

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

249

CWP-13966-2022 (O&M).
Date of Decision: 07.08.2023.

POONAM SHARMA

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. V. K. Sandhir, Advocate,
for the petitioner.

Ms. Lavanya Paul, DAG, Punjab,
for respondent No.1 to 3.

Respondent No.4 ex par te.

Mr. Arjun Dev, Advocate, for
Mr. Vivek K. Thakur, Advocate,
for the respondent No.5.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition had been filed for seeking issuance of directions to respondent No.4 i.e. the Assistant Sub Inspector (ASI) Manohar Lal for unlocking the shop of the petitioner (Standard Sweet Shop) situated at Main Bazar, Judge Nagar, Jaura Phatak, Amritsar, having perishable stock and raw material lying in it and which was illegally locked by him on 29.06.2022 in connivance with respondent No.5. A further direction was sought for respondents No.1 to 3 to take action against respondent No.4 on the complaint dated 24.06.2022 (Annexure P-3) and 29.06.2022 (Annexure P-6) for transgressing his lawful authority.

Briefly summarized, the facts of the present case are that Late Sh. Anant Ram Sharma, father of the petitioner was owner of Standard Sweet Shop at Main Bazar, Judge Nagar, Jaura Phatak, Amritsar, which was taken on rent from Kulwant Singh in the year 1985. After the death of Anant Ram Sharma, Kamlesh Rani, mother of the petitioner started running the shop. In the meantime, Kulwant Singh also died and respondent No.5 became the landlady and started receiving rent from the mother of the petitioner, who also passed away on 12.06.2022. The petitioner thus became tenant over the premises and started paying rent to respondent No.5.

It is averred that in the month of June 2022, after the death of Kamlesh Rani, respondent No.5 started threatening the petitioner for forcible dispossession from the shop whereupon the petitioner filed a civil suit for injunction in the Court of Civil Judge (Senior Division), Amritsar. Vide order dated 23.06.2022, the Civil Court granted ad interim injunction and directed respondent No.5 not to interfere and dispossess the petitioner forcibly and illegally. Notwithstanding the order dated 23.06.2022, respondent No.5 interfered in possession of the shop on 24.06.2023 and the board of the shop was covered with colour. The matter was immediately reported to Police Station Mohkampur, where respondent No.4 was on duty. Instead of taking any action on the complaint, the said respondent No.4 closed the shop and put his own lock thereupon. A threat was also extended to implicate the petitioner in a false case.

The petitioner had also submitted complaint against respondent No.5 on 29.06.2022. The respondent No.4 along with respondent No.5 came to the shop in Uniform and ordered all customers and employees to vacate the shop and locked the shop. Petitioner requested that there was

perishable stock worth Rs.1.5 lakhs and that respondent No.4 could not lock the shop without any order of Competent Authority but he paid no heed.

Learned counsel for the petitioner contended that notwithstanding the order of stay having been granted, respondent No.4 colluded with respondent No.5 to forcibly dispossess the petitioner from the shop and to put the locks in an illegal and unauthorized manner compelling the petitioner to approach this Court.

Short reply has been filed by way of an affidavit of Sukhpal Singh, P.P.S., Assistant Commissioner of Police (Headquarters), Amritsar City, wherein they have submitted that the complaint of the petitioner dated 24.06.2022 was placed before the Commissioner of Police Amritsar and a detailed report was submitted. The factual aspects stated therein were not disputed. The said reply, however, falls short of responding to the allegation against respondent No.4 who had put the lock on the shop in question without any power and notwithstanding that an injunction order was in place. The allegations against respondent No.4 have thus remained uncontroverted as official respondents chose to not respond on the same. Once specific allegation had been leveled, the respondent Authorities ought to have enquired into the same and submit their reply, however, for inexplicable reasons they chose to remain silent. There was no occasion/reason for Assistant Sub Inspector-respondent No.4 to take seizure of the property and to put lock in the absence of any order/directions passed by a competent Authority.

