

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

**CR No.2487 of 2020
Date of Decision: 23.04.2022**

Ajai Jain

...Petitioner

Versus

Ashok Kumar Jain and others

...Respondents

Coram: Hon'ble Mr. Justice Arun Monga

Present : Mr. Sunil Chadha, Sr. Advocate with
Mr. Rajesh Punj, Advocate,
Ms. Ritu Punj, Advocate &
Ms. Swati Verma, Advocate
for the petitioner.

Mr. Atul Goyal, Advocate for
Mr. Apoorv Jain, Advocate
for respondents No.1 and 2.

Mr. Arvind Seth, Advocate
for respondents No.3 and 4.

Mr. Aman Pal, Advocate
for respondent No.5.

Arun Monga, J. (Oral)

Petitioner is before this Court seeking invocation of revisional jurisdiction of this Court. Having been granted a favorable injunction order dated 31.10.2019 (Annexure P-24) by the Trial Court, he is aggrieved by impugned appellate order dated 27.10.2020 (Annexure P-26) passed by learned Additional District Judge, Gurugram, whereby the injunction granted by the Trial Court has been vacated and the application filed by the petitioner under Order 39 Rules 1 and 2 CPC in the pending civil suit has been dismissed.

2. Petitioner fears demolition of his only residential house in which he is currently staying alongwith his wife and two sons. The lis herein *inter alia* is whether the land on which house is located is part of the

collaboration agreement executed by parents of the petitioner (respondents no.1 and 2-recorded owners of the land) with a private builder, namely M/s Lotus Realtech Pvt. Ltd. (respondent No.5) or on the land acquired by HUDA/HSVP (respondent no.3) proposed to be used for sector road in Gurugram?

FACTS

3. Brief factual recitals first.

3.1. Here is a case where the entire family (petitioner, his parents and younger brother) had moved to Namibia in year 1993 when petitioner No.1 was all of an 18 year old boy. It is pleaded that he wanted to study further in Namibia but due to financial constraints, it was only his younger brother who was allowed further studies by the father. He (petitioner No.1) had to start working early in life as he joined family business and successfully set up a cotton ginning factory. However, the hopes of the family to carry on the said business and to strive higher for greener pastures were soon hit with the life threatening troubles, which they faced from the local mafia at Namibia, resulting in the winding up of the entire family business within the short span of two years itself i.e. in September, 1995.

3.2. The case set up by the petitioner is that, in the aforementioned circumstances, he was left behind in Namibia while rest of the family members shifted back to India. He was assigned the tough task of winding up everything in Namibia. Despite the mafia threats, he brought back approximately 200,000 US Dollars. It is thus claimed that the money was brought from Namibia, though by him alone, but was joint family asset. It was from these very proceeds that two chunks of land, total measuring 20 kanal 5 marla, were purchased in Village Chawan, Tehsil and District

Gurugram in the name of the elder son i.e. petitioner No.1, by an irrevocable power of attorney dated 10.07.1996 executed in favour of petitioner by the vendors. It is stated that a lease deed of 99 years was executed by the vendors in favour of petitioner. Corresponding entry was also recorded in land records of revenue department. Jamabandi (revenue record entry) for the year 2005-06 reflects the same.

3.3. Later on, petitioner surrendered 99 years lease executed in his favor and vide a sale deed dated 03.07.2007, petitioner being a general power of attorney of the vendors, transferred the aforesaid land of 20 kanals 5 marlas in favour of his mother – respondent No.2 based on certain family arrangement. Concededly, the said sale deed was executed without any consideration. This is borne out from the admission of the parents in their pleadings. The house in question is built on 4 kanals 1 marla which is part of the same very land measuring 20 kanals 5 marlas transferred to the mother-respondent No.3 by petitioner. Built up area is though only 510.65 square yards. More of it later.

3.4. Dispute arose amongst family members leading to multiple litigations of which the particulars are given in succeeding paragraphs. Same are not denied since both the sides have filed suits and counter suits, including certain criminal proceedings.

3.5. One of the civil suits filed by petitioner is for seeking declaration that the transfer of 20 kanals 5 Marlas by him to his mother is null and void and *non-est* being a transfer without any valid sale consideration and also to declare the surrender of 99 years lease by him as null and void.

3.6. The residential house was/is constructed on 510.65 sq. yards pursuant to a Change of Land Use (CLU) permission letter dated 23.10.1997 issued

by the Director Town and Country Planning. Thus it is not in dispute that the construction is legitimate.

