

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-44276-2020
Date of decision: May 12, 2022

KrishnaPetitioner

State of HaryanaRespondent

Versus

2. CRM-M-5850-2021

Manish SainiPetitioner
Versus
State of HaryanaRespondent

**3. CM-472-C-2021 in
RSA-8-2007**

Municipal Committee Applicant/Appellant
Versus
Surender Kumar Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S. Rana, Senior Advocate with
Mr. Mahir Sood, Advocate for the petitioner
(in CRM-M-44276-2020)

Mr. Ram Kumar Saini, Advocate for the petitioner
(in CRM-M-5850-2021)

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate and
Mr. Shivam Garg, Advocate for the appellant
(in CM-472-C-2021 in RSA-8-2007)

Mr. Rajesh Gaur, Additional A.G., Haryana.

Mr. Prateek Rathee, Advocate for the complainant
(in CRM-M-44276-2020 and CRM-M-5850-2021)

Mr. Jagjeet Singh, Advocate for the applicant
(in CRM-42985-2021)

ARVIND SINGH SANGWAN, J.

By way of the this common judgment, this Court shall decide the above mentioned two petitions, i.e. CRM-M-44276-2020, CRM-M-5650-2021 and CM-472-C-2021 in RSA-8-2007.

Prayer in the above mentioned petitions, i.e. CRM-M-44276-2020 and CRM-M-5850-2021 is for grant of anticipatory bail to petitioner, namely, Krishna and Manish Saini in FIR No.563 dated 1.11.2020, under Sections 120-B, 167, 409, 420, 468, 471 IPC, registered at Police Station City Mahendergarh, District Mahendergarh.

The arrest of both the petitioners was stayed on 18.2.2021 and, thereafter, the investigation was transferred to the Crime Branch. On 27.10.2021, the learned State counsel stated that the petitioner is not co-operating in the investigation. Again, a date was given for joining the further investigation.

Learned Senior Counsel for petitioner-Krishna has argued that as per the allegations in the FIR, registered at the instance of Reader to Deputy Commissioner, Mahendergarh at Narnaul, a complaint was given to the Superintendent of Police, Mahendergarh at Narnaul for registration of FIR against Smt. Reena Garg, her husband Surender Kumar Garg, petitioners-Manish Saini and Krishna Jangra, under Sections 167, 409, 420, 468, 471 and 120-B IPC.

It is stated in the FIR that Reena Garg, being President of Municipal Committee, Mahendergarh, in conspiracy with her husband Surender Kumar Garg and both the petitioners have cheated the Municipal Committee, Mahendergarh. The accused persons have created fake proceedings of resolution of the Municipal Committee, Mahendergarh and some resolutions were passed without any authority and in an illegal manner and in that process, a resolution No.5 dated 9.1.2019 was passed to withdraw RSA-08-2007 filed by Municipal Committee, Mahendergarh against Surender Kumar Garg himself as he was a party to the litigation, his wife Reena Garg, being President of the Municipal Committee, manipulated the resolution and, thereafter forwarded it to the counsel to withdraw the aforesaid Regular Second Appeal before this Court.

It is stated that the husband and wife, duo have cheated the office of the Municipal Committee, Mahendergarh as the Municipal Committee has given a showroom in the shopping complex to Surender Kumar Garg @ Rs.10,000/- per month in an open auction in the year 1996. Advance rent of Rs.1,25,000/- was deposited at the spot. However, later on, Surender Kumar Garg stopped paying the rent as per terms and conditions of the auction. The Municipal Committee, Mahendergarh filed an application under the Haryana Public Premises (Rent and Eviction) Act, 1972 for his eviction, which was allowed by the Collector vide order dated 12.9.2020. This order

was upheld by the Appellate Authority/Commissioner, Gurugram, Division Gurugram on 24.11.2020. It is stated that by interpolation and tampering of the municipal record, Surender Kumar Garg, later on, filed a civil suit for declaration against the Committee for retaining the possession of the shop as a tenant. The suit was decreed by Civil Court vide judgment dated 20.4.2006. The appeal filed by Municipal Committee, Mahendergarh was dismissed by the lower Appellate Court on 9.12.2006. Thereafter, Municipal Committee, Mahendergarh filed aforesaid RSA-08-2007 before this Court challenging the judgment of the Civil Court/Appellate Court. One of the ground was that the Civil Court has no jurisdiction to decide the proceedings decided by the competent authority under the Haryana Public Premises (Rent and Eviction) Act, 1972. It is stated that even on an earlier occasion, an attempt was made by the members of the Committee to give advantage Surinder Garg by passing a resolution No.14 dated 19.1.2011 to withdraw the aforesaid RSA-08-2007. Surinder Garg was a Councillor in that elected house and under his pressure, the said resolution was passed but the same was not acted upon as aforesaid RSA could not be withdrawn due to the protest of the complainant. It is stated that the resolution dated 19.1.2011 elapsed as on 16.6.2006, as fresh election of Municipal Committee, Mahendergarh took place and Surinder Garg and Reena Garg, who were elected Councillors from different Wards and, later on, Reena

