

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

Date of Decision:29.5.2018

Harbir Singh Rathee and another

... Petitioner

Versus

Vijay Kumar, Estate Officer, HUDA Bahadurgarh

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ramesh Sharma, Advocate for the petitioners

Mr.P.S.Chauhan, Advocate for the respondent

RAJIV NARAIN RAINA, J. (Oral)

1. Reply by way of affidavit of Vikas Dhanda, Estate Officer, HSVP filed in Court today is taken on record.

2. This Contempt Petition has been filed alleging violation of the orders passed by this Court on 29th August, 2016 in a joint petition brought by the present petitioners in CWP No.17598 of 2016 which was disposed of by a Division Bench of this Court by an order with the following operative part:-

“4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.3 to take a decision on the letters dated 17.12.2014, 12.1.2015, 12.2.2015 and 12.3.2015 (Annexure P-2 Colly), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of three months from the date of receipt of certified copy of the order.”

3. In compliance of the above directions, as per the short reply by way of affidavit filed by the Estate Officer, HSVP, Bahadurgarh, the petitioners were asked to appear before the Estate Officer, HUDA on 29.9.2016 alongwith complete record in their possession. The petitioners appeared in person on the date fixed, but submitted a representation requesting allotment of an alternative plot in lieu of Plot Nos.378 and 380, Sector 9, Bahadurgarh. This appears to have been a contentious issue since the petitioners were originally allotted plots of size 8 marlas each, but had been asked to deposit premium/sale consideration for a plot larger than 8 marlas i.e Plot measuring about 435 sq. yards and 475 sq. yards, respectively.

4. As directed, the respondent passed speaking orders on 24.7.2017, copy of which is placed as Annex. R-1 and R-2 with the reply, after noticing the letters dated 17.12.2014, 12.1.2015, 12.2.2015 and 12.3.2015.

5. It is not disputed that the land for which the original allotment was made, was a disputed area between the landowners and the HUDA, and therefore, carving out plots on proposed site had become dependent on the resolution of the dispute. It is also not disputed that possession of plots measuring 8 marlas was offered after completion of development works vide memo dated 22.7.2002. In the changed environment, possession certificate of the larger plots was issued vide memo dated 28.7.2008. It is not necessary to go into any details of the speaking order as that, in the considered view of this Court, is not within the scope of contempt jurisdiction to express any opinion on the merits of the orders. At best, there had occurred some delay in deciding the matter for which the petitioners can always be

compensated by directing payment of costs/compensation for the delay. Mere delay in deciding will not in the circumstances amount to willful disobedience to sound a finding of guilt in contempt proceedings. The delay here was apparently beyond the control of both the parties. A dispute as to improper demarcation of land had arisen as stated in the speaking order, and therefore, it cannot be said conclusively that delay is wholly unjustified or amounts to circumvention of the order of the High Court. But this does not mean that the respondent should not have acted promptly within time frame fixed by this Court.

6. A word on the two previous interim orders passed by this Court would be in order. On 15.2.2018 when this matter came up for hearing, the following order was passed:-

“It transpires that both the petitioners were allotted plot(s) and Conveyance Deed(s) executed on payment of entire sale consideration for areas much above their entitlement. The possession, however, could not be delivered due to the litigation between the original land-owners/agriculturists and HUDA. Therefore, both the petitioners are entitled to allotment of alternative plot(s). The petitioners' claim for re-allotment for one Kanal Plot whereas the respondent insists upon re-allotment of Eight Marlas Plot as per the conceded entitlement. However, during the course of hearing, it was proposed that keeping in view the payment of sale consideration for a larger area, the petitioners are entitled to be considered for re-allotment of almost equivalent sizes of plot(s) available in the same Sector.

Learned Counsel for the respondent very graciously agrees to examine the aforesaid proposal and prays for short adjournment.

Adjourned to 05.04.2018.”

7. On the next date of hearing i.e. 5.4.2018, this Court passed the following order:-

Learned counsel for the respondent prays for last opportunity to do the needful in terms of what transpired on the previous date of hearing.

Learned counsel for the petitioners points out that there are 25 (14 marlas) of plots and 35 (01 kanal) of plot available for allotment in the same sector. He submits that the Chief Administrator, HUDA, is unnecessarily delaying the grant of approval for the allotment.

List for 29.05.2018 for further consideration.

To be taken up in the urgent list.”

8. Learned counsel appearing for respondent HUDA submits that even though the proposal may have been in favour of the petitioner at some stage, but ultimately, the Chief Administrator, HUDA being the competent authority has taken the decision and has issued instructions to their counsel that the contempt case would have to be contested on merits. A contest on merits will necessarily have to go to writ proceedings and not result in an action brought for contempt of court.

9. In the circumstances, this Court cannot hold the respondent guilty of contempt and convict him to jail sentence. However, the petitioners can befittingly be compensated in terms of money for the delay in disposal of the case at the hands of authority in HUDA.

10. Consequently, the contempt petition is dismissed with costs of ₹ 10,000/- to be paid to each of the petitioners within a

month. The petitioners are at liberty to challenge the speaking order in the proper forum.

29.5.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE