
(2011) 04 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No"s. 11724 of 2003

Prem Mohan Kalra

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Municipal Corporation Act, 1994 — Section 230, 231, 250, 251, 252
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2

Citation : (2011) 4 RCR(Civil) 592

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—Both these petitions have been preferred by the present petitioner for the same relief on identical grounds and are being disposed of by this common order. Facts leading to the filing of these petitions are that the petitioner is owner in possession of land measuring 10 bighas and 17 biswas comprised in Khewat Nos. 247 to 249 in Village Anangpur, Tehsil and District Faridabad. The petitioner purchased the aforesaid land vide two sale deeds dated 12.10.1989. The first sale deed is in respect of land measuring 3 bighas and 4 biswas executed by one Mahipal Singh son of Het Ram resident of Anangpur Tehsil and District Faridabad whereas the second sale deed is in respect of land measuring 7 bighas and 13 biswas executed by one Vi-pan Marwah son of Tilak Raj resident of E-231. Greater Kailash, New Delhi. These two sale deeds are placed on record as Annexures P- 1 and P-2. The petitioner claims to have taken possession of the property under sale from the vendors. Two mutations bearing Nos. 4009 and 4010 were also sanctioned by the competent authority on 18.10.1989 (Annexures P-3 and P-4). It is alleged that after taking over the possession of the land in question, including the cottage, cow huts, horse huts, toilets, servant room, store room etc.. the petitioner renovated the main building as well as the kitchen and the change room and also got the boundary wall

constructed. The petitioner applied for change of land use from agriculture to residential purpose to the Municipal Corporation, Faridabad (respondent No. 2). An agreement in form of CLU-III was executed dated 4.12.1995 by charging the composition fee of Rs. 1,22,924/-. Copy of the composition order has been placed on record as Annexure P-6. The aforesaid composition order was followed by another composition order dated 5.12.1995 (Annexure P-7). The petitioner has also placed on record receipts of payment in the form of composition charges of Rs. 1,22,924/- and Rs. 84,400/-. After compounding, the Municipal Corporation also sanctioned the plan on 5.12.1995. The sanctioned plan is also placed on record as Annexure P-10. It is stated that thereafter respondent No. 2 issued a show cause notice dated 26.6.1996 (Annexure P-11) regarding cancellation of permission for change of land use on the ground that the ownership documents submitted by the petitioner were not proper, in view of Section 2 (g) of the Punjab Village Common Land Act, 1961. The petitioner was asked to appear in person in the office of respondent No. 2 on 28.10.1999 at 3.00 p.m. in case he is willing to be heard. The petitioner submitted his reply dated 28.10.1999 to the show cause notice through his advocate. It is stated that after the reply was submitted by the petitioner to respondent No. 2, further proceedings on the show cause notice were deferred. A communication dated 2.2.2000 from respondent No. 2 to the petitioner in this regard has been placed on record as Annexure P-13. From the perusal of this communication, it appears that in view of the document submitted by the petitioner regarding composition of the unauthorized construction and pendency of RSA No. 1936 of 1987, further action on show cause notice has been deferred. It is alleged that the petitioner applied to the Consolidation Officer for correction of Khasra Girdawari on 5.4.1996. On this application of the petitioner, AC-II, Gurgaon directed the kanungo Consolidation vide his letter dated 5.6.96 to inspect the spot and after verifying the area and Khasra Number regarding the possession of the petitioner, spot inspection report be submitted to him (Annexure P- i 5). Kanungo carried out the spot inspection in presence of Halqa Patwari, Lamberdar, the writ petitioner, one Uday Chand, MLA on behalf of Municipal Corporation and some other persons and submitted his report certifying that in land measuring 10 Bigha 17 Biswa, there are pucca boundary wall, one Gobar plant, one kothi, kitchen, dining hall, staff room, power house i.e. Generator Room, store, basement, Tennis Court, fruit Trees. The report also certifies the possession of the petitioner as is evident from Annexure P-17. The petitioner has also relied upon a report of the Halqa Patwari to the Consolidation Officer certifying the possession of the petitioner as owner in Khasra No. 58 measuring 10 Bighas and 17 Biswas. In this report, it has also been mentioned that the petitioner has raised loan of Rs. 27,50,000/- from PNB Housing Finance (Annexure P-18). Patwari's report also mentions about construction of six feet long pucca boundary wall alongwith one Gobar gas plant and presence of cattle like cows, dogs, ducks, hens etc. It is alleged by the petitioner that on 15.7.2003, officials of respondents accompanied by police personnel about 200 in numbers demolished the part of the construction of the petitioner illegally and unlawfully.

