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

CWP No.885 of 2017(O&M)
Date of Decision: 03.12.2021

Paramdham Nau Gaja Peer Baba

-Petitioner

Versus

State of Haryana and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sameer Sachdeva, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Addl., A.G., Haryana.

Mr. R.S. Madan, Advocate and
Mr. Mahender Joshi, Advocate
for respondent No.5.

RAJ MOHAN SINGH, J. (Oral)

Petitioner has preferred this writ petition for issuance of an appropriate writ, order or direction, especially in the nature of certiorari, quashing the impugned order dated 10.01.2017 passed by the District Magistrate.

The order dated 10.01.2017 passed by the District Magistrate reads as under:-

*“Executive Engineer, Constrn, Division (NH),
PWD (B&R) Br. Panchkula has intimated that as per CM
window complaint No.CMOFF/N/2016/059951 of Sh.*

Sanjeev Kumar for illegal encroachment made by Dargah/Nau Gaza Peer on NH-444A at Km.0490, near Railway Station, opposite BSNL Telephone Exchange falls on PWD land Ambala-Jagadhari Road, Ambala Cantt is to be removed on 20.01.2017.

In exercise of the powers conferred upon me under Sectioni 22(1) and 23(2) of the Code of Criminal Procedure, 1973, I, Prabhjot Singh, IAS, District Magistrate, Ambala do hereby depute Sh. Sumit Bakshi, Block Development & Panchayat Officer, Naraingarh as Duty Magistrate to maintain law and order for removal of illegal encroachment made by Dargah/Nau Gaza Peer on NH-444A at Km.0490, rear Railway Station, opposite Telephone Exchange falls on PWD land Ambala-Jagadhari Road, Ambala Cantt on 20.01.2017”

Perusal of the aforesaid order would show that the same has been passed in exercise of powers under Sections 22(1) and 23(2) of Cr.P.C.

Learned counsel for the petitioner submits that the impugned order has been passed on a complaint filed by one Sanjeev Kumar alleging illegal constructions made by the petitioner and the Trust opposite to BSNL Telephone Exchange of PWD (B&R) situated on Ambala-Jagadhari road. The Executive Engineer has informed the District Magistrate, Ambala that the construction in question has to be removed. District Magistrate accordingly acted at the instance of Executive Engineer and deputed Block Development Panchayat

Officer, Naraingarh as Duty Magistrate for maintaining law and order situation and also for removal of alleged illegal encroachment made by the petitioner. Learned counsel further submits that the construction of the petitioner Paramdham Nau Gaja Peer Baba is in existence as holly place of worship since 1980-81 and the same is being used as such since then. The premises in question has an electric connection for the last many years besides water connection and sewerage connection provided by the administration of District Ambala. The title over the property in question has not been decided by any competent Court.

Learned counsel further submits that the impugned order is in utter disregard to the principle of natural justice as the same has been passed without issuing any notice to the petitioner. The impugned order has been passed by the authority of the State Government, whereas subsequently the land in question has been transferred to National Highway Authority of India vide notification dated 09.05.2017.

Notice of motion was issued on 18.01.2017 and in the meantime, status quo as regards existing position at the spot was also passed. Municipal Corporation, Ambala was also impleaded as party respondent.

Both the parties are at variance on the issue of title,

but the fact remains that the impugned order was passed at the time when the land underneath Paramdham Nau Gaja Peer Baba was allegedly claimed by the State of Haryana.

During pendency of the present writ petition, order dated 11.12.2020 came to be passed in the following manner:-

“Learned State counsel will clarify, as to who was the owner of land in dispute. Petitioner is claiming that by way of Will (Annexure P-1), which was executed in the year 2006, the land was given by one Smt. Sharda Devi to one Mr. Vijay Kumar. Thereafter, vide Annexure P-6, a Trust was formed in the year 2011. While issuing notice (Annexure P-21) for removing illegal encroachment, it was stated that there is illegal encroachment on the land owned by the State Govt.

Learned counsel for respondent No.5 states that after 09.05.2017, the land now vests with the National Highway Authority, which has issued notice for removing the illegal encroachment to a number of persons. Hence, notice (Annexure P-21) has been rendered infructuous.

Learned State counsel will get instructions, as to who was owner of the land in dispute as per the revenue record. He will also get instructions, whether Smt. Sharda Devi, who has executed the Will (Annexure P-1) in the year 2006, was the actual owner.

Adjourned to 21.12.2020.