Garg became President of the Municipal Committee and both the husband and wife, in conspiracy with the present petitioners Manish Saini and Krishna Jangra again manipulated the record and issued a notice dated 27.12.2008 for conducting a meeting on 4.1.2019. Though the said notice was required to be issued by the Secretary of the Municipal Committee, as per the Rule 4 of the Haryana Municipal Business Bye-laws 1981 and its Rules. However, the President herself convened the meeting. It is stated in the meeting that there was no agenda for withdrawal of RSA-08-2007, however, on 3.1.2019, the then Secretary Municipal Committee issued a letter and cancelled the proposed meeting scheduled to be held on 4.1.2019. However, despite the cancellation of the meeting, the then President Reena Garg and her husband Surender Kumar Garg in conspiracy with the present petitioners Manish Saini and Krishna Jangra convened a meeting and passed resolutions. In that meeting, one resolution No.5 was passed authorizing Manish Saini to file an application in the High Court to withdraw RSA-08-2007. Both the petitioners were signatory to the said resolution knowingly that the meeting was convened illegally. It is further stated in the FIR in a clever manner without any specific agenda, Agenda No.5 was taken up for implementation of the earlier resolution dated 19.1.2011. The proceedings were forwarded to the Office of the Deputy Commissioner for approval. However, the same was never approved by the Deputy Commissioner or his

predecessor. As per the Rules and regulations of the Municipal Committee, Mahendergarh, However, Manish Saini by filing CM-5968-C-2019 giving a reference to the resolution dated 19.1.2011 and the present resolution succeeded in getting withdrawal of RSA-08-2007, which reflects the *mala fide* conduct and conspiracy of all the accused persons. It is stated that in that process, huge financial loss is caused to the Municipal Committee, the details of the violation of the Municipal Act is also given in the FIR, which is not referred to for the sake of brevity. The learned Senior Counsel has further argued that when the first resolution was passed on 19.1.2019, both the petitioners were not the Municipal Councillors. The resolution dated 19.1.2019 reads as under :-

Resolution No.14 To consider the case of Municipal Committee Versus Surender Kumar	:	The Municipal Committee in the open auction had left showroom No.1 in the Shopping Complex in the name of Surender Kumar Gupta on rent. A case was filed against the Municipal Committee in the Civil Court Mahendergarh regarding rent. The appeal against it was filed by the Municipal Committee before learned Sessions Court. This appeal was also decided against the Municipal Committee. Thereafter, the Municipal Committee had filed an appeal in the Hon'ble High Court, which is under consideration. It has been seen that in such cases the time and money of the Municipal Committee is wasted. Unanimously recommended for withdrawal of this case. Appeal No. RSA-8/07.
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Learned Senior Counsel then referred to the various communications on behalf of the Municipal Committee and the learned counsel representing the Committee in the High Court for

withdrawal of the letter. Learned Senior Counsel submits that vide letter dated 12.9.2011, the Deputy Commissioner, Narnaul has approved the proceedings of the resolution dated 19.1.2011 and, therefore, no role is attributed to the petitioners at that stage as the petitioners were elected Councillors at that time.

It is next argued that when the resolution dated 11.1.2019 was passed apart from other agenda, the resolution No.5 was regarding compliance of earlier resolution No.4 dated 19.1.2011 and the following proceedings were undertaken :-

Regarding compliance of proposal No.4 dated 19.1.2011	:	For compliance of proposal No.14 dated 19.1.2011 passed by Municipal Committee either one of Manish Saini Councillor or Accountant is authorized to withdraw RSA No.8/2007 titled as 'Municipal Comittee, Mahendergarh Vs. Surendra' pending in Hon'ble Punjab and Haryana High Court. Passed with consensus.
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Learned Senior Counsel further submits that the only role of the petitioner-Krishna Jangra is she is signatory of the resolution and that Manish Saini is that he was authorized to file an application for withdrawal of the aforesaid RSA.