The first writ petition CWP No. 11724 of 2003 has been filed in respect of the demolition of the construction of the petitioner. In this writ petition, the petitioner claimed following reliefs :-

It is, therefore, respectfully prayed that in view of the above stated facts and circumstances of the case:-

i. The records of the case may kindly be called for by this Hon''ble Court and after a perusal of the same;

ii. a writ in the nature of certiorari may kindly be issued by this Hon''ble Court declaring the action of the respondents in demolishing the walls and other structures at the farm house of the petitioner as illegal, unjust, arbitrary and unconstitutional.

iii. It is further prayed that a writ in the nature of prohibition may kindly be issued by this Hon''ble Court restraining the respondents from further demolishing the farm house of the petitioner.

iv. It is further prayed that the respondents may kindly be restrained from removing the building material lying in the site of the petitioner.

v. it is further prayed that as a preventive (sic)easure to protect the petitioner, his family members and the animals including cattle's, dogs etc. from being harmed, the petitioner may kindly be permitted to raise the boundary wall which has been illegally and unauthorisedly demolished by the respondent authorities.

vi. It is further prayed that a writ in the nature of mandamus may kindly be issued by this Hon''ble Court directing the respondents to compensate the petitioner to the tune of Rs. 20 lacs on account of the illegal action of the govt. authority and its agencies in unauthorisedly demolishing the structures of the petitioner and for causing mental agony, harassment and undue hardship to the petitioner and his family members.

vii. Or any other order or direction to which the petitioner is found entitled to in the facts and circumstances of the case may kindly be passed by this Hon''ble Court.

2. This writ petition was admitted to hearing vide order dated 25.10.2005. It is alleged that the petitioner apprehended further illegal action on the part of the respondents and thus issued a notice dated 12.12.2003 to the respondents No. 2 and 3 through his counsel requesting them that if any notice in future is to be served upon the petitioner, the same may be served through his counsel who is duly authorized. The case of the petitioner is that even thereafter on 9.9.2006, respondent No. 3 accompanied by respondents No. 5 and 6 and about 100 police personnel alongwith staff came to the property of the petitioner at 11.00 a.m. and damaged the part of the boundary wall adjacent to the property of Shri Kartar Singh Duna, a Former Minister of Haryana Government and caused loss of Rs. 5.00 lacs. It is submitted that the petitioner asked them to show any order of

demolition or show cause notice, but the respondents have failed to show any such order. According to the petitioner, the entire exercise was illegal and without any authority of law. The petitioner obtained the assessment of the loss from the Architect valuer who has assessed the loss at Rs. 5.00 lacs as damage caused to the boundary wall. The petitioner has also placed on record photographs (Annexures P-24 and P-26). These photographs show some demolished structures, a Haryana govt. gypsy and an ambassador car with blue light with a copy of news cutting of Hindustan Times newspaper, perhaps to establish the date of demolition.

