

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 19978 of 2011

Date of Decision: March 20, 2017

Kamal Kishore

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Sudeep Mahajan, Advocate
for the petitioner.

Ms. Anu Pal, AAG, Punjab.

Mr. Sudhir Kumar, Advocate for respondent No.2.

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M.M.S. BEDI, J.

The petitioner through instant petition under Articles 226/ 227 of the Constitution of India seeks issuance of a writ in the nature of certiorari for setting aside the order dated May 12, 2011 passed by Deputy Commissioner -cum-Commissioner, Amritsar, annexure P-12 by which the appeal filed by the petitioner against the order dated July 9, 2010 passed by the Collector-cum-Deputy Director, Urban Local Bodies, Amritsar Region annexure P-11 has been dismissed holding that the petitioner was in

unauthorized occupation of the property and was ordered to demolish construction of area measuring 19'-5" x 3'-4" behind his shop.

Brief facts relevant for the adjudication of the present writ petition are that the Municipal Council, Jandiala Guru, Amritsar executed a rent agreement in favour of the petitioner by which a shop owned by the said Municipal Council, bearing No.2 of the Town Hall, Jandiala Guru, Amritsar was rented out to the petitioner in 1984 without specifying any termination of tenancy. It was mentioned that the tenancy of the shop would be determined according to the instructions issued by the Government from time to time and the monthly rent shall be taken in advance. Copy of the rent agreement has been appended as annexure P-1. On July 23, 1997, a notice dated July 8, 1997 issued by Executive Officer, Municipal Council, Jandiala Guru was received by the petitioner mentioning therein that on the rear side of the shop bearing No.2 opposite Town Hall, the petitioner had set up a door way opening into the new market, illegally for which he had not taken any approval from the Municipal Council. It was intimated that Sh.Hari Dev, MC, had formally written to Deputy Director, Local Bodies, Amritsar that the petitioner had made an illegal encroachment. It was thereafter told to the petitioner that the said encroachment should be removed within 7 days of the receipt of the said notice and the doorway opened at the rear of the shop should be closed immediately failing which an administrative action would be taken against him. Copy of the above said notice has been appended with the petition as annexure P-2. In response to

the above said notice, the petitioner wrote a letter to the President, Municipal Council, Jandiala Guru, expressing his wish to enter into a compromise with the Municipal Council and requested respondent No.2 to charge from him a reasonable compounding fee. The said request of the petitioner was reported upon firstly by an official (Tax Clerk) of the Municipal Council stating therein that he had inspected the spot and found the door which had been opened for ingress and egress from the shop does not cause any obstruction to the neighbouring shopkeepers and therefore, Nagar Council had no objection to the entering into a compromise with the petitioner on the issue of door opening at the backside of the shop. The said report dated May 4, 1998 was endorsed by the Executive Officer wherein it was stated that as per the report, the petitioner had indeed opened a door on the rear of the shop with respect to which no person has any objection. He further recommended that after taking Rs.400/- as compounding fee, compromise should be entered into. Copy of the said letter of the petitioner to respondent No.2 and notice thereon dated May 4, 1998 have been appended with the petition as annexure P-3. It has further been pleaded by the petitioner that pursuant to the recommendations of Executive Officer dated May 4, 1998, the petitioner deposited Rs.400/- as compounding fee with respondent No.2. Copy of the receipt dated May 4, 1998 has been appended with the petition as annexure P-4.

Petitioner claims that despite compounding fee having been deposited and the matter regarding opening of the rear door at the back of

his shop having come to an end, respondent No.2 filed an application under Section 5-A and B of the Public Premises (Eviction of Unauthorized Occupants) Act 1971, for short 'the Act, seeking to remove the alleged unauthorized encroachment on the public premises of Municipal Council, Jandiala Guru. The Court of SDM-cum-Collector, Amritsar, after hearing the parties decided to carry on the hearing of the case at the site of the dispute. The SDM-cum-Collector held that the petitioner/ tenant had unauthorizedly made encroachment on area measuring 19'-5" x 3'-4" which was a public premises of Municipal Council, Jandiala Guru as such he ordered that the encroachment be removed within a period of one month failing which the same would be removed by the Executive Officer. A copy of the order dated March 26, 2001 has been appended as annexure P-5.

