

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

**CRWP-9767-2022 (O&M)
Date of Decision: 02.02.2023**

Bahadar Singh and others	Versus	...Petitioners
State of Punjab and others		... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Pardeep Kumar Rapria, Advocate
for petitioners No. 6, 7, 9, 12 and 18.
None for the remaining petitioners.
Mr. Vipin Pal Yadav, Addl. A.G. Punjab.
Mr. R.S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate and
Ms. Kritika Rajpal, Advocate for respondent No. 2.
Mr. Rajeev Kawatra, Advocate for
Mr. Suresh Kumar Bajaj, Advocate for respondent No. 20.

N.S.SHEKHAWAT, J.

Before proceeding to decide the case on merits, it would be appropriate to refer to certain orders passed by this Court to show as to how every attempt was made to delay the disposal of the present case before this Court. On 12.10.2002, the case was adjourned by a Co-ordinate Bench on the request made by the learned counsel for the petitioners. On 20.10.2022, the Bar Association was abstaining from work and on that day, the case was adjourned to 10.11.2022, however, respondents No. 10 and 11 were directed to file a report based on Annexures P-17, P-19, P-21 and P-22. On 10.11.2022, the matter was ordered to be listed before some other Bench, after obtaining appropriate orders from Hon'ble the Chief Justice and this is how, the matter was ordered to be listed before this Court. On 17.11.2022, on request made by the learned counsel for the petitioners, the case was adjourned to 23.11.2022. On 23.11.2022, in compliance of the order dated 20.10.2022 passed by this Court, the Director, Bureau of Investigation, Punjab, placed on record a report in a sealed cover,

however, on a written request circulated on behalf of the learned

counsel for the petitioners, the case was again adjourned to 12.01.2023. On 12.01.2023, again the matter was listed for arguments, however, no arguments were advanced by the petitioners and the matter adjourned to 17.01.2023. It was made clear that no further adjournment would be granted in the case. On 17.01.2023, learned counsel for the petitioners informed the Court that some order has been passed by the Hon'ble Court in SLP (Crl.) 592 of 2023 with regard to the subject matter in dispute and prayed for time to place on record the copy of the order passed by the Hon'ble Apex Court. Consequently, the case was adjourned to 20.01.2023. Again on 20.01.2023, the orders passed by the Hon'ble Apex court were not filed by the learned counsel for the petitioners and the case was adjourned to 23.01.2023. On 23.01.2023, again no orders passed by the Hon'ble Apex Court were placed on record before this Court and the case was adjourned to 31.01.2023. In the meantime, a copy of the order dated 16.01.2023 passed by the Hon'ble Apex Court was filed before this Court by way of CRM No. W-102-2023 and prayer was made by the petitioners for disclosing the report, which was filed by respondents No. 10 and 11 in a sealed cover and to provide a copy of the same to the petitioner. Consequently, the sealed cover was opened and the report submitted by respondents No. 10 and 11 was taken on record formally and a photocopy of the report was supplied to the learned counsel for the petitioners. On 31.01.2023, the case was heard at some length and a specific query was put to the learned counsel for the petitioners with regard to the maintainability of the present petition before a Single Bench of this Court. However, he refused to

assist the Court with regard to the maintainability of the petition and insisted that the case may be heard on merits. Consequently, the case was adjourned to 01.02.2023 for arguments and it was made clear that the case had been repeatedly adjourned so no further adjournment shall be granted. Again on 01.02.2023, the case was listed for arguments and despite specific order on 31.01.2023, learned counsel for the petitioners opted not to appear in the Court and to argue the matter. Some of the persons who claimed to be the petitioners, appeared in the Court on 01.02.2023, but this Court refused to entertain them as they were not identified by any person. Ultimately, the matter was adjourned to 02.02.2023 for hearing the arguments in the matter. Today, i.e. 02.02.2023, Mr. P.K. Rapria, learned counsel appeared by filing a memo of appearance on behalf of the petitioners No. 6, 7, 9, 12 and 18 and he prayed for a long adjournment to argue the matter. He was given an option to inspect the file and to assist the Court on today itself after lunch as the matter had been unreasonably delayed, but he expressed his inability to assist. Then, this Court specifically asked him to argue the matter on the next day also, but he prayed for longer adjournment. Even, the remaining petitioners were not represented by any learned counsel before this Court. Thus, it is apparent that despite granting eight effective opportunities, the petitioners did not assist the Court on the issue of maintainability of the petition itself. It also requires mention that the learned counsel appearing on behalf of respondent No. 2 and 20 had vehemently opposed every adjournment on the ground that pendency of the petition before this Court was being misused by the petitioners to