3.7. On and around 21.12.2009, the State of Haryana issued a notification under Section 4 of the Land Acquisition Act-1894 (*hereinafter referred to as 'the Act-1894'*) proposing to acquire land measuring 69.922 acres for public purpose i.e. development and utilization thereof for residential Sector 110-A, Gurugram and for rehabilitation of the families whose houses would come under road alignment and its green belt.

3.8. After inviting objections, declaration was issued on 17.12.2010 under Section 6 of the Act-1894 *ibid* qua only 41.19 acres of land. As a part thereof, land measuring 3 kanals 10 marlas out of disputed of area 7 kanals 11 marlas situated in Khasra No.39//23 was also acquired.

3.9. Award No.17 dated 20.06.2012 was later announced. In terms thereof compensation qua land measuring 3 kanals 10 marlas was also disbursed to the recorded owners sometime in year 2017 (respondents No.1 and 2).

3.10. It is pertinent to mention here that house is though built on 510.65 sq. yards, but abutting it, there is a few kanals of open area having garden etc. Total land is measuring 7 kanals 11 marlas which is under occupation of petitioner and family. Per petitioner, the house in question is stated to be on the 4K 1M land which has not been acquired out of the 7K 11M.

3.11. In the interregnum of the announcement of the said award and disbursement of compensation, when land measuring 3 kanals 10 marlas out of land measuring 7 kanals 11 marlas already stood acquired, a collaboration agreement dated 14.08.2013 was executed between M/s Lotus Realtech Pvt. Ltd. – respondent No.5 and respondents No.1 and 2 (parents of the petitioner) in respect of a total land measuring 40 kanals 15 marlas,

including the aforesaid 20K 5 M, having within it the unacquired piece of land measuring 4 kanals 1 marla, wherein the house in question has been also built.

3.12. Apprehending forcible eviction at the hands of the developer/collaborator-respondent No.5, though of course through the recorded owners i.e. respondents No.1 and 2, a suit for permanent injunction was filed by the petitioner wherein Haryana Shehri Vikas Pradhikaran (HSVP)-respondent No.3 was also impleaded as a party by the Trial Court on its own motion. Vide order dated 31.10.2019 (Annexure P/24), the Court of Ld. Civil Judge (Sr. Divn.), Gurugram restrained the defendants (respondents herein) from dispossessing the plaintiff (petitioner herein) from the suit property except by following due course of law.

3.13. However, the Appellate Court of Ld. Additional District Judge vide impugned order dated 27.10.2020 (Annexure P-26), on an appeal filed by only the parents of the petitioner (respondents No.1 and 2), *inter alia* observed that the petitioner was a trespasser in the property in question and accordingly set aside the Trial Court order dated 31.10.2019 (Annexure P-24).

3.14. Hence, the instant revision petition.

DISCUSSION

4. As noted above, the parties have been litigating inter-se. Various litigations instituted by them are more particularly tabulated herein below:-

Sr. No.	Date of Institution	Case No.	Title	Nature
1.	14.02.2013	Maintenance Tribunal (District Magistrate)	AKJain&Jaishree Jain vs. Ajai Jain &Sapna Jain	Seeking ejectment
2.	13.06.2014	COMA/150/2014	Sapna Jain vs. AK	Complaint under

			Jain and others	Domestic Violence Act
3.	03.07.2014	CS/20706/2014	Ajai Jain vs. AK Jain and others	Suit for permanent injunction restraining defendant from dispossessing plaintiff
4.	04.07.2014	CS/20331/2014	Ajai Jain vs. AK Jain and others	Suit for declaration declaring surrender of lease dated 29.06.2011 null and void ab-intio
5.	17.09.2014	FIR 565 U/s 323, 341, 506, 34 IPC	State vs. Ajai&Sapna	FIR registered against petitioner and his wife Sapna Jain at the instance of Ashok Kumar Jain
6.	22.10.2014	CS/21804/2014	Ajai Jain vs. AK Jain	Suit for permanent injunction restraining defendant from dispossessing plaintiff And for restoration of electricity connection
7.	27.10.2014	FIR 749 U/s 323, 325, 34, 354, 452 IPC	State vs. AK Jain and others	FIR registered against Ashok Kumar Jain and others at the instance of the Petitioner
8.	10.12.2015	CS/3101/2015	Ajai Jain vs. AK Jain & others	Suit for declaration that irrevocable power of attorney dated 10.07.1996 in favour of plaintiff is valid
9.	22.12.2016	Case of Senior Citizen Before Maintenance Tribunal	AK Jain & Jaishree Jain vs. Ajai Jain and ors.	Petition filed by parents seeking eviction of the petitioner
10.	15.02.2018	CS/458/2018	Ajai Jain vs. HUDA	Suit for Declaration and Permanent Injunction only against State and HUDA authorities claiming that the suit land is free from acquisition.
11.	19.11.2018	CA/9596/2008	Ajai Jain vs. AK Jain	Appeal has been filed by the petitioner against the decree dated 21.07.2014 passed in favour of respondent No.5-company
12.	06.01.2021	COMA/33/2020	Ajai Jain vs. Sandeep Ahlawat and others	Application U/s 156(3) for registration of FIR
13.	07.01.2021	FIR No.3 U/s 323, 341, 352, 379, 380, 382, 395, 426, 452, 456, 457, 506, 34, 120-B IPC and Sections 7, 12 & 13 of PC Act	Against Sandeep Ahlawat and others	FIR registered against the SHO of Police Station Bajghera Road, Gurugram, Administrator, HUDA, M.D. of the respondent No.5-company, Ashok Kumar Jain and others

