

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 29624 of 2018 (O&M)

Date of Decision: 28.01.2021

Baba Ram Niwas

... Petitioner(s)

Versus

Union of India and others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Snehdip Oberoy, Advocate
for the petitioner.

Ms. Areika Singh, Advocate
for respondent No.2.

Mr. Rajinder Goyal, Advocate
for respondent No.5.

Anil Kshetarpal, J.

Through this writ petition, filed under Article 227 of the Constitution of India, the petitioner prays for the following substantive reliefs:

“i) *Issue writ in the nature of mandamus directing the respondents to conduct a fair & impartial probe into the fraudulent disbursement of compensation with regard to the land in possession of the petitioner comprised in Khewat No. 195, Khatuni No. 221-224, Khasra No. 12/21/1, 13/16 situated in Village – Mundi Kharar, Tehsil-Kharar, District-Mohali, having been acquired by the National Highway Authority of India for the purpose of widening, maintenance & operation of the concerned*

Highway, for which several complaints/representations including Ann.P-3 dated 19.05.2017 & Ann. P-4 dated 04.09.2017 have already been submitted with the respondents and no action so far has been taken in this regard;

- ii) Restrain respondent no.2/National Highway Authority of India from carrying out work pertaining to the widening & four laning of the Highway in the aforesaid land during the pendency of the requisite probe/enquiry.*
- iii) Restrain Respondent no.4/S.D.M., Mohali from releasing any further/remaining amount of compensation with regard to the aforesaid acquisition during the pendency of the requisite probe/enquiry;*
- iv) Respondent no.4/SDM, Mohali be directed to refer the matter in hand to the Civil Court of Original Jurisdiction under Section 3-H(4) of the National Highway Act”.*

It would be noted here that rights of the petitioner herein vis-a-vis respondent No.5-Trust has already been finally decided in a civil litigation. Respondent No.5 filed a suit for mandatory injunction to hand over the vacant possession of the religious and charitable property along with directions to render the accounts against Baba Gopal Dass. The aforesaid civil suit was partly decreed qua rendition of accounts by the trial Court on 02.09.1993. However, the first appeal, filed by respondent No.5, was accepted on 03.05.1997. Thus, the directions were issued to Baba Gopal Dass to hand over the vacant possession. A regular second appeal No. 2263

of 1997 was filed and admitted. Baba Gopal Dass died during the pendency of the suit and Baba Ram Niwas-the petitioner herein was impleaded in place of Baba Gopal Dass. Against the aforesaid order, Civil Appeal No. 9638 of 2003 was filed and the Supreme Court held that the Court would decide the rights of Baba Ram Niwas independently as Baba Gopal Dass was only a Sewadar.

The regular Second appeal was decided on 18.07.2016 with a finding that Baba Ram Niwas cannot be considered to be the Manager of the Trust and hence, has no right, title or interest in the property. However, the appeal was partly accepted and consequently, the suit filed by respondent No.5 qua handing over the vacant possession was ordered to be dismissed.

Against the aforesaid judgment, the Supreme Court while deciding Civil Appeal No. 724 of 2020 on 31.01.2020 has reversed the judgment of the High Court qua handing over the vacant possession against Baba Gopal Dass. Thus, the Trust has been held to be entitled to possession. It has been held that Baba Ram Niwas is only a member of the public who can offer his services in place of Baba Gopal Dass. The finding arrived at by the Supreme Court is extracted as under:

“12. We have heard learned counsel for the parties. We find that the order passed by the High Court in respect of first substantial question of law is not sustainable. Section 92 of the Code contemplates a suit against a Trust either for removing any trustee; appointing new trustee; or vesting any property in a trustee etc. but the present suit itself is by a Trust against a Sevadar, therefore, the procedure

prescribed under Section 92 of the Code would not be applicable in a suit by a Trust. Section 92 of the Code confers right on a person in case of any alleged breach of any express or constructive trust created for a public purpose of a charitable or religious nature. Since the Trust itself was the plaintiff, the finding of the High Court is clearly erroneous and not sustainable. The fact is that Baba Gopal Dass has been found to be Sevdar as per statement (Ex.P/1) given in the previous suit for permanent injunction. Therefore, Ram Niwas as legal representative of Baba Gopal Dass will not have a larger interest than what was vested in the original defendant. Ram Niwas has been found to be doing service of the Temple as member of public. The High Court has affirmed the finding that Ram Niwas could offer his services but he has not proved that he was appointed as Chela of Baba Gopal Dass. Still further, the decree for rendition of accounts could be executed only against the deceased Baba Gopal Dass, therefore, after his demise, such decree cannot be executed.

13. *In view thereof, the finding of the High Court on first substantial question of law is set aside and the suit is found to be maintainable and was rightly decreed by the First Appellate Court.*
14. *We find that the apprehension of the respondent that the*

amount of compensation can be misused is not tenable. The appellant is a registered Society. The appellant as a registered Society has statutory obligations. We find that such apprehension is misconceived and beyond the scope of the present suit and the appeal arising out of such proceedings.

15. *Consequently, the present appeal is allowed. The order of the High Court in respect of first substantial question of law is set aside and the suit is decreed”.*

As noticed above, the petitioner, by filing the present writ petition, has prayed for various reliefs. It has come on record that an amount of ₹1,05,00,000/- has been released on account of compulsory acquisition of certain part of the land to respondent No.5-Trust which has been deposited in the Fixed Deposit Receipt. As regards restraining the National Highway Authority of India from carrying out the work pertaining to the widening and four laning of the highway, it may be noticed that the petitioner has been failed to make out the case as no error in the acquisition has been pointed out.

The next prayer made by the petitioner is to refrain the respondent from releasing the remaining amount. Once the petitioner has no right, title or interest, he has no right to seek a direction to restrain the official respondents from disbursing the amount.

The next relief sought by the petitioner is with regard to seeking a direction to refer the matter to the Principal Civil Court of original jurisdiction in accordance with Section 3-H (4) of the National Highway

Act, 2013. The reference is required to be made when there is a dispute with regard to apportionment of the compensation. In the present case, the petitioner, in the absence of any right, has no right to claim apportionment. The rights of the petitioner have already been decided by the High Court as well as the Supreme Court.

Keeping in view the aforesaid discussion, the petitioner has failed to make out any case for issuance of directions. Hence, the writ petition is dismissed.

The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

January 28, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No