

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

COCP-2342-2023 (O&M)

Reserved on : 17.10.2023

Date of Pronouncement : **October 18, 2023**

Parvesh Kumar

.....Petitioner

Vs.

Aashika Jain, DC, Mohali and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate
Mr. Rajat Sheokand, Advocate
Mr. Sagar Sharma, Advocate
for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

Mr. Gagandeep Singh Wasu, Advocate
for respondent No.5.

Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain, Advocate
Mr. Uday Agnihotri, Advocate
Mr. S.K. Jain, Advocate
Mr. Anshumkan Harit, Advocate
for the Intervener(s).

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for initiating contempt proceedings
against the respondents for willfully disobeying and not complying the
orders dated 2.5.2016 and 25.7.2016 passed by the Hon'ble Supreme
Court in Civil Appeal Nos. 13301, 13319, 13394 and 13410 of 2015 as

well as the directions dated 13.9.2022 passed by Justice R.M. Lodha Committee constituted as per the order of the Hon'ble Supreme Court.

Brief facts of the case are that the son of the petitioner is a registered investor in M/s Pearls Agrotech Corporation Limited (hereinafter referred to as "M/s PACL") which came in existence on 19.4.2011. M/s D.G. Housing Projects Limited as a subsidiary of M/s PACL and on 11.2.2009 it has purchased 16 Bighas 09 Biswas of land comprised in Khasra No.107/171/1, Khasra No.735 (4-0), 1637/736 (1-8), 1638/1542/741 (1-4), 1640/742 (1-10), 743 (4-0), 1550/796 (2-10), 1573/797 (2-10), 799 (4-0), 801 (3-16), 813(4-0) kite 11 Rakba out of total land measuring 32 Bighas 18 Biswas land from the land owner. Some other land owners, namely, Surjit Singh and Sukhdev Singh are also having share. It is stated that since M/s PACL is having huge number of investors who have invested crores of rupees when it failed to return the money to the investors, litigation started and in I.A. No.5/2006 in Civil Appeal No. 13301 of 2015 on 2.5.2016, the following order was passed :-

“By way of interim relief, prayer (a) is granted.”

The learned Senior Counsel prayer than referred to prayer (a) which reads as under :-

(a) pass an order directing that no Civil Court or other Authority or Forum shall entertain a suit or other proceedings in respect of any claim or related matters pertaining to PACL Ltd. and /or its Directors/promoters/group/companies/entities/indivi

duals etc., arraying therein as parties/defendants/respondents the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd.), and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India and further no injunction shall be granted by any Court or other authority or Forum in respect of any action taken or to be taken by the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd.) and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India, with respect to claims and/or for matter(s) relating to investments/deposits etc. in/with PACL Ltd. or its Directors/Promoters/Group/Companies/Entities/Individuals etc.”

Learned Senior counsel for the petitioner submits that again on 25.7.2016, the following order was passed :-

“Heard the learned counsel.

Prayer in terms of para (a) is granted, which reads thus :-

‘(a) Pass an order directing that PACL Ltd. And/or its Directors/Promoters/agents/ employees/ group and/ or associates companies be restrained from in any manner selling/transferring/ alienating any of the properties wherein PACL has, in any manner, a right/interest situated either within or outside India”

Further hearing is kept with the main matter. A copy of this application along with the Status Report shall be given by the learned counsel for

the applicant to Mr. Maninder Singh, the learned Additional Solicitor General of India, who will assist the Court on the next date.

I.A. No.8 in C.A. No.13301/2015 (for impleadment) :

Taken on board.

I.A. No.8 for impleadment is allowed.

SEBI shall file counter affidavit before the next date of hearing.

List the applications along with main matter on 2nd August.”

It has further been submitted that in pursuance thereof, a Committee headed by Justice (Retd.) R.M. Lodha was constituted which has issued a letter on 13.9.2022 to AIGEOw-cum-Chairman, SIT, Bureau of Investigation, Punjab and the subject was regarding illegal partition of the land owned by M/s PACL.

Learned Senior Counsel for the petitioner has referred to Clause (b) of the affidavit, which reads as under :-

“ xxx xxx xxx

(b) M/s DG Housing Projects Pvt. Ltd., a subsidiary/associate of PACL owns the land measuring (16 Bighas 2 Biswas) Khasra No.1638/1542/ 741/21637/736/2 and 1638/1542/741/2/1 situated in village Chhat, Tehsil Zirakpur, District SAS Nagar, Mohali. M/s Malwa Projects Pvt. Ltd. has legally obtained ex-parte partition of the land through Missal No.43.”