5. From the narrative herein above, it is clear that first of all the case was filed by parents under Maintenance and Welfare of Parents and

dispute where elder son i.e. petitioner is pitted against his parents i.e. respondents No.1 & 2, who have fallen out with him, but are on good terms with their younger son. Parents invoked the provisions of 2007 Act *ibid*, though petitioner alleges that it was at the instigation of the developer. Parents filed ejectment petition purportedly on the ground that on the one hand the petitioner is causing extreme mental harassment and not looking after their welfare, on the other hand he continues to enjoy the house in question which is their exclusive property. Parents had though vacated the said house, but now its possession is not being handed over to them by petitioner, despite their having made all out attempts for the same, including ejectment orders passed under the 2007 Act by the Maintenance Tribunal, which are under challenge before this court vide separate proceedings.

6. Petitioner alleges *inter alia* that it is his younger brother who, out of his excessive greed, is instigating the parents to *resile* from, in what is/was otherwise a family arrangement amongst all of them, whereby, the house in question, in which he is currently residing along with his wife and two sons and is the only place to live they have, was to remain exclusively with them, as the other family members have opted for certain other properties which are/were owned by the joint family at the relevant time in terms of the family understanding/arrangement. He also alleges that while parents themselves live in a lavish house having a swimming pool etc., but they want petitioner, his wife and the two grandsons to be thrown out from the house in question and live on road, as they have no alternative accommodation.

7. In this context, reference may be had to a collaboration agreement dated 14.08.2013 executed between the parents and developer

company/M/s Lotus Realtech Pvt. Ltd. in respect of 40 kanals 15 marlas, which also includes above said 20 Kanals and 5 Marlas under litigation vide a civil suit filed by petitioner. Pursuant to the collaboration agreement, the builder/developer has gone ahead and built up the project and erected 11 towers having 812 flats. It may be relevant to consider following extracts of the said collaboration agreement:-

“i) That the first party shall get 30% of the total sale amount consideration towards the residential construction whereas the second party shall be entitled to 70%.

ii) That the commercial construction within the project shall be divided in ratio of 50:50 between both parties.”

Perusal of the above clauses reflect that parents being first party have given up all their rights qua the entire land in lieu of their entitlement of 30% of the total sale consideration towards residential flats, which proportionally translates to sale price of 244 flats and 50% of the total built up area of the commercial construction of entire project. Commercial construction is also stated to be complete.

8. In course of the arguments, learned Senior Counsel for the petitioners, on instructions, states that as per petitioners' information the parents-respondents No.2 and 3 have received as much as Rs.40 Crores towards the sale consideration of 30% of their share of flats, in terms of the aforesaid agreement. The said specific figure is though denied by the learned counsel appearing for the parents-respondents No.2 and 3 for lack of instructions.

9. Be that as it may, in the aforesaid premise, speaking in real sense, parents/respondents no.1 and 2 seem to have been hardly left with any further financial and/or proprietary stake on the entire land. It is actually the

developer/builder who is adversely affected by the petitioner's not vacating the house.

10. I have heard the rival arguments addressed by learned Senior Counsel appearing for the petitioner and learned counsel for the respective respondents.