11.12.2020

ajp

(RITU BAHRI)

JUDGE”

In compliance of the aforesaid order, additional affidavit of

Vikas Surjewala, Executive Engineer, Construction Division

(NH), PWD B&R Br. Panchkula has been filed on 29.10.2021 and the same is supplemented by another additional affidavit of Amit Kaushik, Executive Engineer, Construction Division (NH), PWD B&R Br. Panchkula filed on 09.11.2021.

In pith and substance, both the affidavits are to the same effect. In compliance of order dated 11.12.2020, it has been sated in para No.4 of the affidavit to the following effect:-

“4. That the deponent vide memo no.574 dated 18.06.2021 (Annexure R-2) requested to provide the concern information regarding the disputed land from the Deputy Commissioner Ambala and also requested to fix the meeting between all the concerned Authorities i.e. SDM(C) Ambala Cantt, Tehsildar Ambala Cantt, Municipal Commissioner, Ambala Cantt, Defence Estate Officer Ambala Cantt, Executive Engineer Provincial Division No.1 PWD B&R Ambala Cantt, Project Director NHAI Ambala so that the true owner of the disputed land can be found.

After that SDM(C) Ambala Cantt. fixed three meetings. Subsequently, deputy commissioner, vide memo no.936 dated 11.08.2021 (Annexure R-3) has intimated that the record has been examined and as per examination of record, it is clear that the land in issue has been shown as “Tomb on Staff Road” as per survey No.268 of G.L.R.Record. Further, it has been intimated that the property is of Old Grant. It has also been brought out regarding documents/Performa pertaining to Rent/Lease submitted in the case by Sh. Vinay Shukla that there is no entry in the “Mool Register” of “Pralek Karyalaya” and neither in Rent Branch. It has also been

intimated that with reference to RTI of Sh. Vinay Shukla dated 21.09.2019, the record has been scanned but no such record of RTI has been found. In summary, DC Ambala has stated that both the documents submitted by Sh. Vinay Shukla are not available in his office and according to record of Cantonment Board, the land in issue is in the name of Govt. of India and is old grant land.”

Evidently, as per stand taken by the State in the aforesaid additional affidavits, office of Deputy Commissioner was asked as regards the relevant information in respect of the disputed land. After due deliberations and meetings between all the authorities viz. SDM (Civil) Ambala Cantt, Tehsildar Ambala Cantt, Municipal Commissioner, Ambala Cantt, Defence Estate Officer, Ambala Cantt, Executive Engineer Provincial Division No.1, PWD B&R, Ambala Cantt and Project Director NHAI Ambala Cantt., the land in question is found to be recorded as “Tomb on Staff Road” as per survey No.268 of GLR record. It has been found that the property is an Old Grant. There is no entry in the “Mool Register” of “Pralek Karyalaya”, nor is available in rent branch. As per RTI information by one Vijay Shukla on 21.09.2019, no such record is available.

In summary, Deputy Commissioner, Ambala has stated that both the documents submitted by aforesaid Vinay Shukla are not available in the office and according to the

record of Cantonment Board, the land in question is in the name of Government of India and is an Old Grant land.

With this stand of the State of Haryana, the title qua the land in question would fall for consideration of the competent authority and the same is required to be decided at the instance of either of the parties.

At this stage, the issue involved in the present case can be considered in a very narrow compass i.e. as to whether the impugned order can be passed without affording any reasonable opportunity to the petitioner or not.

Admittedly, the order has been passed without giving notice to NHAI as well as to the petitioner. NHAI in its reply has taken a specific stand that the authority has already issued show cause notices to those who are similarly situated on the road except the petitioner in view of interim order passed by the High Court.

During course of hearing, learned counsel for NHAI states that in pursuance of the aforesaid order, NHAI has acquired the task of widening the road i.e. NH444A i.e four lanning from Ambala to Saha.

At this stage, title qua the property is not being commented upon.

Learned counsel for the NHAI very candidly submits

that the authority would take appropriate action strictly in accordance with law. Similarly situated persons have already been removed after due compliance under the Act.

Learned counsel for the petitioner refutes the aforesaid contention on the ground that the land in question is held to be an Old Grant and similarly situated persons were not having any such grant.

Be that as it may, the Authority shall act strictly in accordance with law. Parties to the *lis* would be at liberty to take recourse to appropriate remedy for declaration of title (if any) in accordance with law. Needless to say, that the petitioner can only be dispossessed in accordance with law only.

Disposed of.

All the pending civil miscellaneous are accordingly disposed of.

03.12.2021

Prince

(RAJ MOHAN SINGH)
JUDGE

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