browbeat official respondents. Since, the petitioners had refused to assist the Court after repeated adjournments, this Court has perused the file and has chosen to decide the case.

The petitioners, who claimed to be owners in possession of the land and properties situated at village Palheri, District S.A.S. Nagar, (Mohali) have filed the instant petition under Articles 226/227 of the Constitution of India read with Section 482 Cr.P.C. 1973 to issue a writ in the nature of *mandamus* directing the respondents with the following prayers:-

- (i) *To protect the life and liberty of the petitioners and their families by providing adequate and appropriate security, in view of vulnerability of land scam which the petitioners are highlighting by preferring instant petition.*
- (ii) *To quash/cancel the investigation reports and opinions thereof dated 09.01.2021 (P-18), 30.07.2021 (P-19), 13.12.2021 (P-21), 15.12.2021(P-22) including all the proceedings subsequential and incidental to same being illegal, null and void as same are a result of connivance of authorities concerned with the culprits to help them in attaining their sinister designs.*
- (iii) *To get fair and transparent investigation conducted by the Vigilance Bureau, Central Bureau of Investigation or by constituting a Special Investigation Team comprising officers not below the rank of IG in the land scam in question within time bound manner.*
- (iv) *To take appropriate civil and criminal action against the respondent representatives*

/officials/promoters of the respondent Society for committing fraud on the petitioners and furnishing wrong, false, fake, fabricated information to the public authorities to obtain the impugned CLU, license, registration certificate resulting in approval of layout plan.

(v) To initiate departmental and criminal proceedings against the culprit officials of department of police, DTCP, PUDA, GMADA and RERA who misused their post, power, and position to provide unlawful gains to the culprit persons.

(vi) To direct the competent officials of Enforcement Directorate (ED) to ascertain/locate and attach/seize the Bank Accounts including the HDFC Bank account, movable and immovable properties of the culprits, their other companies established in the names of their family members or near relatives purchased/made by misappropriating the funds generated by selling the commercial sites on the land in question so that the petitioners, public may be compensated for losses.

(vii) To cancel/quash the impugned CLU(P-1), License of Project (P-3), Registration certificate as Promotor (P-4), Registration Certificate of Project (P-5), approved layout plan (P-42) and impugned Consent Letters (P-2) including all the subsequential, consequential and incidental proceeding, promises, agreements or contracts including Joint Development Agreement /MoU/GPA or any agreement of such type (if any) entered by the respondent Society or its promoters, members, assignees, or officials in pursuance to same, as the same are result of

misrepresentation and fraud committed by the culprits by putting forged/fake/bogus signatures or thumb impressions of the petitioners.

(viii) To declare the project of respondent Society, SUNTEC CITY as un-authorized colony u/s 2(g) of the PAPRA Rules, 1995

a. Because the respondent builders, developers are not entitled to develop the colony on the un-partitioned (mastarka land) land without partition by metes & bounds and the petitioners/Co-sharers have not given authorization for the same.

b. Because after excluding the land of petitioners from the area under CLU, the left out area of land is not 100 acres that is minimum area required to develop the residential colony as per the terms of Master Plan.

(ix) To cancel the registration certificate of respondent co- operative Society as the same is a mere sham to commit fraud on the Govt., the members, general public including the present petitioners and lift the corporate veil so that culprit officials of respondent Society can be held personally liable.

