

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 18, 2017

1. CWP No.1488 of 2017 (O&M)

Nafees & others

...Petitioners

Versus

State of Punjab & others

...Respondents

2. CWP No.7709 of 2017

Nayeem & others

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Karambeer Oberoi, Advocate,
for the petitioners in both the petitions.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Mr.K.V.S.Kang, Advocate,
for respondent Nos.2 & 3 in CWP No.1488 of 2017.

AMIT RAWAL, J.

This order of mine shall dispose of two Civil Writ Petitions bearing No.1488 and 7709 of 2017 as the common questions of law and fact are involved in both the cases.

In CWP No.1488 of 2017, the petitioners have sought the following relief:-

“Civil writ petition under article 226/227 of Constitution of India for issuance of a writ in the nature of certiorari for setting aside the impugned order dated 23.12.2016 passed by respondent no.2 (Annexure P-5).

Further a writ in the nature of mandamus directing the respondent no.1 and 2 to allow the petitioners to carry on their work in their shops where they were working earlier till the time better work place is provided or in alternate to provide a work place with better infrastructure with good working space so as to maintain hygiene not only for food material but also for the people working over there.

It is further prayed that respondents No.1 and 2 may be restrained from dispossessing the petitioners from the earlier work place and they may be allowed to earn their livelihood, during the pendency of the present writ petition.

It is further prayed that this Hon'ble court may be pleased to issue any other appropriate writ, order or direction which this Hon'ble Court deem fit and proper in the facts and circumstances of the present case.”

In second writ petition, i.e., CWP No.7709 of 2017, which has been listed for preliminary hearing today, order dated 06.09.2016 (Annexure P-3) rendered by respondent No.3-Sub Divisional Magistrate, Patiala in proceedings initiated under Section 133 of the Public Nuisance Act., has been challenged.

Mr.Karambeer Oberoi, learned counsel representing the petitioners submits that the petitioners, being vendors, were carrying out the business of selling fish in the factory area by taking the shops on rent since 2002. The petitioners along with other vendors worked in the Gurbax Colony for a period of about three years. At the instance of Shivsena, they were forced to shift to Phuara Chowk, Patiala. In the year 2001-02, at the time of Assembly Elections, the ruling party in connivance with the employees of the Municipal Corporation, Patiala started demand illegal gratification, which was not acceded to. Rather, the petitioners filed a complaint before the Commissioner, Municipal Corporation, Patiala, the

Hon'ble Chief Minister, Punjab and Member Parliament Patiala. However, the Municipal Corporation arbitrarily with a fake promise of providing new infrastructure and better place of work, forcefully entered the work place and bulldozed the premises of the petitioners.

He has also made reference to the order dated 6.9.2016 (Annexure P-2) passed in proceedings under Section 133 of the Public Nuisance Act, which is under challenge in the other writ petition. Even the revision filed against the aforementioned order has been dismissed and the matter taken to this Court had been disposed of vide order dated 23.12.2016 (Annexure P-4), with a direction to provide a separate place. The petitioners were flabbergasted to receive a letter from the office of the Municipal Corporation intimating them that they were conditionally allotted an area of 500 sq.yards and out of it, 10-10 sq.feet each space was distributed amongst all. The area designated for this purpose is in outskirts of the city, where the garbage of city Patiala is thrown. In fact, the alleged designated place is adjoining Gandhanala of the city and there can be no provision of the electricity. The administration is playing like a puppet at the hands of the local leaders and, thus, urges this Court for quashing the order dated 23.12.2016 and directing the respondents to allow the petitioners to carry out the work in their shops, where they were working earlier till the time better work place is provided or in the alternate to provide a work space with better infrastructure.

Municipal Corporation, Patiala through Mr.K.V.S.Kang Advocate, has filed reply and taken the preliminary objections with regard to the concealment of certain facts and maintainability. It has been stated that owing to the nuisance and health hazard created by the fish market, a

complaint under Section 133 of the Act was preferred before the Sub Divisional Magistrate, who has passed the order dated 6.9.2016 (Annexure R-2) by directing the Municipal Corporation to provide the space for temporary shifting of the fish market. However, in the meantime, the Civil Surgeon, Patiala wrote a letter dated 5.10.2016 to the Deputy Commissioner, Patiala in respect of the enquiry conducted in the residential area near Guru Ravidass Gurudwara with regard to the health hazards of the fish market and the Municipal Corporation, vide resolution No.422 dated 2.11.2016, approved 500 sq.yards land for temporary adjustment of the fish sellers at Ghalori Gate, Patiala. The revision petition preferred against the order dated 6.9.2016 was dismissed and the factum of passing of this order is also not disputed. However, he submitted that in pursuance to the passing of the eviction order, most of the petitioners have already shifted into private shops taken on rent by them in different areas of Patiala. Petitioner No.1 Nafees along with petitioner No.4 Julafakar have shifted to two rental private shops located at Lakkar Mandi, Patiala. The aforementioned fact is reflected from the photographs (Annexure R-8). Similarly, petitioner No.2 Aslam had taken four shops on rent at Gali No.7, Near Railway Track, Bharat Nagar, Patiala, which is evident from photographs (Annexure R-9) and petitioner Nos.5 and 9, i.e., Noor Islam and Jahul have shifted to Bharat Nagar, which is also evident from photographs (Annexure R-10). Petitioners No.10 and 11 have shifted to a larger premises, namely, Punjab Fish Shop near Central Library, Patiala, few of them to Gali No.1, House No.103 at Bharat Nagar.

