

CWP No.20757 of 2017 (O&M)

[1]

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

CWP No.20757 of 2017 (O&M)
Date of decision: April 17, 2018

Naveender P.K.Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Petitioner-in-person.

Mr. H.S.Sitta, AAG, Punjab.

Mr. J.S.Toor, Advocate,
for respondent no.2.

Mr. M.S.Gill, Advocate, for
Mr. ADS Jattana, Advocate, for respondents no.3 and 4.

Rakesh Kumar Jain, J.

The petitioner is a resident of one of the societies in Zirakpur who has filed this petition on behalf of the residents of various societies falling on the stretch road of 500 meters (abutting towards the left on the Old Ambala Road) allegedly leading to the societies, namely, Sushma Elite Cross, New Generation Maple Apartments, Spangle Condos, Sushma Crescent, Sushma Green Vista and Golden Sand Apartments in Dhakoli, NAC Zirakpur, District Mohali.

The grievance of the petitioner is that approximately 500 meters road from Old Ambala Road leading to all the societies has not been made since the laying down of sewage line more than 2 years back though it has

access to all the societies. The petitioner also has the grievance that respondent no.4 has dug up the road and barricaded it by way of putting pillars in collusion with respondent no.2 resulting into narrowing down the width of the said road. The further grievance of the petitioner is that the respondents have not provided storm water drainage on both sides of the broken road, there is no proper connection of the sewerage line to the main sewerage line and proper tarring/tiling of the road has not been done.

Keeping in view the aforesaid grievances, the petitioner has prayed for the issuance of writ in the nature of *mandamus* seeking a direction to make the aforesaid 500 meters motorable road, starting from Old Ambala Road leading to all the afore-mentioned societies, being the sole access for the people living in those societies and was dug up two years back which has not been made functional and for making a proper storm drainage system on both sides of the said road. The petitioner has also appended the photographs to show the condition of the road.

Separate replies have been filed on behalf of respondents no.2, 3 and 4. In the reply filed by respondent no.2, it is averred that it had passed resolution no.30 on 13.06.2017 regarding execution of various development works in the respective areas falling within its jurisdiction which has been approved by the Directorate Local Government, Punjab, vide letter dated 20.09.2017. It had also completed the entire formalities regarding invitation of tenders in pursuance of the works approved vide the aforesaid resolution. The works no.31 and 32, approved vide resolution no.30 dated 13.06.2017, pertaining to the construction of street at Sushma to main L.H.S. road, M.C. Zirakpur for ₹8.95 lakhs and P/L BMPC near Sushma Square near old Kalka-

Ambala Highway RHS for ₹11.83 lakhs, are near completion. It is further averred that pursuant to the application submitted by the respondents, demarcation of the land has been done by the concerned revenue official and as per the demarcation, respondent no.4 was granted permission to construct pillar boundary because it has been found that the said land belongs to respondent no.4 only and is not a public land.

In the reply filed by respondent no.3, it is averred that the present petition is a proxy litigation as none of the builders, who have sold the properties to the petitioner and other such like persons, have been made party to the present petition whereas most of the allegations are directed against them with regard to the promises made regarding the road and other infrastructure. It is further averred that he is in possession of the land measuring 1125 square yards and has constructed the boundary wall in 2001-2002 by leaving one feet more land towards the passage. The passage in question is of 3 Gatha which is equivalent to 14.3 square feet, which was built after the land was given in rectangle nos.8//2, 3, 4 & 5 and, thus, these rectangles are having the length of 37 Gatha, whereas in case it was the complete rectangle, then it would have been of 40 standard Gatha.

In the reply filed by respondent no.4, similar averments have been made in para no.2 but in para no.3, the following averments have been made:-

“3. That the answering respondent No.4 had purchased this property in question in rectangle No.8//2 & 3/1, Gazipur, Tehsil:Dear Bassi of land measuring 3 Bigha-10 Biswa-by way of registered Sale Deed dated:15/10/2007 in the name of M/s HS Portfolio Private Limited, D-2/19, Maharana Partap Bagh, New Delhi, through its Director being the answering respondent No.4. The Sale Deed dated:15/10/2007 is annexed herewith as Annexure R-4/2. The said ownership is duly reflected in the Jamabandi,

Annexure P-6.