(x) To demolish the illegal construction raised on the project site in pursuance to the instant land scam or provide the proportionate share to the petitioners from the sale proceeds of commercial sites sold by the respondents as larger number of such sites were approved/allocated to the respondents due to inclusion of the land of petitioners.

(xi) To take action against the culprit persons and police officials in view of law laid down by the

Hon'ble Apex Court in Writ Petition (Criminal) No. 68 of 2008, titled "Lalita Kumari Versus Govt. of U.P. and others,". AND

The entire investigation proceedings of the instant land scam may kindly be monitored by this Hon'ble Court so that justice may be delivered. AND

Orders may kindly be passed to stay the further sale, purchase, mortgage and other transactions and construction over the land and properties belonging to the petitioners as well as to the Society. AND

Orders may kindly be passed to award exemplary compensation to the petitioners to be payable by the culprit respondents for the financial, psychological, and social losses, inconvenience, trauma and torture suffered by the petitioners due to this fraud. Issue any other order writ or direction in the favour of petitioners which this Hon'ble Court may deem fit in the facts and circumstances of the case.

From a perusal of the above referred prayers in the instant petition, it is apparent that in the instant petition, the petitioners have joined the reliefs by completely overlooking the roster of this Court, the High Court Rules and Orders as well as the settled law.

Part-A, Chapter 3, Vol. V deals with the Rules regulating the practice of the High Court in the hearing of the causes and other matters. Rule 2 has been extracted below:-

“2.Roster of Single and Division Benches

The Judges will sit singly or in Benches of two or more in accordance with a roster to be prepared from time to time. The roster will be prepared by the Deputy Registrar with the approval of the Honourable the Chief Justice”.

Still further, Part-F Chapter 4 Vol. V of High Court Rules and Orders provides for the rules made by the High Court of Punjab and Haryana for regulating the proceedings under Article 226 of the Constitution of India. These Rules are known as writ jurisdiction (Punjab and Haryana) Rules 1976 and these Rules shall apply to all the petitions under Article 226 of the Constitution of India. Rules 3, 4 and 25 are reproduced below for the ready reference;-

“3. Criminal Writ Petitions

3. A petition for the issuance of a Writ in the nature of habeas corpus ^[31][or any petition challenging order of punishment passed in pursuance to any proceedings before a Court Martial] ^[32][or its equivalent tribunal], ^[1][matters pertaining to Protection of Life and Liberty (Protection Matters), Parole, Furlough, Pre-mature release] shall be styled as "Criminal Writ Petition".

4. Civil Writ Petitions

A petition for issuance of any other Writ, i.e., a Writ in the nature of Mandamous, prohibition, quo warranto or certiorari or any other appropriate writ, order or direction, shall be styled as “Civil Writ Petition”.

25. [(1) “Every petition relating to

- i. Public Interest Litigation,*
- ii. Green matters,*
- iii. Petitions against orders of Central Administrative Tribunal;*
- iv. Tax Matters;*
- v. Petitions Challenging Compulsory acquisition of land/Immovable property including matters in respect of the Change of Land Use;*
- vi. Writ Petitions questioning the vires of any statutory provision;*
- vii. Election matters challenging the Election process in relation to Parliament, Legislative Assemblies, Municipalities and Panchayats; disqualification of members of the legislative assembly and Parliament;*
- viii. Tender matters;*
- ix. Matters in respect of resumption of land/plot or building under the Urban Development Laws of the States of Punjab, Haryana and Chandigarh;*
- x. The matters challenging the action of the Financial Institutions under the State Financial Corporations Act, 1951 & the Recovery of Debts due to Banks and Financial Institutions Act, 1993 & Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- xi. All Service matters of the Judicial Officers;*

xii. The Petitions in respect of the rights in Mines and Minerals, Village Common Land and Consolidation of Land Holdings; and

xiii. Any other matter with the orders of the Chief Justice. Shall be before a Bench of two Judges, and before a Single Bench when there is no sitting of a Division Bench and all other Petitions shall be laid before Single Bench.”

