

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 12645 of 2016 (O&M)
Date of decision: 28.11.2016

The Amritsar Tea Traders Association and others

.. Petitioners

v.

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Umesh Aggarwal, Advocate for the petitioners.

Mr. Kamal Sehgal, Addl. Advocate General, Punjab.

Mr. Sanjeev Soni and Mr. Anil Kumar Sharma,
Advocate for respondents No. 3 and 4.

Mr. S. S. Behl, Advocate for the applicant
in CM No. 12401 of 2016.

...

Rajesh Bindal J.

Various associations of traders carrying on business in bazaars/
streets near Golden Temple, Amritsar have filed the present petition praying
for setting aside of resolution passed by Municipal Corporation, Amritsar in
General House meeting held on 7.8.2015. The substance of the resolution
was to restrict vehicular movement of traffic in certain areas close to the
Golden Temple in a project for its beautification.

The contention of learned counsel for the petitioners was that
the petitioners are carrying on their business of wholesale and retail trade in

bazaars/streets close to the Golden Temple. As a result of restrictions on vehicular traffic including even two wheelers and handcarts/ rickshaws, their business has been affected badly. It will amount to unreasonable restriction to carry on business. If the traffic police has failed to regulate the traffic in the area, that does not give a right to restrict the traffic in totality. Only regulation of vehicular traffic can be permitted and not complete ban thereof. In the area, there are number of residential houses. The residents will face problems in leaving their school going children and even the ambulance cannot reach at the desired place. As a result, the patients may suffer. Because of restrictions of vehicular movement in the area, one may have to take a longer route running upto 2 to 3 kms. to reach a place, which may be just 50 to 100 meters away otherwise. The residents of the area are ready to support the authorities in their project of beautification, however, their interest be also taken care of. Beautification should not be at the cost of traders and the residents of the area. The State is duty-bound to treat all its subjects equally with no preference to any one.

On the other hand, learned counsels for the State and the Municipal Corporation submitted that it is a prestigious project, where beautification around the Golden Temple is being carried on. The Golden Temple is a world famous pilgrimage site, which is visited by the people of all faiths. Daily about 1,00,000 devotees visit the area. Besides, this Government has carried out many development activities in the area. The process, in fact, started way back in the year 1988, when the land around the Golden Temple was acquired for Galiara project. The State is well conscious about the difficulties to be faced by the traders and the residents in the area. All possible measures have been taken to ensure that they do

not face any problem, however, still balancing had to be done. In various meetings with the traders, whatever suggestions were possible of acceptance, were accepted. If blards put up at different places are shifted as per the suggestions given by the petitioners, that will spoil the entire project. There would be vehicular traffic crossing through the pedestrian way. He further submitted that entire beautification of the area including the properties owned by the private persons has been done by the State at its own expense. As a result thereof, the business in the area will increase manifold as the tourists/ devotees coming on foot will certainly visit the shops as compared to those, who travel in vehicles. Any change in the plan at this stage is neither possible nor feasible. The petitioners are merely apprehending difficulties. In fact, in the long run, they will realise that it was all for their benefit only. They should support the project.

Heard learned counsel for the parties and perused the paper book.

Importance of Amritsar, the holy city

Amritsar as a city is a global tourist destination. It is one of the most visited place in the country. It is epicenter of Sikhism. It is believed that Amritsar existed even during Ramayana time.

One of the main attraction at Amritsar is the Golden Temple. As per the information available, the foundation stone of this temple was laid by a Sufi saint-Pir Mian Mir of Lahore, which was open to all castes and creeds on the request of Guru Arjan Dev, 5th Sikh Guru. The temple was destroyed by Ahmed Shah Abdali, ruler of Afghanistan. It was re-built by Maharaja Ranjit Singh. It is famous for full golden dome. Within the sacred precincts of the Golden Temple, a devotee can visit (i) The Akal

Takht; (ii) Har Ki Pauri; (iii) Dukh Bhanjani Ber (Jujube Tree); (iv) Thara Sahib; (v) Ber Baba Budha Ji; (vi) Gurudwara Ilachi Ber; (vii) Ath Sath Tirath; and (viii) Bunga Baba Deep Singh. As per estimates, thousands of devotees visit the place on daily basis, whereas on weekends and special occasions, the number reaches in lacs. The beautification project around the Golden Temple also takes the tourists to Jallianwala Bagh, another historical place in the freedom movement. The memorial commemorates killing of about 2,000 people assembled there for peaceful meeting on 13.4.1919, on indiscriminate firing ordered by Gen. Michael O'Dyer. On some portions of the buildings in the vicinity, bullet marks are still visible which have been preserved along with the memorial well, in which some people jumped to escape. Besides this, location of the city is important, it being located close to the international border between India and Pakistan. The beating retreat ceremony held there every evening is an important event for any tourist. His visit to the city is not complete, unless he visits the border and has seen the ceremony. Change of Guard within handshaking distance by Indian and Pakistani forces makes it a spectacle event. In the beating retreat ceremony, soldiers from both the countries bring down their National Flags as the sun sets.

