

Sr. No.208

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

**CWP No.23999 of 2015 (O&M)
Date of Decision: 18.12.2018**

Guddi Chela and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Manmohan Kaur, Advocate,
for the petitioners.

Mr. Abhaypal Singh Gill, AAG, Punjab.

ARUN MONGA, J.(ORAL)

The present petition has been filed seeking issuance of a writ in the nature of certiorari to quash the impugned order dated 05.08.2015 (Annexure P-4) passed by the Arbitration Committee constituted by the Deputy Commissioner, Moga whereby the petitioners have been restrained from professing their business in certain areas of District Moga.

2. Learned counsel for the petitioners contends that the impugned order is in violation of Article 19 of the Constitution of India inasmuch as the same amounts to being unreasonable restrictions on the petitioners to carry out their business in the areas they so wish to. The petitioners belong to Ennuch Community and earn their livelihood by entertaining public at large by performing dance and singing at the auspicious

occasions of celebration in different households and business enterprises etc.

3. The present case seems to have a cantankerous history. On an earlier occasion, the petitioners had been litigating with private respondent No.7 who too belongs to the same community and carries out business in the same District at Moga.

4. Learned counsel for the petitioners points out that owing to professional rivalry, respondent No.7 had filed a civil suit bearing No.RT-761 dated 11.01.2013 titled as Bobby Mahant Chela Guddi Vs. Kamla Chela Ram Pyari and others wherein petitioners No.1 and 2 herein were arrayed as defendants No.3 and 5. The claim in the said civil suit *inter alia* was for declaration to the effect that respondent No.7 herein is the only chela of Mahant Guddi and solely was entitled to collect the congratulates from District Moga as well as surrounding areas including Dharamkot, Kot Ise Khan, Zira, Fatehgarh Panjtoor and other surrounding villages of Moga District with consequential relief including restraining the defendants No.3 and 5 (petitioners No.1 and 2 herein) from interfering in the area of respondent No.7 from collecting the congratulates.

5. The said civil suit filed by respondent No.7 was dismissed vide detailed judgment dated 30.01.2014.

6. On a query posed by the Court, learned counsel for the petitioners informs that the said judgment in the civil suit was not appealed against and has since attained finality. However, states that passing of the said judgment was not disclosed and Civil Writ

Petition No.6419 of 2014 was filed before this Court seeking to restrain certain members of the same community from carrying on business in the same area which was the subject matter of the civil suit proceedings.

7. She contends that owing to the said concealment, this Court passed an order dated 02.04.2014 without issuing notice, giving directions to the Deputy Commissioner, Moga as also the Senior Superintendent of Police, Moga to look into the grievance of the petitioner (therein) which had been raised in the representation dated 18.02.2014 and pass appropriate orders in accordance with law.

8. Pursuant to the said directions of the Court, the impugned order has been passed by the Arbitration Committee constituted by the Deputy Commissioner, Moga.

9. Learned counsel for the petitioners points out that the impugned order has been passed without considering the judgment passed by the Civil Court wherein clear findings have been given and the suit of respondent No.7 was dismissed disentitling the exclusive usage of certain areas by a certain group and it was kept open for everyone belonging to Ennuch Community.

10. Be that as it may, without commenting on the merits of the case, this Court is of the opinion that the impugned order cannot sustain judicial scrutiny as it has been passed without considering the judgment dated 30.01.2014 rendered in civil suit No.RT-761 dated 11.01.2013 by the Civil Court, adjudicating upon

the same controversy based on the detailed evidence adduced by parties therein.

11. The same parties have been agitating their cause parallelly before the Arbitration Committee under the orders of this Court while on the other hand trial was going on in the Civil Court at Moga. But this Court at no stage made any observations with regard to the merits of the case while directing the Senior Superintendent of Police/Deputy Commissioner to decide the representations of respondent No.7.

12. In the circumstances, the impugned order dated 05.08.2015 (Annexure P-4) is set aside with liberty to the Deputy Commissioner, Moga-respondent No.2 herein to pass fresh orders in accordance with law keeping in view the judgment of the trial Court which has since attained finality.

13. It is made clear that nothing observed above shall be construed as an expression of opinion on the merits of the case.

14. Petition is, accordingly, disposed of.

(ARUN MONGA)
JUDGE

18.12.2018

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No