

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

LPA No.35 of 2016

Date of Decision:-4.4.2016.

Vinay Gupta and another

.....Appellants

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT  
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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?

Present: Mr. Kanwaljit Singh, Senior Advocate with  
Ms. Gurdeep Kaur, Advocate for the appellants.

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**SURYA KANT, J. (ORAL)**

1.) The instant Letters Patent Appeal is directed against the order dated 27.8.2015 whereby the appellant's writ petition was dismissed as withdrawn, as well as against the order dated 16.11.2015 vide which their application to recall the order dated 27.8.2015 and to decide the writ petition on merits, has been dismissed.

2.) We have heard learned counsel for the appellants at a considerable length and are satisfied that the instant appeal is wholly misconceived, misdirected and deserves to be dismissed at the outset. We say so in view of the facts and reasons assigned

hereinbelow.

3.) The appellants filed the writ petition seeking a direction to the official respondents, primarily the Municipal Corporation, Ludhiana to take appropriate action in the matter pertaining to “*alteration/modification of the original area marked under the Green Belt---xxx-xx-xxx*” as the said area has been allotted to the hospital run by respondent No.8.

4.) It is an admitted fact that earlier also, the petitioners purportedly filed a PIL i.e. **CWP No.24553 of 2012** seeking identical relief and that writ petition was dismissed as withdrawn before a Division Bench of this Court on 12.12.2012 by way of the following order:-

**“A.K. SIKRI, C.J. (Oral)**

*After some arguments, learned counsel for the petitioners withdraws this petition with liberty to take other appropriate remedies.*

*Liberty granted. Dismissed as withdrawn.*

**(A.K. SIKRI)  
CHIEF JUSTICE**

**(RAKESH KUMAR JAIN)  
JUDGE**

*December 12, 2012”*

4.) Soon after the dismissal of earlier writ petition as withdrawn, the petitioners instead of resorting to any other appropriate remedy for which liberty was granted by this Court, filed the instant writ petition, this time not as a PIL. With regard to the disclosure of factum of previous writ petition, they have made the

following averments in para 19 of the writ petition:-

*“That the petitioners have not filed any such or similar writ petition except CWP No.24553 of 2012, **the same was dismissed as withdrawn with liberty to file fresh before this Hon'ble High Court or before the Hon'ble Supreme Court of India.**”*

*(emphasis applied)*

5.) When the second writ petition came up for hearing after notice to the respondents and in view of the objection raised by respondent No.2 that the earlier writ petition was dismissed as withdrawn without any liberty to file any fresh writ petition on the same cause of action, learned Single Judge passed the following order on 24.3.2015:-

*“It is stated by the counsel for respondent No.2 that the present writ petition is barred by the principle of res-judicata as he had earlier filed CWP No.24553 of 2012 on the same cause of action, which was withdrawn by him on 12.12.2012 without liberty to re-file a fresh one on the same cause of action. He further states that wrong averments have been made in para 19 of the writ petition, which also dis-entitle the petitioners to the effective relief in the present writ petition. Since the counsel for the petitioners is not present therefore, the case is adjourned to 27.8.2015.”*

6.) Thereafter, the writ petition came up for hearing on

27.8.2015 and when the learned Single Judge, who incidentally was also member of the Division Bench which dismissed the earlier writ petition as withdrawn on 12.12.2012, confronted the counsel for the petitioner, there was a little choice left with the counsel except to seek withdrawal of the second writ petition. Taking a lenient view, learned Single Judge passed the following order:-

**“Rakesh Kumar Jain, J. (Oral)**

*Learned counsel for the petitioners prays for withdrawal of the writ petition.*

*Dismissed as withdrawn.*

***[Rakesh Kumar Jain]  
Judge***

*27.08.2015  
sd”*

7.) The appellants who apparently have an axe to grind or some other personal vendetta against respondent No.8, asked their counsel to move an application for the recall of the above stated order. The counsel then filed **CM No.14424 of 2015** with the following averments:-

*“That when matter again came up for hearing on 27.8.2015 then, the present petitioners counsel was confronted with the order dated 24.3.2015 and in view of the factual position, this Hon'ble Court comes to conclusion that present writ petition is not maintainable. Keeping in view of the factual position of case under singed counsel withdraw the writ petition on 27.08.2015. A Copy of the order dated 27.8.2015 is enclosed as Annexure A-1.*

*That in the evening I undersigned counsel informed the petitioners about withdrawal of writ petition and on this petitioners conveyed to the undersigned counsel to get the order on merit in the writ petition and they have never allowed the undersigned counsel to withdraw the writ petition.*

*That now left with no alternative present application is being moved by the undersigned counsel with a prayer to kindly re-call order dated 27.8.2015 and to pass the order on merits in the writ petition.”*

*(emphasis applied)*

8.) The above stated application having been dismissed by the learned Single Judge on 16.11.2015 that the instant appeal has been filed. As the facts would speak for themselves, the appellants are guilty of misrepresenting the facts and also concealment of material information as the order passed in the earlier writ petition was not appropriately disclosed in para 19 of the instant writ petition. They took the Court for a ride while compelling their counsel to file an application for the recall of order dated 27.8.2015, knowing fully well that the second writ petition was withdrawn by him bonafidely to save them from imposition of exemplary costs.

9.) The appellants are taking full liberty in taxing the Court time through one or the other petitions, thereby abusing the process of law. The dismissal of their PIL after hearing the arguments at length ought to have been graciously accepted by them though with liberty to resort to the alternative remedies. They cannot insist that

the High Court must decide their case on merits, even if it is totally frivolous.

10.) For the reasons afore-stated, we dismiss this appeal with cost of ₹ 25,000/- to be deposited with the Punjab and Haryana High Court Lawyers' Welfare Fund within a period of one month from the date of receiving a copy of this order.

**(SURYA KANT)  
JUDGE**

**(P.B. BAJANTHRI)  
JUDGE**

**April 4, 2016.**

*sandeep sethi*