It is submitted that in pursuance thereof, Civil Miscellaneous No.5968-C of 2019 was filed by Municipal Committee for withdrawal of RSA-08-2007. It was supported by an affidavit of petitioner-Manish Saini

along with resolution dated 19.1.2011 and 9.1.2019. The co-ordinate Bench of this Court on 6.5.2019 passed the following order :-

“Prayer in this application is for withdrawal of the main appeal.

The application has been filed after passing of resolution No.14 dated 19.1.2011 by the Municipal Committee. An approval was also granted by the Deputy Commissioner, Mohindergarh at Narnaul on 12.9.2011 for the withdrawal of the appeal.

In view of above, the date of hearing is pre-poned and the main case is taken up today.

Dismissed as withdrawn.

Office of learned counsel for the respondent be informed.”

Counsel for the petitioner submits that later on, on account of political factions, a complaint was given to the Deputy Commissioner, Mahendergarh at Narnaul regarding the dismissal/ removal of Reena Garg, Chairperson of Municipal Committee, Mahendergarh and her husband Surinder Garg (Beneficiary) as Municipal Councillor and in those proceedings, Reena Garg was removed from the post of the Secretary.

Counsel for the petitioner further submits that all the allegations in this regard relates to co-accused Reena Garg (the then President) and her husband Surinder Garg (the beneficiary-Municipal Councillor).

Counsel for the petitioner has submitted that unofficially, the petitioner has come to know that Deputy Superintendent, State Crime Branch, Gurugram vide its letter dated 9.1.2022 has also written to the Commissioner of Police, State Crime Branch, Gurugram that the facts alleged in the FIR are not verified in the investigation, as per the documents submitted by the parties.

Counsel for the petitioner submits that the anticipatory bail granted to the petitioner be confirmed.

Counsel for the petitioners has additionally filed synopsis of the case, which reads as under :-

- I. **2007** - RSA 08/2007 filed by the Municipal Committee against Surrender.
- II. **19.01.2011** - Municipal Committee Mahendergarh unanimously passed Resolution no. 14 dated 19.01.2011 under presidency of one Bhagat Singh Yadav Chairperson (hereinafter referred to as 'old resolution') for the withdrawal of one RSA No. 08 of 2007 before Hon'ble High Court. (Annexure P-2).
- III. **12.09.2011** - Old Resolution (Resolution No. 14) was approved by the Deputy Commissioner Mahendergarh at Narnaul vide letter dated 12.09.2011 (Annexure P-3).
- IV. From **12.10.2011** to 06.08.2013 as many as 5 letters written to the Advocate/Counsel representing Municipal Committee Mahendergarh in Hon'ble High Court for withdrawal of the case vide the letters dated 12.10.2011 (P-4), 14.12.11 (Annexure P-5), 11.01.2012 (Annexure

P-6), 07.03.2012 (P-7), 06.08.2013 (P-8) authored by Secretary Municipal Committee.

- V. 28.01.16** - After the tenure completion of the Municipal Committee (then) the Letter (P-9) sent by S.D.M/ Administrator of Municipal Committee Mahendergarh to Advocate of High Court for withdrawal of RSA No.08 of 2007.
- VI. 27.12.2018** (P-10) one meeting convening notice was sent to all Ward Councilors as per rules for a meeting scheduled dt. 04.01.2019.
- VII. 04.01.2019** meeting was postponed (P-11) for dt. 09.01.2019 and it was postponed in absence of quorum and upon insistence of Ward Members.
- VIII. 09.01.2019** (P-12) meeting in question was held. Petitioner had participated in meeting in compliance of notice dt. 04.01.2019 (P-11). In meeting dated 09.01.2019 there were nine proposals passed out of which one such proposal was Resolution No. 5 (hereinafter referred to as 'new resolution') for compliance of old resolution dated 19.01.2011 (P-2).
- IX. 11.01.2019** - Meeting proceedings were forwarded to the Deputy Commissioner Mahendergarh at Narnaul as per the compliance of Section 30(2) of Haryana Municipal Act, 1973 vide letter no. 79 dt. 11/01/19 (P-12).
- X. 01.02.19** - All proposals of meeting dated 09.01.2019 were executed. Such proposals of passed meeting were executed and Municipal Committee Secretary made 3 noting as well. Reference Annexure P-13 (execution of Agenda 1 of lease deed Ambedkar Sabha) + Annexure P-14 (execution of Sabzi Mandi Agenda No. 4) and

including Resolution No. 5 dated 09.01.2019 for withdrawal of RSA vide letter dated 01.02.2019 by Secretary Municipal Committee, Mahendergarh (Annexure P-15).

