

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

**CWP-14750-2021 (O&M)
Date of Decision:09.02.2022**

Pawan Kumar & others

... Petitioners

Versus

State of Punjab & another

... Respondents

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE LALIT BATRA.**

Present:- Mr. Imran Farooqi, Advocate for the petitioners.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

As per pleadings on record, petitioners are stated to be running their business from certain shops situated at Sirhandi Gate, Malerkotla on lease/rent hold basis. Such lease rights are stated to have been granted in favour of the petitioners by the Municipal Council, Malerkotla.

Instant writ petition has been filed seeking a mandamus directing the official respondents to issue notice to the petitioners prior to taking any action against the petitioners qua their shops/plots in question. An additional submission raised by counsel is that even representation(s) have been submitted and as such, in the alternative, a direction be issued for the respondents to examine such representation(s).

Having heard counsel at length and having perused the

pleadings on record, we are of the considered view that the instant writ petition is wholly misconceived.

It has gone uncontroverted that the petitioners herein had instituted a suit seeking relief of injunction so as to restrain the respondent/ authorities from taking possession of their shops. The suit was dismissed but the first Appellate Court decreed the suit and restrained the respondents from taking possession of the property in question **'except in due course of law'**.

At this stage, the Improvement Trust, Melerkotla preferred RSA-2310-2010 and which was dismissed by learned Single Judge of this Court vide order dated 30.09.2016 (Annexure P-3).

Relevant observations made by this Court while dismissing the Regular Second Appeal are as follows:

“4. Keeping in view the all these facts, first appellate court has committed no error of law while recognising the title of the defendants-appellants and possession of plaintiffs-respondents over the suit land and decreeing the suit restraining the defendants-appellants from taking possession of disputed shops except in due course of law. I find no legal or factual infirmity in the judgement passed by the first Appellate Court calling for interference.

5. As per decree passed by first Appellate Court, the defendants-appellants are at liberty to take possession of the disputed shops in accordance with law, however, it is unfortunate that instead of proceeding in accordance with law the defendant-appellant, which is a statutory authority, has preferred to file this appeal perhaps with a view to create a ground to extend period of possession of plaintiffs over disputed property and to help them. In case it had proceeded to take

possession of the disputed shops in accordance with law, it would not have wasted seven years after decision by the first Appellate Court. Apparently, this appeal was filed not to secure the right and interest of appellant, but of the plaintiffs.”

It clearly follows that a finding has been recorded as regards recognizing the title of the Improvement Trust, Malerkotla pertaining to the shops/plots in question and at the same time, the possession of the petitioners herein. Furthermore, this Court in the RSA has upheld the order passed by the first Appellate Court to the extent that the Improvement Trust, Malerkotla has been restrained from taking possession of the disputed shops **'except in due course of law'.**

In the instant petition, there are no averments that have been made which would reflect that the Improvement Trust, Malerkotla has taken or initiated any step in dispossessing the petitioners herein by taking recourse to a procedure which is alien to law. Even during the course of hearing, counsel has not been able to advance any submission in such regard.

We are satisfied that the instant petition has been filed on a mere apprehension.

Under such circumstances, no interference is warranted.

We are not inclined to even accept the alternate prayer made by counsel as regards deciding of a representation at Annexure P-10. The rights accruing to the petitioners with regard to protection of their possession and to be dispossessed, if at all, by adopting due course as permissible in law has already been safeguarded in terms of the order passed by this Court while deciding RSA at Annexure P-3.

There is no merit in the instant petition and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

09.02.2022
harjeet

(LALIT BATRA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |