
(2009) 12 P&H CK 0049
In the Punjab And Haryana At Chandigarh

Prem Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1

Citation : (2010) 157 PLR 460

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—Feeling threatened by the proceedings of the Assistant Collector Grade II, Ambala dated 11.2.2009, directing mutation of certain revenue entries, brought at the instance of an application by the Municipal Council, Ambala City, the petitioners have filed the writ petition for quashing the proceedings on the ground that it violated the decree and the injunction already granted in their favour in a suit instituted by them in CS 260 on the file of Additional Civil Judge Senior Division) Ambala.

2. The suit was for the relief of permanent injunction restraining the Municipal Committee, Ambala City and two others to restrain them from alienating or interfering in any manner with possession of shamlat land bearing khewat/khatauni No. 479/519 min, 522 min, Khasra Nos. 18/2(7-10), 3(1-7); 21/(5/3(2-2)); 8/(3(8-0), 4(8-0); 36(8-9) Khe-wat/Khatauni No. 411 mm/3 (8-0) 4(8-0) 433, 434, 435, Khasra Nos. 260 min (2-7), 260 min (0-7) 21/29(1-12) Khewat/Khatauni 410, 431, Khasra Nos. 20/(4/1/2 (0-8)) Khewat/Khatauni No. 412 min/446, 447, 448, Khasra No. 37 min (3-5) 37 min (5-17), 37 min (2-10), situated in Khurampur Majir, H.B.No. 41, Tehsil and District Ambala, as given in the jamabandi for the year 1978-79, owned and possession by the plaintiffs and other cosharers/proprietors under Order 7 Rule 1 of CPC.

3. The suit land was only decreed in part excepting the property claimed by one of the defendants viz., the Ambala Saini Sabha in Khasra No. 37 measuring 3 kanals in the Southern side and also upholding the contention by the first

respondent Municipal Committee partially in restricting the relief of injunction to property other than 15 shops constructed by the Municipal Committee in the portion of the land comprised in Khasra No. 37 situated in the revenue estate of Village Khurampur, Kajri, Ambala City. The petitioners in their capacity as the plaintiffs in the above suit, had been, however, given the liberty to move the possession of the shops, constructed on the portion of the land comprised in Khasra No. 37.

4. The Municipal Committee appears to have applied for mutation of certain revenue entries for incorporating its name on the basis of what recording to them an amendment to the Haryana Municipal Act in its definition to Sub Section 22-B made it possible. The said section refers to definition of "shamlat deh". The said amendment, which had been introduced to take effect from 21.10.1999 included within the definition of shamlat deh, lands described in the revenue records as shamlat deh or shamlat tarafs. The definition contains four other classes of lands also and the definition also exclude certain types of land, which shall not fall within the definition of shamlat deh. The impugned proceedings had been issued by the first respondent on the application by the Municipal Council after hearing the objections of 18 persons, although, none of the petitioners themselves had been cited as respondents. The proceedings came on the request made for correction of girdawari for Kharif 1999 till date in respect of Khewat/Khatauni No. 532/577/578, 579 Khasra No. 37 min for 165/232 share out total land measuring 11 Kanals 12 Marias situated in village Khurampur Majri as per the jamabandi for the year 1998- 99. It appears that the petitioners had filed an execution petition before the Civil Court and also moved an application u/s 47 CPC for consideration of the alleged objections emanating from the Municipal Council that the whole of the property, on which the petitioners were staking a claim for injunction, did not belong to them. The writ petition has been filed by the petitioners on the plea that a Civil Court decree granting the relief of injunction could not be scuttled by any administrative process or through impugned proceedings. The contention was that the first respondent lacked the complete jurisdiction to issue the order in the manner that he did and therefore sought for the relief of quashing of the said proceedings.