(2) At any time when the Court is closed, a petition may be presented to the senior most judge in station if,—

(a) interim relief of an urgent nature is prayed for

(b) irreparable loss is likely to be occasioned to the petitioner in case he waits for the institution of the petition till the Court reopens, and

(c) the petitioner was unable to present the petition to the court on its last working day for reasons beyond his control.

On such presentation the Judge may pass such orders in relation to the interim relief as he may deem just”.

A careful perusal of the aforesaid High Court Rules and Orders clearly shows that the Administrative control of the High Court vests in the Hon'ble Chief Justice alone and it is his prerogative to distribute the business of the High Court, both on judicial and administrative side. He alone has the right and power to decide how the Benches of this Court are to be constituted; which Judge is to sit alone and, which cases, he can and is required to hear, as also, as to

which Judges shall constitute a Division Bench and what work those Benches shall do. It can be said, in other words, that the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order and or in accordance with the directions of the Hon'ble Chief Justice. Still further, it is equally settled that it is not within the competence or domain of any Single or Division Bench of this Court to give any direction to the Registry on that behalf, which will run contrary to the directions of the Hon'ble Chief Justice in this regard. The puisne judges are not expected to entertain any request from the Advocates of the parties for listing of the case, which does not strictly fall within the roster determined by the Hon'ble Chief Justice. It is the basic principle, which is essential for the smooth functioning of this Court. Though, on the judicial side, the Hon'ble Chief Justice is only the “**first amongst the equal**”, but on administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the powers by the High Court Rules and Orders. Even, the daily cause list is prepared on the direction of the Hon'ble Chief Justice and the work is allotted to the puisne judges as per the roster determined by the Hon'ble Chief Justice.

Rule 3, Chapter 4-F, Vol. V of High Court Rules and Orders clearly provided that a criminal writ petition can be entertained only in the matters pertaining to protection of life and liberty (Protection Matters), Furlough, Parole, Pre-mature release and shall be styled as “**criminal writ petition**”. Still further, as per Rule 4 of Chapter 4-F, Vol. V of High Court Rules and Orders, a petition for

issuance of any other writ , i.e. a Writ in the nature of *Mandamus*, *prohibition*, *quo warranto*, *certiorari* or any other appropriate writ, order or direction shall be styled “**Civil Writ Petition**”. Apart from that, Rule 25 Chapter 4 F Vol. V of the High Court Rules and Orders clearly shows that the petitions challenging compulsory acquisition of land, immovable property including matters in respect of change of land use and the matters in respect of resumption of land/plot, or building under the Urban Development Laws of the State of Punjab, Haryana and Chandigarh shall be listed before a Bench of two Judges. A Single Bench can only hear the case, when there is not sitting of a Division Bench, i.e. in case of emergency only.

Adverting to the facts of the instant case, it is apparent that the petitioners have claimed several reliefs, which could be heard only by different Division Benches of this Court, whereas certain matters could be heard by the different Single Benches of this Court. Even, this was specifically brought to the notice of the learned counsel for the petitioners that the reliefs, which are sought are manifestly misconceived, and a criminal writ petition, seeking the said reliefs was not maintainable before a Single Bench of this Court in view of the express provisions of the High Court Rules and Orders and the settled cannons of the law. Still, the learned counsel, instead of addressing the arguments on the maintainability of the petition, stressed that the case should be heard on merits in view of grave injustice to the petitioners by influential persons and the issue of maintainability may be decided at a later stage.