3. Respondents No. 2 and 3 and 5 and 6 have filed their separate replies. The stand of the respondents No. 2 and 3 in their written statement is that the Corporation removed the encroachment made by the petitioner from the land vested in Corporation situated in revenue Estate of village Sarai Khawaja, Tehsil and District Faridabad and the petitioner has no connection with these lands. It is stated that the petitioner had purchased the land comprising in Khasra No. 58 in the revenue estate of Village Anangpur, Tehsil and District Faridabad whereas he has raised illegal construction on the land of the Corporation in Village Sarai Khawaja bearing Rect. No. 83.Killa No. 1, 2, Part of 3. Part of 8.9 and Part of 10. The respondents have placed on record the copy of Jamabandi in the Khasra No. 83 (Annexure R-2/1) to establish its ownership. Respondents have also placed location map as Annexure R2/2 in support of the contention that the encroachment has been removed from village Sarai Khawaja. In sum and substance, the case of respondents No. 2 and 3 is that they have removed the encroachment of land comprising in Khasra No. 83/1 situated in revenue estate of Sarai Khawaja. These respondents have also relied upon a report in this regard submitted by respondent No. 3 to respondent No. 2 as Annexure R2/3. All these Annexures are part of CWP No. 11724 of 2003. As regards the ownership of the petitioner, respondents have taken a stand that the RSA No. 1936 of 1987 filed by the petitioner regarding the ownership of the Municipal Corporation on shamlat deh land of village Anangpur is pending before this Court. Respondents has also denied physical possession of the petitioner over the land comprised in Khasra No. 58 in village Anangpur. It is further stated that the petitioner has raised unauthorized construction over the land in khasra No. 58 against the provisions of Section 6 of Haryana Municipal Corporation Act, 1984. It is also the case of the respondents that the petitioner never applied for the change of land use from agriculture to residential. Respondents also pleaded that notices under Sections 250, 261 of the Haryana Municipal Corporation Act, 1994 were served against the petitioner in respect to unauthorized constructions of Verandah 12" x 160", room 15" x 20", room (2 Nos.) 10" x 8" each, hall 25" x 25", room (3 nos.) 15" x 15". However, the respondents have admitted composition charges of Rs. 1,22,924/- towards the regularization of unauthorized structures in khasra No. 58 of the revenue estate of village Anangpur. It is also admitted that notices u/s 250 and 261 were issued with regard to this property. Respondents have also mentioned that the petitioner has not deposited Rs. 81,90,006/- inspite of the

notice dated 29.12.98 (Annexure R2/4).

4. I have heard learned counsel for the parties at length. Primary dispute in the petition relates to the identity of the property. According to petitioner's claim, the property is situated in Khasra No. 58 in Village Anangpur. Tehsil and District Faridabad which has been allegedly, illegally demolished by the Municipal Corporation with the support of police force whereas the respondent-Corporation has stated that no property in Khasra No. 58 of village Anangpur, Tehsil and District Faridabad was ever demolished. To the contrary, it is stated that the Municipal Corporation has demolished unauthorized construction raised by the petitioner in village Sarai Khawaja. Tehsil and District Faridabad. From the report of respondent No. 3 submitted to respondent No. 2 regarding removal of encroachment, it is admitted that the Corporation has removed encroachment with the help of police by demolishing following structures :-

1. Boundary wall 170"+275"+250"

=

695"long

2.12 Nos rooms of Tin Sheets

=

1152 sq.ft.

3.3 Nos Tin Sheets (15"?25")

=

500 Sq.ft.

4.2 Nos Tin Sheds (20"?20")

=

400 Sq.ft.

5. Horse Shelter (20"?20")

=

400 Sq.ft.

Total land

=

2.74 acres

Now the above said land is lying vacant. Joint Commissioner (F)

5, To the contrary, the petitioner has alleged demolition of following structures as detailed in Annexure P-16 on 15.7.2003 and boundary wall on 9.9.2006 :-

Demolition Unit of A Part thereof

- (1) Cottage front portion and platform around it.
- (2) Boundary Wall 296 sq. ft HT 6'-0" & 18" thick in stone masonry.
- (3) Boundary Wall length 174'-0" upto 6'-0" HT. 18" TH and above IT 4'-0" In 9" TH. Brick Masonry.
- (4) Toilet Block 10'-6" x 9'-6"
- (5) Cow Hut 27'-0" x 15'-0".
- (6) Open Store Shed 34'-0" x 25'-3".
- (7) Servant Room 6'-0" x 25'-0"
- (8) Dog keeping Hut 35'-0" x 13'-0" + 22'-6" x 13'-0".