ARGUMENTS AND ANALYSIS

11. Learned Senior Counsel Mr. Sunil Chadha would strenuously argue that parents of the petitioner having already surrendered their rights and title etc. in the property in question in favour of the developer/collaborator-respondent No.5, are in no manner aggrieved qua the injunction granted by the Trial Court qua the house in his occupation located on the land measuring 4 kanals 1 marla, and therefore, the appeal filed by them (parents of the petitioner) is nothing but a proxy litigation at the instance of the developer/collaborator-respondent No.5. He would argue that concededly the parents of the petitioner are not in possession of the property as they had vacated the same on their own accord and all rights qua the same have been given to the developer/collaborator-respondent No.5 and therefore, the Trial Court has rightly observed that the petitioner being in possession of the property ought not to be evicted except in due course of law. He would further argue that the developer/collaborator-respondent No.5 has gone to the extent of prompting the petitioner's parents to file ejectment petition under the Act-2007, leading to passing of an ejectment order by the Ld. District Magistrate which is also under challenge before this Court vide CWP No.31534 of 2019. He would further argue that various proceedings pending between the parties and the pleadings therein suggest

the parents themselves have admitted that the petitioner is staying in the property in question.

12. Learned Senior Counsel for the petitioner would also vociferously argue that one is at complete loss to comprehend as to how the petitioner can be termed as a trespasser as has been observed by the Appellate Court vide impugned order dated 27.10.2020 (Annexure P-26) and therefore, submits that the said order is patently illegal and deserves to be set aside.

13. Per contra, Mr. Aman Pal, learned counsel appearing for the developer/collaborator-respondent No.5 would argue that it had entered into the collaboration agreement with respondents No. 1-2. Pursuant thereto, a license was issued on 18.06.2014 to developer to set up an affordable group housing colony on the land under collaboration including land measuring 4 kanals 1 marla, which was left out of the acquisition proceedings. It was followed by sanction of building plan on 22.10.2014 and the last date for completion of the project was 30.06.2020. But owing to the petitioner not vacating the land measuring 3 kanals 10 marlas, the project has not been completed. He would further argue that the last date for completion of the project was extended till 31.12.2020. However, despite the boundary walls of three sides of the project having been erected, the front boundary wall and the main entry gate is yet to be constructed as the petitioner is unauthorizedly sitting on the acquired land of 3 kanals 10 marlas which has to be utilized by HSVP in making the sector road, which is also the approach to the main entry of the project.

14. Mr. Pal emphatically argues that the petitioner is not entitled to the equitable relief sought by him as he has indulged in concealment of material

fact, inasmuch as earlier also he had filed a civil suit for permanent injunction, wherein the developer/collaborator-respondent No.5 was also a party alongwith parents-respondents No.1 & 2 and in the said suit an application under Order 39 Rules 1 & 2 was also preferred. He points out that the said application was dismissed on merits declining the grant of any ad-interim injunction to the petitioner. He further submits that subsequently the said suit was though dismissed in default but the fact remains that the petitioner having since accepted the dismissal is non-suited to later seek similar relief, even on merits. He would further argue that even otherwise, the relief sought by the petitioner is hit by the principles of *res judicata*.

15. From perusal of the pleadings filed before the Trial Court it is borne out that, even though Mr. Arvind Seth, learned counsel for respondent No.3-HSVP resists grant of any injunction or restoration of trial court, but the stand in the written statement filed before the trial Court in the main suit, qua location of the house, appears to be totally contradictory. The said written statement has been tendered in Court in course of arguments and is taken on record as Mark 'A'. For ready reference, para No.2 of preliminary objections of the written statement is reproduced herein below:-

"2. That the award was announced vide award No.17 dated 20.06.2012 and possession of the same has also been handed over to the answering defendant vide Rapat No.938 dated 26.08.2015. The Land Acquisition Collector deposited the awarded amount in accordance with the provisions of Land Acquisition Act. The land in dispute was completely vacant at the time of its acquisition. The Civil Writ Petition No.11415 of 2011 titled as Sri NiwasRana vs. State of Haryana and etc. filed against above said acquisition has already been disposed off vide order dated 09.08.2013 by the Hon'ble Punjab and Haryana High Court at Chandigarh. The copy of the same is attached herewith as Annexure D-1. The Hon'ble High Court vide order dated 09.08.2013 directed the HUDA to take the possession of land in dispute, hence the answering defendant has already taken the possession of disputed property as per order of the Hon'ble Court. The land in dispute was acquired

fully in accordance with the law and now vests in HSVP free from all encumbrances. The plaintiffs have got no right, title and interest in the suit property. The answering respondents are empowered as per the provisions of section 18(1), (2) of HUDA Act 1977 to evict the unauthorized occupant from the premises of HSVP and will follow the due process of law as per the ibid Act. The aggrieved person is entitled to file appeal against the eviction order u/s 20 of the HUDA Act, 1977.”