- XI. 01.02.19** - Secretary Municipal Committee got executed lease deed of Ambedkar Sabha (which was Resolution No. 1 of meeting dated 09.1.19)
- XII. 06.3.2019** - The very same Municipal Committee Mahendergarh under Presidency of one Ramesh Kumar (acting president -then) again relied upon the meeting in question i.e. meeting dt. 09.1.19 in the said meeting dt. 06.03.19 (P-22). Therefore, reliance was placed upon the meeting proceedings of 09.01.2019 in the very next meeting by entire committee itself without any opposition of single ward councilor. Subsequent on 08.3.19 - execution lease 08.3.19 (P-23) again which shows validity of meeting 09.1.19.
- XIII. 18.04.2019** (P-17) Secretary Municipal Committee again authored letter (Seventh Letter) to Advocate of Municipal Committee to withdraw R.S.A 07 of 2008. Subsequently the said withdrawal application (Civil Misc. No. 5968-C of 2019) was filed by Municipal Committee's Advocate along-with all true facts i.e. copy of Old resolution 19.01.2011 (P-2) and Compliance / New Resolution 09.01.2019 (P-12) along with affidavit of Secretary Municipal Committee.
- XIV. 06.05.2019** - Hon'ble Court allowed withdrawal C.M Application and R.S.A 07/2008 was withdrawn by the appellant-Municipal Committee.
- XV. 15.01.2019** - First Complaint given by one Kuldeep Sharma in which one such issue (para 6(e) of complaint

- Page 87 is qua the validity of meeting 09.01.2019 (P-12) and said compliant was marked and disposed off.

- XVI. 30.8.19** - Second Complaint filed by Kuldeep Sharma regarding registration of FIR and civil action against 4 accused persons.
- XVII. 20.3.20** - SD Mahendergarh did preliminary enquiry on subject matter and recommended civil action only and not criminal action against co-accused Surender & Rina Garg only and not the petitioner.
- XVIII. 17.7.20** - (P-24) Deputy Commissioner / Complainant took DA Legal Opinion on SDM report dt. 20.3.20 and recommended civil action against against co-accused Surender & Rina Garg only and not the petitioner.
- XIX. 17.9.20** - On basis of report of Deputy Commissioner, state govt. ordered regular inquiry against against co-accused Surender & Rina Garg only and not the petitioner (P-25).
- XX. 11.9.20** - Kuldeep Sharma gave 3rd complaint against all 4 accused persons for registration of FIR to Deputy Commissioner.
- XXI. 9.10.2020** - Deputy Commissioner who himself had disposed off Kuldeep's second complaint had now again authored a letter to S.P Narnaul for registration of FIR.
- XXII. 14.10.20** - Reminder by complainant DC for FiR registration. In this reminder complainant/D.C added allegations of Section 409 IPC also for the first time.
- XXIII. 01.11.20** - case FIR was registered. (P-1).
- XXIV. 06.11.2020** Impugned Order by Ld. ASJ, Mahendergarh passed (P-28).

XXV. 20.11.2020 (P-32) - Queries raised by 1.0 regarding meeting dated 09.01.2019 under which rules the offences alleged have been committed.

XXVI. 13.12.20 at 11 AM petitioner first time joined investigation and Police categorically stated no incriminating evidence against petitioner at the stage See Page 158 - Annexure P-30 - Status Report dt. 24.12.2020).

XXVII.22.12.2020 Investigation transferred to Crime Branch, Gurugram. (P-31).

XXVIII. 19.01.21 - No specific answers to queries of the Crime Branch/1.0 given by the complainant / Deputy Commission (see letter 19.1.21 [P-33]). Even thereafter vide letter 01.02.21 (P-34), 09.02.21 (Reminder - Annx. P-36), reminder 15.2.21 (P-37) no proper response given. 26.2.21 (P-38) reply was given but not satisfactory. (See Place on record CM 1563/21).

XXIX. 18.02.2021 this Hon'ble Court was pleased to grant interim relief to petitioner.

XXX. 22.3.21- Petitioner joined investigation second time which is admitted in Status report presented by State as per which admittedly petitioner again joined investigation on 22.03.21 (para 9).

