

COCP No.739 of 2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**COCP No.739 of 2015 (O&M)
Date of decision:19.10.2015**

Darshan Masih

...Petitioner

Versus

Ashok Kumar Gupta and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. P.P.S. Duggal, Advocate,
for the petitioner.

Mr. Vinod S. Bhardwaj, Addl. A.G., Punjab.

Mr. R.S.Cheema, Advocate,
for respondent No.4.

Mr. Harminder Singh, Advocate.

Rakesh Kumar Jain, J.

This petition is filed to initiate action against the respondents under the Contempt of Court Act, 1971 for the alleged willful disobedience of the order passed by this Court on 08.01.2015.

In brief, the petitioner filed CWP No.15911 of 2014 in which he had prayed for a direction to the official respondents to take action under Sections 172-A, 189, 195 and consequently under Sections 16 and 22 of the Punjab Municipal Act, 1911 against respondents No.5 to 8 because they are in illegal possession on the land of the Nagar Panchayat. The said writ

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petition was disposed of on 08.01.2015 with the following observations:-

“At the outset, learned State counsel has pointed out that needful has already been done. Notice, Annexure R1 has been issued to respondents no.5 to 8 directing them to remove illegal encroachment within seven days failing which same would be demolished.

In view of stand taken by the State, I feel that no cause of action survives in this petition. Same has been rendered infructuous.

Disposed of.”

The petitioner did not disclose that he had filed LPA No.960 of 2015 against the aforesaid order dated 08.01.2015 passed in CWP No.15911 of 2014. The said LPA was disposed of on 11.08.2015 by the Division Bench with the following directions:-

“Having heard learned counsel for the appellant and the State counsel, we dispose of this appeal with a direction to the Deputy Commissioner-cum-Collector, Ferozepur to visit the site and if the allegations made by the appellant are found correct, to further ensure that encroachments made by private-respondents or anyone else be removed within a period of three months after following due procedure. In case the Collector fails to do the needful within the time stipulated, the appellant may initiate contempt, of court proceedings and in that even the Deputy Commissioner-cum-Collector, Ferozepur shall be responsible for the expenses to be incurred by the appellant on the avoidable litigation.

Ordered accordingly.”

The respondents have alleged in their reply that the Nagar Panchayat, Mallanwala Khas had already initiated the eviction proceedings against Balwinder Singh S/o Bohar Singh, Jaswinder Kaur wife of Jaswinder Singh, Gurwinder Singh S/o Bohar Singh and Shakuntla Rani wife of Janak Raj by filing an application under Sections 5 and 7 of the

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as “the Act”) in the Court of Deputy Director, Local Bodies, Ferozepur, exercising the powers of Collector under the Act. The proceedings were initiated much prior to the filing of CWP No.15911 of 2014, in which the Nagar Panchayat, Mallanwala was not only claiming eviction of the petitioners but also Rs.20,000/- per month as damages for the last 3 years. The said eviction petition has been decided by the Deputy Director, Local Bodies, Ferozepur on 25.06.2015. However, Gurwinder Singh has filed the statutory appeal before the Deputy Commissioner, exercising the powers of Commissioner under the Act, in which stay has been granted, which is now fixed for 19.10.2015 for adjudication.

It is argued by counsel for the respondents that the petitioner has not approached this Court with clean hands and has made a complaint for the alleged disobedience of the order passed in the writ petition dated 08.01.2015, whereas the said order has merged in the order passed by the Division Bench on 11.08.2015, according to which the encroachments were to be removed within a period of 3 months after following the due procedure and if the period of 3 months is to be counted from August 2015, it would end up in November 2015, therefore, contempt petition was also pre-mature.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the petitioner has not come to the Court with clean hands as he has sought to file this petition for the alleged disobedience of the order dated 08.01.2015 though the said

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order merged in the order dated 11.08.2015 and he should have withdrawn this contempt petition to await for the time given in that order by the Division Bench to expire in case the direction issued therein was not complied with.

Thus, in my considered opinion, this petition does not have any merit and as such, the same is hereby dismissed with costs of ₹20,000/-, which shall be deposited by the petitioner with the Nagar Panchayat, Mallanwala, within a period of one month.

October 19, 2015
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(**Rakesh Kumar Jain**)
Judge