

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 14887 of 2016

Date of Decision: July 12, 2019

Santan Dharam Sabha (Regd.) Ambala

.....Petitioner

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MR. JUSTICE SUDHIR MITTAL.**

Present: Mr. A.K. Chopra, Sr. Advocate with
Mr. Anil Mehta, Advocate
for the petitioner

Mr. Ankur Mittal, Addl. A.G. Haryana

Mr. Deepak Manchanda, Advocate
for respondents No. 4 and 5

Sudhir Mittal, J.

The petitioner is a Society registered under the Societies Registration Act, 1860, since the year 1935. It has been established for propagating Sanatan Dharam by all legitimate means. Allegedly it is running more than dozen schools in the area and has also established temples. Instruction is also being imparted in Shrutis, Smritis and Puranas.

2. Vide letter dated 21.08.1998, Department of Urban Local Bodies permitted Municipal Council, Ambala Sadar, to sell 4300 sq. yards of land to the petitioner for the purpose of setting up a Planetarium. The sale deed dated 25.08.1999 contained certain conditions subject to which the sale had been made.

The relevant conditions are -

(a) the land would be used only for the purposes of Planetarium and change of land used shall not be permitted; and

(b) The land shall not be used for any commercial purpose nor shall it be sublet.

3. Accordingly, a Planetarium was constructed. Five years later, the petitioner thought of establishing B.Ed. College (for Women) in part of the land and the Municipal Council, Amabala Sadar, issued no objection certificate dated 19.01.2004. The College was set up after taking all the necessary approvals. Suddenly a show cause notice dated 12.08.2013 was issued by the Estate Officer to show cause as to why resumption proceedings be not initiated for violating the terms and conditions of the sale. The allegations contained therein are that the terms of the sale have been violated by using the premises for commercial purposes such as cultural programmes, religious and Kriya ceremonies on payment of charges and B.Ed. college is being run from the premises and secondly that the petitioner has encroached upon 220 sq. yards. A detailed reply dated 03.09.2013 was submitted stating that no commercial activity was being carried out and that the Planetarium was being used for Pravachans, Satsangs and Seminars for students. It was also stated that the B.Ed. College had been set up after obtaining necessary permission. The allegation of encroachment was denied and it was requested that a demarcation be carried out in the presence of the petitioner. Accordingly, it was prayed that the show cause notice be withdrawn. The matter appears to have rested at that stage till 16.03.2016 when another show cause notice of even date was issued. In the said notice allegations were confined only to commercial use of the land. Again a detailed reply dated 11.05.2016 was submitted. However, vide the impugned order dated 14.07.2016 it was conveyed to the petitioner that vide order dated 30.06.2016 the site of the petitioner had been resumed and that possession should be handed over within 15 days of the receipt of the notice.

4. A detailed reply has been filed on behalf of respondents No. 4 and 5 i.e. Deputy Commissioner-cum-Estate Officer, Excised Area, Municipal Council, Ambala Haryana and the Assistant Estate Officer, Excised Area, Municipal Council, Ambala Sadar, Ambala Cantt., Haryana, wherein action of the respondent has been defended.

5. Learned senior counsel for the petitioner submits that no commercial activity is being carried on from the Planetarium premises. Audited balance sheets of the petitioner have been submitted alongwith detailed reply to show cause notice but the same have been ignored. The impugned action has been taken only because of filing of COCP No. 1313 of 2013 *Narinder Sharma Vs. R.P. Gupta*, wherein, officials of the Municipal Council are the contemnors and in order to save their skin. This is apparent from the fact that no action was taken after receipt of detailed reply dated 03.09.2013. The contempt petition had arisen out of general directions given by a Division Bench of this Court in CWP No. 4886 of 2013 permitting any public spirited person to file a contempt petition in case he is in the knowledge of encroachment of public land in connivance with employees of local bodies. This litigation was the trigger for issuance of show cause notice after 2 ½ years of filing of the earlier reply. The action is malafide and deserves to be quashed.

6. Learned counsel for respondents No. 4 and 5, however, supports the impugned action.

7. We asked learned counsel for respondents No. 4 and 5 to produce material before us to show that commercial activity was being carried out from the Planetarium complex but he was unable to do so.

8. The submissions of learned senior counsel for the petitioner, thus, appear to be correct. It seems that resumption order has been passed without

availability of any material and probably on account of initiation of contempt proceedings against officials of the Municipal Council.

9. The writ petition is, accordingly, allowed and impugned communication dated 14.07.2016 (Annexure P-1) as well as resumption order dated 30.06.2016 mentioned therein are quashed. It is, however, made clear that the respondents shall be at liberty to take action against the petitioner in accordance with law, in future, in case they come across any substantial evidence that there is a misuser of the Planetarium.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

July 12, 2019

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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No