

(2013) 12 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 26815 of 2013

Baldev Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0005

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioners have prayed for issuance of writ in the nature of mandamus directing the respondents to consider and regularize the construction raised by them over the land in their possession measuring 2 to 4 marls approximately, wherein they are living from the last 60 years, after constructing their houses and shops, and by allotting them on receiving consideration/price in terms of the policy/instructions dated 08.05.2001 or any other policy/instructions issued by the Government of Punjab from time to time. In brief, the facts of the case are that the land in dispute was recorded in the name of one Kishno as per jamabandi for the year 1939-40. It is alleged that predecessor-in-interest purchased the land in dispute from Kishno in the year 1976. Thereafter, by way of notification dated 02.02.1981, the land in dispute was brought within the limits of the Municipal Committee, Dharamkot. The petitioners were proceeded against on a petition filed u/s 4 of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 for unauthorised possession over the land of the Municipal Committee. The said petitions were allowed and the appeal filed by the petitioners was also dismissed. Thereafter, the petitioners challenged the order of eviction by way of civil suit in which initially temporary injunction was granted but the application filed under Order 39, Rules 1 & 2 CPC was not sustained upto the appellate Court. Resultantly, the petitioners filed CR No. 4132 of 2001 raising one of the arguments was that

there is a policy of 08.05.2001 which enables the Municipal Committee to sell the land to the unauthorised occupants over which they have raised construction of their houses 5 years prior to the issuance of the policy. Ultimately, the revision petition was disposed of by this Court with liberty to the petitioners to approach the competent authority for purchasing the land in dispute in terms of the instructions dated 08.05.2001, within a period of six weeks from the date of receipt of a certified copy of the order. The petitioners filed appropriate applications for the purpose of purchasing the land in dispute, which remained pending and in the meantime, the policy dated 08.05.2001 was stayed in C.W.P. No. 15140 of 1999. The said writ petition was also disposed of on 19.01.2011 in terms of the directions issued by this Court in C.W.P. No. 4886 of 2003 titled as Court on its own motion v. State of Punjab and another, decided on 04.10.2008. The applications filed by the petitioners have not been decided as yet but it is very fairly submitted that the civil suit in which directions was issued by this Court in CR No. 4132 of 2001 has already been dismissed against which the first appeal as well as regular second appeal have also been dismissed.

2. In view thereof, once the protection granted by this Court in CR No. 4132 of 2001 is over with the dismissal of the main suit, the petitioners do not have surviving right even to ask for implementation of the policy dated 08.05.2001 in so far as their case is concerned. Moreover, there would be an anomalous situation if policy dated 08.05.2001 is applied in the presence of directions issued by this Court, which reads as under:- (i) the State of Punjab is directed to take a conscious policy decision, in accordance with law for removal and/or regularization of the encroachments, if any made on the public lands by the government's Educational Institutes, Hospitals, Dispensaries, Police Stations, etc. keeping in view the fact that such institutions are not to be placed at the same pedestal as a private individual encroacher;

(ii) the directions issued by this Court on 10.2.2004 restraining the State Government from regularizing unauthorized encroachments and constructions, provided that such encroachments are other than by the government or public institutions, are made absolute;

(iii) the civil courts before whom the cases pertaining to encroachments made within the areas of Municipal Corporations, Ludhiana, Bhatinda and Patiala are pending, are directed to expedite the disposal of those cases preferably within two years of their institution;

(iv) the Municipal Corporations are directed that encroachments from all those public properties except falling within the direction No. (i) above and/or wherever the civil court has decided the matter in favour of the private individuals, shall be removed and the lands will be retrieved forthwith but not later than six months from today;

(v) the Municipal Corporations are further directed to constitute and notify the Enforcement and Monitoring Committees for one or more areas which shall

periodically report to the Municipal Commissioner regarding the status of the encroachments, if any, their taking place or being removed within the area. Necessary and prompt action shall be taken by the Municipal authorities to nip it in the bud;

(vi) the Municipal Corporations shall forthwith locate the encroachment prone areas and take all necessary safeguards/preventive measures against possible trespass/encroachments, viz., erecting barbed-wire fencing, displaying notice-boards containing statutory warning, etc., and make the Encroachment and Monitoring Committee of the respective area accountable for any lapse or inaction on its part;

(vii) the Municipal Corporations shall also evolve public participation in their anti-encroachment drive by constituting Vigilance Committees of the NGOs/citizens who may volunteer to inform the municipal authorities including the Enforcement and Monitoring Committees regarding any fresh encroachments so that the desired action in terms of direction No. (v) above can be taken without any delay;

(viii) if a public spirited person notices that any encroachment is not being removed and/or being allowed to take place in connivance with the employees, authorities or councillors of the Municipal Corporation, he/she shall be at liberty to institute contempt of court proceedings against such person and/or Municipal authorities for their act of willful and deliberate disobedience of the directions issued hereinabove.

It is categorically provided in clause (iv) that the Municipal Corporation would remove all encroachments from all those properties except the properties falling within the direction No. (i) or wherever the civil court has decided the matter in favour of the private individuals. In the present case, there is no decision in favour of the petitioners with regard to regularization of their unauthorised possession as the petitioners have been held to be in unauthorised possession in the proceedings carried out under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 and their suit challenging those orders of eviction has been dismissed upto this Court and attained finality.

Thus, I find no merit in the present petition and same is hereby dismissed.