

2023:PHHC: 108152

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

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CR-4626-2023

Date of Decision: 17.08.2023

Municipal Committee, Nangal Chaudhary, District Mahendergarh through its
Secretary

..... Petitioner

Vs.

Vikas

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Pritam Singh Saini, Advocate for the petitioner.

GURBIR SINGH, J. (ORAL)

1. Prayer in this petition is for quashing/setting aside the impugned order dated 26.04.2023 passed by learned Addl. District Judge, Narnaul vide which order passed by the learned Civil Judge (Senior Division) Narnaul dated 01.04.2023 (Annexure P-1) on the application filed under Order 39 Rule 1 & 2 C.P.C has been set aside.

2. The plaintiff (respondent) filed a suit for declaration in possession of the property measuring 3K 1M comprising in killa No. 34/13/3 as per jamabandi for the year 2018-19 situated in the revenue estate of Nangal Chaudhary, District Mahendergarh and suit for permanent injunction restraining the defendant/petitioner not to interfere in the suit property.

3. The case of the plaintiff/respondent is that plaintiff/respondent moved an application for correction of khasra girdawari, which was allowed and entries in the khasra girdawari have been corrected in the name of the plaintiff in the revenue record. The said property belongs to Jat's and Brahmin's communities. In an oral family settlement, the suit property had been released in favour of the plaintiff/respondent.

4. The case of the defendant/petitioner is that plaintiff/respondent is not the owner of the suit property rather as per jamabandi for the year

2018-19, plaintiff is in possession over the suit property being a cultivator. All the properties which are Shamilat Deh or Jumla Mustarkha Malkan have vested in the Panchayat Deh or Municipal Bodies concerned.

5. Counsel for the defendant/petitioner has argued that Municipal Committee has been recorded as the owner of the suit property and plaintiff/respondent has no concern with the suit property. The plaintiff/respondent has not been found to be in established possession for a long period especially when the entries in the khasra girdawari have been changed on 09.03.2018. After passing of the judgment in case *State of Haryana Vs. Jai Singh & Others 2022(2) RCR Civil 803*, Govt. of Haryana had issued general instructions to change the entries in the revenue record in the name of Gram Panchayat and Municipality as the case may be. The lands which have been wrongly recorded in the name of proprietors/shamlat deh/tholas are wiped out and Gram Panchayats/Municipalities are deemed to be owners in possession of the of the said property. He has submitted that plaintiff/respondent has constructed a hotel and was using the suit property for commercial purposes without sanction of the building plan, therefore, Municipal Committee has right to demolish the property which was constructed unauthorizedly.

6. I have heard the submissions of the learned counsel for defendant/petitioner. There is no dispute that plaintiff has been recorded as occupier of the suit property. Admittedly, the entries in the khasra girdawari were made in favour of the plaintiff /respondent on 09.03.2018 showing the plaintiff/respondent in possession of the suit property. A person in an established possession can neither be dispossessed forcibly nor his possession can be interfered. As per the law laid down in Jai Singh's case supra, the land pertain to Shamlat Deh Nad Jumla Mustarkha Malkhan have been ordered to

be recorded in the ownership of the Panchayat Deh and Municipal Bodies concerned, as the case may be, but by recording the ownership of the said bodies, possession is not at all disturbed.

6. The learned trial court has rightly held that it is settled law that no one can take law in his own hands and even a trespasser in settled possession cannot be dispossessed without recourse of law relying on the case of *Maria Margardia Sequeria Fernandes and Others vs. Erasmo Jack de Sequeria (Dead) through L.Rs and Others 2012(2) RCR (Civil) 441 (SC)*. The defendant/petitioner can definitely get the possession, if entitled, by due course of law and defendant/petitioner has no authority to dispossess a person in an established possession forcibly. The learned appellate Court has restrained the defendant/petitioner from dispossessing the plaintiff/respondent from the suit property except in due process of law till final decision of the suit.

7. I do not find any illegality in the order passed by the learned appellate Court. It is hereby made clear that this order is only regarding forcible dispossession, but the defendant/petitioner has got every right to initiate proceedings and to seek the possession by invoking recourse of law. If there is violation of any law, then also defendant can proceed in accordance with law and this order is not of any hindrance of passing a legal order by the authority established by law.

8. Petition stands dismissed.

(GURBIR SINGH)
JUDGE

17.08.2023.
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No