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

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Date of Decision: 30.04.2024.

Sukhwinder Singh

...Petitioner.

Versus

Municipal Committee, Shahabad

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Sanjiv Kumar Yadav, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 27.01.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division) Shahabad, vide which application filed by the petitioner under Order 39 Rules 1 and 2 read with Section 151 of CPC was dismissed and further the petitioner has challenged order dated 31.01.2023 (Annexure P-2) passed by the First Appellate Court, vide which the appeal preferred by the petitioner against order dated 27.01.2023 has been dismissed.

2. The relevant facts for adjudication of the present revision petition are that the plaintiff had filed a suit for permanent injunction for restraining the defendant from evicting him forcibly from CCTV Camera Yukt parking near Police Station, G.T., Road, Shahabad Markanda, as detailed in head note and para No.2 of the plaint, without following due

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process of law, as provided under Sections 4 and 5 of the Haryana Public Premises and Land (Eviction & Rent Recovery) Act, 1972.

3. The case of the plaintiff, is that the respondent/ defendant, in the year 2019, claiming itself to be owner in possession of the land measuring 15 Kanal 5 Marla, bearing Khewat No.1913, Khatoni No.2038, Khasra No.122 (4-9), 123 (10-16), situated at Jambra Shahabad, District Kurukshetra, conducted an open auction on 06.09.2019 for parking land measuring 15684-86 square yards, situated near Police Station, G.T., Road, Shahabad Markanda, District Kurukshetra. The petitioner/ plaintiff has submitted that he was allotted the said parking for period of one year w.e.f. 01.10.2019 to 30.09.2020 at monthly rent of Rs.31,500/-. Then the period of allotment was renewed from 04.11.2019 to 03.11.2020. The parking area was again allotted to the plaintiff from 03.11.2020 to 02.11.2021 and then for further period of six months from 03.11.2021 to 02.05.2022. It has been averred that the plaintiff was regularly paying the monthly rent of the said parking area to the defendant without any default but for extraneous consideration, in May, 2022, defendant decided to cancel the allotment/ contract of the said parking area. The defendant got published public notice on 10.05.2022 for auction of the said parking area on 17.05.2022. The plaintiff had challenged the same but his interim application was dismissed by the trial Court and also by the First Appellate Court. Thereafter, the civil suit bearing No.184/2022 was withdrawn by the plaintiff. The successful bidder in auction of the said parking area withdrew his consent when he came to know about the litigation between the defendant and Union of

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India. Thereafter, defendant again conducted one public auction of the said parking area on 04.01.2022, which was allotted to Amit Kumar Pathak by violating all due procedures. It has been pleaded that the defendant is hell bent to oust the plaintiff from the said parking area forcibly and unlawfully, whereas the plaintiff is a lessee in settled possession of the said parking area from where he can be evicted only by following due process of law as prescribed under the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short, 'the Act, 1972'). Alongwith the suit, the plaintiff also moved an application under Order 39 Rules 1 and 2 read with Section 151 CPC for restraining the defendant from evicting him from the said parking area forcibly till the disposal of the suit.

4. On notice, the respondent/ defendant appeared in the above said civil suit and has taken the objection that the suit is hit and barred under Section 11 CPC because the petitioner/ plaintiff had earlier filed civil suit No.CS/184/2022 titled as 'Sukhwinder Singh Vs. Municipal Committee, Shahbad' seeking relief of permanent injunction regarding the same subject matter qua the same property and between the same parties in which the stay application was dismissed vide order dated 17.05.2022 by trial Court. The petitioner/ plaintiff filed an appeal No.38 of 2022 before the First Appellate Court, Kurukshetra, which was dismissed as withdrawn vide order dated 24.05.2022. The respondent/ defendant has claimed that since the term of the petitioner/ plaintiff has already expired on 02.05.2022, so no ground to further extend the same is made out and the petitioner/ plaintiff is not entitled to any protection as he is a trespasser on the land of respondent/

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defendant. The auction proceedings had been again conducted on 04.01.2022 and the highest bidder Amit Kumar Pathak had been allotted the parking area. It was submitted that the present suit has been filed just to harass the respondent/ defendant.

5. After hearing the parties and going through the record, the trial Court had dismissed the application under Order 39 Rules 1 and 2 CPC filed by the petitioner/plaintiff vide order dated 27.01.2023. The appeal preferred against the same before the First Appellate Court was also dismissed vide order dated 31.01.2023. Hence the present revision petition had been filed by the revision petitioner before this Court.