NOTE:- Admittedly as per status report (para 6) the Deputy Commissioner- Complainant in case FIR did not supply all documents despite reminder 24.3.21.

XXXI. 28.6.21 Crime Branch wrote to Commissioner Division (Officer Senior to Deputy Commissioner/Complainant) regarding queries (material questions on basis of which FIR was registered & offences are made out) as replies

were not satisfactory on end of Deputy Commissioner Complainant. (P-40).

XXXII. 05.7.21 (P-41-see CRM 28014/21) Deputy Commissioner wrote to Crime Branch again not answering specific queries / material queries i.e. under which rules non compliance is done and offences are made out.

XXXIII. 28.07.2021/ 29.12.2021 - One Public Interest Litigation had been filed in Hon'ble High Court (CW PIL 113/2020) challenging the validity of meeting proceedings in which vide order dated 08.09.2020 Hon'ble first Division Bench disposed off with direction to the State of Haryana to decide the representation in speaking manner expeditiously. In that case, speaking order was passed on 28.07.2021 (P-42) speaking order was passed by State of Haryana declaring meeting in question i.e. 09.1.2019 valid. Speaking order was also sworn in affidavit of Additional Chief Secretary Urban Local

Bodies Haryana vide affidavit 29.12.21 (P-43). Hence the meeting dated 09.1.19 itself has been declared as per law and valid by State itself and here petitioner who only participated in such meeting is facing criminal prosecution. (See CM 12571/22)

XXXIV. 23.10.21 - Status report presented by State as per which admittedly D.C. complainant & District Municipal Commissioner are not cooperative in answering material queries of I.O and not supplying documents in support at all. Also admitted joining of investigation of petitioner on two times with all accused.

XXXV. 18.11.21 - Upon directions of this Hon'ble Court the petitioner joined investigation 3rd time.

XXXVI. 11.3.22 - Cancellation report has been prepared by the 1.0/ Deputy Supp. Police (Crime Branch) and sent to Inspector General Crime Branch Gurgaon for approval of cancellation report.

XXXVII. 16.3.22 - Co accused sought status report qua investigation of case FIR in trial court in which it has come that all accused have joined investigation 3 times.

XXXVIII. 17.3.22 - Petitioner joined investigation 4th time.

XXXIX. 28.3.22 - Petitioner and all accused joined investigation 5th time.

In reply, the learned State counsel assisted by learned counsel representing the Municipal Committee had opposed the prayer.

It is submitted that in a calculated manner, all the accused, in conspiracy with each other has manipulated in withdrawal of the RSA-08-2007. It is argued that on 16.11.2020 a regular enquiry was conducted in which it was found that under Bye-laws 4 of the Haryana Municipal Bye-laws Rules, 1981, notice was not issued to all the members. It is also stated that as per Bye-laws 14, notice was required to be issued under the signature of the Secretary and not under the signature of the President and there was only three agendas in the notice with a rider that any other item with the approval of the Chair be also taken up. Counsel for the petitioners further submits that in the absence of any specific agenda with regard to withdrawal of the RSA-08-2007, it is apparent that the husband and wife, duo, being the President

and beneficiary of the showroom as well as the present petitioners having the active knowledge were aware of passing of any such resolution that RSA-08-2007 is to be withdrawn.

Learned State counsel has further argued that when co-accused Reena Garg was removed from the post of President of the Municipal Committee, Mahendergarh, she filed CWP-2280-2020 and the same was dismissed by the writ Court by passing the following order :-

“The figment of arguments that documents were not supplied to her is not at all substantiated on the records. The inquiry officer during the inquiry proceedings had afforded reasonable opportunity to the petitioner to show cause and lead her case and clearing the air against her which she did and in spite of opportunity of personal hearing could not instill confidence in the respondents that the allegations were unfounded, *malafide*, illegal and abuse of powers by the political opponents. The inquiry report dated 20.3.2020 (Annexure P-3) and subsequent report dated 16.11.2020 (Annexure P-2) shows that there had been no undue haste by the inquiry officer in conducting the inquiry and upon which a show cause notice Annexure P-1/A was issued on 15.12.2020 and after due opportunity of personal hearing the orders of removal dated 28.12.2020 (Annexure P-1) were passed by the respondents and the learned counsel for the petitioner could not convince this Court how this act and conduct of the petitioner which harmed financial interest of the Committee which she was supposed to protect as its President were compromised and the

manner in which the meetings were held and resolutions passed to attain sinister design leaves nothing to doubt.