6. Assessment of damage/compensation for structure is claimed at Rs. 20 lacs and that of the boundary wall at Rs. 5 lacs. Both the parties have shown different kind of structures to have been demolished, except that of the demolition of boundary wall which is common.

7. Demolition of some structures by the respondents is not in dispute. It is also admitted case of the respondents that the structure demolished by it were in fact constructed by the petitioner by encroaching upon the shamlat deh property of the Municipal Corporation. Petitioner's case is also that the respondent-Corporation has demolished the structures and boundary wall on two occasions without adopting any due course of law. Only dispute is the location of the property. According to the petitioner, the property is located in Khasra No. 58 village Anangpur whereas according to respondents, the demolished property was situated in village Sarai Khawaja. Fact remains that property of the petitioner has been demolished. It is admitted position that some unauthorized construction raised by the petitioner in Khasra No. 58 has been compounded by charging the composition fee by the Municipal Corporation. Though in the reply, the corporation has still disputed the ownership and possession of the property even in Khasra No. 58 saying that the ownership is not proper. Even the site plan for the construction raised by the petitioner has been duly approved by the Municipal Corporation wherein various structures and boundary wall have been mentioned. It is settled law that this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India will not be in a position to decide the complicated factual issues, particularly in respect of the location of the property. However, one fact is admitted that the construction raised by the petitioner has been demolished. During the course of the arguments, learned Advocate General of Haryana was specifically asked about the powers of the Municipal Corporation to demolish the structures without initiating any proceedings even where the construction is unauthorized. Mr. Hooda has referred to provisions of Sections 250, 252, 254, 261, 408 and 408A of the Haryana Municipal Corporation Act 1994. Relevant extract of the aforesaid Sections reads as under :-

250. Prohibition of erection of building without sanction :- No person shall erect or commence to erect any building or execute any of the works specified in Section 252 except with the previous sanction of the Commissioner, nor otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of buildings or execution of works.

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252. Application for addition to, or repairs of building. -

(1) Every person who intends to execute any of the following works, namely :-

(a) to make any addition to a building;

(b) to make any alteration or repairs to a building involving the removal or re-erection of any external or partition wall thereof or of any wall which supports the roof thereof to an extent exceeding one half of such wall above the plinth level, such half to be measured in superficial metres;

(c) to make any alteration or repairs to a frame building involving the removal or re-erection of more than one half of the posts in any such wall thereof as aforesaid or involving the removal or re-erection of any such wall thereof as to an extent exceeding one half of such wall above plinth level, such half to be measured in superficial metres;

(d) to make any alteration in a building involving-

(i) the sub-division of any room in such building so as to convert the same into two or more separate rooms; or

(ii) the conversion of any passage or space in such building into a room or rooms;

(e) to repair, remove, construct, reconstruct, or make any addition to or structural alteration in any portion of a building abutting on a street which stands within the regular line of such street;

(f) to close permanently any door or window in an external wall;

(g) to remove or reconstruct the principal staircase or to alter its position, shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in this behalf.

(2) Every such notice shall be accompanied by such documents and plans as may be so prescribed.

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254. Sanction or refusal of building or work - (1) The Commissioner shall sanction the erection of a building or the execution of a work, unless such building or work would contravene any of the provisions of sub-section (2) of this

section or the provisions of Section 258.

(2) The grounds on which the sanction of a building or work may be refused shall be the following, namely:-

(a) that the building or work, or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan, elevation, section or specification would contravene the provisions of any bye-law made in this behalf or of any other law or the rule, bye-law or order made under such other law;

(b) that notice for sanction does not contain the particulars or is not prepared in the manner required under the bye-laws made in this behalf.

(c) that any information or documents required by the Commissioner under this Act or any bye-laws made thereunder has or have not been duly furnished.