The order dated March 26, 2001 was challenged in appeal by the petitioner explaining that the Municipal Council, upon the report submitted by its official on May 4, 1998 had compounded the notice dated July 8, 1997 and had levelled a composition fee of Rs.400/- upon the petitioner and after the petitioner having deposited the same, no dispute remained between the petitioner and respondent No.2 and as such the construction at the rear of the shop of the petitioner was regularized and thereafter no justification survived on the part of respondent Municipal Council to start the proceedings to reclaim the area in question. The Commissioner, Amritsar, accepted the arguments of the tenant- petitioner and found force in the argument that after accepting the compounding fee of

Rs.400/- the alleged area of encroachment stood regularized. The said authority also found that the proper procedure had not been adhered to by the learned SDM-cum-Collector, Amritsar, while passing the order dated March 26, 2001 (annexure P-5). The said authority also found that the Collector had failed to notice that Government was required to appoint an Estate Officer by an notification in the official gazette which the Government had failed to do so, therefore, there was no Estate Officer appointed to hear the case. The Commissioner, Amritsar has also found that the lower Court had also not given any finding as to whether the property in dispute was of the State Government or of the Central Government and that the lower Court had not even offered any opportunity to the parties to produce evidence, therefore, finding that the order of the lower Court suffered from the material irregularities, it was set aside and the case was remanded back to the Collector to decide it afresh. A copy of the order passed by the Commissioner dated May 2, 2002 has been appended with the petition as annexure P-6. Pursuant to the remand order, the SDM, Amritsar again heard both the parties and ordered the petitioner to remove the alleged encroachment within one month failing which the same would be removed by the Municipal Council, Jandiala Guru, vide order dated April 15, 2004 (annexure P-7).

Respondent No.2 on May 31, 2004 in its executive meeting again considered the request of the petitioner to compound the matter by considering his request sympathetically. Respondent No.2 in its executive

meeting passed a resolution bearing No. 39/2004 on May 31, 2004 (annexure P-8) resolving that monthly rent of the shop of the petitioner be raised by 5% and advice of the Legal Advisor be also taken. The Legal Advisor in his advice/ opinion dated July 8, 2004 approved the decision of the Council/ Committee dated May 31, 2004 and favoured regularization of the area allegedly encroached upon by the petitioner. Copy of the legal advice has been appended with the petition as annexure P-9.

The petitioner challenged the order dated April 15, 2004, (annexure P-7) passed by the Collector on the basis of the remand order dated May 2, 2002 of the Commissioner, Amritsar that the Collector did not arrive at any conclusion whether the property in dispute was the property of the State Government or of the Central Government. Vide order dated November 15, 2004, Commissioner, Amritsar accepted the challenge of the tenant/ petitioner to the order dated April 15, 2004, annexure P-7 passed by SDM-cum-Collector, Amritsar on the ground that the proper opportunity had not been offered to both the parties to lead evidence as directed by the earlier order of the Commissioner and the procedure laid down in Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973. The appeal was accepted and the order dated April 15, 2004 passed by SDM was set aside vide annexure P-10, dated November 15, 2007.

Respondent No.2 filed an appeal against the order dated November 15, 2007 passed by Deputy Commissioner-cum-Commissioner, Amritsar before the Court of Deputy Director, Urban Local Bodies, Amritsar