This Court does not find any merit in the instant petition which being hopelessly without merits stands dismissed."

Learned State Counsel further submits that though LPA-38-2022 has been filed, however, no argument is advanced on behalf of appellant-Reena Garg and the case has been adjourned a number of times.

It is also argued that the resolution No.5 dated 9.1.2019 was passed after eight years of the earlier resolution dated 19.1.2011 in a very clandestine manner that the earlier resolution is to be executed though during the tenure of the previous Municipal Committee, the same was never implemented and the RSA was not withdrawn.

Learned State counsel has further submitted that it is a matter of fact that co-accused Surender Kumar Garg, the beneficiary, is husband of Reena Garg, the then President of Municipal Committee, Mahendergarh and after taking a shop in question on rent of Rs.10,000/- per month in an open auction, never paid the future rent and as on today, more than Rs.02 crores are outstanding and to evade his liability, in a calculated manner, he succeed in withdrawing of the RSA-08-2007, though one of the moot point involved in said appeal is that whether the civil Court has jurisdiction to set aside the order passed

by the competent authority under the Haryana Public Premises (Rent and Eviction) Act, 1972, without there being any illegality.

Counsel for the petitioner has further submitted that the FIR was registered after proper investigation and with regard to the letter dated 11.3.2022 from the Deputy Superintendent of Police, State Crime Branch, Gurugram, the Commissioner of Police, State Crime, Gurugram vide letter dated 24.3.2022 has not approved the report and directed the Deputy Superintendent of Police, State Crime Branch to further conduct the investigation on seven points as stated in the letter and, therefore, the recommendation of the Deputy Superintendent of Police is not based upon correct appreciation of facts.

It is also worth noticing that the Municipal Committee has also filed an application in the aforesaid RSA-08-2007 for revival of the appeal as the application for withdrawal was not an application filed in the *bona fide* interest of the Municipal Committee. The said application is also listed today along with the present petition.

The learned State counsel has also filed the written synopsis, which reads as under:-

Prayer No.9)	(Page -	To revive RSA to its original number which was dismissed as withdrawn vide order dated 6.5.2019 as resolution No.5 dated 9.1.2019 was passed to comply with resolution No.14 dated 19.1.2011 in connivance with the respondent (Member of M.C. Mohindergarh and husband of Smt. Reena Garg, President M.C. Mohindergarh) in violation of bye-rule 4 of Haryana Municipal Bye-laws 1981).
1.3.2996	-	Shop in question was given on rent to respondent by appellant @ Rs.10,000/- per month in open auction. (para pg.No.3).

12.9.2000	-	Eviction proceedings were initiated under Haryana Public Premises (Rent and Eviction) Act, 1972 and the eviction order was passed. (paga 3/pg. No.3)
24.4.2006	-	The order passed by competent authority was upheld by the Commissioner, Gurugram in an appeal filed by the respondent. (para 3 pg. No.3).
20.4.2016	-	Plaintiff/respondent instituted civil suit in the Court of Additional Civil Judge (Jr. Division) which was decreed vide judgment and decree dated 20.4.2006 (para 4 pg. No.3).
9.12.2006.	-	Appeal filed against the aforesaid judgment by the appellant/defendant was dismissed vide judgment dated 9.12.2006 and it was assailed by filing instant RSA (para 5 pg. No.4).
19.1.2011	-	Resolution NO.14 dated 19.1.2011 was passed for withdrawing instant RSA which was also approved by the Deputy Commissioner, Mohindergarh on 12.9.2011. (para 6 pg. No.4).
9.1.2019	-	Resolution No.5 dated 19.1.2011 was passed after 8 years in clandestine manner for complying with resolution No.14 dated 19.1.2011 (para 6 pg. No.4).
6.5.2019	-	Instant RSA was withdrawn by the appellant based on the aforesaid resolution.
20.3.2020 (Annexure 1/11)	A-	Inquiry conducted by SDO (Civil) against Smt. Reena Garg (president MC Mohindergarh & wife of respondent), Surender Garg (respondent), Manish Saini and Krishna Jangra u/s 14(1) and 14(2) of Haryana Municipal Act 1973).
16.11.2020 (Annexure 2/pg.No.19)	A-	Regular Inquiry was conducted and the following facts came to light :- * Meeting notice was issued by President on 27.12.2018 under her signatures for convening the meeting on 4.1.2019. * It was not issued to 3 members though as per Bye Rule 4 of Haryana Municipal Bye Rules 1981 the notice should have been issued to all the members of MC. * Secretary MC intimated all the members that the notice of meeting is patently illegal and requested to postpone meeting. * The notice dated 27.12.2018 was neither withdrawn nor postponed. * On 4.1.2019 the meeting was adjourned under the signatures of President to 9.1.2019 without any intimation to 3 members. (As per Bye Rule 14, notice has to be issued under the signatures of Secretary and not the President).