Still further, the petitioners have sought the relief of quashing/cancelling the investigating reports and opinions thereof (ii) quash/cancel the investigation reports and opinions thereof dated 09.01.2021 (P-18), 30.07.2021 (P-19). 13.12.2021 (P-21), 15.12.2021(P-22) including all the proceedings subsequential and incidental to same being illegal, null and void as same are a result of connivance of authorities concerned with the culprits to help them in attaining their sinister designs; and (iii) get fair and transparent investigation conducted by the Vigilance Bureau, Central Bureau of Investigation or by constituting a Special Investigation Team comprising officers not below the rank of IG in the land scam in question within time bound manner.

However, the said subject matters were not assigned to this Bench by the Hon'ble Chief Justice and could be heard and decided by other Hon'ble Benches, to whom, the said subject matters were specifically assigned.

Apart from that, the petitioners have also made the following prayers in the writ petition:-

(iv) To take appropriate civil and criminal action against the respondent representatives/officials/promoters of the respondent Society for committing fraud on the petitioners and furnishing wrong, false, fake, fabricated information to the public authorities to obtain the impugned CLU, license, registration certificate resulting in approval of layout plan;

(vi) *To direct the competent officials of Enforcement Directorate (ED) to ascertain/locate and attach/seize the Bank Accounts including the HDFC Bank account, movable and immovable properties of the culprits, their other companies established in the names of their family members or near relatives purchased/made by misappropriating the funds generated by selling the commercial sites on the land in question so that the petitioners, public may be compensated for losses.*

(vii) *To cancel/quash the impugned CLU(P-1), License of Project (P-3), Registration certificate as Promotor (P-4), Registration Certificate of Project (P-5), approved layout plan (P-42) and impugned Consent Letters (P-2) including all the subsequential, consequential and incidental proceeding. promises, agreements or contracts including Joint Development Agreement/MoU/GPA or any agreement of such type (if any) entered by the respondent Society or its promoters, members, assignees, or officials in pursuance to same, as the same are result of misrepresentation and fraud committed by the culprits by putting forged/fake/bogus signatures or thumb impressions of the petitioners.*

(viii) *To declare the project of respondent Society, SUNTEC CITY as un-authorized colony u/s 2(g) of the PAPRA Rules, 1995*

(a) Because the respondent builders, developers are not entitled to develop the colony on the un-partitioned (mastarka land) land without partition by metes & bounds and the petitioners/Co-sharers have not given authorization for the same.

(b) Because after excluding the land of petitioners from the area under CLU, the left out area of land is not 100 acres that is minimum area required to develop the residential colony as per the terms of Master Plan.

(ix) To cancel the registration certificate of respondent co- operative Society as the same is a mere sham to commit fraud on the Govt., the members, general public including the present petitioners and lift the corporate veil so that culprit officials of respondent Society can be held personally liable.

(x) To demolish the illegal construction raised on the project site in pursuance to the instant land scam or provide the proportionate share to the petitioners from the sale proceeds of commercial sites sold by the respondents as larger number of such sites were approved/allocated to the respondents due to inclusion of the land of petitioners.

As per the roster determined by the Hon'ble Chief Justice and as per the High Court Rules and Orders, the petition containing the above mentioned reliefs could be heard only by a Division Bench of this Court and not by a Single Bench. Even, the Registry of this

Court had raised several objections with regard to the maintainability of the instant petition, still on the insistence of the learned counsel for the petitioners, the case was listed before this Court. The above mentioned subject matters have been assigned to different Hon'ble Benches of this Court by the Hon'ble Chief Justice and a criminal writ petition could have been filed before a Single Bench of this Court seeking the said reliefs. Even otherwise, the High Court Rules and Orders make it expressly clear that the criminal writ petition could only be filed with regard to the matters pertaining to the protection of life and liberty, parole, furlough, pre-mature release and civil writ petition would be maintainable for other reliefs.

Apart from that, the petitioners also sought the following relief in the present petition:-

(b) Because after excluding the land of petitioners from the area under CLU, the left out area of land is not 100 acres that is minimum area required to develop the residential colony as per the terms of Master Plan.

