**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****122****RSA-226-2024 (O&M)
Date of decision: 09.09.2025****Anand Dev Yadav****...Appellant(s)****Vs.****Municipal Council Rewari and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

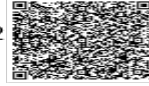
Present:- Mr. Yogesh Goel, Advocate for the appellant.

Mr. Ashish Yadav, Advocate for respondent No.1.

NIDHI GUPTA, J.

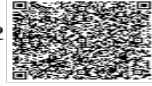
Present Second Appeal has been filed by the plaintiff No. 2 against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiffs for permanent injunction, has been dismissed by both the Courts below.

2. The plaintiffs had filed the instant suit for permanent injunction restraining defendants from demolishing construction of the plaintiffs over the suit property as described in the plaint and shown in red colour in the site plan Ex.PW1/1. It was the case of the plaintiffs that they were owners in possession of suit property and had been in unbroken possession and had been residing in the suit premises since 1978.



3. It is submitted by learned counsel for the appellant that in passing the impugned judgments, the learned Courts below have ignored the fact that the plaintiffs were in long and continuous possession of suit property right from the year 1978. This fact was very much within the knowledge of the respondent-authorities. Plaintiffs had incurred huge expenses over the suit property and had made concrete construction and had constructed a marriage banquet hall after taking into confidence of all local authorities. The said banquet hall is the only source of their livelihood.

4. The Administrator of Municipal Council, Rewari vide his letter No. 201-MCR dated 16.03.1994 had admitted possession of Banwari Lal i.e. father of the appellant over the suit property; and Deputy Commissioner Rewari had even offered/directed that the suit property be sold to the appellant @ Rs.1200 per sq.yds. In 2010, the Municipal Council/defendant No.1 had even passed a Resolution No. 7 dated 15.01.2010 to sell out the above plots of the Municipal Council to the father of the present appellant. However, on account of ill motive and grudge of some local residents including the defendants No. 2 to 10/private respondents herein, the said offer and Resolution have not been acted upon till date. It is submitted that the said sanction by Deputy Commissioner was never withdrawn; and even the Resolution dated 15.01.2010 has not been suspended till date by any competent authority of the Government. Plaintiffs were always ready and willing to purchase



the suit property by paying requisite amount to the Government/Municipal Council, Rewari. However, these facts have not been correctly appreciated by learned Courts below who have totally misinterpreted the factual and legal position of the present case. Thus, the impugned judgments are based on conjectures and surmises.

5. It is further submitted by learned counsel for the appellant that the defendants have miserably failed to produce any document/record to prove that the suit property was being used and meant for green belt. Furthermore, no evidence was produced by the defendants to prove that the suit property was ever used for any public common purpose or for any passage. On the contrary the plaintiffs have produced not only the relevant government orders permitting the sale of the suit land in favour of the plaintiffs but also the necessary and requisite resolution of the Municipal Council, Rewari itself to sell the suit land in favour of the plaintiffs. However, all these evidence and records were discarded by the Ld. Lower Courts causing serious prejudice for the appellant.

6. It is further submitted by learned counsel for the appellant that the appellant had filed a specific application for producing the additional evidence before the Lower Ld. Appellate Court and therein the appellant had produced the copy of the Order dated 30.01.1996 whereby respondent No. 1 had sold out the land @ Rs. 1200 per square yard to a person who was exactly similar to the present appellant. Apart from that appellant had also produced copy application/representation dated

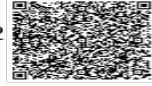


22.03.1994 moved by the father of the present appellant showing his readiness and willingness to purchase the suit property. However, all these crucial evidence/records were totally ignored and discarded by the Ld. Lower Appellate court and that too without giving any reasoning.

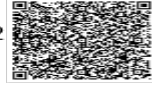
7. It is contended that even the private respondents themselves/defendants No.2 to 10 are illegal encroachers and occupants who are sitting illegally on the public passage. However, this aspect of the matter has not been considered by the learned Courts below.