Durgiana Temple (Lakshmi Narain Temple) is another historical place, foundation of which was laid by Pandit Madan Mohan Malviya. Ram Tirath is another historical place located close to Amritsar. It is believed that it relates back to the period of Ramayana. It has an ancient tank and many temples. Mata Sita gave birth to Luv and Kush at this place. It is also believed that when Lord Ram performed Ashwamedha Yagna, Luv and Kush caught the horse in Amritsar and even tied Lord Hanuman with a

tree at the place close to Durgiana Temple. The city is otherwise also famous for traditional food, phulkari and handicrafts.

The Project

The project, which has been taken by the authorities is a step forward to beautify the area close to the Golden Temple. It started with the acquisition of land around the Golden Temple way back in the year 1988;. The process was to beautify and re-develop the area around the Golden Temple Complex. Emergency provisions under the Land Acquisition Act, 1894 were invoked. The acquisition included large built up area around the Golden Temple. It was challenged before this court. The acquisition was upheld in Smt. Daljit Kaur and another v. Municipal Corporation of Amritsar and another, AIR 1989 P&H 159. The opening line in the judgment was “Individual good versus Public Good' is the bout in the instant litigation”. Finally, it was opined that 'individual good' must make way to 'public good'. No doubt, now road about 385 meters in length starting from Maharaja Ranjit Singh Chowk to the Golden Temple has been closed for vehicular traffic by beautifying the area putting pavers thereon to be used by pedestrians alone. All buildings in the vicinity have been renovated and beautified by the State at its cost. The manner in which the area has been developed is worth seeing. One has to see that to believe. The approach of vehicular traffic from road/streets opening on this portion of the road, which has been paved, has been stopped by putting blards. The manner in which the petitioners are suggesting to remove blards and allow vehicular movement across the pedestrian way will defeat the entire process for which the project has been developed. On the main road, known as bazaar Katra Ahluwalia, the road is open. As a result of the restrictions on

traffic on this small portion measuring 385 meters, not much hardship is going to be caused to the residents of the area except that they may have to take a little longer route, for which alternates are available. Even otherwise, in old cities, in tight streets/lanes, hardly there could be any vehicular movement. To claim that vans and school buses to carry children and Ambulance cannot now reach their houses is merely an argument raised, which has no substance. On the one hand, people claim development, which always comes with cost. The cost may not be in terms of money only, which normally is spent by the State out of the revenue generated, that again from public also, but with hardship faced by some of the residents of the area. Any development, which is not for any private benefit, is always in larger public interest and any private interest always stands subordinate to the public good. Planning of this kind is highly complex matter, which requires meeting of minds by the experts. Objectivity has to be given more weightage than the subjectivity. The observations made by Hon'ble the Supreme Court in this regard in Friends Colony Development Committee v. State of Orissa, (2004) 8 SCC 733 are relevant, which are extracted below:

In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their

property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.”

The aforesaid passage was quoted with approval in Esha Ekta Apartments Cooperative Housing Society Limited and others v. Municipal Corporation of Mumbai and others, (2013) 5 SCC 357. It is when a particular project is found to be against the mandate of law or tainted due to *mala fide*, only then the court can interfere.

The suggestion, as made by the petitioners for opening the pedestrian way at other two places by removing the blards or by having the pedestrian way only in the middle portion of the road, on which the traffic has been restricted and allow traffic on both sides, is merely a suggestion made for the sake of it as firstly the same will defeat the very object for which the area is being developed and secondly, it is not practicable keeping in view the width of the road on which traffic has been restricted.

The plea that sale of businessmen in the area will suffer on account of restriction of vehicular movement is also presumptive. The area around the Golden Temple is so congested that during day time also, the vehicular movement is quite restrictive. The buyers come to the market on foot and do not travel in vehicles. This is not an area developed in modern times. In the case of Malls, one can go, park his vehicle in the designated parking place and then go to the Mall/market. Even in that case, one may have to walk long way not from the parking place to the main market but even within the market as well. In the present case also, additional parking places have been provided. The tourists who will be walking along the portion of the paved road would love to make more purchases in the market than the persons who may have earlier moved in vehicles.

No argument was raised to point out that the project otherwise is against mandate of any law. No *mala fides* have been alleged. The project is for public good.

For the reasons mentioned above, we do not find any merit in the present petition. Accordingly, the same is dismissed.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

28.11.2016
mk

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

