

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

108

CWP-16985-2022 (O&M)
Date of Decision: 25.08.2022

POONAM

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Deepanshu Mattya, Advocate for
Mr. Manjeet Saini, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. AG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

CM-12794-CWP-2022 &
CM-11573-CWP-2022

Allowed as prayed for.

CM-12795-CWP-2022 &
CM-12797-CWP-2022

The first application is for placing on record the affidavit of the petitioner dated 15.08.2022 and that of Bimla/seller dated 13.08.2022 as Annexures A-1 and A-2 respectively, and the second application is for exemption from filing certified copies/true typed copies thereof.

For the reasons mentioned in the applications, the same are allowed as prayed for, subject to all just exceptions.

The affidavits mentioned above (Annexures A-1 and A-2) are ordered to be taken on record. Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASE

The instant petition has been filed under Article 226 of the Constitution of the India for issuance of a writ in the nature of Mandamus directing the respondents to remove the tube-well installed by respondents no.1 to 3 in the property owned by the petitioner.

Learned counsel for the petitioner has argued that the petitioner purchased the land measuring 419 sq. yards comprised in khewat No.1513, khata no.1740 situated in Modern Colony, Safidon, District Jind vide sale deed No.4207 dated 07.01.2022. He contends that the mutation on the strength of the aforesaid deed was duly entered in favour of the petitioner. It is argued that after the purchase of the aforesaid property, she realized that a tube-well was already installed on the said land and that the Public Health Department had installed the same without having any title to it. It is contended that the Municipal Committee, Safidon is currently operating the above said tube-well. Reliance is placed on the information dated 28.02.2020 under RTI Act, 2005 which is claimed to have been provided to one Kamal son of Ram Mehar, as per which the tube-well in Model Colony was installed by the department in the month of December 2006. Further, in response to the information furnished under point No.3, the land is claimed to be under the ownership of the Municipal Committee and the same having been handed over to the department of Public Health for installation of the tube-well. Further, the information from the Municipal Committee, Safidon also does not admit the ownership of the petitioner.

Learned counsel appearing on behalf of the petitioner contends the petitioner had been approaching the respondent authorities for removal of the aforesaid tube-well but no action has been taken thereupon. He has further placed certain documents on record viz. the affidavit of the petitioner

as well as her vendor to contend that there was no agreement executed with the vendor of the petitioner as well as the Municipal Committee/ Public Health Department for installation of the tube-well.

I have heard learned counsel appearing on behalf of the petitioner and have gone through the document appended alongwith the instant petition.

It is not in dispute that the sale under question was executed in favour of the petitioner in the year 2022 and that the installation of the tube-well was done in the year 2006. Hence, the same existed at the spot in question even prior to the execution of the sale deed. There was no occasion or reason to infer that the petitioner was not aware of the existence of the tube-well on the land at the time of purchase. Further, what is glaring is that there is no document on record on the basis whereof, it can be ascertained that the land/area reflected in the sale deed executed in favour of the petitioner is infact the same land on which the tube-well has been installed. There can be no presumption of the said fact and the sale deed at best would reflect that the petitioner had purchased some land from her vendor. Identity of that land is a disputed question of fact, which is yet to be determined. High Court, while sitting in writ jurisdiction does not adjudicate upon the disputed questions of fact.

Reliance on the information furnished under the R.T.I. does not substantiate or support the case of the petitioner inasmuch as none of the authorities have admitted the claim or title of the petitioner over the land where the tube-well is installed. As a matter of fact, the department i.e. the Municipal Committee has specifically claimed land to be the ownership of the Municipal Committee. Since disputed questions with regard to the ownership and title over the land where the tube-well is installed are

involved, writ Court is not an appropriate remedy available with the petitioner to address such disputed questions of fact.

Hence the present petition is dismissed being devoid of any merit. The petitioner would, however, be at liberty to take recourse to his alternative remedies in accordance with law.

25.08.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No