

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

Civil Writ Petition No.17825 of 2017(O&M)
Date of Decision: November 20, 2017

**Diamond Avenue, Green Field, Karan Vihar Society, Majitha Road,
Amritsar**

...Petitioner

Versus

State of Punjab & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.S.S.Toor, Advocate,
for the petitioner.

Mr.Shireesh Gupta, Sr.DAG, Punjab,
for the State.

Mr.Ashwani Prashar, Advocate,
for respondent Nos.2 & 3.

Mr.Harminder Singh, Advocate,
for respondent No.5.

AMIT RAWAL, J.

1. Petitioner-Diamond Avenue, Green Field, Karan Vihar Society,
through Sukhbir Singh being Social Worker/Volunteer, has preferred the
present Public Interest Litigation claiming the following relief:-

*“Petition under Article 226/227 of the Constitution of India for
issuance of writ in the nature of Mandamus directing the
respondent No.2, 3 and 4 to remove the respondent No.5 from
the premises owned by the Municipal Corporation reserved for
parking and park of the residents of the petitioner colonies
which has been illegally encroached upon by the respondent
No.5 and has installed the small scale cement block making*

industry and has created hazard for the public by making dirty water pond to produce snakes and other dangerous animals and mosquitoes to spread dengue/Malaria in the area.

Further for issuance of any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case.”

2. Mr.S.S.Toor, learned counsel representing the petitioner-Society submitted that the colony aforementioned was approved by the Municipal Corporation Amritsar in the year 2000. Father-in-law of respondent No.5-Avtar Singh and his brother Janraj Singh were the owners of land bearing Khasra Nos.124/19 (4-17) and 124/22, which was sold in plots by respondent No.5 as General Power of Attorney. Respondent No.5 illegally encroached upon the area left for parking and park for the residents of the Diamond Avenue and other colonies by starting a small scale industry of cement blocks and collected unwanted material in the shape of sand, crusher, machinery and stock of blocks. The petitioner, being a social worker, approached the authorities along with other residents of the area by moving separate applications, but of no avail. One of the application has been annexed as Annexure P-3.

3. It was also argued that an application for demarcation of the land bearing khasra numbers aforementioned was also moved, wherein it was found that respondent No.5 was the owner of 3 Marlas of land in Khasra No.124/19 (4-17) and 3 Marlas in Khasra No.124/22, on which he has already constructed the house. Reference was made to an order dated 10.2.2004 rendered in Civil Writ Petition No.4886 of 2003 (Court on its own motion Versus State of Punjab & Another), whereby while disposing of the aforementioned writ petition, the following directions were issued:-

“(i) the State of Punjab is directed to take a conscious policy

decision, in accordance with law for removal and/or regularization of the encroachments, if any, made on the public lands by the government's Educational Institutes, Hospitals, Dispensaries, Police Stations, etc. keeping in view the fact that such institutions are not to be placed at the same pedestal as a private individual encroacher;

(ii) the directions issued by this Court on 10.2.2004 restraining the State Government from regularizing unauthorized encroachments and constructions, provided that such encroachments are other than by the government or public institutions, are made absolute;

(iii) the civil courts before whom the cases pertaining to encroachments made within the areas of Municipal Corporations, Ludhiana, Bhatinda and Patiala are pending, are directed to expedite the disposal of those cases preferably within two years of their institution;

(iv) the Municipal Corporations are directed that encroachments from all those public properties except falling within the direction No.(i) above and/or wherever the civil court has decided the matter in favour of the private individuals, shall be removed and the lands will be retrieved forthwith but not later than six months from today;

(v) the Municipal Corporations are further directed to constitute and notify the Enforcement and Monitoring Committees for one or more areas which shall periodically report to the Municipal Commissioner regarding the status of the encroachments, if any, their taking place or being removed within the area. Necessary and prompt action shall be taken by the Municipal authorities to nip it in the bud;

(vi) the Municipal Corporations shall forthwith locate the encroachment prone areas and take all necessary safeguards/preventive measures against possible trespass/encroachments, viz., erecting barbed-wire fencing, displaying notice-boards containing statutory warning, etc.,

and make the Encroachment and Monitoring Committee of the respective area accountable for any lapse or inaction on its part;

(vii) the Municipal Corporations shall also evolve public participation in their anti-encroachment drive by constituting Vigilance Committees of the NGOs/citizens who may volunteer to inform the municipal authorities including the Enforcement and Monitoring Committees regarding any fresh encroachments so that the desired action in terms of direction No.(v) above can be taken without any delay;

(viii) if a public spirited person notices that any encroachment is not being removed and/or being allowed to take place in connivance with the employees, authorities or councillors of the Municipal Corporation, he/she shall be at liberty to institute contempt of court proceedings against such person and/or Municipal authorities for their act of willful and deliberate disobedience of the directions issued hereinabove.”

