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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

250

CWP-10537-2023 (O&M).
Date of Decision: 24.07.2024.

KASHMIRI LAL

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

PRESENT Mr. Vaibhav Sharma, Advocate,
for the petitioner.

Mr. Suneel Ranga, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The petitioner has approached this Court for seeking issuance
of directions to the official respondents to provide administrative and police
help for averting the use of any potential criminal force at the time of

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raising of the construction on the property, possession whereof has been delivered under Court order.

2 Learned counsel for the petitioner contends that the father of the petitioner had filed a Civil Suit No.792 of 2008 for declaration as owner with respect to the land in dispute which was decreed in his favour on 06.05.2010. Thereafter, execution petition No.5711 of 2013 for execution of the judgment and decree was filed which was decided on 31.10.2013 and possession of the land was got delivered to the father of the petitioner in the presence of Administrative and Police Authorities.

3 Ishwar Singh one of the defendant in the said Civil Suit No.792 of 2008, however, filed another Civil Suit No.301 of 2013 challenging the decree passed in Civil Suit No.792 of 2008 dated 06.05.2010. The said civil suit was dismissed by the Additional Civil Judge (Sr. Divn.), Panipat, vide judgment and decree dated 02.05.2016. Civil Appeal No.47 of 2017 filed against the judgment and decree dated 02.05.2016 was also dismissed by the learned Additional District Judge, Panipat vide order dated 01.11.2018.

4 During the pendency of the second suit, father of the petitioner attempted to raise construction over the portion, the possession whereof had been handed over in compliance of the order passed in execution petition No.5711 of 2013, however, the legal representatives of Zile Singh as well as Ishwar Singh came to the spot and started beating the petitioner as well as his family members whereupon FIR No.378 dated 28.09.2016 under Sections 148, 149, 323, 427, 448, 452 and 506 of the Indian Penal Code,

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1860, was registered. The petitioner contends that despite being assaulted, the police did not take any action against Ishwar Singh and others and instead filed a challan against the petitioner and his family members under Sections 107/151 of the Code of Criminal Procedure. He submits that various representations had been sent to the police authorities, however, no response was received whereupon the petitioner approached this Court by filing CRM-M-14269-2019. The same was disposed of vide order dated 20.02.2020 directing the Superintendent of Police, Panipat, to look into the representation dated 13.03.2019 and to do the needful. The said representation was later decided by the Superintendent of Police, Panipat, vide order dated 18.07.2020 by directing the SHO, Police Station, Matlauda to provide adequate police force, including lady constables, to the Duty Magistrate Naib Tehsildar, Matlauda as and when required to help the petitioner in raising peaceful construction over the land in his possession.

5 He submits that representations/reminders had been sent to the Duty Magistrate but the same were not responded to. Thereafter, a petition CRM-M-24846-2022 was filed before this Court for seeking appointment of the Duty Magistrate to enable the petitioner to raise construction over the land belonging to the petitioner. The same was dismissed by this Court vide order dated 01.06.2022 for the reason that the petitioner had never approached the concerned authorities for appointment of a Duty Magistrate. The petitioner thereafter approached the office of Naib Tehsildar for appointment of Duty Magistrate vide representation dated 02.08.2022. The

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representation dated 07.08.2020 was also sent to the Tehsildar of the area to appoint a Duty Magistrate, however, having received no response from the Tehsildar, and other authorities, the petitioner had to again approach this Court by filing CRM-M-12010-2022 which was later dismissed as withdrawn.

6 Learned State counsel contends that Dr.Kapil, Veterinary Surgeon, GVH, Naulya, was appointed as Duty Magistrate by the Naib Tehsildar Anil Kumar. He visited the place but on the said date, neither there was any labour nor any mason available with the petitioner. Besides, no construction material was lying at the spot, hence, the petition is premature.

7 Learned counsel for the petitioner submits that the Duty Magistrate had come at about 4:15 P.M., without any prior notice and that in the absence of any intimation, there was no occasion for the petitioner to commence the construction or to hire labour and mason going by his past experience.

8 Learned counsel further places reliance on the averment contained in para No.5 of the reply filed on behalf of respondents No.3 and 5. The same is extracted as under:-

“5. That the respondent No.5 has also made a recommendation vide letter No.232-5A dated 10/07/2020 to the respondent No.3 to approach the respondent No.2/District Magistrate-cum-Deputy Commissioner Panipat to get the Duty Magistrate appointed so as to the exact location of

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Khasra No.834 situated at Village Urlana Kalan may be Identified in the presence of both the parties and the police help may be provided to the petitioner. In contortion thereof, the respondent No.3 has approached vide office letter No.222380 dated 11/07/2020 to the respondent No.2 and in pursuance of it the respondent No.4 was appointed as Duty Magistrate by the respondent No.2 vide order Endst.No.3076-DM dated 13/07/2020. After that keeping in view of the above facts and circumstances, a detailed speaking Order No.23282 Dt.18/07/2020 was passed by the respondent No.3 to the effect that the above said representation Dt.13/03/2019 is hereby disposed of with a direction to the respondent No.5 to provide adequate police force including lady constable to the respondent No.4/ Naib Tehsildar-cum-Duty Magistrate Madlauda as and when it will be required to help in the peaceful construction over the concerned land. The Speaking Order is already endorsed by the petitioner with petition as Annexure P-6 for the kind perusal of this Hon'ble Court."

9 He submits that the requisite police help was ordered to be provided to the Duty Magistrate as and when asked for by the Duty Magistrate to ensure that peaceful construction is undertaken. He prays that a time schedule may be prescribed so that the uncertainty can be ruled out and the problem is resolved

10 Counsel for the State has no objection to the same and contends that the State has already offered to depute police force, in its

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reply, as and when it is so asked for by the Duty Magistrate. The necessity for seeking replies of the remaining official respondents is dispensed with.

11 The present writ petition has already remained pending before this Court since 2023 for the above said reason and the matter is being unnecessarily delayed.

12 The petitioner has been awaiting raising of construction for last 08 years approx. from the time when FIR was registered in the year 2016. He has already approached this Court thrice but the issue still remains unresolved.

13 The present writ petition is accordingly disposed of with the following directions:-

- (i) That the Naib Tehsildar-cum-Duty Magistrate, Matlauda, District Panipat, is directed to remain present himself or to nominate any other person as the Duty Magistrate, to enable the petitioner to raise construction at the property, the possession whereof had been delivered to him in execution petition vide order dated 31.10.2013;
- (ii) That the Duty Magistrate shall remain present at the spot on 20.08.2024 or on such other date as may be so fixed by the Duty Magistrate (in the event of any other exigency or emergency duty being discharged by the Duty Magistrate), but not later than seven days;

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(iii) That the Superintendent of Police, Panipat, shall ensure that the SHO concerned makes appropriate arrangement for the necessary police help along with a lady constable to remain present at the spot to enable the petitioner to raise construction over the premises in question on the said date and/or for all dates fixed by the Duty Magistrate and till the completion of the boundary wall.

14 Let a compliance report be filed by the respondent within a period of two months.

15 The present writ petition stands disposed of accordingly.

July 24, 2024
raj arora

(VINOD S. BHARDWAJ
JUDGE

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