

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

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**CRWP-10440-2020(O&M)
Date of decision: 20.04.2022**

KABAL SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Krishan Sehajpal, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

Instant petition has been filed under Article 226 of the Constitution of India for issuance of directions to respondent Nos.2 and 3 to take legal action against respondent Nos.4 to 12 who are alleged to have illegally confined the petitioner and members of his family in the house and thereafter to have illegally entered in the boundary wall/*haveli* and demolished the construction over the property owned by the petitioner and his brothers by misusing their powers.

Learned counsel for the petitioner has referred to the averments contained in the petition and has submitted that the petitioner and his brothers are owners in possession of land measuring 1 kanal 8 marlas situated in the area of village Kaler Tehsil Ajnala District Amritsar. The same has been in their ownership and possession since a long time. Reliance was placed upon the jamabandi pertaining to year 2015-2016. It is alleged that the petitioner belongs to Akali Dal and the Sarpanch and Panchs of the village belongs to the Congress Party and due to the said party factionalism, the petitioner is being oppressed and harassed by the respondent Nos.7 to 12. It is alleged that on 24.06.2020, the respondent Nos.5 to 12, in an illegal criminal conspiracy confined the petitioner

at Police Station Lopoke and demarcated the property with the help of Halka Patwari and Kanungo and in complete disregard of the procedure acceptable in law, illegally entered and trespassed the boundary wall/*haveli* of the petitioner with a JCB machine and demolished the construction raised upon the same. He has further referred to the order dated 30th October 2019 (Annexure P-5) passed in Civil Suit No.160-A dated 23.09.2019 titled as Kabal Singh & Anr Vs. Amarjit Kaur & Ors, wherein the statements of the defendants has been recorded to the effect that they have never entered into the peaceful possession of the complainant and shall also not interfere in the peaceful possession of the plaintiff(petitioner herein) in future. He submits that there is a violation of the said undertaking given by the respondent in Civil Court.

Upon notice, reply by way of affidavit of Gurpartap Singh Sahota, PPS, Deputy Superintendent of Police, Sub-Division Attari, Amritsar-Rural has been filed. Copy of the said reply has been furnished to the counsel for the petitioner. The relevant extract of the said reply is reproduced hereinbelow:-

3. *That it is humbly submitted that according to the detailed reports submitted by the SHO, Police Station Lopoke, Amritsar Rural, it has been revealed that an application bearing No. 1460-ADGP (Annexure P-2) was given to the Director General of Police, Punjab, Chandigarh by the petitioner with respect to the alleged occurrence dated 24.06.2020 as mentioned in paragraph no. 04 of the present petition. A detailed enquiry was conducted into this representation (Annexure P-1) by SHO of Police Station Lopoke, Amritsar Rural. During the course of enquiry, the petitioner Kabal Singh, respondents Amarjit Kaur, Davinder Singh, Kanoogo Charanjeev, Patwari Gagandeep Singh, Karampal Singh, Sub-Inspector, ASI Joginder Singh were joined and their respective statement were recorded. On the basis of the enquiry conducted, it was revealed that on*

24/06/2020, Kanoongo Charanjeet Sharma, Patwari Gagandeep Singh came to Police Post Ram Tirath and they produced one application given by Amarjit Kaur Sarpanch (respondent no. 7) and order of the District Magistrate, Amritsar for demarcation of land and demanded for police protection. Therefore, SI Karampal Singh the then In-charge of Police Ram Tirath (respondent no. 4) along with police force had accompanied them to the spot. The demarcation of the land falling in khasra no. 93 (Non-Cultivable Periphery) of the village Kaler was carried out by the aforesaid officials of Revenue Department in the presence of both the parties. The present petitioner Kabal

Singh also remained present at the spot. Neither the land of the petitioner Kabal Singh falling in khasra no. 37//6 (0-13), 37//28 (0-15) was demarcated nor the petitioner was confined in Police Station Lopoke nor was any attempt made to take forceful possession of the above land belonging to the petitioner. As such, the allegations leveled in the representation given by the petitioner were not proved. Therefore, on the basis of report submitted in this regard by SHO PS Lopoke, Amritsar Rural, the report was forwarded by the deponent to the Senior Superintendent of Police, Amritsar Rural with the recommendation to consign the application to records. The true translated copy of the report of SHO PS Lopoke, containing reproduction of statements of all the aforementioned persons is annexed herewith as **Annexure R-1/T** for the kind perusal of this Hon'ble Court.

4. That in so far as the second alleged incident dated 17.07.2020 as mentioned in paragraph no. 5 of the present petition with regard to demolishing the construction raised by the petitioner in the boundary wall and haveli by respondents no. 4 to 12, is concerned, it is submitted that a fresh enquiry has been conducted in this regard by SHO of Police Station

Lopoke, Amritsar Rural.

