

COCP No.823 of 2014

[1]

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

**COCP No.823 of 2014
Date of decision:06.11.2015**

Harbhajan Singh

...Petitioner

Versus

Gurnam Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.

Mr. G.S.Sirphikhi, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner has prayed for initiation of contempt proceedings against the respondents for the alleged willful disobedience of the order passed by this Court on 27.08.2013 in CWP No.11922 of 2012.

In short, the respondents had earlier filed CWP No.11918 of 2012 to challenge the orders dated 07.10.2011 and 18.05.2012 passed by the District Development and Panchayat Officer, Gurdaspur, exercising the powers of Collector, and the Director, Rural Development and Panchayat, SAS Nagar, Mohali, exercising the power of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961. The said writ petition was dismissed on 07.08.2012 with the following order:-

“We have heard counsel for the petitioners, perused the paper-book and the impugned orders. The Collector and the

COCP No.823 of 2014

[2]

Commissioner have recorded concurrent findings of fact that the petitioners have not been able to prove that the street, in which they have installed a gate, is a private street. A perusal of the site plan, appended by the petitioners, establishes that the petitioners have installed a gate in the center of a street, thereby denying access to other inhabitants of the area. The petitioners' contention that the fact that street is a part of Khasra nos. 84 and 85 allotted to them in 1957, has not been proved by reference to any evidence and even, if accepted, the street lies between two rows of houses and is used by inhabitants of these houses. The petitioners, admittedly, installed a gate in the middle of a street and as is apparent from site plan, placed on record as Annexure A-1, have adversely affected the right of access of residents of adjoining houses.”

The respondents had also filed CWP No.11922 of 2012, which was allowed on 27.08.2013 in the following manner:-

“Under the circumstances, we allow this writ petition. Orders dated 07.10.2011 and 18.05.2012 (Annexure P-5 and P-7) are quashed. It is further ordered that as per undertaking given by the petitioners, they shall remove a door which they had put unauthorizedly on the street, which was subject matter of challenge in CWP No.11918 of 2012, which was dismissed on 07.08.2012. If the petitioners fail to do so, the District Development and Panchayat Officer is directed to remove the gate with the police help after one month.”

The present petition has been filed alleging that respondents No.1 and 2 had removed the gate from the street but on the same day, they put up a brick wall closing the ingress and outgress of the petitioner from his house, as a result thereof, his movement in the street has been obstructed. In this regard, he has also appended two photographs as Annexure P-4.

In reply, the respondents have alleged that they have already

COCP No.823 of 2014

[3]

complied with the order dated 27.08.2013 in which they were directed to remove the door which was alleged to have been put up unauthorizedly by them on the street which was a subject matter of challenge in CWP No.11918 of 2012, which was dismissed on 07.08.2012. It is further alleged that the Division Bench, in its order dated 27.08.2013, which is alleged to have been disobeyed by them, has further directed that if the respondents failed to remove the gate themselves, then the District Development and Panchayat Officer shall remove the gate with the help of police after one month. It is submitted that since they have already removed the door, which is not disputed, therefore, there is no reason for filing this petition to drag the respondents in this Court to face the charge of contempt as the petitioner is pleading an altogether new case of restricting his movement to the street from the area which is shown in the photographs Annexure P-4, cordoned off by way of a wall.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The argument of the petitioner that the respondents have restricted his movement/ingress and outgress to the street by raising the wall was not a subject matter of decision in CWP No.11922 of 20122 decided on 27.08.2013 in which the only direction issued by this Court was for removal of the door from point 'A' and 'B' which was alleged to have been unauthorizedly put up by the respondents and which has admittedly been removed. Moreover, it cannot be expected that the petitioner is having the main entrance from the street to his house which is alleged to have been

COCP No.823 of 2014

[4]

obstructed by the respondents by raising a wall, which is shown in photographs Annexure P-4. It is obviously the backyard of the house of the petitioner which cannot be expected to be the main entrance to his house. It appears that by breaking open the wall of his own plot, the petitioner wanted to reach the street which is alleged to have been again closed by the respondents by raising the wall and by constructing that portion of the wall which was alleged to have been opened by the petitioner but in any case it would not tantamount to disobedience of the order dated 27.08.2013 in which no such direction was issued nor any undertaking was made by the respondents.

Thus, the present petition has been filed without there being any cause of action having been arisen from the order dated 27.08.2013, unnecessarily dragging the respondents to this Court to contest the alleged charge of contempt.

Consequently, the present petition is hereby dismissed with costs of ₹20,000/-, which shall be paid by the petitioner to the respondents within a period of three months from today.

November 06, 2015
vinod*

(Rakesh Kumar Jain)
Judge