

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.30267 of 2022
Decided on 16.02.2023.

Ram Murti Marwaha

...Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Harmeet Singh, Advocate for
Mr. Vikram Anand, Advocate
for the petitioner.

VIKRAM AGGARWAL, J.

1. The petitioner seeks setting aside of the order dated 22.11.2021 (Annexure P-11) passed by respondent No.2 vide which Resolution dated 08.06.2021 (Annexure P-10) passed by respondent No.3 recommending acceptance of reserve price amounting to Rs.30,68,906/- *qua* Plot No.446-A, Model Town Kapurthala, Punjab (hereinafter referred to as the plot) from the petitioner has been cancelled. The petitioner also seeks a direction to the respondents to accept the balance amount due from the petitioner and to transfer the plot in his name. The petitioner also seeks a restraint order against his dispossession from the plot.

2. The case of the petitioner is that he is in possession of the plot measuring 10 marlas which is owned by the Wakf Board. The petitioner has constructed his house on the plot. The Punjab Wakf Board originally owned 2 kanal 15 marlas of land out of which 16 marlas was taken-over by respondent

the Wakf Board which was under the possession of the predecessor-in-interest of the petitioner and, thereafter, in the possession of the petitioner.

3. Initially, a petition under Section 5 and 7 of the Public Premises Act, 1973 (hereinafter referred to as 'the 1973 Act') was filed by respondent No.3 against the predecessor-in-interest of the petitioner namely, Surinder Kaur and Harnek Singh for their eviction from the plot. This petition was allowed vide order dated 18.01.2011 (Annexure P-3). The same was affirmed in appeal vide order dated 18.07.2013 (Annexure P-4). The petitioner then filed **CWP No.19579 of 2013, titled as Ram Murti Vs. Deputy Commissioner and others**, against these orders, which was dismissed vide judgment dated 19.05.2014 (Annexure-P5) and this judgment was affirmed in **LPA No.964 of 2014 titled as Ram Murti Vs. Deputy Commissioner Kapurthala and others**, vide judgment dated 04.06.2014 (Annexure P-6). Thereafter, a civil suit was filed by the petitioner for permanent injunction against forcible injunction which was decreed on 21.03.2016 (Annexure P-7). The appeal against the said decision was dismissed vide judgment dated 15.01.2019 by the Additional District Judge, Kapurthala (Annexure P-8). Regular Second Appeal against the said decision is stated to be pending.

4. In the meantime, initially resolution dated 22.11.2016 (Annexure P-9) was passed in favour of the petitioner recommending the allotment of the plot to the petitioner at collector rate along with other charges. Subsequently, Resolution dated 08.06.2021 (Annexure P-10) was also passed recommending the acceptance of reserve price from the petitioner *qua* the plot. It is this resolution (Annexure P-10) which has been now cancelled by way of the impugned order dated 22.11.2021 (Annexure P-11) leading to the filing of the present writ petition.

5. We have heard the learned counsel for the petitioner and have perused the record.

6. Learned counsel for the petitioner has submitted that the impugned order is illegal and has been passed without application of mind and therefore, deserves to be set aside. Learned counsel has referred to the earlier resolution dated 22.11.2016 (Annexure P-9) and the current resolution dated 08.06.2021 (Annexure P-10) and has submitted that the petitioner has constructed a house over the plot which is in existence for the last many years. It has been contended that keeping in view this very fact, respondent No.3 has, for the second time recommended that the plot be allotted to the petitioner. Learned counsel has submitted that the impugned order did not take into consideration the judgment passed by the civil Court and the fact that Regular Second Appeal is also pending before this Court. It has been submitted that the impugned order is also violative of the principles of natural justice since no opportunity of hearing was granted to the petitioner.

7. We have considered the submissions made by learned counsel for the petitioner but are unable to agree with the same.

8. The plot measuring 10 marlas, was under the ownership of the Punjab Wakf Board. The other land adjoining the plot was acquired by respondent No.3. The plot was earlier in possession of one Surinder Kaur and Harnek Singh and subsequently the petitioner came into possession of the same. How he came into possession is not known. There is no document showing as to how the petitioner came in possession of the plot. The possession of the petitioner can, therefore, be termed to be unauthorized. It is a matter of record that initially petition under the 1973 Act was filed by respondent No.3 against Surinder Kaur and Harnek Singh which was allowed vide order dated 18.01.2011 (Annexure P-3). This order was affirmed in appeal vide order dated 18.07.2013 (Annexure P-4). It appears that after the appeal, the petitioner came into possession of the plot and therefore, he

challenged the eviction proceedings by way of **CWP No.19579 of 2013, titled as Ram Murti Vs. Deputy Commissioner and others**, which was dismissed vide judgment dated 19.05.2014 (Annexure P-5). This judgment was affirmed vide judgment dated 04.06.2014 (Annexure P-6) passed in **LPA No.964 of 2014 titled as Ram Murti Vs. Deputy Commissioner Kapurthala and others**. While upholding the eviction proceedings, the Division Bench of this Court held as under:-