Even though respondents No.4 and 5 had been duly served as per the report dated 06.08.2022, however, respondent No.4 has chosen not to appear before this Court or to file reply despite service and as such, he is

ordered to be proceeded against ex parte. In so far as respondent No.5 is concerned, a statement had been made today that there is no necessity of filing any separate reply on behalf of the said respondent. Hence, even the allegations against respondent No.5 have remained unrebutted.

Learned counsel for the respondents while advancing arguments contend that present is a case which at best is in the nature of non-compliance of the order passed by the Civil Court and that the petitioner has efficacious remedy of approaching the Civil Court under Order 39 Rule 2 A CPC. He submits that the present writ petition is liable to be dismissed so as to enable the petitioner to take recourse to the remedies available to her in accordance with law.

Learned counsel for the petitioner has controverted the same and submitted that an injunction suit had been filed against respondent No.5 and that the illegal locks and possession of the shop in question had been taken by respondent No.4 although in connivance, but he is not a party. He further contends that notwithstanding that the said respondents have been served, they have chosen not to file their responses before this Court and as such, the allegations leveled in the present petition remained uncontroverted. Even respondents No.1 to 3 have chosen not to rebut the allegations leveled by the petitioner that respondent No.4 had actively colluded with respondent No.5 to take illegal possession of the shop in question. There was no order or direction by the competent Authority permitting said respondent No.4 to seize the shop in question.

I have heard learned counsel appearing on behalf of the petitioner and have also gone through the documents appended along with the present petition.

The undisputed facts which emerge from the perusal of the above establish that the petitioner was in continuous possession of the shop in question and that the injunction has also been granted in her favour by the Civil Judge (Senior Division) Amritsar. Notwithstanding the said order of injunction staying forcible dispossession of the petitioner, the respondent No.4, in collusion with respondent No.5 has forcibly taken possession of the shop in question and has put his lock on the said premises. The high headedness of respondent No.4 is also reflected from the fact that despite the notice having been served upon him leveling specific allegations against him and the private respondent, they have chosen not to respond to the allegations. Hence, in the wake of uncontroverted allegations, the misconduct of respondent No.4 and his connivance with respondent No.5 remains undisputed. It is also apprised by the counsel for the petitioner during the course of hearing that respondent No.4 has still not taken any pains to remove the lock put on the premises in an illegal and unauthorized way and as such, the petitioner suffers from being denied her entitlement to retain and enjoy possession of the shop.

Even though the petitioner may have an efficacious alternative remedy to proceed against respondent No.5, however, at the same time, it cannot be lost sight of the fact that respondent No.5 had actually taken possession on account of intervention of respondent No.4 who has clearly transgressed beyond the scope of his call of duty and has abused his status and position. Such mis-conduct of respondent No.4 as an agency to become a persecutor instead of protector and to take forcible possession of the property, which is subject matter of dispute before the Civil Court, cannot outrightly be ignored. The acts of instrumentalities of State which reflect

abuse of power and are illegal can be looked into by the High Court notwithstanding alternative remedy. The plea is not a shield for defending illegality and violation of Rule of Law.

The circumstances of the present case do not leave an option but for that respondent No.4 being an officer in the Police Department has violated the process of law and has consciously chosen to compromise rule of law for motives that are yet to be enquired into.

Accordingly, the present petition is allowed. The Assistant Commissioner of Police, Amritsar City, is directed to ensure that locks put by respondent No.4 on the premises in question are removed forthwith and an inventory of the goods lying therein is prepared. The possession of the petitioner in terms of order dated 23.06.2023 passed by Civil Judge (Senior Division) Amritsar, is restored to the petitioner. Further appropriate disciplinary proceedings be also instituted against respondent No.4 for acting in violation of the call of his duty and in a manner which erodes faith of the people in the rule of law. A penalty of Rs.50,000/- is also levied upon respondent No.4 for his misconduct. The same be deposited with the High Court Legal Services Committee within a period of 06 weeks of receipt of a certified copy of the order.

The Assistant Commissioner of Police, Amritsar City, shall also file a compliance report including as regards the action taken against respondent No.4, within a period of 04 months from the receipt of a certified copy of this order.

August 07, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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