

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

116

**CWP-26070-2021
Date of decision: 21.12.2021**

BIJENDER SINGH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present: Mr. Mani Ram Verma, Advocate for the petitioner.

VINOD S. BHARDWAJ, J.(Oral)

The petitioner has approached this Court with a prayer for issuance of a Writ in the nature of Mandamus directing the Municipal Council/Corporation, Bhiwani to utilize the common land meant for the benefit of the people of the Colony and to allow the people of the Colony to make use of the open space for their own benefit by allowing them to construct a Library for Senior Citizens or School for kids or for other common purposes.

2. We have heard learned Counsel for the petitioner and have gone through the pleadings and documents appended with the petition, with his assistance.

3. Learned Counsel for the petitioner has argued that he is residing in the old Housing Board Colony, Bhiwani and is entitled to all facilities provided by the Housing Board in the Colony. It was submitted that as per

the layout plan of drawing No.1, Job no.15 dated 26.11.1975, an open space has been left near House No.221-244-256-257 for the residents of the Housing Colony, aforesaid. The said open space was given by the M.C. Bhiwani to the Public Health Department to construct a sewer disposal plant, which came to a shut down in the year 2013. The Public Health Department had constructed a one room set on the said property without a sanctioned plan from the Municipal Committee. An argument was raised that the land in question did not stand in the name of Public Health Department and was misused by the said Department by allotting the said one room set to its Baildar. It was urged that maintenance of the Colony has since been taken over by the Municipal Committee, Bhiwani.

4. A perusal of the pleadings shows that the Municipal Committee had handed-over the work of maintenance of water supply and sewerage to the Public Health Department in terms of letter bearing memo No. 10-67/1363-1422 pertaining to the proceedings dated 23.03.1993. The pleadings also show that Civil Writ Petition No. 10803 of 2016 titled as *“Raj Singh and others versus State of Haryana”* had been filed earlier by the petitioners which was disposed of vide order dated 27.05.2016 directing the respondent to decide upon the representation submitted by the petitioners. COCP No. 959 of 2017 is stated to have been filed on account of non-compliance of the said order dated 27.05.2016 wherein a status report/compliance report dated 16.07.2018 was filed and the contempt petition was disposed of as infructuous vide order dated 01.11.2018.

5. The petitioner contends that in the status report so filed (status report has not been appended with the petition) the Public Health Department had surrendered possession of the said constructed room to the

Municipality and that pursuant to such handing over, the possession of the said room has been taken over by the petitioner and other respectables of the Colony for using the same for common purpose of the Colony.

6. The petitioner further argues that the municipal body should be directed to permit the petitioner to use the vacant land for benefit of the locality.

7. During the course of arguments, learned counsel for the petitioner was called upon to furnish documents including the layout of the area in question as per the drawings approved to which the learned counsel categorically stated that there was no necessity to place any such layout plan on record and that the land being public property and the petitioner being a resident of the said area was entitled to take possession of the property and to ensure usage of the said property for a purpose which is more benevolent and beneficial towards the residents. The petitioner refused to refer to any approved/sanctioned layout plan which may be necessary to ascertain whether the approved layout would permit utilization of the property as per proposal of the petitioner. Despite repeated queries raised to the learned counsel for the petitioner to place some primary document to substantiate the argument, the repeated response of the learned counsel was that the residents of the locality had a right to the occupation and enjoyment of the property and to convert the same for use by the residents. Learned counsel however, failed to refer to any statutory provision and/or decision taken by any competent authority to handover possession of the premises to the petitioner and/or to use the premises in any particular manner as proposed by the petitioner.

8. Having heard learned counsel for the petitioner at much length, we are of the view that utilization of land is a part of the scheme of Town Development and Improvement. The area ear-marked as open spaces are part of the development plan for future contingencies and planning and hence, cannot be put to any other use without proper approval even though such use may seem to be advancing public interest in other ways. The Town Planning Schemes/layout/development plans provide for all facilities and amenities such as libraries, Primary Schools, Play Schools, Parks etc. Such usage is prescribed in the Town Planning Scheme taking into consideration various norms of urban planning. A space 'kept open' does not mean 'surplus', and may well be a part of future planning for expansion of the infrastructure. Any such change of user cannot be directed by the Writ Court in its exercise of powers of judicial review especially when such layout is not a subject matter of challenge before the Court and the petitioner fails to establish how such layout/planning is bad and liable to be set aside. In the absence of the planning/layout being shown to the Court or any challenge to the same, it is now left to the discretion of the Court to assign the user for such land. Apart therefrom, issuance of directions to develop such land has financial implications and the Committee may have its own restraints. The petitioner or the Court cannot determine the use of land left as open spaces in the Town Planning Scheme/approved layout as experts or to take unauthorized possession of such public land or property.

9. Residents of the locality do not become custodians of the public property. Title in the property is vested in the Government which is elected by the people and remains the sole custodian of public property. Article 51-A only imposes a duty upon the citizens to safeguard public property. The

petitioner cannot be permitted to confer upon itself a right or dominion over the public property under the pretext of discharging fundamental duty to safeguard the public property.

10. The petitioner having failed to demonstrate any accrued right in the petition and denial thereof by the respondent, the instant writ petition is devoid of any merit and deserves to be dismissed in *limine*.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

21.12.2021
Vishal Sharma

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