

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024.PHHC.092129-DB



(121)

CWP No.26618 of 2023
Decided on :23.07.2024

Suresh Kumar and another

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Imran Mohammad, Advocate for the petitioner (s).

Mr. Saurabh Mago, DAG, Haryana.

Mr. Vikram Singh, Advocate for the respondent No.

G.S. Sandhawalia, J.(Oral)

1. Challenge in the present writ petition filed under Article 226 of the Constitution of India is to the order passed by the District Collector Ambala dated 25.10.2016 (Annexure P-11) and to the orders dated 30.01.2018 (Annexure P-12) passed by the Commissioner, Ambala, whereby the appeal filed against the said order had been dismissed and order dated 20.11.2019 (Annexure P-13) passed by the Financial Commissioner, Haryana, in the revision petition.

2. The said proceedings arose out of the suit for declaration filed by the Gram Panchayat on 05.09.2001 against 13 different persons including Shiv Kumar, who sold the land measuring 1 marla falling in Khasra No.62 min (32-12), village Majra Shahzadpur, Tehsil Naraingarh, District Ambala in the said

village on 10.09.2013 (Annexure P-8) to the present petitioners. The petitioners were never party in the said proceedings neither filed any application for being impleaded, having purchased the said land, during the proceedings before the Collector, which culminated on 25.10.2016. The Collector eventually accepted the claim of the Gram Panchayat and held that the land is vested in the Gram Panchayat as per Section 2(g) of the Punjab Village Common Land Act and any sale registered by the defendants-respondents with regard to the land in dispute was not valid. Resultantly, the effect was that the sale deed which was in favour of the respondent therein on the strength of the claim that they had a right over the property, was held to be invalid. The appeal filed by Shiv Kumar alongwith Ranjit Singh against the Gram Panchayat and other set persons who were arrayed as defendant Nos.7 to 11, was also dismissed by the Commissioner, Amabala Division, Ambala on 30.01.2018 (Annexure P-12). In the said proceedings, Ashwani Kumar was a legal heir of Shiv Kumar, but the petitioner again chose not to file any application to get himself impleaded, though had purchased the property in question. The revision petition bearing ROR No.352 of 2017 filed before the Financial Commissioner has also been dismissed on 20.11.2019 (Annexure P-13), which had been filed by another set of similarly placed persons.

3. Even firstly the locus-standi of the petitioner itself to challenge the said proceedings having chosen not to get himself impleaded stands in his way. The second issue which would arise is that in the suit for permanent injunction which he had initiated on 16.05.2017 after purchasing the property he had claimed ownership of 1 marla land in Khasra No.62 min (32-12) and he had claimed the relief of injunction against the Gram Panchayat and Laxmi Narayan Mandir (Annexure P-14).

4. The stand of the Gram Panchayat was that the said property vested with the Gram Panchayat of village-defendant No.1 and the said defendant is the true owner of the suit property and no stay could be granted against the true owner. In the rebuttal evidence which was led, the petitioner had placed on the copy of the sale deed as Mark-ZA. Keeping in view the sale deed, the Trial Court came to the conclusion by holding that the title of Shiv Kumar was defective, since the Collector already decided against Shiv Kumar to grant him the benefit, as the Gram Panchayat could not dispossess the plaintiff from the shop in question forcibly except in due process of law. Relevant findings recorded by the Trial Court on the issue No.1 whether the plaintiff is entitled to a decree for permanent injunction, read as under:-

“16. The plaintiff has purchased the shop in question from Shiv Kumar. However, as per order dated 25.10.2016 passed by the District Collector, Ambala i.e. Ex. D1 and order dated 30.01.2018 passed by Commissioner, Ambala Division, Ambala i.e. Ex. D4, Shiv Kumar is not owner of the land in dispute, so, he could not execute the sale deed in favour of the plaintiff as the law is quite settled that no one can confer better title than he has. As per the Ex. D1 and Ex. D4, the defendant No. 1 is the owner of the shop in question. In this case, as the title of Shiv Kumar was itself defective, so, he could not execute the sale deed in favour of the plaintiff and the sale deed which has already been executed in favour of plaintiff is not valid. Apart from Mark-M, no document has been produced by the plaintiff to prove his ownership over the shop in question. However, the ownership either of plaintiff or defendant is not be decided in this case by the court.

17. The plaintiff has filed the present suit for permanent injunction for protection of his possession over the shop in question. The possession of the plaintiff over the shop in question is settled and long. The defendant No.1 has not denied the possession of the plaintiff over the shop in question in the written statement. Further, as per the arguments raised by

learned counsel for Gram Panchayat i.e. defendant No.1 has been declared owner of the shop in question, so, the plaintiff has no right to retain the shop in question. Admittedly, Gram Panchayat i.e. defendant No.1 has been declared owner of the shop in question, but, the possession of the plaintiff is also admitted. As the possession of the plaintiff over the shop in question is long and settled, so, the defendant No.1 cannot dispossess the plaintiff from the shop in question forcibly and he is to be dispossessed by adopting due process of law. Hence, the plaintiff is liable to protect his possession from forcible and illegal dispossession. However, at this stage, it is made clear here that in the garb of present suit, the plaintiff cannot claim his ownership over the shop in question.

18. Hence, in view of above discussion, the plaintiff has successfully discharge his burden to prove his possession over the shop in question, so, the present issue No. 1 is decided in favour of the plaintiff and against the defendants.”

5. Resultantly, while allowing the suit on 26.05.2022 (Annexure P-14) to the limited extent the protection was granted that the plaintiff shall not be dispossessed except in due course of law. In such circumstances, on 27.03.2023 (Annexure P-15) notices have been issued under Section 24(1) of the Haryana Panchayati Raj Act, 1994 (for short ‘1994 Act’) to the petitioner No.1, who has no such basis or claim or title in his favour. In response of the said notice, since no document was produced by the petitioner No.1, order notice Section 24(2) of the 1994 Act was issued on 27.06.2023 (Annexure P-17). The reply as such to the notices had been met by the Gram Panchayat (Annexure P-20) was that they had already taken the possession and the suit had been decreed on 26.05.2022, but the sale deed did not confer any right or title, since the same was subject matter of the suit filed bearing No.47/2013 before the Collector against the vendor Shiv Kumar, which as noticed above had been initiated prior to the purchasing of the property by the petitioner.

6. In such circumstances, we are of the considered opinion that once the petitioner had failed to challenge the proceedings and the land in question had been held to be vested with the Gram Panchayat and the Civil Court findings as such would stand in the way of the petitioner. Resultantly, the limited right which the petitioner had, if he is sought to be dispossessed was in accordance with law and the Gram Panchayat has resorted to by issuing the appropriate notices under Section 24 of the 1994 Act. The *locus* of petitioner No.2 namely Rakesh Kumar is, thus, not there, as he has no independent right or sale deed in his favour on the basis of which he lay any claim.

7. Resultantly, there is no plausible reason to entertain the present writ petition and same is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

23.07.2024
Nuveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No