

(2017) 08 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3527 Of 2017 (O&M)

M/s Ruby Anand And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 22-08-2017

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 15, 45
Haryana Municipal Corporation Act, 1994 — Section 2(4A), 2(52A), 408A, 408A(1)(b)
Punjab Village Lands (Regulation) Act, 1961 — Section 13
Civil Procedure Code, 1908 — Order 39, Rule 1, Order 39, Rule 2
Constitution Of India, 1950 — Article 226, 227

Citation : (2017) 08 P&H CK 0043

Hon'ble Judges : S.S. Saron, J; Avneesh Jhingan, J

Bench : Division Bench

Advocate : Puneet Bali, Vaibhav Jain, Ashok Singla, Lokesh Sinhal

Final Decision : Disposed Of

Judgement

S.S. Saron, J

The petitioners - Ms. Ruby Anand and others are aggrieved against the order dated 18.12.2015 (Annexure P-1) passed by the Tehsildar, Tehsil Sohna,

District Gurgaon (respondent No.5) whereby mutation No.3249 in respect of land measuring 3717 kanals, 1 marla in the revenue estate of village

Gawal Pahari, Tehsil Sohna, District Gurgaon now Gurugram has been sanctioned in favour of the Municipal Corporation, Gurgaon.

The petitioners' claim that they are owners of land measuring 16 kanals comprised in khewat/khata No.393/434, Rectangle No.82 khasra Nos.2/11

(13-7), 3/1 (2-13) situated in the revenue estate of village Gawal Pahari, Tehsil Sohna, District Gurugram, which is part of land measuring 3717 kanals

1 marla in respect of which the impugned mutation No.3249 has now again been

sanctioned in favour of Municipal Corporation, Gurgaon.

It is submitted that father of the petitioners namely Justice H.L. Anand purchased the said land measuring 16 kanals vide registered sale deed dated

22.03.2006 (Annexure P-2). Mutation No.2441 (Annexure P-3) was sanctioned on 28.04.2006 in favour of Justice H.L. Anand in consequence of the

said purchase. The father of the petitioners namely Justice H.L. Anand died on 24.09.2007 and mutation in respect of the said land measuring 16

kanals was sanctioned in the name of the petitioners vide mutation No.3087 (Annexure P-4) on 17.04.2012 being the sole legal heirs.

The effect of the sanction of the impugned mutation No.3249 (Annexure P-1) in favour of Municipal Corporation, Gurgaon is that mutation No.3110

dated 02.07.2012 (Annexure P-47), which was also in favour of Municipal Corporation, Gurgaon and had been set aside, now has been revived.

Mutation No. 3110 dated 02.07.2012 (Annexure P-47) in favour of Municipal Corporation, Gurgaon had in fact been set aside by the Additional Chief

Secretary and Financial Commissioner, Haryana (respondent No.2) vide order dated 15.09.2014 (Annexure P-41) passed in ROR No. 530 of 2014

titled M/s Metro Valley Business Park Pvt. Ltd. v. Commissioner Gurgaon Division, Gurgaon and others; ROR No. 563 of 2014 in application dated

20.08.2014 submitted by Sh. Pawan Kumar Verma and ROR No.562 of 2014 titled M/s Rathore Promoters and Developers Pvt. Ltd. v. The

Collector (South) Sohna, Gurgaon and others.

Review applications No.2, 3 and 4 of 2014 of the said order dated 15.09.2014 (Annexure P-41) were filed under Section 15 of the Punjab Land

Revenue Act, 1887 on behalf of the Commissioner, Municipal Corporation, Gurgaon. The review applications were dismissed by the Financial

Commissioner, Haryana vide order dated 21.10.2015 (Annexure P-46). Therefore, according to the petitioners, the order dated 15.09.2014 (Annexure

P-41) and the order dated 21.10.2015 (Annexure P-46) passed by different Financial Commissioners Revenue, Haryana had attained finality and the

same were not further challenged.

It is submitted that a show cause notice dated 31.01.2017 (Annexure P-52) has been issued to the petitioners under Section 408-A (1) (b) of the

Haryana Municipal Corporation Act, 1994 ('M.C. Act' â?" for the short) by the Joint Commissioner-III, Municipal Corporation, Gurugram (respondent

No.7) exercising the powers of the competent authority under Section 408-A read with Section 2 (4A) of the M.C. Act. The act of issuing the said

show cause notice is illegal; besides, being arbitrary.

According to the petitioners, their father had purchased the land after due diligence and the names of the vendors and their predecessors in interest

were duly recorded in the revenue records. Therefore, their father was a bona fide purchaser who bought the land for valuable consideration without

notice and knowledge of any alleged dispute with respect to the title of his vendors. The petitioners and their predecessor in interest since the date of

purchase i.e. 22.03.2006 have been the owners and in exclusive peaceful and actual possession of the land measuring 16 kanals. They constructed

their farmhouse over the property in question and they have been living there for over the past ten years. Some photographs of the land in question

and the farm house (Annexure P-5 collectively) have been attached.