4. The learned counsel for the petitioner further argued that since respondent No.5 had encroached the public park for the reasons best known to the authorities, applications along with photographs, Annexures P-7 to P-12, were submitted to the authorities, which were kept pending without any adjudication thereon. The complaint was also filed before the Permanent Lok Adalat, Amritsar, but the grievance remained un-redressed.

5. Upon notice of motion, respondent No.5 filed reply contesting the petition by raising objection qua its non-maintainability on the premise that there is a suppression and withholding of material facts from this Court, for, Sukhbir Singh had caused injuries to his wife and in this regard, an FIR bearing No.206 dated 2.10.2013, under Sections 447 and 379 IPC was registered at Police Station Sadar, Amritsar (Annexure R-5/1). It was further

stated that respondent No.5 and his family has a big chunk of land within the area of Municipal Corporation, Amritsar. This writ petition has been filed for settling personal scores at the instance of Sukhbir Singh in collusion with other persons, referred to in paragraph 2 of the written statement, with an attempt to pressurize, harass and humiliate him and, therefore, in view of the scathing and unwarranted allegations, the petitioner is liable to be prosecuted as per the provisions envisaged under Section 209 IPC.

6. It was further stated that the Municipal Corporation, Amritsar made an attempt to take possession of the land without acquisition of the same and in this regard, a Civil Suit bearing No.703 dated 25.11.2010 along with an interim application was instituted and vide order dated 17.9.2011 (Annexure R-5/2), the Civil Court had, restrained the Municipal Corporation not to dispossess in any manner except in due course of law. The son of Sukhbir Singh was serving in a computerized branch of the Revenue Department, where the jamabandies were prepared and given to the general public. Sukhbir Singh, in active collusion with his son, changed the ownership of respondent No.5 and diminished it showing him to be the owner of lesser area. On acquiring the knowledge of fabrication, he made complaints to the Senior Revenue Officials and corrected jamabandi (Annexure R-5/5) had been issued.

7. Short reply on behalf of respondent Nos.2 and 3 through Tej Preet Singh, Municipal Town Planner, Municipal Corporation, Amritsar has been filed, wherein it has been stated that there is/was no permanent encroachment over the land earmarked for the parking area, whereas that

parking area is to be developed along with the shopping area as and when it is sold/developed by the private owners. The Building Scheme No.15-B came into existence in the year 2000 and there exists no park as per the sanctioned layout plan of this scheme. As per the revenue records, Khasra numbers relied upon are not owned by the Municipal Corporation. There is no small scale industry in operation on this land. Mr.Prashar, representing Municipal Corporation, Amritsar by referring to the averments made in Paras 2 and 3 of the affidavit, further stated that the cement blocks/crusher lying in the premises had been removed on 22.9.2017. For the sake of brevity, the same read thus:-

“2. That the Building Scheme No.15-B came into existence in the year 2000 but there exists no park as per the sanctioned layout plan of this scheme. In the scheme this plan, a chunk of land has been earmarked for commercial use, in front of which some area has been proposed for parking which is the land of the private owners only. There is no municipal land for the Khasra No.124/19 and 124/22 as per the revenue records. There is no small scale industry in operation on this land.

3. That there was no permanent encroachment over the land earmarked for the parking area. This parking area is to be developed along with the shopping area as and when it is sold/developed by the private owners. However, the cement blocks/crusher etc.which were temporarily stacked by the respondent no.5 over the land earmarked for parking in the Scheme No.15-B has been removed from this site by the Municipal Corporation on dated 22.09.2017, when cleaning operation was carried out in this area. Also the temporary pond existing at site has also been dismantled/filled. The respondent no.5 who was also present at site during this operation undertook to remove the remaining cement blocks at

his own level within a week's time failing which MC shall remove the same at risk and cost of the respondent no.5.”

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

9. As per the stand of the Municipal Corporation, the khasra numbers aforementioned are not in possession and ownership of the Municipal Corporation and is ownership of the private owners. Be that as it may, we do not intend to ponder upon the ownership of the parties as, *prima-facie*, respondent No.5, through jamabandi Annexure R-5/5 which carries presumption of truth unless rebutted, depicts him to be owner of the property and the factum that cement blocks had been removed. The grievance as raised in the present petition appears to have been redressed.

