

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

**CWP-774-2024
Decided on: 14.02.2024**

Balbir Singh

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Subh Karan, Advocate, for the petitioner.

Mr. Tribhawan Singla, Sr. DAG, Punjab

Ms. Parul, Advocate for
Mr.Kamaldeep Sidhu, Advocate, for
respondent No.2.

Mr. Amanpreet (A.P.) Singh, Advocate,
respondent No.4.

Mr.R.S. Manhas, Advocate and
Ms. Mrinal Dewa, Advocate, for respondent No.5.

Rajesh Bhardwaj, J. (Oral)

Prayer in the present petition is for setting aside the speaking order dated 23.11.2023 (Annexure P-4), passed by the Commissioner, Municipal Corporation, Batala (respondent No.2), especially because the same has been passed in gross violation of Sections 342, 323, & 324 of Punjab Municipal Corporation Act, 1974; furthermore the above-mentioned speaking order is factually incorrect & erroneous, which has been passed without appreciating the facts that respondent No.5 has neither taken any Trade License from Municipal Corporation as detailed in RTI letter dated 17.04.2023 (Annexure P-6) & also in view of the order/directions issued by Pollution Control Board vide order dated 20.03.2023 (Annexure P-5); moreover respondent No.5 has always been working during night hours as well as reflected from photographs (Annexure P-7). Further issuance of

direction to respondents No.1 to 4 for taking appropriate legal action and for immediately stopping the factory/manufacturing unit being run by respondent No.5 (Manjit Singh) within the residential area of Umarpura, Shir Hargobindpur Road, Batala where respondent No.5 has employed more than 12 persons in this factory which is running 24x7 and is involved in manufacturing of iron Almirah, Dessert Coolers and other iron goods, because of which a continuous loud & unbearable sounds of iron cutting, hammering on iron goods, iron cutters' noise, gas welding, iron melting equipment's are disrupting the peace & harmony of the residential neighbourhood. Furthermore, this manufacturing unit/factory is being run in the residential area of Batala without any permit, permission either from Municipal Corporation, Batala or from other competent authorities, as per law.

The petitioner earlier approached this Court by way of filing of CWP-10569-2023, which was disposed of by this Court vide order dated 16.05.2023 with a direction to the Commissioner, Municipal Corporation to pass a speaking order on the representation filed by the petitioner. In pursuance to the same, the Commissioner passed a speaking order dated 23.11.2023. The petitioner has assailed the same by way of filing the present petition.

It has been submitted by learned counsel for the petitioner that house of the petitioner is situated in the residential area of Municipal Corporation, Batala, which is densely populated. He submits that respondent No.5 is running a factory/manufacturing unit of iron Almirah, Dessert Coolers and other iron goods within the residential area. He has submitted that because of the same there occurs a continuous loud and unbearable noise pollution. He has submitted that this manufacturing unit is

being run in a residential area without any permit from the Municipal Corporation, Batala and hence, the same is being run in violation of Sections 342, 323, 324 of Punjab Municipal Corporation Act, 1974 (for short, 'the Act'). He has further submitted that the petitioner filed a representation dated 23.03.2023 regarding illegal commercial activities being carried out by respondent No.5, but no action was taken by the respondent-authorities, thus, he filed CWP-10569-2023, which was disposed of by this Court vide order dated 16.05.2023 with a direction to respondent No.2 for taking appropriate action by passing a speaking order on the representation. However, respondent No.2 has passed a cryptic and erroneous order dated 23.11.2023 which is not sustainable in the eyes of law. It is further submitted that the impugned order has been passed by respondent No.2 on the basis of incorrect facts and thus, the same being unsustainable, deserves to be set aside.

Learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He has submitted that in pursuance to the order passed by this Court, shop in dispute was personally inspected and after receiving the relevant reports, the speaking order was passed. He submits that on verification of the site, it was found that two shops are located at Shri Hargobindpur Road Batala bearing UID No.B-53/1321 and the said shops were already constructed when the area came in the limits/jurisdiction of Municipal Corporation in the year 2003. He submits that report from Pollution Board was taken and the sound level was found to be within the prescribed limit. It was found that respondent No.5 is using a small shop for repairing of coolers and only two person are working in shop. It was also found that respondent No.5 carries out work in

the shop in the day time and not in the night hours. He has further submitted that respondent No.5 has already applied for Trade Licence with regard to the shop in dispute. It is submitted that the speaking order has been passed after taking into consideration the relevant reports and thus, on verification it was found that no further action is required to be taken.

Reply by way of affidavit of respondent No.5 has been filed in Court which is taken on record.

Learned counsel for respondent No.5 has also opposed the submissions made by learned counsel for the petitioner. He has submitted that the petitioner has filed the present petition clandestinely due to the business rivalry. It is submitted that when the petitioner started raising constructions on the adjoining shop, then respondent No.5 made a complaint to the Municipal Corporation on the ground that the construction being raised by the petitioner is without getting the site plan approved. Hence, as a counterblast to the complaint filed by respondent No.5, the present petition has been filed on the basis of false and frivolous allegations. He submits that brother of the petitioner also filed frivolous application under Section 133 Cr.P.C. before SDM, Batala on the same set of allegations. He submits that respondent No.5 would not carry out any activity in his shop after 8:00 p.m. He submits that in these circumstances, the present petition being devoid of any merit deserves to be dismissed.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner and respondent No.5 are neighbours. On the direction issued by this Court in the earlier petition filed by the petitioner bearing No.CWP-10569-2023, respondent No.2 was directed to pass a speaking order and the same has been passed vide order dated 23.11.2023 and the same order has been impugned by the petitioner in the

present petition. It is apparent from the perusal of the speaking order passed that respondent No.2 has taken into consideration the grievances raised by the petitioner after receipt of report from the Pollution Board as well. The site was also inspected. The precise grievance raised by counsel for the petitioner is that the commercial activity is being carried out by respondent No.5 during late night hours as well. However, respondent No.5 has undertaken by way of filing his reply in the shape of an affidavit that no commercial activity whatsoever would be carried out in his shop after 8:00 p.m. and thus, he would ensure that no disturbance whatsoever is caused to the petitioner or anyone else in the vicinity of his shop.

In view of the above, this Court does not find any cogent reason for its interference at this stage. However, respondent No.5 is directed to adhere to the undertaking given by him before this Court not to carry out any commercial activity after 8:00 p.m. Respondent-MC would also ensure that respondent No.5 runs his shop in compliance with the relevant statutory provisions of the Act and the undertaking given before this Court.

Disposed of in above-mentioned terms.

14.02.2024			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No