5. The objections from the State was that the impugned proceedings itself did not refer to the whole of the properties for which relief of injunction has been granted. The learned Counsel Shri D.S. Nalwa would contend that the order had been passed after personal verification of the property held in possession by the Municipal Council and that it was confined to entries in respect of the land being 165/232 share comprised in Khewat/Khatoni No. 532/577, 578 and 579 Khasra No. 37 min, out of total land measuring 11 Kanals 12 Marlas situated in village Khurampur Majri, Tehsil and District Ambala. According to him, the Assistant Collector accordingly satisfied himself about the possession of the Municipal Council over total land measuring 8 Kanals 5 Marias since the year 1999 and therefore the order could not be impeached through the writ petition. The objection on behalf of the Municipal Council was restricted however to the

contention that for the proceedings taken by the Assistant Collector, there are statutory remedies available under the Punjab Land Revenue Act and that the writ petition itself was not maintainable. The learned Counsel would also contend that the proceedings for correction of girdawari was not related to the property, which had been in the suit and the suit itself had been filed with reference to some other property, which is not covered under the proceedings (Annexure P-10).

6. The relief of permanent injunction, which has been granted by a Civil Court on a contest by the Municipal Council, shall be binding on the Municipal Council comprehensively in all the matters to which it subjected itself to the jurisdiction of the Civil Court. The Civil Court's relief of injunction must be understood as comprehensive and conclusive in so far as it allowed to the petitioners the relief of restraint against alienation and for interfering in their possession of the shamlat land with specific khasra numbers, subject to such exclusions made in respect of the claim made by the Ambala Saini Sabha and in respect of the 15 shops, which had been constructed by the Municipal Committee to which shops, independent action of recovery had been provided in the decree. The Municipal Council was not able to point out to me of any particular provision of the Haryana Municipal Act or under any other provision vesting the property of shamlat deh or in respect of any portion of property for which a suit has been laid and for which relief of injunction has been granted. The mere amendment by introduction of Section 2(22-B) will not itself clothe the Municipal Council with any proprietary title over shamlat deh for which relief of injunction has been granted. If it were to be contended that there was a divestiture of any portion of the land in shamlat deh by a statutory provision, it could have the effect of modifying the relief of injunction granted through a decree. Otherwise, the relief of injunction against alienation or interfering the possession cannot suffer a beating by any modification in revenue entry that Municipal Council may secure through the intervention of the first respondent. It is not possible for me to conclude whether there is any overlapping of claims brought through the Civil Court decree and the impugned proceedings, with no assistance of oral evidence and determine whether the impugned proceedings, causes any infraction of the claim made by the petitioners in the civil suit. Whether there is any congruity of the claim of the petitioners in the property in the civil suit and the claim by the Municipal Council through the impugned order cannot be ascertained with the facts disclosed through the pleadings in the writ petition and it requires a further probe with the assistance of documentary and oral evidence. The petitioners submit that there is already a petition, filed u/s 47 CPC before the Additional Civil Judge (Senior Division), Ambala and the extent to which the decree could be executed in so far as offers to the petitioners the relief of permanent injunction will be a matter that will be decided only by the Executing Court. The Executing Court shall be bound by the decree already granted and it cannot be extend or vary the extent of operation of relief of injunction. The Executing Court will consider if any portion of the order passed by the first respondent operates in any way to

infringe the right secured under the decree and if it does, the Executing Court will be perfectly at liberty to restrain the Municipal Council from causing any such disturbance which the decree protects. If the proceedings of the first respondent relate to properties, which are not covered under the decree, it is needless to state that the petitioners in the writ cannot treat themselves as in any way prejudiced by the correction of entries brought about through the impugned proceedings. The ultimate validity of the entries, which have been made through the impugned order could be tested only on the identity of the properties to which the Civil Court decree and the impugned order make references to.

7. Even while upholding the right of the petitioners to have their possession protected in the manner granted by the Civil Court, I am of the view that quashing of the proceedings brought through the impugned direction of the first respondent cannot avail to the petitioners now, till a final adjudication is made in the manner referred to above by the Executing Court. The prayer before the Executing Court in respect of the decree already granted was not before me and I, therefore, do not pass any direction to the Executing Court but it shall be open to the respective parties to approach the Court and while seeking an adjudication refer to the area within which the Executing Court will traverse for adjudication.

8. The counsel for the petitioners and the Municipal Council agree that they will appear before the Executing Court on 22.1.2010 and prosecute the case u/s 47 for the adjudication of their respective rights.

9. The writ petition is disposed of in the above terms.