

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

112

2023:PHHC:090734

**1. RSA-5557-2016 (O&M)
Date of decision: 19.07.2023**

RANDHIR SINGH AND OTHERS **..Appellants**

Versus

MUNICIPAL COUNCIL AND OTHERS **..Respondents**

2. RSA-3502-2017 (O&M)

BHUPENDER SINGH AND ANR. **..Appellants**

Versus

MUNICIPAL COUNCIL AND OTHERS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Sharma, Sr. Advocate
with Mr. Vikram Singh, Advocate
for the appellant (in RSA-5557-2016).

Mr. Aman Bahri, Advocate
for respondent No.1.

Mr. Surjit Singh, Advocate
for Mr. Rajbir Singh, Advocate
for the appellant (in RSA-3502-2017)
for respondent No.6 and 7 (in RSA-5557-2016).

Mr. Govind Goel, Advocate
Sh. Amit Kashyap, Advocate
for contesting respondent.

Mr. Damanjeet Singh Batalvi, Advocate
for Mr. Nimarpreet Sidhu, Advocate
for the applicants/respondents No.6, 7 & 8.

Ms. Vibha Tewari, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

1. These two connected appeals have come up for hearing.
2. In both the appeals, the correctness of concurrent finding of facts arrived at by the Courts below are challenged by the plaintiffs.

3. The plaintiffs are the tenants inducted by the Municipal Council which now stands superseded by the Municipal Corporation. The dispute is with regard to the property located on Atlas Road, Sonapat. Both the Courts have found that in fact the land underneath the shops belongs to the rehabilitation department. Apart from the shops constructed, there were certain unauthorized constructions which were removed pursuant to the direction of the High Court in CWP-11673-2011. The plaintiffs while filing the suit have claimed a decree of permanent injunction restraining the defendants including the State of Haryana and rehabilitation department from demolishing the shops which have been rented out to the appellants. They claim to be sitting in the shops from the year 1993. At one point in time, the Government came out with a policy decision while giving option to the Municipal Council or Municipal Corporation to pay some amount to the rehabilitation department in order to ensure transfer in its favour. However, Municipal Council never took benefit of the option given in the aforesaid policy.

4. The learned Senior counsel representing the appellant does not dispute the correctness of findings of facts arrived at by the Courts below that the disputed land belongs to the rehabilitation department. His entire argument is based upon the policy decision taken by the Government in the year 1983. He submits that the Municipal Council has applied for the transfer by paying the token amount, while complying with the necessary formalities. He submits that the appellants who are earning their livelihood by running the shops for the last 30 years should not be demolished as it would result in depriving them of their livelihood.

5. On the other hand, the learned counsel representing the Municipal Corporation submits that the aforesaid area is meant for the development of green belt and parking space. He submits that these shops were wrongly constructed and the tenants under the Municipal Council cannot claim protection of the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the '1973 Act'). The tenancy period is on a yearly basis. Even if the appellants were to be treated as tenants of shops owned by the Government still the protection under the 1973 Act would not be available to them. It is the stand of the Government before this Court that this area is crucial for maintaining the green belt and parking space. The policy adopted by the Government in the year 1983 makes a provision for transfer. The exact word used in the policy is 'should' which is not equivalent to 'shall' and it should not be interpreted as 'shall'. Moreover, the Government cannot be compelled by the Municipal Council to transfer the land and permit its utilization for a purpose for which it was never reserved.

6. It may be noted here that an application has been filed for permission to lead additional evidence in order to produce the policy decision of the Government in the year 1983, rent note between the Municipal Council and tenants and their receipts.

7. These documents have been considered by this Court.

8. As already noticed, the policy has been examined. The tenancy created by the Municipal Council in favour of the appellant is not in dispute, however, the land underneath the shops was never under the ownership of the Municipal Council. Hence, the documents sought to be produced in

additional evidence do not come to the rescue of the appellants.

MOHD AYUB
2023.07.24 15:04
I attest to the accuracy and
authenticity of this order/judgment.