

CWP-23115-2014

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

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Date of Decision: 22.09.2015

Shri Ram Dham Colony Welfare Association, Rattan Chand Road,

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. V.K.Sandhir, Advocate,
for the petitioner.

Mr. B.S.Cheema, DAG, Punjab.

Mr. Sandeep Khunger, Advocate,
for respondent No.3.

Mr. A.P.S.Shergill, Advocate,
for respondent No.4.

Mr. Hemant Goswami, respondent No.5
in person.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India by Shri Ram Dham Colony Welfare Association, through its authorized person, Hari Om Dhanuka son of Shri Thakur Dass Dhanuka, which is not a registered Society, however, neither there is any resolution passed by the alleged association authorizing Hari Om to file the present petition nor there is any

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document in favour of the Ram Dham Colony Welfare Association showing it to be alleged welfare association. There is a prayer in the writ petition for issuance of a writ in the nature of mandamus directing respondent No.3 to take action against the alleged illegal construction being raised by respondent No.4 as hospital on plot No.18-B Ram Dham Mandir Colony, R.B.Rattan Chand Road, Amritsar, which is residential area, without getting any site plan sanctioned under Section 258 of the Punjab Municipal Corporation Act, 1976 and without getting any permission to convert the residential area into commercial property under Section 275(6) of the Punjab Municipal Corporation Act, 1976. It is averred that the alleged illegal construction of hospital is likely to create public inconvenience/nuisance in the residential area.

The facts as narrated in the present petition are to the effect that the area around Rai Bahadur Rattan Chand Road is residential except the area marked for schools, Bhai Vir Singh Trust and some commercial area. However, plot No.18-B is a residential plot situated within the residential lines on 22 ft. road and is surrounded by other residential houses. Earlier the residential building was constructed over this land, however, respondent No.4 with the connivance of officials of respondent No.3, has allegedly started constructing a hospital in the name and style of Thakar Dei Mehra Charitable Foundation Hospital. In fact, there is one such trust already in existence at 128, PUDA Colony Green Avenue, Amritsar. It is also averred in the petition that respondent No.4 without permission to change the land use and getting the site plan

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sanctioned, started raising the illegal construction of hospital with OPD facilities and specialized lab facilities. Various complaints were made to respondent No.3-Municipal Corporation, but no action has been taken. Rather under the garb of renovation, respondent No.4 is constructing a new hospital in the residential area and latest photographs (Annexure P-5) show that multi-story building is being raised in the residential area and officials of respondent No.3 are turning blind eye despite complaints. The action of respondent No.4 is illegal and arbitrary. It is also averred in the petition that two PILs i.e. CWP-14900 of 2010, titled as 'Sarbjit Singh vs. State of Punjab and others' and CWP-8801-2012, titled as 'Prabodh Chander Bali vs. Chief Secretary to Govt. of Punjab and others' are pending in this Court whereby allowing of illegal construction by the staff of respondent No.3 and non-compliance of provisions of Sections 257 to 275 of the Punjab Municipal Corporation Act, 1976, by the Municipal Corporations are under challenge.

In pursuance of notice of motion, respondent Nos.3 and 4 filed their separate written statements. During the pendency of petition, application under Order 1 Rule 10 read with Section 151 CPC was moved by Thakar Dei Mehra Charitable Foundation as respondent No.5 claiming itself to be owner of the property in question and it was impleaded as respondent No.5. It also filed its separate reply.

In its reply, respondent No.3 pleaded that the petitioner has made false averments. The present petition has been filed to settle some personal scores. The area in question is a mixed area consisting of

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residential, school and commercial. In fact, as a matter of record, plot No.18-B is a residential plot and is surrounded by residential houses. The residential house has been constructed over the plot in question. It has been denied that under the garb of renovation, respondent No.4 is constructing any hospital. It has also been denied that respondent No.4 has constructed any multi-story building in the shape of the hospital. It is also averred that aforesaid CWP-14900 of 2010 has already been disposed of with the observations that no further monitoring is required.

Respondent No.4 in its separate reply denied the averments in the petition and averred that he is not the actual owner of the property and has been wrongly made a party with an intention to obtain an order by misleading and without following the process of law. The property in question is owned by Thakar Dei Mehra Charitable Foundation which is now impleaded as respondent No.5. It is also averred that some ex-counselors are trying to occupy the building and grab the property in question as it was lying unused since 1980. The said building was constructed sometimes around 1946 and the building still maintains the same structure. Only necessary repairs and renovation have been carried out in the building in question. The other averments made in the petition are false and frivolous and the petition deserves to be dismissed with special costs.

Respondent No.5 also filed its separate reply on the similar lines. Even some photographs have been annexed with the reply filed by respondent Nos.4 and 5 to indicate that building has been in existence

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since 1946. It is averred that the petitioner has played a fraud upon the Court and criminal action is required to be taken.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that a multi-story building is being constructed at the spot, rather the area in question is residential and it will be converted into hospital. The commercial activity is prohibited without permission to change the land use under the provisions of the Punjab Municipal Corporation Act, 1976.

Per contra, learned State counsel, learned counsel for respondent No.3, learned counsel for respondent No.4 and respondent No.5 present in Court contended that false averments have been made in the petition. No multi-story building is being constructed. The building as was constructed in 1946 is in the same state except minor repairs and renovation carried out therein. Reference to photographs Annexures R-5/2 to 5/4 has been made.

In addition to it, learned counsel for respondent No.3 contended that there is no change in the building structure. The locality of the area is a mix used area including school, commercial and residential, but the plot in question is residential and the construction as shown in the photographs was raised since long ago and there is no multi-story construction at the spot.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties.

