

(2014) 12 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10551 of 1993 (O and M)

Municipal Committee

APPELLANT

Vs

The Commissioner, Rohtak Division and Others

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227

Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 — Section 5 7

Citation : (2015) 178 PLR 563 : (2016) 1 RCR(Civil) 93 : (2015) 2 RCR(Rent) 554

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Ashwani Gaur, Advocate for the Appellant;

Final Decision : Allowed

Judgement

Paramjeet Singh, J.

CM-5402-CWP-2014

Allowed, as prayed for. Annexures P-6 and P-7 are taken on record.

CWP No. 10551-1993

1. Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 22.05.1993 (Annexure P-1) passed by respondent No. 1-Commissioner, Rohtak Division, Rohtak whereby appeal filed by respondent No. 3 against the order dated 16.03.1992 (Annexure P-4) passed by the Collector, Sonapat has been allowed, order dated 16.03.1992 has been set aside and application filed by the petitioner-Municipal Committee for ejectment of respondent No. 3 has been dismissed. In brief, facts are to the effect that Municipal Committee, Ganaur filed application under Sections 5 and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (in short, 1972 Act") before respondent No. 2-Collector, Sonapat with the averments

that Municipal Committee, Ganaur is owner of land measuring 30 kanals 5 marlas comprised in khewat Nos. 108//15(8-0), 16/2(5-10), 24(4-11), 109//11/1(4-4) and 108//6(8-0), situated in village Ganaur. It is further pleaded that respondent No. 3 trespassed into the property in dispute. The petitioner also claimed damages for unauthorized occupation.

2. Respondent No. 3 contested the said application and filed written statement with the averments that respondent No. 3 has become owner by way of adverse possession, therefore, he cannot be ejected.

3. After considering the evidence on record, respondent No. 2-Collector, Sonapat came to the conclusion vide order dated 16.03.1992 (Annexure P-2) that Municipal Committee, Ganaur is the owner of the property in dispute and possession of respondent No. 3 is unauthorized.

4. Feeling aggrieved, respondent No. 3 preferred an appeal before the Commissioner, Rohtak Division, Rohtak which has been allowed vide impugned order dated 22.05.1993 (Annexure P-1). Hence, this writ petition.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner vehemently contends that impugned order is against the law and evidence on record. The civil suit filed by respondent No. 3 has been dismissed vide judgment and decree dated 18.03.1997 (Annexure P-6) and appeal preferred by respondent No. 3 has also been dismissed by learned District Judge vide judgment and decree dated 13.02.1998 (Annexure P-7).

7. Per contra, learned counsel for respondent No. 3 vehemently oppose the contentions of learned counsel for the petitioner and contend that application under Sections 5 and 7 of the 1972 Act was filed by the President without any authorization from the Municipal Committee, Ganaur. Learned counsel further contend that after passing of the orders by the authorities, the Haryana Dholidar, Butimar, Bhonedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 (in short, the 2010 Act") has come into being and respondent No. 3 has filed petition before the Collector under this Act and his rights have not been determined. As such, rights of respondent No. 3 are yet to be finally determined.

8. I have considered the (sic) contentions of learned counsel for the parties.

9. Admittedly, the plea of respondent No. 3 in written statement is to the effect that he is in adverse possession of the disputed land. It means that his possession is unauthorized and certainly proceedings under the provisions of the 1972 Act can be initiated against him. So far as the contention with regard to enactment of the 2010 Act and pendency of proceedings under the said Act is concerned, the same is not tenable, those being independent proceedings. Earlier respondent No. 3 set up the case on the basis of adverse possession, now respondent No. 3 cannot set up a new case and accordingly proceedings under the 1972 Act are legal and valid and filing of petition under the 2010 Act will not have any effect in any manner. However, if any order is passed in his favour in

the petition filed under the 2010 Act, respondent No. 3 can avail the remedy in accordance with law.

10. So far as the plea of learned counsel for respondent No. 3 that Municipal Committee, Ganaur did not authorize its President to file application for eviction is concerned, the same is also not -sustainable. There is no such plea in the reply filed before the Collector. As such, the plea now raised, cannot be entertained, at this stage. Besides this, in view of judgment of the Hon''ble Supreme Court in Jagpal Singh and Others Vs. State of Punjab and Others, , every citizen of India has a right to move the Court for removal of unauthorized occupants from the public property. In the present case, the petitioner is not only the citizen of India, but also elected representative of a civic body. Even if there is no resolution in favour of the President, he is competent for the limited purpose of seeking eviction of the person, who is in unauthorized possession of the public property. In view of above, instant writ petition is allowed, impugned order dated 22.05.1993 (Annexure P-1) is set aside, order dated 16.03.1992 (Annexure P-4) passed by Collector, Sonapat is restored, and application filed by the petitioner-Municipal Committee for ejectment of respondent No. 3 is allowed.

No order as to costs.