

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

COCP No.2783 of 2016 (O&M)

Date of decision: June 01, 2017

Rajinder Singh & others

...Petitioners

Versus

Ram Bir Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Jatinder Nagpal, Advocate for the petitioners.

Mr. V. Ram Swaroop, Addl. A.G. Punjab.

Mr. V.K. Sandhir, Advocate with Mr. Jagjeet Singh, Adv. for
Mr. NPS Mann, Advocate for respondent No.4.

Mr. Namit Kumar, Advocate for respondent No.5-Election
Commission of India.

Mr. Chetan Mittal, Assistant Solicitor General of India with
Mr. Mayank Aggarwal, Advocate, as amicus curiae.

Rajan Gupta, J.(oral)

Present petition emanates from the order, passed by the writ court on 16.05.2016. Petitioners alleged that land owned by the Gram Panchayat of Village Rohar Jagir, Tehsil and District Patiala had been encroached by some residents who constructed houses thereon. The writ court disposed of the petition with a direction to the Deputy Commissioner, Patiala and other officials to ascertain the correct facts and take remedial measures within a period of four months if there was any truth in the allegations levelled by the petitioners. As the respondents failed to take any action, instant contempt petition was filed. On January 11, 2017, a statement was made on behalf of the State that it would not be possible to

implement the order passed by the writ court in view of election code promulgated in the State of Punjab. Later on, an affidavit was filed by the Deputy Commissioner, Patiala. He referred to certain instructions issued by the Election Commission of India, according to which demolition/eviction drives would be temporarily suspended in the interest of free and fair elections. The instructions further said that in case any issue arose regarding implementation of the decision of the court, the case would be referred to the Commission. A larger question, thus, arose for consideration of this court whether orders issued by the writ court would remain suspended during the subsistence of the Model Code of Conduct and whether instructions issued by the Election Commission would override the orders passed by the writ court. Election Commission of India was also impleaded as a respondent in the petition vide order dated March 08, 2017. On February 06, 2017, Mr. Mittal, learned Assistant Solicitor General of India made a statement before this court that para 51 of the Model Code of Conduct (FAQs) makes it abundantly clear that the order passed by the writ court has to be complied with even during operation of the Model Code of Conduct without reference of the matter to the Election Commission. An affidavit on behalf of the Election Commission has also been filed by way of CM No.11366-CII-2017. Same has been taken on record. It has been reiterated therein that various authorities are obliged to comply with order passed by this court even when code of conduct is in force, if such order does not impede the election process.

In the instant case, Election Commission had acted in accordance with aforesaid stand and directed the Deputy Commissioner,

Patiala to implement the orders passed by the court at the earliest.

In view of clear stand taken by the Election Commission, there is no room for doubt that the orders passed by the writ court would prevail and would be complied with by all authorities even during the promulgation of Model Code of Conduct. Even otherwise, the powers of this court under Article 226 of the Constitution would have primacy over orders passed by all other authorities, which are instrumentalities of State within the meaning of Article 12 of the Constitution. They are bound by the orders passed by the writ court. Stand of the Commission is on similar lines. No further direction is, thus, necessary. It is expected that the State/Commission would circulate a copy of this order to the concerned authorities, particularly the Deputy Commissioners.

Disposed of.

(RAJAN GUPTA)
JUDGE

June 01, 2017
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No