Learned Senior counsel for the petitioner submits that since the petitioner is one of the investors, the partition proceedings have taken place in gross-violation of order passed by the Hon'ble Supreme Court as well as letter dated 13.9.2022 issued by the Committee.

Learned Senior counsel has also referred to order dated 31.8.2016 which is passed by the Naib Tehsildar-cum-Assistant Collector 1st Class, Zirakpur in application No.43/Partition instituted on 21.4.2016. In that case Surjit Singh and Sukhdev Singh were the petitioners, whereas M/s D.G. Housing Pvt. Limited was the respondent. Learned Senior counsel further submitted that the Assistant Collector 2nd Grade, Zirakpur passed the following order on 31.8.2016, again in violation of the order of the Hon'ble Supreme Court.

“That the brief circumstances of this case are as follows that Mr. Surjit Singh and others, resident of village Chhat, Sub Tehsil Zirakpur submitted an application regarding Taksim/Partition through his counsel Mr. Bikramjit Passi, the details of which are recorded in the above said head note in revenue estate of village Chhat and requested that the land is co-shared by applicant and respondent in the revenue record. Due to the shared land, applicant cannot take full advantage of their share of land. Due to which the parties have a dispute about the road, ditch and water.

After this application was received in this Court, summons was issued to the successor party as per Section 20 of the Punjab Land Revenue Act, 1887. On which the Clerk of this Court reported that the

addresses of the respondent are not correct. Due to which the notice could not be served to the respondent. The council of applicant was instructed to give the correct addresses of the respondent. Counsel of the applicant submitted an application and requested that the respondents live in the village and they are deliberately refusing summons. Therefore, the summoning of the respondents should be done through Mustari Munadi. Request of the applicant was accepted and orders were given to summon the respondents through Mustari Munadi. In spite of the summons, none of the respondents came to the Court. Due to which, on 21.6.2016, ex-parte proceedings were initiated against the respondent and the map-A with the consent of the counsel of applicant was approved. ON 27.6.2016, mode of partition was prepared which was approved with the consent of the council of applicant, a copy of the mode of partition was supplied to Girdawar Kalka and was directed to be prepare and submit Map-B. On 16.8.2016 Girdawar Halka prepared and presented Map 'B' which was shown to applicant and his council that if they have any objection regarding this map then they should present it but they requested this map 'A' to be approved and got recorded statement of consent to accept. Therefore, Map 'A' was approved without any changes. The Gurdawar Halka was instructed to prepare and submit a map 'C'. On 31.8.2016 Girdawar Halka prepared and presented map 'C' which was shown to applicant and his council that if they have any objection regarding this map then they should submit but they did not submit any

objection regarding this map. Therefore, Map 'C' is approved without any change.

The order was pronounced. Applicant was instructed that after the expiration of the period, they could file the necessary documents and stamp duty as per the appellate Act and get the warrant of possession issued. Application be consigned to the record room after due compliance in systematic manner.”

Subsequently on 14.7.2016, the land was partitioned by preparation of maps in which the separate share of Surjit Singh and Sukhdev Singh was shown in the map 'C' in light yellow colour and the share of M/s DG Housing was shown in dark yellow colour and of M/s PACL was shown in blue colour.

Learned Senior Counsel for the petitioner has submitted that even issuance of warrant of possession by handing over the separate the share on 21.11.2016 was done at the back of the petitioner.

Separate replies have been filed.

Learned State counsel on the basis of the reply of the Director, Bureau of Investigation i.e. respondent No.6 submitted that as per office order dated 21.5.2023 the investigation of case FIR No.79 dated 16.7.2020 under Sections 420, 406, 467, 468, 471 and 120-B IPC, Police Station Zira, District Ferozepur and FIR No.01 dated 21.2.2023 under Sections 420, 406, 465, 467, 468, 471, 384 and 120-B IPC, Police Station State Crime, SAS Nagar, Mohali is handed over to Vigilance Bureau and

the investigation will be completed at the earliest and final report will be submitted before the competent/Illaqua Magistrate.

Learned State counsel submits that with regard to the transfers made by M/s PACL aforesaid two FIRs have been registered in which initial investigation was conducted by the local police, thereafter, a SIT was constituted which is headed by DIG, Bureau of Investigation and then again the investigation was conducted by an officer of the rank of ADGP (Prisons), Punjab and now it has been transferred to the Vigilance Bureau, Punjab on 21.5.2023 as per the order dated 21.5.2023, the investigation will be completed in both the FIRs.

