

CWP No.19236 of 2002
COCP No.3300 of 2015

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

(1) **CWP No.19236 of 2002**
Date of decision:07.12.2016

Sudagar Singh ...Petitioner

Versus

The Deputy Commissioner and others ...Respondents

(2) **COCP No.3300 of 2015**
Date of decision:07.12.2016

Saudagar Singh ...Petitioner

Versus

Kamaldeep Singh Sangha and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Anand Chhibbar, Senior Advocate, with
Mr. Gaurav Mankotia, Advocate, and
Mr. Vaibhav Sahni, Advocate, for the petitioner
in CWP No.19236 of 2002.

Ms. Riya Bansal, Advocate,
for the petitioner in COCP No.3300 of 2015.

Mr. Anant Kataria, DAG, Punjab.

Mr. K.S.Dadwal, Advocate,
for respondent Nos.2 to 4.

Mr. M.K.Singla, Advocate,
for the applicant-Ranjit Singh.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP
No.19236 of 2002 and COCP No.3300 of 2015 as both are inter-connected.
However, for the sake of convenience, the facts are being extracted from
CWP No.19236 of 2002.

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In brief, the petitioner along with his brother had purchased a plot bearing Khasra No.13/2 (0-17) in village Brahman Majra, Tehsil Sirhind, District Fatehgarh Sahib from M/s Nanak Chand Paras Ram vide sale deed dated 22.02.1973 for a sum of ₹4,000/- for carrying on the business of animal carcass (Hadda Rori). Respondent No.3 issued notice dated 24.06.1982 under Section 155 of the Punjab Municipal Act, 1911 (hereinafter referred to as the "Act"). The petitioner filed a suit for permanent injunction against respondent No.3 seeking to restrain it from interfering in his business and from demolishing the construction on the plot of Khasra No.13/2. The suit was partly decreed to the extent that respondent No.3 will not remove the structure but refused to grant injunction to carry on the business of animal carcass at that site vide its judgment and decree dated 12.06.1984. Appeal filed by the petitioner was allowed by the Additional District Judge, Patiala on 19.08.1986, as alleged, and thereafter, the respondent No.3, vide its order dated 24.05.2001, allowed the petitioner to continue his business of Hadda Rori at the same place till the allotment of new piece of land.

It is averred in the petition that the petitioner has got the contract for carrying on the business of 'Hadda Rori' on the disputed site for a sum of ₹82,000/-, for which the petitioner had deposited a sum of ₹41,000/- on 13.03.2002 and another sum of ₹10,000/- on 23.10.2002. The petitioner received the impugned notice dated 28.11.2002 in which it was mentioned that by order of the Deputy Commissioner, Fatehgarh Sahib, the petitioner has to remove the 'Hadda Rori' forthwith.

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Thus, the petitioner has challenged the notice dated 28.11.2002 issued by respondent No.3 and sought a direction to the official respondents to allow him to carry on his business of animal carcass at the site in question.

The said notice has been challenged, *inter alia*, on the grounds that it has been issued in violation of the principle of natural justice and respondent No.3 had given an undertaking that till an alternate site is allotted to the petitioner, it will permit the petitioner to continue with his business of Hadda Rori at the old site and that neither the business of the petitioner is injurious to the health of the people nor it is causing any nuisance to the traffic.

After notice, the operation of the impugned notice was stayed and the writ petition was ultimately admitted on 17.11.2003. The writ petition was ordered to be listed for final disposal in the motion list vide order dated 01.03.2013. However, on 21.05.2013, the said order was recalled and the disposal was restricted to the application. The main case was posted for hearing on 27.10.2014 for 04.12.2014 and on 04.12.2014, it was recorded in the order that the petitioner would suggest an alternative site which may be considered by respondent No.3 for re-locating the avocation. On 24.09.2015, it was recorded in the order that the Municipal Corporation had submitted that the land bearing Khasra No.62, Killa No.24 (0-19), situated in the revenue estate of village Brahman Majra has been allotted for shifting the business of Hadda Rori and sanction has been accorded for this purpose under Section 154 of the Act. It was also

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recorded that the water connection has been given, even boundary wall of the road has also been constructed and only one room and electricity connection is to be set up there.

It requires pertinent notice that the petitioner had filed COCP No.3300 of 2015 for willful disobedience of the order dated 05.12.2002 passed in CWP No.19236 of 2002 as the respondents therein were forcing the petitioner to stop the Hadda Rori work at the site in question by sending various letters.