The primary challenge in the petition is to mutation No. 3249 (Annexure P-1) which has been sanctioned in favour of the Municipal Corporation,

Gurgaon. According to the petitioners, the same has the effect of reviving mutation No.3110 dated 02.07.2012 (Annexure P-47) in favour of Municipal

Corporation, Gurgaon, which had in fact been set aside by the Additional Chief Secretary and Financial Commissioner, Haryana (respondent No.2)

vide order dated 15.09.2014 (Annexure P-41) passed in ROR No. 530 of 2014 titled M/s Metro Valley Business Park Pvt. Ltd. v. Commissioner

Gurgaon Division, Gurgaon and others; ROR No. 563 of 2014 in application dated 20.08.2014 submitted by Sh. Pawan Kumar Verma and ROR

No.562 of 2014 titled M/s Rathore Promoters and Developers Pvt. Ltd. v. The Collector (South) Sohna, Gurgaon and others. Review applications

against the same have also been dismissed by the Financial Commissioner, Revenue Haryana vide order dated 21.10.2015 (Annexure P-46).

A further challenge has been made to the show cause notice dated 31.01.2017 (Annexure P-52) which has been issued under Section 408 A (1) (b) of

the M.C. Act for the removal of encroachments from the land measuring 16 kanals of which the petitioners' claim ownership rights.

The legal position in respect of mutation entries is well settled that these do not confer any title.

Honâ??ble the Supreme Court Balwant Singh v. Daulat Singh, (1997) 7 SCC 137

has held that mutation of properties in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Reliance was placed on an earlier decision in *Sawarni v. Inder Kaur*, (1996) 6 SCC 223 wherein it was held as follows:-

“Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.”

Independent of the above, in case a person is aggrieved against an entry in the revenue records, he has a remedy in terms of Section 45 of the Punjab Land Revenue Act, 1887 which provides for 'suit for declaratory decree by persons, aggrieved by an entry in a revenue record'. Said Section 45 reads as under:-

“45. Suit for declaratory decree by persons, aggrieved by an entry in a record: -

If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.”

Therefore, with respect to disputes in an entry in the revenue record, which would include entries in mutation the proper remedy is a civil suit for declaration. Besides, the question whether the parties have any dispute with regard to title is also liable to be determined in the Civil Court by filing a suit for declaration.

Mr. Puneet Bali, Senior Advocate appearing for the petitioners submits that in fact the petitioners have already filed a civil suit i.e. Suit No.135 of 2012 which is pending before the learned Civil Judge (Senior Division), Gurgaon titled as '*Ruby Anand and others v. Municipal Corporation, Gurgaon*'.

The said suit has been filed for declaration and permanent injunction to the effect that the plaintiffs are exclusive owners in possession of the suit land being the successors in interest of their father late Justice H.L. Anand and are entitled to get mutation of inheritance sanctioned in their favour. Along

with the suit, the petitioners have also filed an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure ('CPC' - for short). The

learned trial Court has granted status quo regarding possession of the land of the petitioners measuring 16 kanals, which order is continuing.

It is to be noticed that the 'Shamlat deh' land in the revenue estate of Gawal Pahari, which earlier vested in the Gram Panchayat now vests with the

Municipal Corporation, Gurugram with the enlargement of the area of the municipality in pursuance of notification dated 20.03.2012. Earlier the

disputes as to whether the 'Shamlat deh' lands in the revenue estate of Gawal Pahari vested in the Gram Panchayat or the land owners was

determined in accordance with the provisions of Punjab Village Lands (Regulation) Act, 1961 as applicable in Haryana ('1961 Act' â?" for short).

However, with the land merging in the Municipal Corporation, the Gram Panchayat, Gawal Pahari has ceased to exist. Therefore, it is the Civil Court

which is to determine the question as to whether the 'Shamlat Deh' lands vest in the Municipal Corporation or the owners.

In Anar Singh v. Commissioners, Rohtak Division, Rohtak and others, (2014-2) PLR 13 6a Division Bench of this Court considered the case where

the petitioner therein filed a petition under Section 13 of the 1961 Act which was dismissed. During pendency of the appeal, a notification was issued

to include the 'sabha' area of the Gram Panchayat within the municipal limits of Municipal Council, Sampla. After issuance of the notification, the

Gram Panchayat and 'sabha' area ceased to exist and the land, in dispute in the said case, no longer was amenable to the 1961 Act. Consequently, the

Collector and the Appellate Authority, exercising powers under the 1961 Act had no jurisdiction to decide whether the land vested or did not vest in a

Gram Panchayat. It was said that the Appellate Authority had, therefore, rightly dismissed the appeal. It was held that the petitioner would, however,

have to approach a Civil Court for adjudication of his rights in the 'shamlat deh' of the erstwhile Gram Panchayat.

The petitioners having already availed the civil remedy, no interference in exercise of the writ jurisdiction of this Court under Articles 226/227 of the

Constitution of India is called for.

There is already an injunction in favour of the plaintiffs in the Civil Suit. The injunction restrains the Municipal Corporation, Gurugram from taking

possession of the suit land. However, with a view to maintain the property so that it does not deteriorate, the parties shall also maintain status quo with regard to alienation, construction and change of nature of the land till disposal of the suit.

It is made clear that this order shall not in any manner be construed as an expression of opinion on the merits of the controversies between the parties and neither shall it be taken as determining the kind of land i.e. as to whether it is 'Shamlat deh' as defined in Section 2 (52A) of the M.C. Act or

whether it does not fall within the said definition or whether it is excluded by the exclusionary clauses of the said definition. The learned Civil Court

shall consider the civil suit that has been filed in accordance with law and on the basis of evidence and material adduced before it.

The writ petition is accordingly disposed of, leaving the parties to get their rights adjudicated in the civil suit.