Learned State has submitted that as many as 84 accused are there in the said FIR and 07 challans have already been presented.

Learned State counsel further on the basis of the affidavit of the Naib Tehsildar-cum-Assistant Collector, Barnala i.e. respondent No.2 submitted that he remained posted as Naib Tehsildar, Zirakpur from 6.2.2023 to 14.7.2023 and thereafter, he has been transferred and he is not the person who has done the partition proceedings.

As per the reply filed by the Chief Town Planner, Punjab, i.e. respondent No.4 learned State counsel has submitted that the permission for change of land user has not been granted by the office of the Chief Town Planner, Punjab and it is granted by the only competent authority, i.e. by the Regional Deputy Director, Local Government, Punjab. It is stated that as per the record of the Senior Town Planner, SAS Nagar, Mohali, the permission to change the land use of 12.2 acres

of land in village Chhat was granted to M/s Maya Estate on the basis of the documents and on report given by Naib Tehsildar, Zirakpur 26.6.2018 that the land is free from any encumbrance. It is stated that in this report, the Naib Tehsildar has not mentioned that M/s Pearl Agrotech has any right or title over the land in question and relying upon entries in the revenue records, the permission was granted.

Along with the reply, copy of permission is attached as Annexure R1 and the certificate for change of land use is attached as Annexure R2, which was granted in favour of Ms/ Maya Estate.

Learned Counsel appearing for the Chairman, RERA, Punjab-respondent No.5 has also filed separate reply and has raised an objection that the registration of the Project, namely Green Lotus Utsav promoted by M/s Maya Estate was granted on 26.2.2019 and renewed on 28.2.2022. It is stated that respondent No.6 has joined as Chairperson on 22.12.2022 and has no role in the process of registration of the project which concluded in February 2019. It is also stated that the contempt petition against respondent No.6 is not maintainable as it has not done any act of violation.

Learned State counsel has referred to the judgment of the Hon'ble Supreme Court in 2013(2) RCR (Civil) 972 **M/s Rajureshwar and Associates Vs. State of Maharashtra and others**, wherein it is held by the Hon'ble Supreme Court in case non-compliance of the order passed by the Supreme Court, the High Court cannot be entertained, the contempt petition.

Paras 4 and 5 of the judgment reads as under :-

“4. Having perused the reasons in the light of the submission of the counsel for the petitioner, we find no infirmity in the view taken by the High Court as it cannot be disputed that the judgment and order passed by a particular Court, especially the Supreme Court if alleged not to have been complied, will have to be taken care of and addressed by the Court which passed the order sought to be complied. The petitioner, therefore, wrongly approached the High Court for initiating contempt proceedings and the same has rightly not been entertained. Challenge to the said order by this special leave petition, therefore, is not fit to be entertained; hence the special leave petition is dismissed.

5. However, counsel for the petitioner submits that if this Court is of the view that the petitioner had approached the wrong forum for initiating contempt proceedings, he should not be deprived of the liberty to approach the appropriate forum, which is the Supreme Court, for initiating fresh contempt proceedings alleging non-compliance of the judgment and order passed by this Court in Civil Appeal No. 8539 of 2002.

6. We make it clear that we are not coming in the way of the petitioner to take any appropriate steps before any appropriate Forum for compliance of the order and judgment passed by this Court and therefore, he is at liberty to take recourse to any legal remedy that may be available to him under the law including a contempt petition which obviously will be dealt with by the appropriate Court on its own merits.”

Similar view is taken by the Hon'ble Supreme Court in 2017

(1) RCR (Civil) 874 **Vitusah Oberoi and Others Vs. Courts of its Own**

Motion, wherein the Hon'ble Supreme Court has held as under :-

“11. The power to punish for contempt vested in a Court of Record under [Article 215](#) does not, however, extend to punishing for the contempt of a superior court. Such a power has never been recognised as an attribute of a court of record nor has the same been specifically conferred upon the High Courts under [Article 215](#). A priori if the power to punish under [Article 215](#) is limited to the contempt of the High Court or courts subordinate to the High Court as appears to us to be the position, there was no way the High Court could justify invoking that power to punish for the contempt of a superior court. That is particularly so when the superior court's power to punish for its contempt has been in no uncertain terms recognised by [Article 129](#) of the Constitution. The availability of the power under [Article 129](#) and its plenitude is yet another reason why [Article 215](#) could never have been intended to empower the High Courts to punish for the contempt of the Supreme Court. The logic is simple. If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court subordinate to the Supreme Court doing so. Viewed from any angle, the order passed by the High Court appears to us to be without jurisdiction, hence, liable to be set aside.

