

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Revision No. 6525 of 2015(O&M)  
Date of decision : 27.05.2016

Hukam Chand

.....Petitioner

versus

Shri Digamber Jain Sabha

..... Respondent

Civil Revision No. 6872 of 2015(O&M)  
Date of decision : 27.05.2016

M/s Biku Mal Kewal Ram and another

.....Petitioners

versus

Shri Digamber Jain Sabha

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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Present: Mr. V.KJindal, Sr. Advocate  
with Mr.Amardeep Sheoran, Advocate  
for the petitioner(in CR-6525-2015).

Mr.KPS Dhillon, Advocate  
for the petitioners(i CR-6872-2015).

Mr.Y.P.Malik, Advocate and  
Mr.SKS Bedi, Advocate  
for the respondent.

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1. Whether Reporters of 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?

**AJAY TEWARI, J. (Oral)**

This order shall dispose of the aforesaid two revision petitions.

Since the matter involved in both the petitions is same, they are being  
disposed of by this common order. Both these petitions have been filed

against concurrent orders of eviction of the petitioner/s from the shops in dispute.

Respondent Shri Digamber Jain Sabha had averred that they were running a school in the premises and the shops need to be raised to the ground to expand the area of the school since the primary school had to be converted to a middle school. Both the Courts being against the petitioners the matter had come up to this Court.

On 11.04.2016 the following order was passed:-

*“These petitions have arisen out of the concurrent orders of eviction which have been passed against the petitioners. The ground taken was that in the premises in dispute a primary school was being run by the respondent-Shri Digamber Jain Sabha and they wanted it to be upgraded to a middle school.*

*The short case of the petitioner(s) was that in fact no school was running at the spot. Today learned counsel appearing for the parties have agreed that a Local Commissioner be appointed to visit the site in dispute alongwith a representative of the Office of the District Education Officer, Ambala Cantt. tomorrow itself and give their report whether there is a functional school in the premises in dispute.*

*Mr. A.S. Cheema, Advocate who is present in Court is appointed as a Local Commissioner to visit Ambala Cantt. tomorrow morning and give a report about the above facts. The District Education Officer, Ambala Cantt. is directed to either accompany the Ld. Local Commissioner or send a representative. For this purpose the Ld. Local Commissioner will reach the office of the District Education Officer, Ambala Cantt. at 10 A.M. tomorrow.*

*The fees of the Ld. Local Commissioner is fixed at Rs.25,000/- which shall be paid by the petitioners in both the cases. The said fees be handed over to the Ld. Local Commissioner by 4.00 P.M today itself. The matter is adjourned to 22.04.2016.*

*A copy of this order be given to the Ld. Local Commissioner as well as Ld. counsel for the parties under the*

*signatures of the Bench Secretary who would apprise the District Education Officer, Ambala Cantt. about this order ,  
A photocopy of this order be placed on file of the connected case”*

Thereafter the Local Commissioner went to Ambala Cantt on 12<sup>th</sup> April, 2016 and gave a report as per which he stated that the school was functioning at the spot.

Learned senior counsel for the petitioner has not assailed the factual aspects of the report but has argued that the report of the Local Commissioner has a note by the District Education Officer and as per that note and the material which has already come on the record the fact is that originally the respondent was running school in Gur Mandi but later on obtained land in Rai Market in the year 1970 and shifted the Jain Girls Senior Secondary School to the new complex in Rai Market. Thus the school which is now being run is being run illegally without there being any affiliation or approval from the Government. He has relied upon a decision of this Court in case of **Manoj Kumar Jaswal v. State of Haryana and others, CWP No. 15225 of 2012** decided on **04.09.2012**. In that case the petitioner had filed a petition against four respondents therein claiming that they were running schools in Faridabad without getting the necessary affiliation, in violation of the provisions of Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 and also in violation of the provisions of Sections 4 and 5 of the Haryana School Education Act, 1995 and the Rules framed thereunder. As per learned senior counsel in that judgment a Division Bench of this Court had directed the State of Haryana to conduct a survey in the entire State to ensure that no school is established or allowed to function in violation of the provisions

aforementioned. Developing this argument further learned senior counsel has asserted that the school which is being run is thus an illegal school and consequently the need even if it exists is not bona fide.

Learned counsel for the respondent on the other hand have argued that the mere fact that the respondent continued to use the premises in dispute as a school even after getting additional land in another building would not render the running of the school illegal and in any case this is a matter between the respondent and the State of Haryana. As per learned senior counsel, on 11.04.2016, it was stated as a fact that no school was in fact running at the spot and this assertion has been proved to be a bare-faced falsehood. As per them there is nothing illegal about the school and if at all the State of Haryana indulges in any kind of witch hunt they would stoutly oppose the same, but as matters stand there is a school where 250 students are admittedly studying and thus requirement for more space cannot be held to be not bona fide and that too at the instance of a tenant who has his own personal axe to grind. I find myself in agreement with learned counsel for the respondent. It is trite to say that the Rent Controller is not to go into vexed question of title or illegality or legality thereof. If under some other judgment some action has to be taken against the respondent by the Government that fact cannot permit the tenant to dispute the entitlement of the landlord for the premises.

Another argument raised by learned senior counsel for the petitioner/s is that during the pendency of this petition two tenants had surrendered their premises but were given fresh tenancy after reconstruction. This fact has been considered by the Courts below who have found that the two tenants had larger space in their occupation and after getting it vacated a

smaller space was given to them after making the access to the school wider.

He has further argued that after the limited argument raised on 11.04.2016 this argument does not really lie in the mouth of the petitioner/s because on that date the only thing which survived was whether a school was functioning or not.

In my opinion both these points of learned counsel for the respondents are correct and consequently these revisions are liable to be dismissed. However, learned senior counsel has made an offer. He states that just like the other two tenants who surrendered a portion of the space in their occupation the petitioner/s are also ready for the same and are willing to vacate the premises so that the respondent can reconstruct them in a manner in which their purpose can also be solved and the livelihood of the petitioners is also not taken away and the petitioner/s would not be averse to renegotiate the rent also. Learned counsel for the respondent state that they are not in a position to either accept or reject this prayer but they will communicate the same to the respondent and the respondent would take a view thereon.

**(AJAY TEWARI)**  
**JUDGE**

**May 26, 2016**  
**sunita**