

(2014) 07 P&H CK 0354
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14388 of 2012

Narinder Kumar Gupta

APPELLANT

Vs

The Deputy Commissioner

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 3, 4, 5

Citation : (2014) 4 RCR(Civil) 259 : (2014) 2 RCR(Rent) 254

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Advocate : Pawan Kumar, Sr. Advocate with Anshuman Mandhar, Advocate for the Appellant; Suresh Singla, Addl. A.G. and K.K. Gupta, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Paramjit Singh Patwalia, J.—Reply by way of affidavit of Gurpal Singh Chahal, Sub Divisional Magistrate, Patiala on behalf of respondent nos. 1 and 2 has been filed in Court today and the same is taken on record.

2. Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 26.09.2011 (Annexure P/6) passed by the Collector, Patiala-respondent No. 2 and order dated 22.02.2012 (Annexure P/8) passed by the Deputy Commissioner, Patiala, exercising the powers of Commissioner, Patiala Division, Patiala-respondent no. 1.

3. Brief facts of the case are that respondent no. 3-Food Corporation of India filed an application for eviction under Sections 3, 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the "Act") for illegal possession of the petitioner over the land consisting of Khewat No. 743/744, Khatoni No. 849/855 bearing khasra No. 120/2(0-7),

121(4-1), 124/1/5(2-4), 124/1/6(1-2), 124/1/1(1-0), 124/1/2(2-0), 124/1/3(1-13), 124/1/4(0-2) Kitta 8 measuring 12 Bighas 9 Biswas situated in village Rasulpur Saidan. The case set up by the petitioner is that land bearing khasra Nos. 122(6-5) and 123(5-2) has not been acquired by the authorities. The area of khasra no. 120/2 is 4 Bighas 1 Biswa. So far as khasra nos. 122 and 123 are concerned, these are not part of the notification (Annexure R-3/1). Only a part of khasra no. 120/2 i.e. 0 Bigha 7 Biswas has been mentioned in the said notification. It is pleaded by the petitioner that no notice was given before taking possession of khasra no. 120/2 after land acquisition notification.

4. Upon notice, respondents appeared and filed written statement taking the plea that the land has been acquired. Part of khasra no. 120/2 has also been acquired. Khasra nos. 122 and 123 are not part of the petition for eviction. The petition was filed qua the land which was acquired by the State of Punjab for respondent no. 3. The respondents referred to rapat roznamcha which has been shown in the Court. The entry regarding delivery of possession of the acquired land was made in the revenue record i.e. roznamcha at serial no. 1247 dated 10.06.1982. Meaning thereby that the possession of the acquired land had already been taken by respondent no. 3. The Collector in pursuance of evidence available with him had passed the order directing the petitioner to hand over the possession to respondent no. 3. Learned counsel for the petitioner further contended that in the eviction petition, khasra nos. 122 and 123 have not been included. Only a part of khasra no. 120/2 i.e. only 7 biswas has been included. The said finding was affirmed by the Deputy Commissioner exercising the powers of Commissioner under the Act. There are concurrent findings recorded by the authorities. This Court has limited right to set aside the order passed by the authorities.

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

6. Perusal of the record shows that eviction petition is not with regard to khasra nos. 122 and 123, it is only with regard to a part of khasra no. 120/2 total area of which is 4 Bighas and 1 Biswa and the eviction is qua only 7 biswas which has been acquired and tatima has been prepared.

7. Learned counsel for the petitioner does not dispute with regard to the other khasra numbers mentioned in the eviction application filed before the Collector. The only contention raised by the learned counsel for the petitioner is that the petitioner has purchased the property in question vide sale deed dated 7.5.2003. Perusal of the sale deed clearly indicates that the petitioner has purchased 3/4/308 area measuring 44.44 square yards out of three khasra numbers i.e. 120/2(4-1), 122(6-5) and 123(5-2) total measuring 15 Bighas 8 Biswas. Even in the sale deed, dimensions have also been mentioned with respect to the area purchased by the petitioner i.e. 20 feet on the eastern side, 20 feet on the western side, 20 feet on the northern side and 20 feet on the southern side. It needs to be mentioned that the land with respect to which eviction application has been filed was acquired in the year 1982 and the possession was delivered

on 10.06.1982. It is pertinent to mention that the award was passed in the year 1986. Petitioner has purchased the land much later on 07.05.2003 that to a share out of khasra nos. 120/2(4-1), 122(6-5) and 123(5-2) total 15 bighas 8 biswa to the extent of 3/4/308 share which comes to 3/4 of a Biswa, even less than a biswa i.e. measuring 44.44 sq. yards. The fact remains that the petitioner is a purchase of a share which is less than a biswa, he cannot say that the possession qua khasra no. 120/2 measuring 0-7 biswa was not taken by the revenue authorities in view of the documentary evidence i.e. roznamcha of the year 1982. He purchased land 21 years later. As per Rapat Roznamcha dated 01.08.2012 (Annexure R-1/2), possession has already been taken by the authorities in pursuance of orders and rapat roznamcha to that effect has been entered.

8. So far as khasra nos. 122 and 123 are concerned, they are not part of eviction nor respondent no. 3 is taking possession of the same. Further, learned counsel for the petitioner has failed to show any illegality or perversity in the impugned orders. After appreciating the evidence on record, the authorities below have concurrently recorded finding against the petitioner. The impugned orders of the authorities does not call for interference.

9. However, for the just satisfaction of the petitioner, proper demarcation shall be carried out again in the presence of the petitioner with regard to Khasra No. 120/2 out of which possession of 0-7 biswas has been taken.

10. Instant petition is disposed of in the above terms.