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The petitioner has made false averments and annexed photographs (Annexure P-5) at page 21 to 23 of the paper-book indicating that multi-story building is being constructed at the spot. There is a categorical stand of respondents that the building in question was constructed in the year 1946, only minor repairs and renovation have been carried out therein and no hospital is running at the spot. The locality of the area is a mix-used. The petitioner has tried to mislead the Court by annexing wrong photographs and even has not filed counter-affidavit to written statements of respondent Nos.3 to 5.

The Hon'ble Supreme Court in catena of judgments has suggested the hike in the quantum of costs on the persons indulging in filing frivolous and fictitious litigation which are clogging the justice delivery system in the country. From the photographs (Annexures R-5/2 to 5/4), the building in question appears to be single story and old one, stated to be constructed in the year 1946. The photographs (Annexures R-5/2 to 5/4) clearly show that no multi-story building has been constructed over structure or behind that. The building had been lying vacant since 1980 and it is now being renovated. The petitioner is a property dealer and is working under the name and style of Universal Developers. The allegations against the petitioner are to the effect that the petitioner in connivance with others wants to grab the building in question. The petitioner-Association through its authorized person Hari Om has filed frivolous petition and Hari Om has filed false affidavit with regard to the construction of building and alleging changing its user.

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The Hon'ble Allahabad High Court in WRIT - C No. - 32661 of 2014, titled '**Smt. Poonam and Another vs. State Of U.P.**', decided on 18.06.2014, has held as under:

“7. Both the aforesaid paras have been sworn on the basis of personal knowledge and interestingly, the affidavit is sworn by both the petitioners, therefore, it is clear case where petitioners have sworn a false affidavit.

8. However, when enquired as to why this writ petition has been filed, learned counsel for the petitioners could not give any effective reply and it appears to this Court that just to get a certificate to the alleged marriage, this writ petition has been filed on the pretext as if there is an apprehension of life and liberty to the petitioners from respondents no.6 to 9 but in respect of substantial aspect regarding apprehension of life and liberty, appropriate pleadings are almost absent, which shows that real objective is something else than what is attempted to be shown by way of arguments. I am clearly of the view that this writ petition is nothing but a totally vexatious and frivolous litigation. It is really unfortunate that such frivolous litigation is consuming a lot of time of this Court depriving other substantial matters to be conducted within reasonable time.

*9. Stressing upon the ways to discourage filing of vexatious and frivolous cases against all kinds of orders or at every stage of proceedings, irrespective of the fact whether petition like the present one would be permissible in law or not, Apex Court in the context of practice of filing SLPs against all kinds of orders of High Court or other authorities, came heavily in **Mathai @ Joby vs.***

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George and Anr, 2010 (4) SCC 358 and said that if all such sundry kinds of cases are allowed, the Court will soon be flooded with a huge amount of backlog and it will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done. The Court has limited time at its disposal and the Judges are struggling with unbearable burden with zeal to dispense justice to whom it is highly needed yet being obstructed by such frivolous and vexatious matters, a trend is developing to bring all kinds of trivial and flimsy matters to Court causing wastage of not only public money, but also precious time of the Court, which can be used for other substantial matters.

10. The Apex Court in **Crl. M.P. No.25683 of 2013 in Special Leave Petition (Crl.) No. 2448 of 2014 (Phool Chandra & Anr. Vs. State of U.P.)**, decided on 10.3.2014, observed:

“..the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters. There is an urgent need to put a check on such frivolous litigation. Perhaps many such cases can be avoided if learned Counsel who are officers of the court and who are expected to assist the court tender proper advice to their clients. The Bar has to realise that the great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be made unbearable. The Judges of this Nation are struggling bravely against the odds to tackle the problem of dispensing

quick justice. But, without the cooperation of the gentlemen of the Bar, nothing can be done.”

11. The Court in **Phool Chandra & Anr. (supra)** referring to earlier decisions in **Varinderpal Singh Vs. Hon'ble Justice M.R. Sharma and Ors., 1986 Supp SCC 719; Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors., (2011) 8 SCC 249; and Gurgaon Gramin Bank Vs. Khazani and Anr., AIR 2012 SC 2881** has said:

“It is high time that the Courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on learned Counsel who act in an irresponsible manner.”

12. I may also repeat here [the] observation made by the Court in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, JT 2005 (6) SC 486** stating that award of costs must be treated generally as mandatory. It is the liberal attitude of the Courts in not awarding costs which has led to frivolous points or litigation before the Courts. Costs should invariably follow the event and reasons must be assigned for not awarding costs.

13. In view of aforesaid, this petition has to be dismissed with costs.

14. It is accordingly dismissed with costs, which I quantify to Rs.2,500/-.”

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In view of above discussion, I do not find any merit in the present petition. The instant petition is frivolous and vexatious. It has been filed making false averment that multi-story building is being constructed. In fact, only minor repairs and renovations are being carried out as building was originally constructed in 1946. A trend is developing to bring out kind of trivial and flimsy matters to the courts resulting in wastage of public money and precious time of the courts.

Dismissed with costs of ₹50,000/- out of which ₹25,000/- shall be deposited with the State Legal Services Authority, Punjab and ₹25,000/- shall be deposited with the High Court Lawyers' Welfare Fund. It is made clear that if the amount of costs is not deposited within two months, the same shall be recovered as arrears of land revenue.

22.09.2015
parveen kumar

(Paramjeet Singh)
Judge