As per the roster provided as per the orders of the Hon'ble Chief Justice, the said subject matter falls within the category of writ petitions and general miscellaneous (except specifically assigned to other Hon'ble Benches) and a civil writ petition was maintainable for the said relief. However, the petitioners chose to file a criminal writ petition, claiming said relief, which was not at all maintainable.

Apart from that, the following reliefs were also sought by the petitioners in the present criminal writ petition:-

(iii) To get fair and transparent investigation conducted by the Vigilance Bureau, Central Bureau of Investigation or by constituting a Special Investigation Team comprising officers not below the rank of IG in the land scam in question within time bound manner;

(xi) To take action against the culprit persons and police officials in view of law laid down by the Hon'ble Apex Court in Writ Petition (Criminal) No. 68 of 2008, titled "Lalita Kumari Versus Govt. of U.P. and others,".

As per the roster of this Court, the said subject matters fall in the category of all criminal roster Benches except crimes against women and Prevention of Corruption Act and only a criminal miscellaneous petition (CRM-M) was maintainable before this Court under Section 482 Cr.P.C. and that too before other Hon'ble Single Benches of this Court.

Thus, it is apparent that the present petition is nothing but an instrument of misuse of process of the Court.

It has been held by the Hon'ble Supreme Court in the matter of **Asok Pande Vs. Supreme Court of India through its Registrar and others** 2018(5) SCC 341 as follows:-

*9. The position of the Chief Justice of a High Court was elucidated in a judgment of a three judge Bench of this Court in **State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1**. During the course of the judgment the following broad conclusions were formulated in regard to the position of the Chief Justice:*

"(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the Master of the Roster. He alone has the prerogative to constitute Benches of the court and allocate cases to the Benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the Bench themselves and one or both the Judges constituting such Bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the larger bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(6) That the puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice. "

10. Recently, a Constitution Bench of this Court in *Campaign for Judicial Accountability and Reforms v. Union of India, (2018)1 SCC 196* held that the principle which was noticed and recognised in the decision of this court in *Prakash Chand (supra)* in relation to the jurisdiction and authority of the Chief Justice of the High Court "must apply proprio vigore as regards the power of the Chief Justice of India". The position of the Chief Justice was reiterated with the following observations:

"The aforesaid position though stated as regards the High Court, we are absolutely certain that the said principle is applicable to the Supreme Court. We are disposed to think so. Unless such a position is clearly stated, there will be utter confusion. Be it noted, this has been also the convention of this Court, and the convention has been so because of the law. We have to make it clear without any kind of hesitation that the convention is followed because of the principles of law and because of judicial discipline and decorum. Once the Chief Justice is stated to be the Master of the Roster, he alone has the prerogative to constitute Benches. Needless to say, neither a two-Judge Bench nor a three-Judge Bench can allocate the matter to themselves or direct the composition for constitution of a Bench. To elaborate, there cannot be any direction to the Chief Justice of India as to who shall be sitting on the Bench or who shall take up the matter as that touches the composition of the Bench. We reiterate such an order cannot be passed. It is not countenanced in law and not permissible.

An institution has to function within certain parameters and that is why there are precedents,

rules and conventions. As far as the composition of Benches is concerned, we accept the principles stated in Prakash Chand [State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1], which were stated in the context of the High Court, and clearly state that the same shall squarely apply to the Supreme Court and there cannot be any kind of command or order directing the Chief Justice of India to constitute a particular Bench."

In view of above, it is apparent that the instant petition is totally misconceived and not maintainable and is dismissed with costs of Rs. 1 lac, which shall be deposited by the petitioners in the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund within a period of four months today.

However, in the end, it is observed that this Court has deliberately chosen not to go into the merits of the case or contentions raised on merits as the instant petition is not at all maintainable before this Court. Even, this Court has not commented on the rights of the parties or the validity of any order and action taken by any authority and liberty is granted to the petitioners to claim the reliefs, as prayed for in the in the instant petition, in appropriate petitions, if so advised, in accordance with law.

The petition is disposed off in above terms.

02.02.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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