

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

**CWP No.19462 of 2015
Date of decision: 15.9.2015**

William Singh Sandhu @ Diljinder Singh Sandhu
.....Petitioner

Directorate of Enforcement and others
.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. R.B.S.Chahal, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing complaint dated 16.3.2015, Annexure P.18 filed by respondent No.2 under Section 16(3) of the Foreign Exchange Management Act, 1999 (in short, "the FEMA") and the Show Cause Notice issued by respondent No.3 to him being illegal and against the provisions of law. Further prayer has been made for staying further proceedings before respondent No.3.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner was born at Merrut on 13.7.1951. After graduating from Guru Gobind Singh College, Chandigarh, the petitioner went to the United States of America for higher

studies in 1973. The petitioner continued to be an Indian citizen till 1993 when through process of naturalization he opted for American citizenship. He also changed his name from Diljinder Singh Sandhu to William Singh Sandhu as was legally permissible. The petitioner owned considerable agricultural land in India prior to his departure for abroad. He was given this land by his father who while retaining one share for himself, also gave equal 1/3rd share to his younger son – respondent No.4. The father of the petitioner also owned urban property which too was earmarked equally for his two sons. A three kanal house in sector 8 Chandigarh fell to the share of the petitioner whereas a four kanal house in Sector 28A, Chandigarh fell to the share of his younger brother. Both the brothers had one showroom each in Sector 30 Chandigarh. Over a period of time, the agricultural land in Malerkota became urbanized. In 1990, the family sold that land and purchased agricultural land near Chandigarh in Villages Singhpura and Bishanpura, Zirakpur. Since the petitioner was living abroad, he executed a General Power of attorney in favour of his younger brother in order to facilitate the transfer of assets. With the passage of time, the prices of land in the vicinity of Chandigarh reached great heights. Respondent No.4 started usurping the properties of the the petitioner. In the year 2010, the petitioner came to know that his younger brother had misused his power of attorney and sold a number of properties. He also exchanged his land in Singhpura with the land belonging to his wife near Patiala. The petitioner arrived in India on 30.1.2010. He approached the civil court by filing suit against his brother and his wife seeking a declaration that the exchange of land was illegal. Injunction against the defendants from alienating the suit land or changing its nature was prayed. The same was granted by the lower

court on 18.8.2010, Annexure P.5. The said order was made absolute and the appeal against the said order was dismissed. Thereafter, with the intervention of friends and relatives, the petitioner and his younger brother entered into a family settlement whereby the younger brother agreed to transfer certain properties to his elder brother, the petitioner. Pursuant to the said family settlement dated 3.4.2010, Annexure P.6, respondent No.4 through his associate Sukhwant Singh transferred 6 acres of land in Village Rawas Brahmana near Patiala through five registered sale deeds dated 4.5.2010. He also filed a complaint before the Sub Registrar alleging insufficient stamp fee. Thereafter, the younger brother of the petitioner utilized the services of his friend respondent No.5 to file a complaint dated 24.8.2010 to the Deputy Commissioner, Patiala alleging that besides the undervaluation, the petitioner could not purchase agricultural land in India being an NRI. Prayer was made for taking appropriate action against the petitioner. It was alleged that the petitioner had violated the provisions of FEMA. On the basis of the said complaint, FIR No.51 was registered against the petitioner under Sections 420/199/200/120B IPC at Police station Tripuri Town, Patiala. The petitioner was arrested and incarcerated in the Patiala jail for 14 days. The investigating agency after examining the matter submitted final report before the Magistrate on 5.8.2012 under Section 173 Cr.PC recommending cancellation of the FIR. Thereafter, respondent Nos. 4 and 5 in order to harass the petitioner approached respondent No.2. Summons were issued to the petitioner for appearance by respondent No.2 on 4.7.2013, Annexure P.12. The petitioner appeared and filed detailed reply bringing all the facts to the notice of respondent No.2.

When nothing was done, the petitioner approached this court against the

summoning order by way of CWP No.18931 of 2013 which was dismissed. The petitioner filed Letters Patent Appeal. This Court directed respondent No.2 to consider the reply filed by the petitioner and pass a speaking order. Since nothing was done, the petitioner filed COCP No.1008 of 2014. Respondent No.2 filed affidavit dated 18.7.2014/21.7.2014, Annexure P.15 taking the plea that the court had not fixed any time limit for passing a speaking order. He filed another affidavit dated 24.4.2015, Annexure P.17 stating that the scheme of the Act did not permit him to pass an order on any representation etc. The contempt petition was dismissed on 14.5.2015. After more than two years of harassing the petitioner, respondent No.2 referred the matter to the adjudicating authority but as a complainant. Hence the instant writ petition.

3. We have heard learned counsel for the petitioner.

4. From the perusal of the narration of facts noticed above, it is evident that disputed questions of fact are involved herein. It would, thus, not be appropriate in writ jurisdiction to adjudicate the same as the factual matrix would require to be established by producing material evidence in that regard. In such a situation, we do not find justification to entertain this petition under Articles 226/227 of the Constitution of India.

5. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in *N.C.Mahendra v. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country

and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit.” (Emphasis supplied).

The Hon'ble Supreme Court in State Cadre Authority and another v. K.S.Bajpal and others, (1990) (Suppl.) SCC 713, Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others, (2007) 4 SCC 241 and Mukesh Kumar Agrawal v. State of UP and others, (2009) 13 SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in *Dwarka Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others*, AIR 2003 SC 2686, wherein it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that

too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

6. In view of the above, we do not find any justification to entertain the writ petition as the factual matrix involved requires to be probed thoroughly before any findings on facts could be arrived at. Consequently, the petition stands dismissed.

(Ajay Kumar Mittal)
Judge

September 15, 2015
'gs'

(Ramendra Jain)
Judge