5. *That on the basis of detailed enquiry conducted with respect to the alleged occurrence dated 17.07.2020, it has been revealed that on 15/01/2020, the Gram Panchayat of Village Kaler had passed a resolution unanimously in Proceedings Book of the Gram Panchayat with regard to digging up pond of the Panchayat and removing illegal encroachments/possession of general public thereon, which falls in khasra no. 68 belonging to Gram Panchayat of Village Kaler. Sarpanch Amarjit Kaur (Respondent no. 7) had also issued notices to the illegal possessors. As the present petitioner Kabal Singh and his brother Nirmal Singh were also illegal possessors on the above khasra number, thus, notices were also issued to them on 14.03.2020 and 18.04.2020. Some of the illegal possessors had removed their possessions from the above area and they had given self declaration regarding agreement in this regard, but the present petitioner Kabal Singh and his brother Nirmal Singh did not agree to remove their illegal possession from the aforesaid land belonging to Gram Panchayat of Village Kaler falling in khasra no. 68. Therefore, on the request of Gram Panchayat Kaler, the Block Development and Panchayat Officer, Chogawan had written one letter bearing No. P:F/2020/2068-69 dated 8/7/2020 to the Senior Superintendent of Police, Amritsar Rural for providing police protection to Sarpanch Gram Panchayat Kaler, Panchayat Officer and Panchayat Secretary. Therefore, on 17.07.2020, Sahib Singh, Panchayat Officer, Pardeep Singh Secretary, Bhupinder Singh Patwari approached In-charge Police Post Ram Tirath (Respondent no. 4), who provided them police protection. Thereafter, Sahib Singh Panchayat Officer, Pardeep Singh Secretary and Bhupinder Singh Patwari along with Sarpanch Amarjit Kaur had removed illegal encroachments/possession with JCB Machine from the land falling in khasra no. 68 of*

*belonging to pond of Gram Panchayat of Village Kaler in the presence of police force, which included the illegal possession of the present petitioner Kabal Singh and his brother Nirmal Singh. The petitioner did not produce any stay order or restraining order of the Hon'ble Court in his favour with respect to the land falling in khasra no. 68 to the aforesaid officials. Neither the petitioner or his family members were confined in their house nor was any interference made in the land of the petitioner falling in khasra no. 37//6/2 (0-13), 37//28(0-15). The true translated copies of the resolution, notices, letter from BDPO, self declaration, statements of Sahib Singh Panchayat Officer, Pardeep Singh Secretary, Bhupinder Singh Samiti Patwari, Amarjit Singh Sarpanch, SI Karampal Singh, report of SHO PS Lopoke, Amritsar Ruraland G.D. No. 11 dated 17.07.2020 are annexed herewith as **Annexure R-2/T to R-15/T** for the kind perusal of this Hon'ble Court.*

6. *That it is humbly submitted that keeping in view the totality of the facts and submissions made hereinabove, it is evident that on 24/06/2020 the demarcation of the land belonging to Gram Panchayat of Village Kaler falling in khasra no. 93 (Non- Cultivable Periphery) belonging to Gram Panchayat of Village Kaler was conducted by officials of Revenue Department and thereafter on 17/07/2020, the illegal encroachments/ possessions were removed from the land of pond falling in khasra no. 68 belonging to Gram Panchayat of Village Kaler by officials of office of Block Development and Panchayat Officer, Chogawan with the help of local police as the petitioner Kabal Singh and his brother Nirmal Singh were adamant not to remove their illegal possession in spite of having been issued notices by Sarpanch of Gram Panchayat of the village. The whole proceedings on both the occasions were initiated in accordance with law and as per prescribed procedure. The respondent no. 4, SI Karampal Singh then In-*

charge of Police Post Ramtirath of Police Station Lopoke, Amritsar Rural had provided police protection to the officials of Revenue Department and BDPO, Chogawan in pursuance to the official letters received through proper channel from concerned quarters. The petitioner Kabal Singh has ownership of land measuring 1 kanal 8 marlas falling in khasra no. 37//6 (0-13), 37//28 (0-15) in the same village Kaler, but on the both occasions i.e. 24.06.2020 and 17.07.2020, no interference was made in the aforesaid land pertaining to the petitioner by anyone nor was he and his family members were confined anywhere. The actual grudge of the petitioner against the private respondents is that unlike other residents of the Village Kaler, the petitioner Kabal Singh and his brother Nirmal Singh had also taken illegal possession on some portion of the land of pond falling in khasra no. 68 belonging to Gram Panchayat Village Kaler, which was creating trouble in smooth drainage of waste water of the village. The petitioner and his brother Nirmal Singh were issued notices by Sarpanch Amarjit Kaur (Respondent no. 7) for removing their illegal possession, but they remained adamant. Therefore, the Gram Panchayat had passed resolution unanimously for seeking police protection in order to remove the illegal encroachments. In pursuance thereto the respondent no. 5 (B.D&P.O) Chogawan had issued letter to the Senior Superintendent of Police, Amritsar Rural for providing police protection to Gram Panchayat and concerned officials of his office. The respondent no. 4 had provided police protection while performing his official duty in compliance of orders of his senior officers. The illegal possessions and encroachments were removed from khasra no. 68 on 17.07.2020 by demolishing the illegal constructions from this khasra number and the petitioner has annexed photographs of the above proceedings. Whereas, on 17.07.2020 neither any interference had been made in the land owned by the petitioner or had any construction from his land