16. Not only before the trial Court, even in another collateral proceedings instituted by the petitioner vide CWP No.26325 of 2019 before this Court, wherein he had sought directions from this Court to seek demarcation of land qua acquired 3 kanals 10 marlas vis-à-vis unacquired 4 kanals 1 marlas in Khasra No.39//23, wherein HSVP is also a party, no such stand, as is canvassed in course of arguments here, has been taken in the return filed by HSVP. For ready reference, para No.1 of preliminary objection No.1 and parawise reply of para No.9 are reproduced herein below:-

*“1. That it is submitted that the perusal of the petition of the petitioner, it reveals that the land in the question and some other land were acquired by the Haryana Government for HUDA Department that regarding the said acquisition and remaining land, there are litigations between the petitioner, his family members and HUDA Department relating to its title and possession. The said litigation which are inform of civil suit are yet to be decided by the Hon’ble concerned court. **That the property detail is Khasra No.39/23 is 3 kanals 10 marlas whereas, the total land in this Khasra is 7 K-11M, so from all angles, it is proved that the house of the petitioner in question is situated in the balance area of 4 Kanals 1 Marlas of this Khasra Number.** Thus unless and until title and possession of the concerned land is not decided by the Hon’ble concerned court, the issue raised by the petitioner cannot be sorted out. That the copy of the suit is attached herewith as Annexure R-1.”*

9.That the contents of Para No.9 of the petition are wrong, hence denied. That the answering respondents are performing their duties in accordance with law to the best of their abilities and in anyway not misusing their power to favour one individual. So, it is wrong to say on the part of the petitioner that the perusal of above stated facts clearly go to show that the respondents being and instrumentality of the State are not acting

*fairly and are misusing their powers to favour one individual and to fulfill his object by throwing the petitioner on the street by demolishing the shelter, which is being used by them for decades. **It is further wrong to say on the part of the petitioner that the petitioner had been pursuing the respondents for properly demarcating the land as the acquired area of Khasra No.39/23 is 3 kanals 10 marlas whereas the total land in this Khasra is 7K-11M, so from all angles, it is proved that the house of the petitioner in question is situated in the balance area of 4 kanals 1 marla of this Khasra Number.** In this regard, it is submitted that the perusal of the petition reveals that there is a dispute regarding title and possession of the land in question between the petitioner and other family members and HUDA and unless these litigations are not decided by the concerned Hon'ble Court, the issue raised by the petitioner cannot be sorted out. The legal notice got issued by the petitioner are matter of records. That the answering respondents never refused to demarcate the land and are ready to demarcate the same."*
(Emphasis supplied)

17. It is also pertinent to note here that qua the findings of possession given by the Trial Court, HSVP has not preferred any appeal and to that extent it would be safe to presume that there is no grievance by HSVP qua the same.

18. Thus, it appears that HSVP admits that the property in question is located on the non-acquired land but stand of the developer/collaborator-respondent No.5 is otherwise. In the premise, the said dispute can only be adjudicated if a proper demarcation of the entire 7 kanals 11 marlas land of khasra no.39//23 is carried out squarely depicting as to which is the exact 3 kanals 10 marlas that has been acquired and which is the unacquired 4 kanals 1 marla in order to have a clear picture as to on which part of the land (acquired or unacquired) property in question is located.

19. In the course of hearing, learned counsel for HSVP has referred to document (Annexure R-5/J) stating that the same is a demarcation report. However, on perusal, it is found to be merely a site report and not a

demarcation report as has been claimed by the officials of HSVP, who are present in Court in person.

20. During pendency of proceedings before this court an order dated 17.01.2022 was passed by my Learned Brother Rajbir Sehrawat, J. (then seized of the matter) directing as below :-

“One of the important aspect, to be considered in this case, is whether the land in dispute, measuring 3 kanal 10 marla has been acquired by or for the respondents No.3 & 4 or not.

The counsel for respondents No.3 & 4 submits that the said land stands acquired. Whereas, the counsel for the petitioner submits that the said land was never acquired and respondents No.3 & 4 are taking this objection in collusion with the added respondent.

Hence, it would be appropriate if the court has a reference to the original survey plan/site plan prepared at the time and for the purpose of issuance of notification under Section 4 of the Land Acquisition Act, so as to pin point as to which portion of khasra No.39//23, was intended and notified to be acquired by the State-respondents No.3 & 4.

Accordingly, the respondents No.3 & 4 are directed to place on record the part of the survey plan site plan prepared before and for the purpose of issuance of notification under Section 4 of the Land Acquisition Act qua the khasra number 39//23, as well as, qua the khasra numbers surrounding that khasra number.