On 08.07.2016, this Court recorded the following order:-

“Counsel for the petitioner has submitted that the petitioner is not averse to re-allocation of Hadda Rori to the place offered by the respondent which is shown in the photographs i.e. Annexure R-3/I but the petitioner is apprehensive that there may not be a litigation in respect of that place and ultimately they may not be dispossessed by some other persons.

Shri Dadwal, Advocate for respondents No. 2 to 4 submits that the matter can be sorted out if a direction is issued to the Deputy Commissioner, Fatehgarh Sahib.

Adjourned to 12.07.2016.

To be shown in the urgent list.

Deputy Commissioner, Fatehgarh Sahib is directed to be present in Court on the next date of hearing.

A copy of this order be given to counsel for the respondents under the signatures of the Bench Secretary of this Court for compliance.”

On 12.07.2016, the following order was passed by this Court:-

“Pursuant to the order dated 08.7.2016, D.C, Fatehgarh Sahib, is present in the Court. During the course of hearing, learned counsel for the petitioner has made a reference to RSA No.2642 of 2015 (Gagandeep Singh and others Vs. Municipal Corporation Sirhind and others) which is stated to have been filed

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by the persons who are going to be affected by the re-allocation of 'Hadda Rori' which is projected by photograph Annexure R-3/1.

Mr.Dadwal, learned counsel for the respondents has submitted that in the civil suit, there is no stay granted by the Court and only notice has been issued.

Since it is an issue with regard to the rights of the parties, therefore, it would be in the interest of justice if this case is adjourned to 04.8.2016 as the second appeal pending in this Court is fixed for 03.8.2016.”

On 04.08.2016, the following order was passed by this Court:-

“Learned counsel for respondent-Municipal Council submits that RSA No. 2642 of 2015 titled as Gagandeep Singh and others Vs. Municipal Council and others was listed on 03.08.2016 and has been adjourned to 03.11.2016. He further submits that the present petition is pending since 2002 and the issue involved in this case is with respect to shifting of 'Hadda Rori' from the present site for which the respondent Municipal Council has already provided an alternative site with amenities. Counsel for the petitioner prays for time to argue the matter on merit.

Adjourned to 17.08.2016.”

During the pendency of the writ petition, permission was sought by some persons to intervene in the matter and in that regard, the following order was passed by this Court on 17.08.2016:-

“During the course of hearing, Mr. Manish Singla, Advocate has put in appearance and prayed that he may be allowed to intervene in this matter on the ground that he is representing the appellants in RSA No.2642 of 2015 in which the trial Court has decreed the suit for permanent injunction restraining the Municipal Council, Sirhind from construction of Hadda Rodi in question.

Mr. Dadwal has argued that in the said RSA, repeatedly Mr. Singla's client was asked to file an affidavit to disclose the distance of his house from the proposed location of the Hadda Rodi. It is further submitted that no affidavit has been filed so far and the said RSA has not been decided one way or the other.

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Be that as it may. Mr. Singla is directed to file an affidavit of his client showing the distance of his house from the proposed place in question along with site plan.

Adjourned to 22.8.2016.”

In terms of the aforesaid order, affidavit was filed on 31.08.2016 by the interveners.

Counsel appearing on behalf of respondent No.3 has also brought on record the photographs (Annexure R-3/1) of the area re-allocated to the petitioner, in which a room is constructed, a hand-pump is installed for water and the same is bounded by a boundary wall and an iron gate is also installed, whereas the photographs attached as Annexure A-17 of the existing site show a gruesome and repelling picture which is on the roadside.

I have also examined the application of the intervener and the site plan produced by both the intervener and respondent No.3 and am satisfied that the present location is the ideal location for re-location of the said Hadda Rori as the activity of Hadda Rori has to be contained within an enclosure having high-rise walls beyond the physical reach and sight of the human beings.

Thus, in the given facts and circumstances, the present petition bearing CWP No.19236 of 2002 is hereby disposed of with a direction that the present site of Hadda Rori shall be shifted by respondent No.3, much-less the Civil District Administration, within a period of one month from the date of receipt of the certified copy of this order, to the place re-allocated to the petitioner, as mentioned in reply of the respondents and also shown by

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photographs Annexure R-3/1.

Consequently, since the writ petition has been disposed of with the aforesaid directions, therefore, the contempt petition bearing COCP No.3300 of 2015 has become infructuous and is dismissed as such.

December 07, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No