(d) that in cases falling u/s 230. lay out plans have not been sanctioned in accordance with Section 231;

(e) that the building or work would be an encroachment on Government land or land vested in the Corporation;

(f) that the site of the building or work does not abut on a street or projected street and that there is no access to such building or work from any such street by a passage or pathway appertaining to such site;

(g) that the building or work would be in contravention of any scheme sanctioned u/s 267;

(h) that a building for habitation, does not provide for a flush or a water seal latrines.

(3) The Commissioner shall communicate the sanction to the person who has given the notice, and where he refuses sanction on any of the grounds specified in subsection (2) of this Section or u/s 258 he shall record a brief statement of his reasons for such refusal and communicate the refusal along-with the reasons therefore to the person. who has given the notice.

(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the bye-laws made in this behalf.

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261. Order of demolition and stoppage of building and works in certain cases and appeal :-(1) Where the erection of any work has been commenced, or is being carried on or has been completed without or contrary to the sanction referred to in Section 254 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act, or bye-laws made thereunder, the Commissioner may in addition to any other action that may be taken under this Act., make an order directing that such

erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed within such period (not being less than three days from the date on which a copy of the order of demolition with a brief statement of the reasons therefore has been delivered to that person) as may be specified in the order of demolition :

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order should not be made :

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408. Prohibition against unauthorized removal deposit etc. -No person shall without authority in that behalf, remove earth, sand or other material or deposit any matter or make any encroachment in or on any land vested in the Corporation or in any way obstruct the same.

408A. Power to evict persons from Corporation premises/land (1) if the competent authority is satisfied.

(i) Or

(ii) Or

(iii) Or

b) that any person is in unauthorized occupation of any premises/land or building/structure constructed thereon, of the Corporation the competent authority may, notwithstanding anything contained in any law, for the time being in force, by notice served upon him by post or by person and if such person avoids service or is not available for service of notice or refuses to accept notice, then by affixing a copy of it on the outer door or some other conspicuous part of such premises/land or building or by beating of drums or in such manner, as may be prescribed, call upon such person to appear and show cause why he should not be ordered to vacate the said premises/land or building structure constructed thereon or demolish unauthorized construction and to restore to its original state or to bring it in conformity with the provisions of this Act or rules framed there under, as the case may be. within a period of seven days from the date of service or the notice.

8. Section 250 of the Act prohibits erection of building without previous sanction of the Commissioner, in accordance with the bye-laws etc. Section 251 requires every person who intends to erect a building to apply for sanction to the Commissioner. Section 252 also requires a person to obtain sanction even for addition or re-pair of the building. Section 254 empowers the Commissioner to sanction the erection of a building or execution of a work. Section 261 empowers the Commissioner to demolish any such erection, work or building erected without or contrary to sanction. Proviso to Section 261 mandates service of

notice and opportunity of show cause notice before any order of demolition is passed. Even u/s 408-A, an unauthorized occupant of Municipal property is required to be put to notice before any action is initiated against him. It is admitted case of the Corporation that no notice of show cause was ever issued to the petitioner before demolition of the structures, admittedly, raised by the petitioner irrespective of the dispute of location. Petitioner has placed on record sufficient material to establish that construction raised by the petitioner was duly compounded by the respondents. It is not the case of the respondents that the petitioner has two different farm houses one in Khasra No. 58 and the other in Sarai Khawaja. It can be safely presumed that the demolition has been carried out in village Anangpur. Even if it is presumed that the structures raised by the petitioner in village Sarai Khawaja were unauthorized, the Municipal Corporation was still under obligation to at least issue a show cause notice to the petitioner before initiating demolition proceedings with the help of police force. Admittedly, the petitioner has not been afforded any opportunity whatsoever. In a democratic country, rule of law prevails and not the whims and arbitrariness of any official/person empowered. Even though power to demolish unauthorized structure is conceded to the Municipal Corporation, yet law enjoins upon it statutory duty u/s 261 to afford an opportunity of being heard. Even if it is considered that there is no specific provision to serve a notice, principles of natural justice have to be observed in all such situations where ever civil right of a person is adversely affected by the action of state authority. No authority established by law can be permitted to take law into its own hands. The procedure established by law has to be followed, particularly, where it adversely affects any civil right of a person. Hon"ble Supreme Court in the case of Mohan Lal and Others v. The State of Punjab and Others, 1971 PLJ 338 has even protected the rights of unauthorized person from the illegal action at the hands of the authorities. The relevant observations of Hon"ble Supreme Court are as under :-