6. Learned counsel for the revision petitioner has contended that on the intervening night of 30/31.01.2023, the respondent/ defendant had taken possession of the suit property forcibly with the help of the local police without following any course of law. The petitioner/ plaintiff was in established possession of the suit property and was tenant by way of holding over. Otherwise, even if he is not to be treated as tenant holding over, he can be termed as a person in unauthorized occupation of the public premises in view of the Section 3(b) of the Act, 1972 and in that case the mode to eject him from the suit property was to be followed as provided in Sections 4 and 5 of the Act, 1972. He has further contended that the respondent/ defendant is a State instrumentality and a statutory body, so under the colour of State power, the respondent/ defendant cannot be above law and cannot use force/ police power for doing an illegal act. If the respondent/ defendant enters into commercial activity, then it will have to honour the terms of the

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agreement and custom of the trade. He has argued that the trial Court has wrongly held that no lease agreement or deed of any grant or allotment letter was ever executed between the petitioner/ plaintiff and respondent/ defendant, while it is the admitted case of the parties that the parking area was allotted to the petitioner/ plaintiff vide letter dated 17.09.2019, which was extended vide letter dated 05.11.2019, which was further extended vide letter dated 03.11.2021, so the plaintiff can be held to be in unauthorized possession of the suit property and not a trespasser. He has also urged that this fact was also not appreciated by the Courts below that the petitioner/ plaintiff was in settled possession of the suit property and he could be ejected by the respondent/ defendant by following the procedure prescribed by the Act, 1972, even if the respondent/ defendant was in unauthorized possession of the suit property. He has contended that it is the settled law that even the true owner cannot dispossess the person in established possession except by following the procedure prescribed by law and in this context has relied upon **Krishna Ram Mahale (Dead) by his legal representatives Vs. Mrs. Shhobha Ram Venkat Rao, 1990(1)R.C.R. (Rent) 525** and **Sunta Devi Vs. The Commissioner, Rohtak Division, Rohtak, 2008(1) R.C.R. (Civil)720** and has further submitted that the possession over the suit property is liable to be restored to the petitioner/ plaintiff till the final decision of the case.

7. I have heard learned counsel for the petitioner and have gone through the relevant record.

8. This is the admitted fact between the parties that previously the

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parking lot comprised in the suit land was auctioned in favour of the plaintiff by the defendant on 01.10.2019 terms of which were extended till 02.05.2022. This is again the admitted fact that when despite expiry of his term, the plaintiff remained in possession over the parking lot, then the auction proceedings were again conducted and the parking lot was allotted to Amit Kumar Pathak, who was the highest bidder to the tune of Rs.1,30,000/- per month.

9. The petitioner/ plaintiff claims protection under Sections 4 and 5 of the Act, 1972 regarding his unauthorized possession. The latest auction had been held on 04.01.2023 in which Amit Kumar Pathak gave the highest bid. It is again an admitted fact the petitioner/ plaintiff did not participate in any such auction proceedings, despite the fact that he had challenged the said auction before the Civil Court, but could not get any interim relief even up to the Appellate Court. Thus, the plaintiff was not having any right to remain in possession over the suit property. It has not been explained that in which capacity he remained in possession over the suit property after expiry of term allotted to him in the open auction. The Courts below have rightly held that when the petitioner/ plaintiff did not participate in the auction proceedings after his period of allotment had already expired and subsequent highest bidder has deposited the security amount of Rs.2,00,000/-, then no prima facie case is made out in favour of the plaintiff. Balance of convenience also does not lie in favour of the plaintiff and granting of injunction would, rather, cause irreparable loss to the defendant/ respondent and to the person who had been declared successful bidder in the

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fresh auction and who had already deposited the security amount. The aforesaid highest bidder has not even been impleaded as a party in the instant suit, despite the fact that the injunction, if any, granted would directly affect the said highest bidder. The Courts below have further rightly held that it is trite law and an injunction cannot be sought against a lawful owner of the property and the provisions of the Act of 1972, cannot be relied upon by the petitioner/ plaintiff in order to claim injunction, as a matter of right, the fact being that he has no right to remain in possession of the suit property after expiry of his term. The case law cited by learned counsel for the petitioner is of no help to him being based on distinguishable facts.

10. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

12. Nothing expressed hereinabove shall be construed as an opinion on the merit of the case.

(SUKHVINDER KAUR)
JUDGE

30.04.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No