Adjourned to 11.02.2022.

However, it is clarified that the respondents No.3 & 4 shall not be granted any further time for the above said purpose. They are to place on record the said survey plan/site plan well before the next date of hearing.

Interim order to continue.”

Apropos, a site plan no.113 dated 07.01.2008 has been filed but it does reflect any demarcation of the kind so to ascertain as to where is the house in question exactly located.

21. As far as the stand of developer/collaborator – respondent No.5 is concerned qua the possession/demarcation of the property in question, it would be relevant to refer to an order dated 16.12.2020 passed by Learned Brother Sanjay Kumar, J. (as he then was in this court) in CWP No.19682 of

2020, which was filed by the petitioner against the State of Haryana as well as the Managing Director of respondent No.5-company, making allegations that he fears threat to his life and liberty as well as the property in question. Therefore, appropriate directions/orders were sought for protecting the same. The stand taken by the respondent No.5-company is noted by the Ld. Judge in the order dated 16.12.2020 as below:-

“.....In response to this contention, Mr. Aman Pal, learned counsel, would state that the applicant has no interest in the property claimed by the petitioner and that no portion of the reconstructed property of the petitioner would be demolished in the course of construction of the main entry gate and the compound wall by the applicant...”

22. That apart, it is the case of the developer-respondent No.5 that unacquired land is vacant land. While on the other hand, the stand of HSVP is that the acquired land is vacant land. Thus, there is a clear contradiction between their stands. Both parcels i.e. 4K 1M as well as 3K 10M can not be vacant, as the house is existing on either these !Concededly the total land in dispute is 7 kanals 11 marlas. Out of it, only 3 kanals 10 marlas has been acquired. The lis pertains to the remaining unacquired 4 kanals 1 marla land of khasra no.39//23. It is imperative to determine as to on which portion of the property the house in question has been constructed. The construction can be demolished by HSVP if it is found that the same is on the acquired 3 kanals 10 marlas of land. Needless to say, the demolition can be done only in accordance with law, which will include the right of the oustee from the property to seek allotment of alternative plot as per the applicable policy of HSVP. If the house in question is on 4 kanals 1 marla of land, which has not been acquired, then the developer can dispossess the petitioner, but again only by following the law and demolish the construction thereafter.

23. It may also be pertinent to note that the petitioner has also filed a complaint/representation before the Director Town and Country Planning qua the demarcation/sanction of the land on which the group housing colony has been erected by the developer-respondent No.5. The same having not been since looked into, he filed a writ petition bearing CWP No.5689 of 2021 before this Court, which was disposed of vide order dated 10.03.2021 with the observation that the complaint/representation shall be looked into and appropriate orders thereof shall be passed. Pursuant thereto, the Director Town and Country Planning vide order dated 09.06.2021 rejected the representation of the petitioner stating that the requisite approvals/sanctions qua the building plans were legal and do not deserve to be set aside, as prayed by the petitioner. Subsequently, the petitioner preferred an appeal which was accepted vide order dated 03.02.2022 (Annexure P-35) and the order passed by the Director Town and Country Planning was set aside and the matter was remanded back for fresh consideration. It is stated that the said matter is still pending with the Director Town and Country Planning.

24. No fresh order has been passed by the Director Town and Country Planning till date. I am of the view that it would be unfair to the petitioner and inappropriate if the respondents were left free to demolish the house in question at this stage without awaiting the outcome of the pending proceedings before the Director Town and Country Planning qua the demarcation/sanction of the building plans in favour of the developer-respondent No.5.

25. Further argument of learned counsel for respondent No.5 is qua the alleged concealment on the part of the petitioner in not disclosing his

earlier civil suit bearing No.21804 of 2014, which he had filed against his parents alongwith Dakshin Haryana Vitran Bijli Nigam as defendant as well as M/s Lotus Realtech Pvt. Ltd. as defendant No.4 (respondent No.5 herein).

26. I am *prima facie* of the view that the said suit was necessitated due to the dire urgency caused by disconnection of the power supply at the residential premises in question, where the petitioner is residing with his family. No doubt, there was an application under Order 39 Rules 1 and 2 CPC which was dismissed by the Ld. Trial Court and perhaps that was the reason for the petitioner's not pursuing the suit for permanent injunction and in the premise, that suit was dismissed in default. It is borne out from the perusal of plaint that in order to avoid disconnection he was compelled to pay certain charges which otherwise were disputed in nature.