of ownership was demolished nor was he confined anywhere. Similarly on 24.06.2020 the demarcation of the land falling in khasra no. 93 (Non-Cultivable Periphery) of Village Kaler was got done by Gram Panchayat of Village Kaler and on that day also the petitioner or his family members were not detained anywhere. The petitioner wants to retain illegal possession of the land belonging to Gram Panchayat, which was removed by the officials of office of Block Development and Panchayat Officer, Chogawan on the request of Gram Panchayat Village Kaler but while adopting due procedure and in accordance with law and no illegal confinement of the petitioner or his family members was ever made by any police official. The petitioner has misrepresented the actual material facts for his own suitability with a mala fide intention to obtain favourable order from this Hon'ble Court. Therefore, the present petition is liable to be dismissed.

Conclusion Report:

From the statements and the till date inquiry of application conducted by the concerned ASI It is revealed that the complaint filed by aforesaid Kabal Singh regarding his ownership land area measuring 1 Kanal 8 Marla comprising in Khasra No. 37//6 (0-13), 37//28 (0-15) situated at Village Kaler and the allegations imposed against Amarjit Kaur existing Sarpanch W/o Mahinder Singh, Davinder Singh S/o Mehar Singh residents of Kaler (Ramtirath) Tehsil Ajnala, District Amritsar, Karampal Singh Randhawa Sub-Inspector, Cum Chowki Incharge Ramtirath, ASI Joginder Singh Police Post Ramtirath, Kanungo Charanjeev, Circle Kaler (Ramtirath) Tehsil Ajnala, District Amritsar that on 24-06-2020 revenue department after conducting the demarcation want to take the possession forcefully on the aforementioned Khasra numbers and I was illegally detained into police custody.

In this regard statement of witnesses recorded and the allegations imposed by the complainant were also secretly investigated by the concerned ASI. From the statements and the till date inquiry of application conducted by me it is revealed that during demarcation process on 24-06-2020 demarcation of Khasra No. 93 (Non-Cultivable Peripheral) has been done. No interference has been made with Khasra No. 37//6 (0-13), 37//28 (0-15) Neither any attempt of forceful possession on the said Khasra Numbers were made nor the complainant party Kabal Singh detained into illegal custody by the Police department. There is no truth in the complaint filed by Kabal Singh. After considering the report Complaint may please be cancelled.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

As per the case of the petitioner, the police authorities have connived with the private respondents and have forcibly caused demolition of the construction raised by the petitioner and dispossessed him without any authority in law.

Per contra, the response of the State is that a specific demand for Police help and presence was received from the office of BDPO, Chogawan Amritsar (Annexure R-7/T) dated 08.07.2020. It is submitted that the presence of the Police officials was pursuant to an order from the District Administration and that there was no illegal detention or confinement of the petitioner or any other person by the Police.

Apparently, there is no order passed by any competent authority referred to by the respondents in their pleading or argument directing dispossession of the petitioner from the alleged possession of the panchayat land,

however, the legality of such an action is not a subject matter of challenge in the present petition. The scope of the present petition is only with respect to ensuring safety and security of the family members of the petitioner and as to whether they had been illegally confined by the Police officials. The presence of the Police at the asking of the District Administration cannot be conceived as an act of illegal detention. The grievance of the petitioner, if any, against illegal and/or arbitrary action by the District Administration in carrying out demolition of the construction and removal of unauthorized encroachments without following the procedure known to law, would entitle the petitioner to file appropriate proceedings in accordance with law. Further, the breach of an undertaking given by the Civil Court shall mandate an action in terms of Order 39 Rule 2-A of the Code of Civil Procedure.

No further directions are called for in the instant petition. The instant petition is accordingly dismissed as this stage with liberty to the petitioner to take recourse to remedies available to him in accordance with law for redressal of his residuary grievances.

(VINOD S. BHARDWAJ)
JUDGE

April 20, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>