

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

CWP-7310-2024

Date of Decision: 01.04.2024

Renu Aggarwal

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Harjot Singh Bedi, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for setting aside the impugned order dated 21.09.2023 (Annexure P-17) passed by the Deputy Commissioner, Gurdaspur, vide which the representation given by the petitioner has illegally been rejected on an altogether facts which has no relevancy with the case and the Municipal Council, Gurdaspur as well as the Additional Deputy Commissioner, Gurdaspur has not brought the facts to the notice and rather have actively concealed the same which has led to the passing of an erroneously order. Further prayer has been made for issuance of direction to the respondents to shift the water pump from the private property of the petitioner with immediate effect.

2. As contended by counsel for the petitioner, the petitioner purchased 11 Marlas of land in the year 2017 comprised in Khasra No.2079 which measures 4 Kanals 3 Marlas and out of the said land, the petitioner sold 2½ Marlas of land to one Deepak Ghai and was left with 8½ Marlas of land in which a water pump was installed by the Municipal Council, Gurdaspur. He submits that the co-sharers already occupied the specific portion of the joint land and hence, the petitioner filed an application for demarcation on 19.05.2021. He submits that on conducting the demarcation,

Tehsildar gave report dated 26.05.2021. It is submitted that as the water pump of Municipal Council, Gurdaspur was installed in the area of the petitioner, she made a request to the Deputy Commissioner, Gurdaspur to get the same removed/shifted from her area vide her representation dated 21.06.2021. It is further submitted that the Deputy Commissioner, Gurdaspur marked the same to the SDM (G), Gurdaspur for necessary action. He submits that the SDM (G) further wrote to the Executive Officer, Municipal Council, Gurdaspur vide its letter dated 30.07.2021 to initiate necessary action. He has submitted that the EO, MC, Gurdaspur vide letter dated 02.08.2021 directed the Municipal Engineer, Gurdaspur to submit his report and thereafter, Municipal Engineer vide his letter dated 10.08.2021 wrote to the Executive Engineer, Punjab Water Supply and Sewerage Division, Gurdaspur to send them the estimate of the shifting of the water pump to a proper place so that the water supply of clean water continues to the residents. It is further submitted that the estimate prepared by the Executive Engineer, Punjab Water Supply and Sewerage Division, Gurdaspur was of Rs.34.83 lacs. He has submitted that this matter was taken up in the meeting of the MC, Gurdaspur held on 28.10.2021 at agenda No.65. He submits that the meeting was attended by all the 29 Councilors and this agenda No.65 was considered and approved and thereafter, it was passed on receiving the approval of the Government as per Rules. He submits that thereafter, the Additional Deputy Commissioner (Urban Development) Gurdaspur wrote to the Executive Officer, Municipal Council, Gurdaspur vide letter dated 29.06.2022 and asked that in resolution No.65 dated 28.10.2021 it has not been specified as to on which place, this pump is to be shifted, hence, directed the Municipal Council, Gurdaspur for

sending clarification regarding the same. It is submitted that once the resolution was already passed by the MC Gurdaspur on 28.10.2021 to shift the said pump from the private land of the petitioner, the MC cannot continue to operate the water pump from the land of the petitioner. It is submitted that when no action was taken by respondent-MC, the petitioner filed an application dated 21.06.2021 before respondent No.3, but no action was taken on the same, hence, the petitioner filed CWP-29243-2022 before this Court, which was disposed of by this Court vide order dated 21.07.2023 directing respondent No.3 i.e. the Deputy Commissioner, Gurdaspur to decide the representation dated 21.06.2021 within one month from the date of order. In pursuance to the same, the Deputy Commissioner passed the impugned order dated 21.09.2023 rejecting the representation of the petitioner. He has submitted that respondent No.3 has not taken into consideration the facts and circumstance of the case. He has submitted that this is an admitted position that the water pump is installed in the private land of the petitioner and the resolution has also been passed by the MC, Gurdaspur for shifting the same but despite that the Deputy Commissioner has rejected the representation on the basis of false grounds which are not even relevant in the present case. He further submits that the impugned order being unsustainable in the eyes of law, deserves to be set aside.

3. Heard.

4. After hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner had purchased 11 Marlas of land in the year 2017 in Khasra No.2079 measuring 4 Kanals 3 Marlas. Thus, it is evident that the petitioner purchased the share of the vendor/co-sharer in the land measuring 4 Kanals 3 Marlas. This land was in the joint ownership of all the co-sharers at the time when the petitioner purchased the land.

Thus, it cannot be said that the petitioner purchased a specific area of joint land. Perusal of the impugned order would show that the civil suit alongwith application under Order 39 Rule 1 CPC was also filed pertaining to this land and thus, civil dispute regarding this land was also initiated. As observed by the Deputy Commissioner, learned Additional District Judge observed in the order passed that ownership of the land in dispute is with Mandir Trust and Manager Mai Ka Mandir is in possession of the property in dispute. The water pump was installed about 20 years ago which is supplying water to almost 1020 houses and thus, it is apparent that the petitioner had purchased share in the joint ownership which was not partitioned. The case involves the disputed question of the facts and hence, the Deputy Commissioner directed the petitioner to approach the Civil Court. In the overall facts and circumstance of the case, the view taken by the Deputy Commissioner in directing the petitioner to approach the Civil Court, suffers from no illegality.

5. Thus, in the considered opinion of this Court, there is no infirmity in the order passed by the authority below. Hence, the present petition being devoid of any merit is hereby dismissed.

6. However, the petitioner would be at liberty to avail her remedy as available to her under law.

01.04.2024
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No