12. We, accordingly, allow these appeals, set aside the judgment of the High Court and discharge the rule issued by the High Court. The parties to bear their own cost.”

It is worth noticing that one CM No.18020 of 2020 was filed on behalf of the M/s Maya Estate as intervenor, which was allowed. The learned Senior Counsel appearing for M/s Maya Estate has additionally argued that the application for partition was filed much prior to the passing of the order by the Hon’ble Supreme Court and after following a due process of partition was conducted, details of which have already been noticed above as separate maps were prepared, areas were defined and possession was delivered subsequently.

Learned Senior counsel has further argued that when a compliant was given on behalf of the petitioners, the Naib Tehsildar, Ziarakpur has given a detailed report dated 27.6.2023 to SDJM, Derabassi in which after giving all the details of the registration M/s Maya Estate, the purchases made by the different persons as well as the share of the land owners, with reference to the order of the Hon’ble Supreme Court and Lodha Committee, it is reported as under :-

“Whereas, the question of Hon’ble Supreme Court and Hon’ble Lodha Committee and Government order is concerned, it is submitted that the entry of which was made in the revenue record vide report No.434 dated 26.8.2016. These orders do not seem to have been violated in any way nor has any entry been made in the revenue record by the then

revenue officials by going against those orders because ½ share which was in the name of M/s D.G. Housing Project Pvt. Limited before the partition, the same ½ share is still in the name of M/s D.G. Housing Project Pvt. Limited after the partition and the land which came in the name of M/s D.G. Housing Project Pvt. Limited after the partition, some part of the land abuts to PR7 Road.”

Learned Senior counsel, based on the said report, has submitted that the complaint was filed by the Deputy Commissioner, SAS Nagar, Mohali and the petitioner has independent remedy dated 27.6.2023 to challenge the said order before the competent Court and, therefore, no contempt is made out.

Learned Senior Counsel has further submitted that the order of the partitioned is already assailed by way of filing an appeal by the aggrieved persons and therefore, the contempt is not the appropriate remedy as if the petitioners have any grievance, can pursue their appeal before the appellate Court.

Learned Senior counsel has also referred to the two orders passed by the Hon'ble Supreme Court to submit that the interpretation of the interim order qua Clause-(a) cannot be read in a manner that the partition proceedings cannot take place as it was only with regard to the claim of the investors relating to M/s PACL Limited and person like Surjit Singh and Sukhdev Singh, who are the original land owner have every right to seek partition of land.

In reply, the learned Senior Counsel for the petitioner has argued that in view of both the orders passed by Hon'ble the Supreme Court on 2.6.20216 and 31.8.2016, no partition proceedings can be initiated. However, it is not disputed that an appeal challenging the order of the partition is pending before the Appellate Court.

After hearing learned counsel for the parties, this Court finds no merit in the present petition for the following reasons : -

- (a) The partition proceedings were initiated by the land owners Surjit Singh and Sukhdev Singh and they are not party to the litigation before the Hon'ble Supreme Court. The proceedings were initiated in the year 2016 prior to passing of the order of the Hon'ble Supreme Court and a perusal of the order show that after serving the respondents, i.e. the petitioners, ex-parte proceedings of partition were completed.

Therefore, there is nothing on record to suggest that the order of the Hon'ble Supreme Court was brought to the notice of the Naib Tehsildar/ Assistant Collector 2nd Grade, Zirakpur;

- (b) Even the order dated 25.7.2016 passed by the Hon'ble Supreme Court, as per the interpretation of the petitioner that it restricts the right of joint share holder from seeking the partition of the land under the Punjab Land Revenue Act cannot be accepted. Moreover, the order of partition is already under challenge before the appellate Court who is seized of the matter and will

decide whether the order of the Hon'ble Supreme Court was served on the Naib Tehsildar before passing of order;

- (c) The letter issued by the Committee on 13.9.2022 is after five years of passing of the order of partition and cannot be interpreted in a manner that there is violation of the order of the Hon'ble Supreme Court;
- (d) There is no explanation as to why the contempt proceedings are not initiated before the Hon'ble Supreme Court that too within the prescribed period of limitation under the Contempt of Courts Act.

In view of the judgments of the Hon'ble Supreme Court passed in **M/s Rajureshwar's** case (supra) and **Vitusah Oberoi's** case (supra), this Court is otherwise is not competent to entertain the contempt petition of n order passed by the Hon'ble Supreme Court.

Accordingly, this petition is dismissed.

October 18, 2023
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO