

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.24055-2023
Reserved on :02.11.2023
Pronounced on: 26.02.2024.

Gian Singh Dagar	Versus	Petitioner
State of Haryana and others		Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Lokesh, Advocate
Ms. Palak Dev, Advocate
Mr. Saksham Malhotra, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G. Haryana and
Ms. Kushaldeep Kaur, Advocate for the respondents.

VIKRAM AGGARWAL, J.

1. The petitioner is aggrieved of the order dated 13.10.2023 (Annexure P-13) passed by respondent No.3 vide which the appeal preferred by the petitioner under Section 20 of the Haryana Shahari Vikas Pradhikaran Act, 1977 (hereinafter referred to as the HSVP Act) against the show-cause notice and notice of eviction dated 18.01.2023 (Annexures P-1 and P-2) was dismissed.

The petitioner also seeks quashing of the aforesaid notices as also notice dated 14.02.2023 (Annexure P-10). He also seeks a restraint upon the respondents from interfering in his peaceful possession over house No.297, Rajiv Colony, Tehsil and District Gurugram comprised in Khewat Khata No.84/22 Min Khata 94 Min Khasra No.6/24/2, situated in Revenue Estate of Village Naharpur Rupa, Gurugram (hereinafter referred to as ‘the disputed land’).

He further seeks a restraint upon the respondents from demolishing the construction over the disputed land.

2. The petitioner, who is 71 years old, claims to have purchased the disputed land from the original owner-Ram Kishan vide registered sale deed dated 15.04.1997 (Annexure P-3). The case set up by him is that he has been in undisturbed/uninterrupted and continuous possession over the disputed land for over 30 years. He also claims to have perfected his title by way of adverse possession. It is his case that the notice dated 18.01.2023 issued under Section 18 (1)(b) of HSVP (Annexure P-1) calling upon the petitioner to vacate the acquired land and to appear before the concerned Officer of HSVP to show cause as to why the disputed land be not got vacated and the notice of even date (Annexure P-2) calling upon the petitioner and other persons to vacate the disputed land by 4.00 p.m. 18.01.2023 are illegal and arbitrary. It has been averred that these notices are non-speaking and are violative of the principles of natural justice. It has also been averred that the notices depict non-application of mind, they are not directed towards any particular person and were simply pasted on the property of the petitioner in a hurried manner.

2(i). The petitioner has placed reliance upon certain property tax receipts and electricity bills (Annexures P-4 and P-5) to prove his possession over the disputed land.

2(ii). It has been averred that the notice is also violative of the provisions of Section 18 (1)(b) of the HSVP Act and 07 days period as envisaged under the said provision was not provided.

2(iii). The petitioner initially approached the Court of Civil Judge (Senior Division), Gurugram and vide order dated 20.01.2023, interim injunction against demolition was granted.

2(iv). A representation dated 24.01.2023 (Annexure P-6) and additional reply dated 25.01.2023 (Annexure P-7) were also submitted by the petitioner, but no response was received.

2(v). The petitioner filed CWP No.2722 of 2023 challenging the notices (Annexures P-1 and P-2), but withdrew the same on 09.02.2023 (Annexure P-8) so as to enable him to withdraw the civil suit and thereafter approach the High Court again.

2(vi). The civil suit was withdrawn vide order dated 16.02.2023 (Annexure P-9). However, on the same day, notice dated 16.02.2023 (Annexure P-10) was pasted on the premises of the petitioner calling upon the petitioner to vacate the disputed land failing which the construction raised would be demolished.

2(vii). Since the remedy of appeal was not found to be an efficacious remedy, the petitioner again filed CWP No.3576 of 2023 before this Court but the same was also withdrawn vide order dated 21.02.2023 (Annexure P-11) with liberty to file an appeal as envisaged under Section 20 of the HSVP Act.

2(viii). Appeal (Annexure P-12) was filed which has now been dismissed by way of the impugned order dated 26.02.2023 (Annexure P-13) leading to the filing of the present writ petition.