8. It is accordingly prayed that this Second Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

9. *Per contra*, learned counsel for caveator/respondent-defendant No.9 vehemently opposes submissions made on behalf of the appellant and submits that the defendant No.1/Municipal Council, Rewari in its written statement has admitted that there is a municipal land towards southern side meant for green belt. Possession of the plaintiffs since 1978 was denied. It was also denied that any construction was raised in the year 1978. It is submitted that in any event, any alleged construction raised by the plaintiffs is nothing but an encroachment over the public property and the encroachment cannot be recognized as a legal possession. It is submitted that Plaintiffs have no right, title or interest in the suit property. Plaintiffs are influential persons and if the officers of MC Rewari had not taken any action against them, it does not mean that the



plaintiffs have got any right over the suit property. On account of frequent complaints, Duty Magistrate was got appointed to remove the encroachment from the green belt. It is pointed out that initially the suit was filed only against defendant No. 1. Later on, on an application filed by defendants No. 2 to 8, they were impleaded as party in the suit vide order dated 08.12.2011. Another application for impleadment was filed by defendants No. 9 and 10, which was allowed vide order dated 14.02.2017. Defendant No. 4 in her written statement inter alia submitted that the alleged construction has been made by the plaintiffs over the property of MC Rewari and in this manner, the plaintiffs are in unauthorized possession of the suit property. They have no right to raise construction thereupon. Suit property is rasta sare-aam as well as green belt and the same is owned by MC Rewari Thus, it is the public property. Gates of houses of defendant No. 2 to 7 along with other persons are also opening in the said gali/rasta. Due to encroachment of the plaintiffs, she is suffering a lot. Already several complaints stand moved for removal of the encroachment of the plaintiffs. Defendants No. 9 and 10 along with the written statement also filed a counter claim. In the written statement, it was inter alia submitted that the plaintiffs have encroached upon the green belt which is being used as rasta sare-aam. Rehabilitation Department of State of Haryana was owner of the green belt. Suit has been filed by the plaintiffs in collusion with defendant No. 1 just to grab the suit property because the same is being managed by defendant No. 1



on behalf of State of Haryana. Plaintiffs are not the owners of suit property. They had no right, title or interest in the suit property.

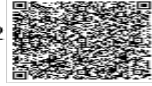
10. Ld. Counsel further submits that in the counter claim, it had been averred that Suit property has already been transferred in favour of MC Rewari on 21.04.1986 and thereafter, Naib Tehsildar (Sales) Rewari, has no concern with the suit property. Administrator Rewari has no right to issue any such letter. No Municipal Property can be sold without the approval of the government. Defendant No. 1 is in collusion with the plaintiffs. Collector, Rewari has no right to give any permission to sell the suit property. Various complaints have been made to the authorities to remove the said unauthorized encroachment of the plaintiffs. In the counter claim, it was alleged that the suit property is a part of green belt/rasta meant for ingress and outgress of the inhabitants. It is a public property. No person has got right to encroach upon the same. Plaintiffs have encroached upon the suit property shown in red colour in collusion with defendant No. 1 and have raised some temporary construction in the shape of tin shed, iron pillar etc., which are required to be removed. Accordingly, a prayer for grant of decree for mandatory injunction by way of counter claim was prayed for demolition of temporary construction raised by the plaintiffs over the suit property. Hence, dismissal of the present Second Appeal is prayed for.



11. No other argument is raised on behalf of the parties. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant.

12. Although in the plaint, the plaintiffs had stated themselves to be owners in possession of suit property. However, after repeated Court queries, it is admitted by learned counsel for the appellant that no sale deed is executed in favour of the appellant. In fact, it has been admitted by the plaintiffs themselves that in the year 1994, Deputy Commissioner had offered to sell the suit property to the plaintiffs @ Rs.1200/- per sq. yd. as noted above. Reference is also made to Resolution No. 7 dated 15.01.2010 by Municipal Council/defendant No.1 that suit land be sold to the plaintiffs. These facts are further fortified from the written statement filed by Municipal Committee, Rewari/defendant No.1 as noted in para 3 of the impugned judgment of the learned Trial Court.