		* There were only three agendas in the notice and one item said "any other item with the approval of chair". * Under this head one of the item included was "withdrawn of RSA No.8 of 2008"- which was not included in the earlier notice. * Resolution No.5 was passed to comply with the Resolution No.14 dated 19.1.2011 and RSA was withdrawn. - Irregularities pointed out by the Inquiry Officer. * Violation of Bye Rule 15 of Haryana Municipal Business Bye laws as the notice of meeting was issued under signatures of President and not the Secretary. * Rule 4 of the Bye laws was violated as the notice included 3 agenda items, with third item being "any other agenda with the approval of chair." * In meeting dated 9.1.2019 under aforesaid agenda item 9 new items including withdrawal of RSA was included which was not in the meeting notice. This is violation of Rule 14 of Bye laws. * Meeting was convened without quorum.
28.12.2020 (Annexure A-3/pg. No.30)	-	Based upon the aforesaid inquiry report Smt. Reena Garg was removed from the post of President by the Additional Chief Secretary to Govt. of Haryana (Urban Local Bodies).
20.9.2021	-	- The aforesaid order of removal was challenged before this Hon'ble Court in CWP No.22806 of 2020. - The writ petition stands dismissed and the order of removal has been upheld vide judgment dated 20.9.2021. - LPA No.38 of 2022 has been filed, however, for last three dates the appellant therein has taken adjournments. Not even notice has been issued in the LPA.

It is worth noticing that the Municipal Committee, Mahendergarh has also filed CM-472-C of 2021 in RSA No.08 of 2007 for revival of the Regular Second Appeal to its original number, which was dismissed as withdrawn vide order dated 6.5.2019 on the basis of the aforesaid resolution. The primary ground in the application is that the

resolution dated 19.1.2011 was never acted upon and after 08 years, Reena Garg wife of respondent Surender Kumar Garg succeeded in getting the resolution No.5 dated 9.1.2019 to implement the same and, therefore, the resolution itself do not reflect application on mind that it has been passed by the members of the Committee independently by applying their mind whether withdrawal of the present RSA in the interest of the Municipal Committee or that the same do not have implication of financial loss to the appellant-Municipal Committee.

Vide order dated 22.2.2021, the co-ordinate Bench of this Court directed that the RSA, which was allowed to be dismissed as withdrawn as per the order dated 6.5.2019, be also tagged with the present petition, i.e. CRM-M-44276-2020.

Counsel for the applicant/appellant has argued that the application for withdrawal was not filed in a *bona fide* manner considering the interest of the Municipal Committee and the collusion of the then President Reena Garg with respondent Surender Kumar Garg, being husband and wife is apparent on record. The counsel for the applicant/appellant has referred to the letter dated 12.9.2011 issued by the Deputy Commissioner, Mahendergarh at Narnaul to the Secretary Municipal Committee, Mahendergrah in which with regard to resolution No.14 dated 19.1.2011 for withdrawing the present appeal, it was opined by the office of the Deputy Commissioner that the opinion of the District Attorney be taken whether the appeal pending before this Court be withdrawn or not. It is also observed in the opinion that the

resolution No.14 is approved, subject to the report of the District Attorney.

Counsel for the applicant/appellant has submitted that no opinion of the District Attorney was taken in this case and, therefore, the application filed by Manish Saini for withdrawal of the RSA is not *bona fide* action to protect the interest of the Municipal Committee, Mahendergarh. Counsel has also referred to the order dated 9.1.2007 passed in RSA-07-2008 vide which notice of motion was issued. The said order is as under :-

“Learned counsel for the appellant contends that as per Bid Sheet Ex.D1, the rate of rent of the shop in dispute was Rs.10,000/- p.m. Further, it is also argued that the Courts below have exercised the jurisdiction which was not vested in them, inasmuch as under Section 15 of the Public Premises Act, the jurisdiction of the Civil Court is barred. It is also argued that in the year 1993, rate of rent of this very shop, which is in possession of the respondent, was Rs.5100/- p.m., and so, the question of letting out the said shop in the year 1996 at the rate Rs.1000/- p.m. does not arise and orders of ejectment of the respondent passed by the Collector and the Commissioner, were perfectly correct and did not warrant any interference by the Civil Courts.