3. Learned counsel for the petitioner vehemently submitted that the action of the respondents in issuing notices (Annexures P-1, P-2 and P-10) is completely illegal and arbitrary and is grossly violative of the principles of natural justice. It was submitted that respondent No.3 did not examine the matter from the

correct perspective and erroneously dismissed the appeal filed by the petitioner. Pointed reference was made to the sale deed dated 15.04.1997 (Annexure P-3) and it was submitted that the petitioner has been in continuous possession of the disputed land since the year 1997 and under the circumstances, he cannot be evicted from the same except in due course of law.

4. We have given our thoughtful consideration to the issue in hand but find the claim of the petitioner to be completely devoid of merit.

5. Admittedly, the disputed land was acquired for development of residential/commercial/institutional Sector-33/34, Gurugram. After notification under Section 4 of the Land Acquisition Act 1894 having been issued, the declaration under Section 6 was issued and finally award was announced on 22.01.1992. Possession of the acquired land including the disputed land was taken over by HSVP vide Rapat No.309 dated 26.01.1992. After the conclusion of the acquisition proceedings with the announcement of the award and taking over of possession, the petitioner purchased the disputed land vide sale deed dated 15.04.1997. This sale transaction after finalization of the acquisition proceedings would not confer any right or benefit on the petitioner as the land had already vested in HSVP. It is settled law that any transaction thereafter would be void ab initio. Reference can be made to the judgment of the Hon'ble Supreme Court of India in the case of ***U.P. Jal Nigam, Lucknow Vs. M/s Kalra Properties (P) Ltd. Lucknow and others, 1996 AIR(Supreme Court) 1170***, wherein the aforesaid principle of law was reiterated. Reference can also be made to the judgments of the Hon'ble Apex Court in the case of ***Meera Sahni Vs. Lt. Governor of Delhi and others, 2009(sup) AIR (Supreme Court) 760*** and ***Shiv Kumar and another Vs. Union of India and others, 2019 AIR(Supreme Court) 5374***.

6. The conduct of the petitioner is also far from satisfactory. He remained in unauthorized occupation of the disputed land even after its acquisition till the time notices (Annexures P-1 and P-2) were issued to him. It is quite strange that even HSVP did not make any efforts to demolish the construction over the disputed land and to evict the petitioner from the same for all these years. Be that as it may, once the land had been acquired and possession had been taken, the petitioner would be left with no right. Notices (Annexures P-1 and P-2), therefore, do not suffer from any illegality except that they were issued extremely late in point of time.

7. The petitioner invoked the jurisdiction of the Civil Court despite the fact that the jurisdiction of the Civil Court is barred as per the provisions of Section 50(2)) of the HSVP Act. However, when he approached this court by way of CWP no.2722 of 2023 and this fact came to light, the petitioner instantly withdrew the said writ petition on 09.02.2023 to enable him to withdraw the civil suit. After withdrawing the civil suit, he, instead of preferring an appeal against the notices (Annexures P-1 and P-2) again approached this Court by way of CWP No.3576 of 2023 which he also withdrew on 21.02.2022 with liberty to challenge the notices in appeal.

8. His appeal came to be dismissed by respondent No.3 by way of the impugned order (Annexure P-13) dated 13.10.2023. The order does not suffer from any illegality as it simply states the fact of the disputed land having been acquired and possession of the same also having been taken after announcement of the award. The plea of the petitioner that he was in adverse possession of the disputed land is also misconceived. He cannot be permitted to raise the plea of adverse possession once he claims ownership/title on the basis of sale deed dated 15.04.1997. We wonder if such a plea could even be raised in a petition preferred

under Article 226 of the Constitution of India. Be that as it may, the conduct of the petitioner as also that of HSVP is deprecated.

In view of the aforementioned facts and circumstances, we find the present writ petition to be devoid of merit and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Pronounced on 26.02.2024
Rekha

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