27. At this stage benefit of doubt can be given to the petitioner who was under *bona fide* belief that the litigation involved in the said suit was only for immediate relief arising out of and confined to disconnection of electricity was merely incidental and not substantial vis-à-vis other main rights and claims for which he was parallelly pursuing his other cases/ suits, tabulated as above. Be that as it may, needless to say, that the Trial Court would go into the applicability or otherwise of *resjudicata* if any such objection has been taken in the written statements filed by the defendants in the pending civil suit.

28. In course of arguments, much emphasis have been laid on the findings of the Trial Court while deciding injunction application, qua which, admittedly the petitioner has not preferred any appeal. It appears that having got a favourable order, he was under advice to wait for the final outcome of the suit. In any case, said adverse finding qua petitioner is based on the fact

that pursuant to the award No.17/2012 since the compensation had already been released to the owner i.e. mother of the petitioner (defendant No.2 in the suit) and hence upon payment of the compensation, the ownership of the house in question stood transferred to Haryana Shehri Vikas Pradhikaran (HSVP). Therefore, the plaintiff (petitioner herein) had no right to remain in possession of the suit property. At this stage, what is to be borne in mind is that the dispute is not qua disbursement of the compensation to the owners, but whether or not the house in question is located on the land which has been acquired or is on the unacquired portion of land? And, whether petitioner being in possession deserves injunction to protect demolition of the house?

29. It was in this context, that my Learned Brother G.S. Sandhawalia, J. (then in seizen of the case) while issuing notice in revision petition passed the following order dated 09.11.2020 :-

*“Counsel inter alia contends that the possession of the petitioner on the land in dispute is not beyond any doubt on account of various family arrangements including a General Power of Attorney dated 10.07.1996 which had been executed in favour of the petitioner-plaintiff. It is submitted that there was also a lease deed as such in favour of the petitioner which was surrendered on 29.06.2011 on account of the fact that a sale deed had been executed on an earlier point of time on 03.07.2007 in favour of defendants no. 1 and 2, the parents. The farm house had been constructed in the year 1998 wherein, all of them had been living on account of good relationship inter se. In such circumstances, the injunction has been granted by the trial Court on the ground that irreparable loss and injury would have been caused if the petitioner was dispossessed during the pendency of the suit while rightly relying upon the judgment in **RameGowda (D) by L.Rs. vs. Varadappa Naidu (D) by L.Rs., 2004 (1) SCC 769.***

It is submitted that the Appellate Court has wrongly vacated the stay vide order dated 30.10.2019 (Annexure P-24) by coming to the conclusion that the appellant is a tress passer in the property and no injunction can be granted against the true owner without distinguishing the judgment of the Apex Court and relying upon other precedents which were holding the field at an earlier point of time. It is submitted that various

proceedings are pending in this Court including CWP No. 31534 of 2019, which is now pending for 08.01.2021, against the order of the District Magistrate dated 04.09.2019 (Annexure P-19) wherein, eviction had been ordered from the farm house in question. It is submitted that no interim order was passed in the said case because at that point, the injunction had been passed in favour of the petitioner.

Reference is also made to the pendency of CWP No. 26325 of 2019 wherein, the issue of demarcation of the land is subject matter as 3 kanals and 10 marlas of land had been acquired and compensation has been paid to the respondents. Possession was being taken by the State of Haryana of the constructed portion also which had not been acquired while referring to CWP No. 26325 of 2019 and the order noting these facts on 04.10.2019 (Annexure P-19).

Notice of motion for 08.01.2021.

To be heard alongwith CWP No. 31534 of 2019.

In the meantime, operation of the order dated 27.10.2020 (Annexure P-26) passed by the Additional District Judge, Gurugram shall remain stayed and dispossession of the petitioner shall remain stayed.”

30. Concededly, the total area in dispute is 7 kanals 11 marlas. Out of that, as per the award itself, it is only an area of 3 kanals 10 marlas which has been acquired and commensurately compensated for. The built up portion of the farmhouse is only a mere 510.65 sq. yards area. It is rather intriguing that even though compensation has been disbursed and possession is also stated to be taken over qua the acquired land by the HSVP, but there is no demarcation report produced either before the Trial Court or the First Appellate Court or even in course of the proceedings before this Court. In ordinary course, it is rather incomprehensible to know the exact location of built up area without carrying out proper physical demarcation prior to acquiring the land. The rest of the area being open area may be used for gardening and for other purposes. I have had a look at the google picture (Annexure P-32) which reflects the clear physical location of the land vis-à-vis the proposed road which is to be made on the land which has been acquired. As it stands today, the photograph reflects that the proposed road

which is coming all the way upto the farmhouse abutting the boundary of the society/buildings set up by respondent No.5, gets truncated almost into 1/4th on reaching the house in question. Thereafter, it spirals around the farmhouse towards the left and is totally surrounded all around with constructions including a school, which is right in the middle of the proposed section road to be built.