He has further submitted that even the team comprising of Chief Sanitary Inspector, Municipal Corporation, Patiala conducted the

inspection and submitted enquiry report dated 9.2.2017 (Annexure R-12) indicating the factum of running of the shops at the aforementioned places and the aforementioned fact has been concealed by the petitioners. The Municipal Corporation had provided temporary space without having knowledge of the fact that all the petitioners are running the business from separate locations, though the Sub Divisional Magistrate has no power to issue direction to the Municipal Corporation to provide alternate temporary space, yet the order dated 23.12.2016 (Annexure P-5) has been complied with.

During the course of the hearing of CWP No.1488 of 2017, a dispute had arisen with regard to the shifting/carrying on the business by the petitioners at the places indicated in the written statement. Resultantly, this Court vide order dated 16.2.2017, appointed a Local Commissioner to ascertain the aforementioned fact. The report of the Local Commissioner has been filed, which reveals that the same is in conformity with the stand taken by the Municipal Corporation in the written statement and, thus, urges this Court for dismissal of the petitions of having not approached the Court with clean hands.

I have heard the learned counsel for the parties and appraised the paper book.

I would be committing a fallacy in case I do not extract the report of the Local Commissioner, the relevant portion of which reads thus:-

“4. That the undersigned counsel first visited the earlier location i.e.the Factory Area and the shops were open and the business was on. During inspection it transpired that the entire day they are selling fish. A memo of presence was also prepared in whose presence the inspection was conducted in this area. The memo of presence and photographs are annexed

as Annexure P-1 (Colly) along with the report.

5. *That the undersigned counsel then inspected Gali No.7, Near Railway Track, Bharat Nagar, Patiala. During inspection after asking people from the neighborhood it transpired that these shops were opened just three months back by petitioner no 2 (Aslam), 5 (Noor Islam) & 9 (Jahul). The undersigned counsel clicked a few photographs and also prepared a memo of presence which is annexed as Annexure P-2 (Colly) along with the report.*

6. *That the undersigned counsel then inspected the Gali No.1, House No.103, Bharat Nagar, Patiala where a shop was open and during inspection it was seen that in the said shop the business of selling of fish was not taking place, but it also looked like as if the selling of fish was stopped a few days back because of the date known to them for inspection by the Commission. This fact was clarified by the people living in the same locality. Memo of presence in this regard is annexed as Annexure P-3 along with the report.*

7. *That the undersigned counsel then inspected Lakkar Mandi/Bazar, Patiala where the shop of petitioner No.1 was located. Inquiry was made from the neighbouring shops and the undersigned counsel was told by everyone that the shop has been opened 2-3 months back by the petitioner No.1 (Nafees) and he is carrying on a business of selling fish. The memo of presence finds mention of a TV Dish operator at Sr.No.1, who stated before the undersigned that the petitioner No.1 (Nafees) has recently opened the shop and is selling fish, as the operator has himself installed the Dish on the roof of the shop. The memo of presence as well as the photographs in this regard is annexed as Annexure P-4 (Colly) along with the report.*

8. *That the undersigned counsel lastly inspected the site of Central Library, Patiala, Opposite District Court. It was shocking to see that people are openly selling fish at such a prime location having Central Library to its right, an auto*

service showroom to its left and District Court in its close vicinity. After inquiry it transpired that the shop has been recently opened 2 ½ months back by petitioner no 10 (Sabad Ali) & 11 (Mosim). The memo of presence prepared and the photographs in this regard are annexed herewith as Annexure P-5 (Colly) along with the report.”

An attempt has been made to rebut the aforementioned report by filing Civil Misc.No.5552 of 2017 to place on record the affidavits of different persons, who allegedly signed the memo of appearance annexed along with the report of the Local Commissioner by taking different versions.

Be that as it may, the fact remains that the petitioners have concealed the factum of running the business in the shops indicated in the report, much less the written statement. By placing on record the affidavits, an attempt is being made to raise a disputed question of law, which this Court cannot decide. Instead of pondering upon the affidavits, the fact remains whether the grievance of the petitioners at this stage no longer subsists.

Mr.Kang, during the course of hearing, has apprised this Court that the infrastructure would be provided in routine, but not at the whims and fancies of the petitioners, who have approached this Court by concealing the factum of not running the business at different places by taking the shops on rent. As per Article 19 of the Constitution of India, every person has a right to carry out the business. The Municipal Corporation in its letter dated 23.12.2016 (Annexure P-5), as a temporary measure, provided an area for the purpose of running the fish market unknowingly the petitioners are running their business in different shops after having been shifted from the factory area where they had earlier been

carrying on the business. The Municipal Corporation is well within its right and alive to the situation of providing infrastructure with all the facilities to the local residents by proving eatables, including the non-vegetarian food, but the petitioners cannot assert their right for allotment of an area in the manner and made indicated above.

An attempt to defy the report of the Local Commissioner is not a positive act. The Courts instead of visiting the spot, take the assistance of Advocates of the concerned Court to ascertain the position. The orders have to be respected and regarded. Once the petitioners are carrying out the business in different places, no cause of action arises for the petitioners to seek vindication of the grievance of setting-aside the order dated 23.12.2016 (Annexure P-5) and also seek the alternate prayer. However, this Court is sanguine of the fact that Municipal Corporation would take appropriate steps for the purpose of providing infrastructure for selling the meat/poultry/non-vegetarian products at a designated area.

I do not find any illegality in the orders under challenge. No ground for issuance of directions as sought for is made out.

Writ petitions stand dismissed.

April 18, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No