4. That the answering respondent No.4 is in possession of the land of about 3500 yd² and had purchased this land for constructing offices and due to the economic downfall & demonetization, the construction is not being carried out by the answering respondent no.4. “

It is further submitted in para 3 of the reply on merits that he had barricaded his land by pillars and wire after the demarcation was carried out by the revenue authorities and the said construction was carried out in the presence of the Municipal Staff and no encroachment has been made.

The petitioner had filed replication to the written statement filed by respondent no.4 challenging his ownership and has alleged that the width of the road has been mentioned as 20 meter in the master plan.

There were additional affidavits filed on behalf of the Municipal Council, Zirakpur. In the last affidavit dated 06.03.2018, filed by Manbir Singh Gill, Executive Officer, Municipal Council, Zirakpur, the following averments have been made:-

“2. That this Hon’ble Court vide order dated 14.02.2018 was pleased to direct the deponent to file the status report and the same is being filed by way of present affidavit. The work of Gali/Road Sushma Square, near old Kalka-Ambala Highway RHS, MC Zirakpur interlocking Tiles has already been completed. However, with regard to the work pertaining to BMPC near Sushma Square, near old Kalka-Ambala High way RHS, MC Zirakpur, it is submitted that the initial notice inviting e-tender for the execution of the said work was issued for 30.10.2017. No valid tender was submitted to the said notice. Thereafter, the second notice inviting e-tender for the execution of the said work was issued for 21.11.2017, but again no valid tender has been received. It is, therefore, submitted that the notice inviting e-tender regarding the aforesaid work shall be issued in the month of March, 2018. As the hot mix plants meant for laying BM/PC are normally functional

in the first week of April in the year.

3. That the photographs showing the execution of the work pertaining to interlocking Tiles near Sushma Square, near old Kalka-Ambala Highway RHS, MC Zirakpur have already been produced on record in the earlier additional affidavit dated 14.12.2017.

4. That with regard to the modalities for widening of the roads it is submitted that the same can be done only by way of acquisition process to be conducted by the Government of Punjab, however the tiles have been laid on the existing road by the MC Zirakpur. The funds have already been earmarked for the said work.

5. That the sewerage line has already been connected as per the report submitted by the technical officials. At present there is no provision regarding the storm water drainage system.”

After hearing learned counsel for the parties, examining the available record and taking into consideration the aforesaid facts and circumstances, it is clear that respondent no.2 has already completed the work of paving of interlocking tiles and has undertaken to invite e-tender regarding the work of laying BM/PC in the month of March 2018 because the hot mix plants normally become functional in the first week of April.

Thus, keeping in view the statement made in para 2 of the affidavit dated 06.03.2018, the first direction is issued to respondent no.2 to immediately start the process of laying BM/PC near Sushma Square, old Kalka-Ambala Highway by issuing e-tender, as undertaken by it. It is needless to mention that respondent no.2 shall make strenuous efforts to complete the aforesaid work in all respect before the onset of the monsoon so that the residents of the area may not suffer in this regard.

Insofar as the sewerage line is concerned, that has already been connected with the main sewerage line, as reported by the technical officials,

therefore, the second prayer made by the petitioner has become infructuous.

As regards the third prayer for providing storm water drainage system, though respondent no.2 has mentioned in the affidavit dated 06.03.2018 that there is no provision regarding it but in order to drain out the rain water, the storm water drainage system is an essentiality for which respondent no.2 shall make endeavors by considering the feasibility for the same as early as possible but not later than six months from the date of receipt of certified copy of this order.

Lastly, with regard to the widening of the road, since the respondents have averred that for the said purpose, land belonging to the private persons has to be acquired, therefore, it is ordered that respondent no.2 shall consider that matter in accordance with law.

The writ petition is, thus, disposed of in the aforesaid terms.

April 17, 2018
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(Rakesh Kumar Jain)
Judge

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