31. Assuming, if I were to accept the arguments of the learned counsel for the respondents and vacate the stay order, the end result would still remain the same i.e. the public purpose of laying sector road on the acquired land would still remain unserved. The reasons is that the said road cannot be constructed if the other pre-existing constructions including the school are also not demolished. The court is informed that there is a certain proposal of making a flyover above the said constructions. On a Court query, learned counsel appearing for the HSVP-respondents No.3&4 submits that he has no instructions if there is any proposal for flyover or whether steps have been or are being taken to remove the school which is functional and also the other structures which are still existing.

32. As argued by learned counsel for respondent No.5, it may be true that delay in providing sector road by not demolishing house in question is a genuine cause of delay in completion of the project since boundary wall with main entry gate cannot be erected. Despite the fact that as per the license sanctioned by Director, Town & Country Planning, rest of the entire project has been completed and flats have been allotted to the respective owners. Almost 50% of the allottee families have started staying there and in the absence of the main gate of the building as per the building plan and the access road which is passing from the farm land, the residents of the society

have to take a long spiral road to reach their respective dwelling. However, the fact remains that the rights of respondent No.5-developer can only be enforced only after the proposed road is built by HSVP on the land to be acquired. In the absence of the proposed road, the residents will have to only continue using the earlier passage as it existed today.

33. As an upshot of discussion made herein above, a case of grant of interim injunction in favour of petitioner is made out on as all the ingredients of first principles thereof are satisfied i.e. a). prima facie case of triable issues is made out b). balance of convenience is in favor of petition and c) demolition of house in question would result in irreparable loss. It shall thus be most appropriate to first carry out a proper demarcation of the land in question to find out as to whether the house is built up on the land which has been acquired or falls outside the acquisition.

34. In the premise and to ascertain the reality in this behalf it would be appropriate that the State of Haryana through the Revenue Department/HSVP be required to carry out proper demarcation after giving prior notice to the petitioner and other stakeholders who may be interested including respondent No.5.

35. Till the demarcation, it would be highly inequitable to demolish the pre-existing construction which concededly was carried out after taking all requisite permissions i.e. CLU etc. Assuming the construction in question does not fall in the acquired area, it would lead to irreparable loss, if in the meanwhile, without there being any demarcation report, the building in question is demolished, as is the fear of the petitioner. His apprehension is also borne out from the previous proceedings i.e. CWP No.19682 of 2020,

wherein this Court had to intervene vide order dated 19.11.2020 observing that in case any demolition has been carried out, the same be restored.

36. In the premise, the impugned appellate order dated 27.10.2020 (Annexure P-26) is set aside and the injunction granted by the Ld. Trial Court vide order dated 31.10.2019 (Annexure P-24) is restored. The State of Haryana through the Revenue Department/HSVP is directed to carry out proper demarcation, after giving prior notice to the petitioner and other stakeholders who may be interested including respondent No.5 and to find out as to whether the house in question or any part of it is built up on the land which has been acquired or it falls outside the acquired land. It is expected from the State to carry out the demarcation as expeditiously as possible but, in any case within a period of six weeks from the date of receipt of a certified copy of this order.

37. Upon the demarcation report being made available, either party will be at liberty to approach the Ld. Trial Court for modification of the injunction order dated 31.10.2019 (Annexure P-24) which has been restored by virtue of the instant order.

38. Furthermore, with the consent of learned counsel appearing for the parties, who have jointly agreed that it would be in the better interest of all the parties herein, if the pending civil suits, as mentioned above, already being tried in the same Court are consolidated. Accordingly, it is so ordered with consent of the learned counsel for the parties, who have sought instructions qua the same in the course of hearing today.

39. Ld. Trial Court after consolidation of the said proceedings shall proceed and decide the matters as expeditiously as possible, but in any case within 9 months from the date of receipt of a certified copy of this order.

Most of the evidence appears to be documentary in nature and the Ld. Trial Court shall not grant any unnecessary adjournments and make endeavours to conclude the trial in given time. However, needless to say, in the event of any unforeseen event, if the trial gets delayed, the parties are at liberty to seek extension of time.

40. Revision petition stands allowed.

41. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

April 23, 2022
ashish

(ArunMonga)
Judge

Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No