region. The said authority re-counted the history of the matter and touched all the orders passed by the Authorities below and rejected the claim of the petitioner and concluded that the compounding fee of Rs. 400/- was only for opening of the door at the back of the shop and not for use of the area at the back of the shop. The said Court further observed that the order of one time compounding fee of Rs.400/- was only for opening the door at the back of the shop and the area behind the shop cannot be presumed to be given to the petitioner for use. The said Court observed that some monthly rent would have been made payable by the petitioner as additional land could not have been given to the petitioner for mere sum of Rs.400/-. The said Court observed that the Municipal Council was not authorized under Municipal laws to sell the encroached land that too at a meager amount of Rs.400/-. By the said observation the Deputy Director, Urban Local Bodies declared that the petitioner was in unauthorized occupation of the area in dispute which was a public premises as such the petitioner was directed to demolish the area of 19'-5" x 3'-4" behind the shop of the petitioner illegally occupied by the petitioner. The said Court, however, allowed the tenant/ petitioner to continue to use the door just behind the shop without addition of any area. Copy of the order dated July 9, 2010 passed by the Collector-cum-Deputy Director, Urban Local Bodies, Amritsar region, has been appended with the petition as annexure P-11.

The petitioner filed an appeal before the Deputy Commissioner-cum-Commissioner, Amritsar against the order dated October 7, 2010

passed by the Deputy Director -cum-Collector, Amritsar, on the ground that he is allottee of a shop of Municipal Council, Jandiala Guru for the past several years and that he has opened a door at the backside of the shop which was initially objected to by the Municipal Committee but later on it was compounded by the Municipal Committee and he had deposited the necessary compounding fee with the Committee. On the other hand, the case of the Municipal Council has been that the tenant/ petitioner had installed a door at the back of the shop and thereupon he had encroached upon the area of the street at the back of his shop which is the ownership of Municipal Committee and has thus added the said area illegally to his shop, therefore, his possession over the land is illegal. The Deputy Commissioner-cum-Collector, Amritsar in order to ascertain the truth, appointed Naib Tehsildar, Amritsar was appointed to inspect the spot in dispute and submit his report. The Naib Tehsildar, Amritsar submitted his report upon the inspection of the spot, mentioning therein that the petitioner had taken shop No.2 on rent from Municipal Committee, Jandiala Guru at the monthly rent of Rs.900/- and had illegally encroached the area by opening up a door at the backside of the shop. The Court of Deputy Commissioner-cum-Commissioner, Amritsar appreciating the spot inspection report found that the petitioner by opening the door at the back of his shop had illegally encroached upon the area of the street which is the ownership of the Municipal Committee, Jandiala Guru and had illegally encroached upon the area as such the appeal of the petitioner was dismissed with cost of

Rs.5000/- vide order dated May 12, 2011. Copy of the order of the Deputy Commissioner-cum-Commissioner dated May 12, 2011 has been appended with the petition as annexure P-12.

The orders of eviction annexures P-11 and P-12 have been challenged, mainly on the ground that respondents No.3 and 4 have not fairly appreciated the fact that the procedure as earlier directed by the Commissioner, Amritsar in his order dated May 2, 2002, annexure P-6 and dated November 15, 2007, annexure P-10 had not been followed. To show that the procedure under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 has not been followed, it has been urged by counsel for the petitioner that no notice under Section 4 of the 1973 Act has been issued by the Collector to show cause that petitioner was not in unauthorized occupation of any public premises. It is claimed that the petitioner had only received a notice dated July 8, 1997, annexure P-2 issued by the Executive Officer, Municipal Council but the said notice does not specify that the same has been issued under Section 4 of the 1973 Act nor any opportunity of showing cause why eviction order should not be passed had been given. It is a predetermined decision of respondent No.2 that petitioner had encroached upon the land of the Municipal Council illegally as such it should be removed within 7 days. It has also been argued by counsel for the petitioner that Section 5 of the 1973 Act lays down that the cause furnished by a person pursuant to the notice under Section 4 of the 1973 Act has to be considered and evidence can be produced after granting

an opportunity of hearing. It is only thereafter that the Collector on the basis of his satisfaction that the public premises was in unauthorized occupation, may pass the order of eviction. On account of absence of any show cause notice and in the absence of any opportunity of hearing the impugned orders have been passed. It has been vehemently urged that after permitting the compounding as determined by the Executive Officer and accepted by respondent No.2-Municipal Council, the petitioner cannot be said to have encroached upon the area at the back of the shop of the petitioner. Counsel for the petitioner has submitted that in view of unanimous resolution annexure P-8 dated May 31, 2004 findings of the Courts below observing that the petitioner is in unauthorized occupation of the area measuring 19'-5" x 3'-4" and the order for removal of the unauthorized occupation are illegal.