10. Before we could part with our order by disposing of the writ petition, Mr.Toor insisted that there are certain other things required to be done as indicated in the counter affidavit dated 24.10.2017 filed on behalf of the petitioner. It has been stated therein that in the FIR, alleged to have been registered against Sukhbir Singh, no challan has been filed till today, whereas very scathing allegations have been made against respondent No.5, who is stated to be a man of criminal background. A prayer was made for appointment of Local Commissioner to ascertain the encroachment on the land alleged to be of the Municipal Corporation.

11. We called upon Mr.Toor to specially point out as to how the present writ petition under the garb of Public Interest Litigation in view of the Public Interest Litigation Rules, 2010 (for short “2010 Rules”) is maintainable. He was unable to answer the query. Public Interest Litigation would lie within parameters of 2010 Rules framed in view of the judgment

of the Supreme Court. The same read as under:-

“1.(i) These Rules shall be called as MAINTAINBILITY OF PUBLIC INTEREST LITIGATION RULES, 2010.

(ii) These Rules shall come into force with effect from the date of approval by the Full Court.

2. No Public Interest Litigation shall be entertained by the Registry unless the petitioner(s) has specifically disclosed his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit.

3. Every Public Interest Litigation shall be separately numbered and categorized.

4. All the Public Interest Litigations shall be listed before a Division Bench by the orders of the Chief Justice of the High Court.

5. The Bench, wherever it appears so desirable, may ask the petitioner to deposit an appropriate amount with the Registry to be paid as compensation/costs to the person/institution who may be forced to contest the litigation, which is ultimately found to be vexatious, frivolous or mala fide.

6. Ordinarily, the PIL may be entertained on any subject of vital public importance, such as:

(a) Bonded Labour matters.

(b) Neglected Children.

(c) Petitions from riot victims.

(d) Petitions complaining of harassment or torture of persons belonging Scheduled Castes, Scheduled Tribes and other Backward Classes by the others or by the police.

(e) Petitioner pertaining to environmental pollution, disturbance of ecological balance, forest and wild life.

(f) Petitioners complaining violation of human rights.

7. The Registry shall be entitled to verify the antecedents of a person, society or an association who invokes the jurisdiction of the High Court on the cause of public

interest. Where the Registry has any doubt on such antecedents, an office note to this effect shall be put up, except on the petitions which are received by post.

8. The Public Interest Petitions received through post shall not be entertained except in the following cases:-

(i) Petitions sent by prisoners and detenues;

(ii) Petitions complaining violation of human rights;

(iii) Petitions seeking a writ in the nature of habeas corpus;

(iv) Petitions with a cause of such nature that it may require suo-motu proceedings by this Court in 'Public interest';

(v) Petitions by financially or physically disabled persons, minors and/or oppressed sections of Society. The petitions falling in this category may be sent to the Member Secretary of the State Legal Services Authority concerned, who, on satisfaction regarding genuineness of the petitioner, may provide adequate legal aid including a counsel to the victim.

9. All the suo-motu petitions initiated by the High Court shall be put up before the Chief Justice for enlisting the same before an appropriate Bench as per roster within three days."

12. The question of maintainability of Public Interest Litigation came to be debated upon before the Division Bench of this Court in **Ajaib Singh and Anr.Versus The State of Punjab & Ors., 2014 (4) PLR 367.**

The relevant paragraphs 3 and 4 of the said judgment read thus:-

"3. We have also perused the Maintainability of Public Interest Litigation Rules, 2010, which have laid down the guidelines for entertaining a public interest petition. The nature of grievance set out in the petition does not fall within the defined Clauses of Para-6 where a PIL may be ordinarily entertained. In fact, the present nature of grievance, a cause on which many PILs are filed, is really in the nature of allegations against the municipal authorities for failure to perform their statutory

duties and that should be the style of the petition.

4. The other aspect we want to emphasise is that the petitioner has to specifically disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. The expression "specifically disclose his credentials" must, naturally, imply that he has to set forth what he does for his living, what public interest he has been espousing, the work done by him in that behalf, the particulars of any matter preferred by him as PIL earlier on which the Court has passed orders, etc. It cannot imply merely writing a sentence that a person is residing in the State, is public-spirited and is, thus, filing a PIL."

13. As per the facts narrated above, the present relates to settlement of personal rancour scores between Sukhbir Singh and respondent No.5 and, thus, such an interest cannot clothe the present petition to be a Public Interest Litigation. Further, factual dispute as noticed hereinbefore also does not fall for adjudication within the writ jurisdiction under Articles 226/227 of the Constitution of India.

14. In view of what has been held above, we are of the opinion that the present writ petition is bereft of any merits. Resultantly, the same is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

November 20, 2017
ramesh

**Whether speaking/reasoned
Whether Reportable:**

**Yes/No
Yes/No**