Notice of motion for May 03, 2007.

Operation of the impugned judgment and decree, passed by the Appellate Court, shall remain stayed till further orders.”

Counsel for the applicant/appellant has submitted that since the operation of the impugned judgment passed by the lower Court was stayed, it was incumbent of respondent Surender Kumar Garg to deposit the arrears of rent with the Municipal Committee, which has now accumulated to a tune of Rs.2 crores.

It is also worth noticing here that subsequently vide another order dated 9.11.2009, the appeal was admitted by passing the following orders :-

"After hearing learned counsel for the parties, I find that the following substantial questions of law arise for determination :-

- (i) Whether a patent illegality has been committed by Courts below in considering the oral evidence against documentary evidence to hold that the rate of rent/lease was RS.1000/- per month and not Rs.10,000/- per month especially in view of Ex.D1, Ex.D3 and Ex.D4?
- (ii) Whether the civil Court has no jurisdiction to entertain a suit against the orders passed by learned Collector and the Commissioner in the proceedings under Public Premises Act in view of Section 15 of the Pubic Premises Act?

Admitted.

To be posted for final hearing within two years.

Interim order dated January 09, 2007 is, however, modified by directing the parties to maintain status quo

regarding possession as it is obtaining today, subject to the plaintiff-respondent depositing the lease money @ Rs.1000/- per month. However, the plaintiff shall also furnish security to the satisfaction of the trial Court undertaking to pay the remaining lease money in the event of the appeal being finally accepted. The security shall be accepted after due notice to the defendant. The security be furnished within two months from today.”

Counsel for the applicant/appellant has argued that once the substantial question of law was framed for adjudication in the appeal, there was no occasion for the Municipal Committee to withdraw the same on extraneous consideration.

After hearing learned counsel for the parties, I find no merit in the petitions filed by petitioners, namely, Krishna and Manish Saini as the conspiracy between the petitioners and the co-accused Reena Garg and Surender Kumar Garg is apparent on record.

As noted above, the resolution dated 19.1.2011 was never implemented as the Deputy Commissioner, Mahendergarh at Narnaul in the letter addressed to the Secretary has given a conditional approval that after seeking an opinion of the District Attorney, the RSA may be withdrawn in public interest. However, the record is silent that any opinion of the District Attorney was obtained. Rather, the fact that no application was filed in pursuance to this resolution would reflect that no opinion of the District Attorney acknowledging this resolution, was ever given.

The conspiracy of the petitioners with the co-accused is also apparent as while passing the second resolution dated 19.1.2019, both the petitioners are signatory and even petitioner-Manish Saini was an authorized person to file the RSA.

Nothing stated in this resolution that the same is passed considering the interest of the Municipal Committee as huge financial loss is being caused to the Municipal Committee as the petitioners could not be produced on record any receipt to show that Surender Kumar Garg, co-accused and husband of Reena Garg, the then President of the Municipal Committee, whereas the petitioners were the Councillors had made any payments subsequent to the year 1996 and the arrears have accumulated more than Rs.02 Crores, which is a direct financial loss to the Municipal Committee.

The conspiracy between all the accused is also apparent for another reason that while issuing notice of motion in RSA No.08-2007, the operation of the lower Court judgment was stayed by this Court and subsequently finding substantial question of law, the RSA No.08 of 2007 was admitted, which required consideration and in the alleged resolution dated 19.1.2019, none of the petitioners did not form any opinion that withdrawal of the RSA is in the large interest of the Municipal Committee and therefore, they conspiracy with the other accused have committed a serious offence of causing loss to the financial institution and accordingly, I find no ground to grant the concession of anticipatory bail to the petitioners, the same is dismissed.

So far as CM-472-2021 is concerned, this Court finds that substantive legal grounds are made out for recalling the order dated 6.5.2019 and for restoration of the RSA-07-2008, which requires adjudication on merits of the case in view of orders dated 9.1.2007 and 9.11.2009.

The case file of RSA-08-2007 is ordered to be segregated from CRM-M-44276-2020.

Notice of the application be issued to respondent Surender Kumar Garg for 14.7.2022.

The Registry is directed to list RSA No.08 of 2007, as per the roster.

**(ARVIND SINGH SANGWAN)
JUDGE**

May 12, 2022
satish

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