In the reply filed on behalf of Municipal Council through its Executive Officer, it has been urged that the petitioner wants to grab a piece of land measuring 19'-5" x 3'-4" belonging to the Municipal Council, Jandiala Guru which is situated at the back of shop No.2 which the petitioner has encroached in an unauthorized manner. The order annexure P-11 dated July 9, 2010 passed by the Collector-cum-Deputy Director, Urban Local Bodies, Amritsar and the order dated May 12, 2011, annexure P-12 passed by Deputy Commissioner-cum-Commissioner, Amritsar wherein it has been observed that the petitioner has taken unauthorized possession of the land in question on the basis of the inspection are valid and appropriate orders.

With the assistance of counsel for the petitioner and counsel for the respondents, I have carefully gone through the order annexures P-11 and P-12. The order annexure P-11 passed by the Collector rejecting the contentions of the petitioner (who was respondent before the Collector) in proceedings under Section 5 of the 1973 Act reads as follows:-

“The arguments of the respondent, that a compromise had been reached between the parties and the matter was compromised by depositing the compounding fee of Rs. 400 as ordered by the Court of Sh. S.S. Puri, I.A.S. for opening of the door, has no substance. The Hon'ble Court ordered for the compounding fee of Rs. 400/- which is the amount of compromise for the opening of the door at the back of the shop and not for the use of land at the back of the shop. The orders of one time compounding fee of Rs. 400/- by the Hon'ble Court is only for the opening of the door at the back of the shop; and the area behind the shop cannot be presumed to be given to the respondent for use. The petitioner's argument that only the door was allowed to be opened for which the respondent made a compromise by paying the compounding fee of Rs. 400/- as per the orders of Shri S.S. Puri, I.A.S., is more justifiable. It cannot be presumed that the land at the back of the shop

is given to the respondent for use at the compounding fee Rs. 400/-. Only the door is allowed to be opened at the back of the shop. Had the full area of the back of the shop been given to the respondent, for usage, some monthly rent would have been payable by the respondent. Land at the back of the shop, not only of the respondent but also at the back of adjoining shops cannot be given to the respondent for lump sum amount of just Rs. 400/- only. Moreover, petitioner Municipal Council is not authorized, under Municipal Laws, to sell the encroached land and that too, at the meager amount of Rs. 400/- only. Just in the garb of opening a door at the backside of the shop the respondent has encroached upon the area behind his own shop and behind adjoining shops on its left and right side, which is a cunning abuse of process of law and is wrong and misleading interpretation of the respondent that his offence of encroachment and illegal occupation of Municipal land had been compounded by the Municipal Council.

I, therefore, after perusal of all the documents and arguments and after analyzing the legal propositions of the cases decided by Courts, declare that the respondent is in unauthorized occupation of the property in dispute

which is a public premises. I, therefore, order the respondent *u/s* 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 to demolish the area of 19'5"x3'4" behind the shop of respondent and behind the adjoining shops, illegally occupied by the respondent and vacate the same on or before 09.08.2010. The respondent is allowed to continue the use of door just behind his shop, without addition of any land, in the building line of all shops.”

Annexure P-12 is an order dated May 12, 2011 wherein the Appellate Authority has held as follows:-

“5. After hearing arguments of both the sides and in order to ascertain whether the appellant is in unauthorized possession of land belonging to Municipal Council, Jandiala Guru which is public premises the undersigned had ordered that the Naib Tehsildar Amritsar-I shall visit the disputed site and carry out inspection and shall submit his report whereupon Naib Tehsildar, Amritsar-I inspected the spot and reported that Kishore Kumar had taken Shop No.2 from Municipal Committee, Jandiala Guru on a monthly rent of Rs.900/- and has after installing a door in the backside of the shop taken illegal/ unauthorized possession of land.