3. Mr. Keswani, learned counsel for the Gram Panchayat contended that as the High Court has come to the conclusion that the appellants are in unauthorized occupation of the suit properties, they are not entitled to invoke the jurisdiction of the High Court under Arts. 226 and 227 of the Constitution. This contention has no merit. Under our jurisprudence even unauthorized occupant can be evicted only in the manner authorized by law. This is the essence of the rule of law.

9. A similar opinion has been expressed by the Hon"ble Supreme Court in case of State of Haryana and Another v. Mohinder Pal and Others, (2001) 9 SCC 292. The relevant observations of the Supreme Court are as under :-

1...The High Court proceeded on the basis that even the Government cannot take the law into their hands while dispossessing the petitioners but should have followed the due procedure prescribed by law and not doing so is contrary to the rule of law and consequently allowed the writ petition by awarding damages to the extent of Rs. 15,000 and Rs. 5000 by way of costs. However, while disposing

of the writ petition the High Court took care to protect the interest of the appellants to the extent of giving an opportunity to revive their application filed earlier or to file a fresh application and that withdrawal of the earlier application would not come in their way. Learned counsel for the appellants very vehemently submitted that in the absence of any material as to the title of the respondents in respect of the property in question the High Court could not have granted relief in the manner it has been made. It is also pointed out that there are several other strong reasons for the appellants to have acted in the manner they did. The question of examining the title of the parties does not arise at all as admittedly the respondents were in possession of the property in question and had put up structures thereon. On that admitted position the High Court took the view that ejection of the respondents forcibly without due recourse of law was not in due process. No exception can be taken to that view at all...

10. Similar view has been expressed by Hon'ble Supreme Court in the case of Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, and a learned Single Judge of this Court in the case of Mohd. Sadik and Others v. Chandigarh Administration through Labour Commissioner-cum-Deputy Commissioner, LIT Chandigarh and Others, 2010 (1) RCR 177 ruled that forcible eviction without adopting due procedure of unauthorized occupation has been held to be impermissible in law.

11. The action of the respondents, by no stretch of imagination can be said to be legal and valid, rather it has to be termed as arbitrary, whimsical and in contravention of rule of law, besides being violative of principles of natural justice.

12. Now the question arises as to what relief can be granted to the petitioner. The petitioner has placed on record the assessment of damages by Architect/authorized valuer. M/s. Rakesh Bhatia and Associates in C WP No. 11724 of 2003. a valuer firm even on the panel of HUDA who has assessed the value of the damages caused by demolition of the property of the petitioner at Rs. 1607138/- whereas in CWP No. 2495 of 2007. value of the damage caused by demolition of part of the boundary wall has been assessed at Rs. 5 lacs. However, from the record, it appears that no such assessment of further damage to the boundary wall has been placed on record. From the assessment report in CWP No. 11724 of 2003. it appears that damage to part of the boundary wall is also assessed by the Architect valuer. In the fitness of the circumstances. I am of the opinion that damages to the extent of Rs. 10 lacs would meet the ends of justice or in the alternative the Municipal Corporation may restore the demolished building at its own expense. The Municipal Corporation will exercise its option within a period of one month with prior intimation to the petitioner. In a similar situation Municipal Corporation. Ludhiana was asked to restore the demolished building in violation of the statutory provisions in case of Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another, .

13. These petitions are accordingly allowed in the above terms.

14. Copy of this order be placed on record of each concerned file.