

221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21809-2015
Decided on: 06.02.2024

Parkash Singh and others

..... Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Akshay Kumar Jindal, Advocate, for the petitioners.
Mr. Arun William, Assistant Advocate General, Punjab.
Mr.G.S. Attariwala, Sr. Advocate with
Mr. Saurabh Singla, Advocate for respondent No.2.

Mr. D.S. Sidhu, Advocate for
Mr. Alok Jain, Advocate for respondents No.3 to 5.

Rajesh Bhardwaj, J. (Oral)

Prayer in the present petition is for setting aside the resolution No.13 dated 12.03.2012 issued by the Municipal Council, Zirakpur District Mohali wherein land measuring 2000 sq. Yards in village Baltana has been sold to respondent No.3 and consequently for setting aside the sale effected dated 29.09.2015, wherein in furtherance of the resolution dated 12.03.2012 (Annexure P-4) the land reserved for the non-proprietors (petitioners) has been sold.

It has been submitted by learned counsel for the petitioners that the petitioners are the non-proprietors inhabitants in village Baltana, Tehsil Dera Bassi, District SAS Nagar Mohali. He has submitted that consolidation in the village had taken place on 07.12.1985 and in the partition proceedings, land comprised in *Khasra* No.973, 974, 975 and 978 were reserved for non-proprietors as *Abadi* plots were situated in the said *Khasra*

numbers. He has submitted that *Jamabandi* for the year 2012-13 would show that these *Khasra* numbers are *gair mumkin/abadi* plots inhabited by the non-proprietors/scheduled castes. It is submitted that vide notification dated 04.08.2000, village Baltana was declared as a transitional area and consequently a Nagar Panchayat was constituted in place of Gram Panchayat and thereafter, in the year 2006 the Nagar Panchayat was declared as Municipal Council, Zirakpur. He has submitted that the petitioners have been living in the said area for many generations and almost 40 to 50 houses were situated in the aforesaid *Khasra* numbers. It is submitted that Municipal Council, Zirakpur passed a resolution dated 12.03.2012, wherein, it was resolved that land measuring 2000 sq. yards in village Baltana and 5000 sq. yards Dialpura would be provided to respondent No.3 for setting up of Sub Station in Baltana. He submits that sale deed was got executed by the Municipal Council, Zirakpur in favour of respondent No.3 for the land which was reserved for the petitioners at the time of consolidation. It is submitted that the respondents are trying to take possession of the said land forcibly and some houses belonging to the non-proprietors were also demolished. It is submitted that resolution dated 12.03.2012 and registered sale deed dated 29.09.2015 were executed illegally as the same are without any jurisdiction and against the settled principles of law. It is further submitted that after merger of village in Municipal Council, Zirakpur, Shamlat land of the village had not vested in the Municipal Council, Zirakpur. He submits that in view of the provisions of Section 56 of the Punjab Municipal Act, Municipal Council had no power whatsoever to transfer the same in favour of respondent No.3. He submits that the land reserved for the petitioners/non-proprietors, which was

initially *Shamlat land*, does not vest in the Municipal Council and hence, Municipal Council had no right to alienate them. It is submitted that the petitioners were not granted any opportunity before taking any decision. He further submits that the necessary sanction from the State Government was also not obtained by the Municipal Council, Zirakpur. He submits that in these circumstances, the resolution dated 12.03.2012 and the sale deed dated 29.09.2015, being unsustainable in the eyes of law, deserves to be set aside.

Per contra, learned Senior Counsel assisted by Mr.Saurabh Singla, Advocate for respondent No.2 i.e. Municipal Council, Zirakpur has opposed the submissions made by counsel for the petitioners. He has submitted that the petitioners have not approached this Court with clean hands and the present petition has been filed with a clandestine motive. He submits that the land falling in *Khasra* No.978 was reserved as *Gair Mumkin* during consolidation. He submits that the petitioners are residing in *Khasra* No.978 for last many years. He submits that total area of *Khasra* No.978 is 4750 sq. yards approximately and out of this area, the petitioners constructed their houses in an area measuring 2000 sq. yards approximately and are residing peacefully in that area. He further submits that the respondents have only sold vacant land measuring 2000 sq. yards to PSPCL out of 4750 sq. yards for construction of 66 KV Sub Station for the benefit of the residents of the city. He has submitted that no construction of the houses of any inhabitant of the area was touched/disturbed even though the MC is the owner of the said land. He has submitted that in order to resolve the electricity problem in the area, resolution No.13 dated 12.03.2012 for setting up of two 66 KV Sub Stations in village Baltana and village

Dayalpura, was passed and thereafter, this resolution was sent to the State Government for approval since the MC falls within the jurisdiction of Director, Local Government, Punjab. He submits that State Government vide letter dated 06.06.2014 granted approval for setting up of 66 KV Sub Station at Baltana in land measuring 2000 sq. yards. It is submitted that respondent No.2-MC being the owner sold land measuring 2000 sq. yards to PSPCL at Collector's rate. It has been submitted that the petitioners are not in possession of the subject land and they are living peacefully in other part of the land and the possession of the petitioners would not be disturbed in any manner by constructing 66 KV Sub Station. He submits that from the facts and circumstances of the case, it is apparent that there is no title dispute in the present case as admittedly respondent-MC is the owner of the land in dispute. However, 66 KV Sub Station is being constructed in the vacant land and not in the land which is in the possession of the petitioners. He further submits that the submissions made by the petitioners are totally beyond the revenue record. It is submitted that the petitioners have no *locus standi* to file the present petition and the pleas taken by petitioners are totally based on the disputed questions of facts, which cannot be adjudicated in the present petition. He submits that the present petition is not even maintainable as the grievance raised by the petitioners falls in the domain of the Civil Court and beyond the jurisdiction of the writ Court.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioners are in possession of the land in village Baltana. It is an admitted fact that there is no title dispute involved in the present case as the petitioners have not disputed the ownership of the respondent-MC. However, the precise submission made by counsel for the

petitioners is that the petitioners are the non-proprietors and in the partition proceedings the land was reserved as *Gair Mumkin* plots. It is also an admitted fact that the respondent-MC passed the resolution on the basis of which the land was sold to respondent No.3-PSPCL for setting up of 66 KV Sub Station. However, as submitted by respondent-MC that out of total area of 4750 sq. yards, respondent-MC sold only 2000 sq. yards to PSPCL. The case of respondent-MC is that resolution dated 12.03.2012 passed was sent to the State Government for its approval, which was approved by the State Government on 06.06.2014 and thereafter, possession of this area has also been delivered to the PSPCL. As has been specifically submitted by learned Senior Counsel that possession of the petitioners has not been disturbed by setting up of 66 KV Sub Station despite the MC being owner of this property. However, he has opposed the maintainability of this petition as the plea taken by the petitioners cannot be adjudicated in the writ jurisdiction and the same lies with the domain of Civil Court only. The petitioners have also not claimed the ownership of the land in their possession. This Court finds that disputed questions of facts are involved in the present case. The petitioners are admitting the ownership of respondent-MC and on the other hand, respondent-MC is admitting the possession of the petitioners. Whether in the facts and circumstances of the case, the petitioners have any *locus standi* and whether the houses of the petitioners are part of the area sold by respondent No.2-MC to respondent No.3-PSPCL are the questions to be determined by the Civil Court on the basis of evidence and are beyond the jurisdiction of the writ Court. Thus, this Court does not find any ground for its interference in the writ jurisdiction.

However, the present petition is disposed of with liberty to the

petitioners to avail the alternative appropriate remedy as available to them for redressal of their grievances as per law.

06.02.2024

sharmila

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE