In the light of the dismissal of the main appeal, no order is required to be passed in this application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

18.04.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No