“Apart from these pleadings, it was held that the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents. In the present case, the pleadings of the appellant leave alone being complete are quite discrepant and contradictory. Besides, the appellant states that he came in possession of the property during the pendency of the proceedings. He has not placed on record any material to show the basis or the foundation of his possession. He has not placed on record as to how he came in possession. At one stage, he states that he came in possession on the basis of an agreement purported to have been executed by Harnek Singh. However, the said agreement has not been placed on record; besides, the foundation of the possession of Harnek Singh even is not mentioned as the allotment letter (Annexure P-9) has been executed by the Punjab Wakf Board in respect of an area of 207.7 square yards in favour of Surinder Kaur wife of Harbhajan Singh. In the ejectment petition (Annexure P-1) filed by the Improvement Trust, Kapurthala (respondent No.3) against Surinder Kaur and Harnek Singh, the latter did not contest the petition and was proceeded against ex parte. The reply (Annexure P-2) was filed only by Surinder Kaur. The order of ejectment (Annexure P-6) was passed by the Sub Divisional Magistrate, Kapurthala exercising the powers of Collector under the PP Act on 18.01.2011 against Surinder Kaur and Harnek Singh. The

appeal before the Deputy Commissioner exercising the powers of Commissioner under the PP Act was filed only by Surinder Kaur which was dismissed vide order (Annexure P-7) on 18.07.2013. The said order has not been further assailed by Surinder Kaur and has attained finality.

In the circumstances, the appellant has indeed not shown any material nor made clear pleadings as to how he came in possession of the land of which he claims his entitlement to remain in possession. Therefore, indeed the appellant has no locus standi to file the present appeal. He is unclear and unable to explain as to how he is in possession of the land. In these circumstances, the learned Single Judge rightly held that it appeared that the various persons who had not been able to establish any right/title had been instituting proceedings to retain possession of the property in question.

For the foregoing reasons, there is no merit in the appeal and the same is accordingly dismissed.”

9. Undeterred by the aforesaid decisions, the petitioner filed a civil suit for permanent injunction which was decreed vide judgment dated 21.03.2016 (Annexure P-7) and was affirmed in appeal vide judgment dated 15.01.2019 (Annexure P-8). It has to be borne in mind that by way of these judgments, it was only held that the petitioner would not be dispossessed except in due course of law. While deciding the appeal it was held as under:-

“18) So in the given circumstances, when the respondent/plaintiff is admittedly in the possession of the suit property, he cannot be ousted therefrom illegally and forcibly by anybody including the appellant/defendant Punjab Wakf Board. I find to interfere in the finding given by learned lower court that if the defendants i.e. Punjab Wakf Board wants to evict the respondent/plaintiff, they can evict him in due course of law. In Ex.D2 i.e. order dated 19.05.2014 passed by Hon’ble Punjab and Haryana High Court in Writ Petition No.19579/2013 also, it has been held that the plaintiff be not dispossessed except in due course of law. If at all, the respondent/plaintiff is an authorized occupant over the

suit property, the appellant/defendant Punjab Wakf Board is at liberty to get them evicted therefrom. I do agree with the observation made by learned lower court that vide Ex.D2, the Hon'ble Punjab and Haryana High Court has given liberty to the appellant/defendant to evict the plaintiff from the premises as per law i.e. by way of filing execution application, and not straightway.

19) In view of what has been discussed above, I am of the considered view that there is no merit in the appeal filed by the appellants/defendants and no interference of this Court is required in the judgment dated 21.03.2016 passed by learned lower Court. Hence, the appeal filed by appellants-defendants Improvement Trust is hereby ordered to be dismissed and the judgment and decree of learned lower Court has been upheld. Miscellaneous application pending, if any, stands dismissed being not pressed. Decree sheet be prepared. Lower court record be returned forthwith alongwith copy of judgment and appeal file be consigned to the record room."

10. Simultaneously, the petitioner was also pursuing his matter with respondent No.3 which also passed resolution after resolution in favour of the petitioner bothering little about the loss to be caused to the State Exchequer. Initially, resolution dated 22.11.2016 (Annexure P-9) was passed which, as per order dated 22.11.2021 (Annexure P-11) was cancelled on 15.01.2017. Thereafter, resolution dated 08.06.2021 (Annexure P-10) was passed which has been cancelled by way of the current impugned order dated 22.11.2021 (Annexure P-11). There is no illegality in this order as it says that possession of the plot should be taken in accordance with law. It has been rightly observed that there was no need of filing Regular Second Appeal against the decisions of the trial Court allowing the suit of the petitioner for permanent injunction as these decisions only restrained the authorities from taking forcible possession of the plot from the petitioner. It was, therefore, rightly held that the resolution dated 08.06.2021 (Annexure P-10) deserves to be cancelled. It has to be borne in mind that

unauthorized occupants of Government land do not deserve any indulgence and the mere efflux of time does not clothe such persons with any right.

11. In view of the aforementioned facts and circumstances, we do not find any merit in the present writ petition and the same is, therefore, dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

16.02.2023

rekha sharma

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