After hearing the arguments advanced by the Ld. Counsel for the parties and on perusing the report of Naib Tehsildar, Amritsar-I regarding inspection of the disputed premises, it is found that the appellant has by installing a door in the back portion of his shop taken unauthorized possession of land in the street which is the ownership of Municipal Committee and has included the same in his shop. During the course of arguments, the undersigned had enquired from the appellant Kamal Kishore several times, as to whether he is in authorized possession of the disputed portion and the undersigned had asked the appellant to disclose the truth. However, the appellant repeatedly answered that he has not taken any unauthorized possession of any land belonging to the Municipal Committee. Whereupon, in order to ascertain the true facts the undersigned had ordered Naib Tehsildar Amritsar-I to inspect the spot and submit a report who reported that the appellant Kamal Kishore has taken unauthorized possession of Government land by installing a door in the rear portion of the rented shop.

Keeping in view the above said situation, the present appeal is dismissed and the appellant Kamal Kishore is directed to pay a fine of Rs. 5000/- for lying to

the Court and trying to mislead the Court. It is further directed that the amount of fine shall be deposited with the Red Cross Society, Amritsar and receipt of the same be submitted in this Court. Record of the case be returned to the record room.”

I have carefully considered the submissions of counsel for the petitioner that on the basis of the compounding which was permitted vide annexure P-3 on May 4, 1998 regarding permission to open the door for ingress and egress with a specific condition that no obstruction will be caused to the adjoining shopkeepers, the matter came to an end and the proceedings initiated thereafter were illegal. The petitioner appears to have, in the garb of that compromise, started using the back portion of the shop to the extent of 19’-5” x 3’-4” as has been observed in orders annexures P-11 and P-12.

The short question which is required to be determined in the present case is whether on payment of sum of Rs.400/- and on compounding of the original notice annexure P-3, the petitioner can be permitted to have been given right to use and encroach on the area measuring 19’-5” x 3’-4”.

The original compounding proceedings dated May 4, 1998 clearly show that the compounding has been done pertaining to the door which is at the back of the shop. There is no reference to the grant of permission to use the area of the street measuring 19’-5” x 3’-4”. The petitioner was directed to make available copy of the site plan which has

been placed on record as annexure P-14 which gives an indication of the location of the shop of the petitioner. The area behind the shop of the petitioner is vacant to the extent of 19'-5" x 3'-4". Both the shops on the left and right of the petitioner have got a blank space which is in the shape of blind alley. There is no document on the record which indicates that additional area has been permitted to the petitioner on payment of any monthly charges. It is settled principles of law that there is no estoppel against law. Even if it is presumed that the petitioner had been given liberty to use the area behind his shop by opening a door, it will not tantamount to authorize his user and possession. The petitioner cannot derive the benefit of his contention that compounding would be deemed to be compounding regarding the opening of the door which would not cause any obstruction to anyone. The backside of the shop of the petitioner being a common area cannot be permitted to be left for exclusive use of the petitioner. The absence of common user by general public and the other occupants of the neighbourhood will not confer any right on the petitioner to exclusively use the back portion measuring 19'-5" x 3'-4".

The right sought for by the petitioner has not been granted to any of the shopkeepers in the neighbourhood as such the petitioner cannot given a preferential treatment in violation of Article 14 of the Constitution of India.

In view of the said circumstances, I do not find any ground to interfere in the orders annexures P-11 and P-12. It can be observed that the

compounding fee paid by the petitioner will be deemed to be for opening the door at the back of his shop for ingress and egress but that permission will not imply that the petitioner will be entitled to the exclusive user of the portion or that he is entitled to encroach upon the backyard which is part of the street.

The petition is dismissed.

March 20, 2017
sanjay

(M.M.S.BEDI)
JUDGE

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