
(2013) 12 P&H CK 0161
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10391 of 2002

Ram Sarup and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 174 PLR 286

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioners have challenged orders dated 30.03.1998 passed by respondent No. 3 and 30.01.2002 passed by respondent No. 2 by which they have been ordered to be evicted from the land in dispute under the provisions of the Haryana Public Premises (Eviction and Rent Recovery) Act, 1972 (hereinafter referred to as the "Act"). The Sub Divisional Officer, Gohana, Binjhol, WJC Division, Panipat, filed an application on 30.03.1994 against the petitioners under Sections 5 and 7 of the Act for seeking their eviction from the land measuring 30 x 40 sq. feet and 30 x 25 sq. feet respectively comprised in Khewat No. 819, Khatauni No. 1305, Khasra No. 2617, Patti Rajputana, Panipat, measuring 25 Bighas 01 Biaswa.

2. In reply, the petitioners disputed the title of the State alleging that the land does not fall within Khasra No. 2617 and alleged that they are in possession for the last many years after constructing houses and at that time no objection was raised. It is alleged that the houses are assessed to municipal tax, they got electricity connection and have got issued their voter identity card and ration cards etc. at the address of the houses constructed on the land in dispute. The Collector, Panipat (respondent No. 3) concluded that the land belongs to the State of Haryana through Department of Irrigation as per jamabandi for the year 1990-91 over which the petitioners are in unauthorized possession. The petitioners have failed to adduce any proof of their ownership and hence, the

order of eviction was passed.

3. The petitioners and other similarly situated persons, who were ordered to be evicted by the Collector, filed as many as 6 appeals before the Divisional Commissioner but those appeals have also been dismissed holding that the State of Haryana is the owner of the land in dispute and the petitioners have failed to lead any cogent evidence to prove their ownership.

4. Counsel for the petitioners has submitted that after the eviction order was passed on 30.03.1998, the petitioners made an application dated 29.06.1998 for purchasing the land in dispute as per the government policy which has not been decided by the respondents. On the basis thereof, notice was issued by this Court on 11.07.2002 and dispossession was stayed in the meanwhile. The respondents have taken a stand that the land in dispute (abandoned Panipat minor) comes under reserved forest vide notification No. SO-41-CA-16/27/S-29- 72 and as such, this land cannot be disposed of.

5. During the course of hearing, a question was raised to trace the title of the State as it was alleged that the entry in the Jamabandi for the year 1990-91 is a stray entry. Consequently, the affidavit was filed by Shri Jagminder Singh, Sub Divisional Officer, Irrigation Department, Panipat, in which he alleged that as per the record, in the year 1944-45, Khewat No. 411/410, Khatauni No. 819, Khasra No. 2617 having area of 25 Bighas 01 Biswa, situated in Patti Rajputan, Panipat, was owned by the provincial Government and was in possession of the Irrigation Department. This entry continued from 1944-45 till 2000-01 showing name of the State Government recorded in the column of ownership and in possession of the Irrigation Department. The said affidavit is also accompanied by the revenue record.

6. Counsel for the petitioners has submitted that the State of Haryana had decided to sell the land in dispute to the unauthorized occupants because of which they had filed application on 29.06.1998.

7. On the other hand, counsel for the respondents has submitted that the petitioners cannot claim the benefit of any policy because they had contested the application filed under Sections 5 & 7 of the Act in which they alleged that the State of Haryana is not even the owner of the land in dispute. They had also tried to show that the entry in the jamabandi for the year 1990-91 is a stray entry and as soon as the eviction order was passed against them, application dated 29.06.1998 was filed for the purpose of getting the land sold to them.

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

9. There is no doubt that the petitioners are in unauthorized possession over the land which belongs to the State of Haryana and have been rightly evicted by both the Courts below. The question is as to whether the petitioners could be allowed to approbate and reprobate and to blow hot and cold in the same breath because when the petition under Sections 5 & 7 was filed against them, they

knew very well that they are in unauthorized possession but instead of accepting this fact they contested that application tooth and nail alleging that they have rightly raised construction and are in occupation of the land in dispute for a long time and the entry in the jamabandi showing provincial government to be the owner is a stray entry but once the ejectment order was passed, they filed an application accepting the State to be the owner of the land in dispute and asked for sale of land to them on its terms. This type of attitude of the petitioners is not acceptable in the matter of equity. It would have been altogether different aspect if the petitioners had filed the application for purchasing the land before eviction order was passed by the Collector but once they have been ordered to be evicted after contesting their application by leading evidence, they are not entitled to any benefit of the policy, as alleged. In view of the aforesaid discussion, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.