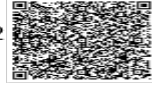
13. Defendant No.1/Municipal Council, Rewari in its written statement has *inter alia* stated that the Municipal land towards southern side, which is presently occupying by the appellants, is meant for green belt. Suit property was earlier owned and possessed by the Rehabilitation Department and as per government policy the same was transferred to MC Rewari vide order dated 21.04.1986 passed by Deputy Commissioner, Narnaul and since then MC Rewari is using the suit property as a green belt in public interest. It was denied that defendant No. 1 admitted the possession of the plaintiffs and the alleged letter, if any, is wrong and



illegal and beyond jurisdiction. Administrator MC Rewari had no right to issue such a letter. Even DC Rewari is not competent to accord sanction for sale of suit property. When the public property was being grabbed, it was decided that no municipal property would be sold without prior approval of government as per letter dated 12.09.1994. The suit property can never be sold because it is a land of green belt. It was further pointed out that if there was any sanction, then why the plaintiffs did not come to purchase the suit property.

14. In their written statement, the defendant no.1 had further denied that the suit property is in possession of the plaintiffs since the year 1978; it is also denied that any construction was raised in 1978; the alleged construction is nothing, but encroachment over the public property; and that encroachment cannot be recognized as legal possession; the plaintiffs have no right, title or interest in the suit property. Thus, the suit property can never be sold as it is a land of green belt.

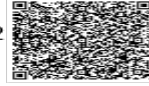
15. Besides the above vociferous denial of any right of the plaintiff by defendant no.1, the record further reveals that defendants No. 9 and 10 had got themselves impleaded vide an application under Order 1 Rule 10 CPC, which was allowed by the learned Trial Court vide order dated 14.02.2017. The said defendants No. 9 and 10 had then filed a counter claim raising above noted objections and *inter alia* further stating that encroached green belt was being used as a rasta sare aam; and the



suit has been filed by the plaintiffs in collusion with the Municipal Council just to grab the suit property; that the Collector, Rewari has no right to give permission to sell the suit property; that the plaintiffs have made unauthorized encroachment over the suit property; as the suit property is a green belt/rasta meant for ingress and outgress of the inhabitants and is a public property and therefore, no person has a right to encroach upon the same. Yet, plaintiffs have raised a temporary structure on the suit property. From the site plan Ex.PW1/1, it was evident that plaintiffs had raised a temporary structure.

16. Upon appraisal of the pleadings and oral and documentary evidence adduced by the parties, learned Courts below have given a positive finding that the plaintiffs are in unauthorized possession of the suit property; upon which they had raised a temporary structure without the written permission of the competent authority. It was also noticed that defendant No.1/Municipal Council, Rewari had not taken any legal action against the plaintiffs for removal of unauthorized encroachment. Even a complaint was made by defendant No.5 to the Lokayukta, Haryana, on which an order dated 09.03.2011 Ex.DW5/B was passed; wherein it is observed as follows: -

“From the record and the documents placed on the file on behalf of the complainant and the local authorities of Rewari it is categorically made out that there was no legal hitch in removing the encroachment from the green belt on 06.10.2010. It is further established that the excuse/ stand



taken by the Sub Divisional Officer (Civil) and the Secretary Municipal Committee, Rewari in their respective reports that the there was an order of of status quo from the civil court on 06.10.2010 is totally false and against the record. Thus, both the aforesaid officers posted at Rewari on 06.10.2010 are found to have acted in a manner which amounts their willful failure to act in the discharge of their official duty.

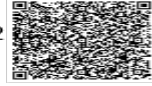
The Deputy Commissioner, Rewari is, therefore, asked that action be taken against them in accordance with law and thereafter, action taken report be sent to this office on or before 30.05.2011 as required under Section 17(2) of the Haryana Lokayukta Act, 2002.

A copy of this report be also sent to the Chief Secretary to Government, Haryana for information and necessary action in the matter.”

17. Learned Trial Court has therefore, correctly observed in para 27 of its judgment dated 08.12.2017 that the suit property is a public property and that the Court is always a guardian of the public property. Accordingly, decree of mandatory injunction was correctly issued in favour of counter claimants/defendants No. 9 and 10; whereas suit of the plaintiffs was dismissed with costs.

18. The above said findings were affirmed by the learned Additional District Judge, Rewari vide its judgment dated 16.11.2023.

19. Ld. Counsel for the appellant has failed to dispute or controvert the above said incriminating findings against the plaintiffs.



Plaintiffs have failed to explain as to under what title, they are in possession of suit property, if at all.

20. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

21. Pending applications, if any, stand disposed of.

09.09.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No