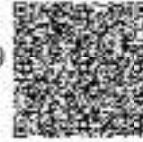


2024:PHHC:101009



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

CWP-18626-2024

Date of Decision: 06.08.2024

Saru Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Aashish Chopra, Senior Advocate assisted by
Mr. Bhupinder Chai, Advocate,
Mr. Sangram S.Saron, Advocate and
Ms. Meher Nagpal, Advocate
for the petitioner,

Mr. Abhilaksh Gaiind, Advocate and
Mr. Rakesh Roy, Advocate
for respondent No.2.

HARSH BUNGER J. (ORAL)

1. Petitioner has filed the instant writ petition under Article 226 of the Constitution of India seeking a writ in the nature of Certiorari for setting aside order dated 18.01.2019 (Annexure P-19) passed by the Sub Divisional Magistrate-cum-Collector, Mohali (respondent No.4 herein), whereby Tehsildar Mohali was directed to take the possession of the demised

premises in compliance of order dated 03.01.2017 (Annexure P-17) passed by the learned Deputy Commissioner, S.A.S. Nagar.

1.1 A further prayer has been made for setting aside order dated 03.01.2017 (Annexure P-17) passed by the learned Deputy Commissioner, S.A.S. Nagar, permitting execution of warrants and handing over possession of the premises to the Punjab Small Industries and Export Corporation Limited (in short, 'the PSIEC'). A still further prayer has been made for setting aside order dated 21.03.2006 (Annexure P-7) passed by the learned Collector, Mohali (under the Public Premises Act, 1973), directing handing over of the aforesaid premises. Another prayer has been made for setting aside order dated 29.07.2003 (Annexure P-6) passed by the learned Collector, Mohali, Rupnagar, which is an eviction order passed under Sections 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short, 'the 1973 Act'), in respect of the aforesaid premises. Yet another prayer has been made for setting aside order dated 29.08.2000 (Annexure P-5) passed by the learned Joint Managing Director, PSIEC, whereby allotment of the industrial shed adjoining Plot No.C-89 (opposite water works IFP), Phase VII, Mohali was cancelled.

1.2 Apart from the aforestated prayers, the petitioner also seeks quashing of Letter of Intent dated 09.05.2000 (Annexure P-28) issued in favour of respondent No.8 (Suri Associates).

1.3 Another prayer has been made by the petitioner for issuance of a writ in the nature of Mandamus to direct respondent No.2-PSIEC to consider and accept the viable offers of settlement; and to further direct the

respondents to take all such steps that may be necessary to restore the title and the possession of the aforesaid premises.

2. Briefly, the petitioner claims herself to be the sole proprietor of S.S. Industries. It is stated that pursuant to an auction notice (Annexure P-1), an auction was held by respondent No.2-PSIEC on 17.07.1997 in respect of a shed situated in the Industrial Focal Point, Phase VII, Mohali. It is stated that in the auction notice, although the shed had been referred to as C-89 admeasuring 1000 square yards but the auction was conducted in respect of plot admeasuring 4100 square yards, adjoining Plot No.C-89 (opposite Water Works) Industrial Focal Point, Phase VII, Mohali, which was announced at the time of auction. Petitioner claims to have made a bid for the aforesaid Plot admeasuring 4100 square yards, adjoining to Plot No.C-89, and the said property was allotted to the petitioner on leasehold basis vide letter dated 28.07.1997 (Annexure P-3). Petitioner further states that a Possession Certificate dated 29.07.1997 was also issued to her and that she had taken over the possession of property in question, although, no area was mentioned in the allotment letter. It is stated that since a correct allotment letter was not issued to the petitioner, accordingly there was no occasion for her to deposit the first installment, which had fallen due on 16.01.1998. Petitioner claims that she had deposited an amount of Rs.50,000/- vide cheque bearing No.034078 on 19.01.1999, and thereafter, she did not pursue the matter as she had already been granted the possession of plot in question and according to her, the Building Plans were deemed to have been sanctioned.

3. It is a pleaded case of the petitioner that pursuant to order dated 21.03.2006 (Annexure P-7) passed by the learned Collector, Mohali under Sections 5 and 7 of the 1973 Act, Tehsildar, Mohali, visited the property in question with an attempt to take over the possession. It is also the admitted case of petitioner that at that point in time, she became aware as regards the *ex parte* order dated 29.08.2000 (Annexure P-5) passed by the Joint Managing Director of respondent No.2-PSIEC, thereby cancelling the allotment of property; and also regarding an order dated 29.07.2003 (Annexure P-6), whereby the eviction of petitioner from the Plot in question was ordered. Petitioner claims that there was an understanding with respondent No.2-PSIEC that in case petitioner submits an amount of Rs.22,08,000/- then no further action for evicting her would be taken. Although, petitioner states that she had deposited the said amount by way of a cheque, however, it is also stated that the said cheque was returned to her subsequently.

4. Petitioner further states that since she apprehended threat of dispossession, she accordingly filed a Civil Suit bearing No.436 dated 08.12.2009, seeking a permanent injunction, wherein *status quo* order was passed, however, the said suit was initially dismissed in default on 07.12.2012 and later on restored on 08.01.2016, but ultimately, the said suit was withdrawn by the petitioner vide order dated 08.11.2017 (Annexure P-11), with liberty to file fresh Civil Suit on the same cause of action.

5. Petitioner still further states that she had requested for a One Time Settlement by submitting an application dated 06.10.2010, and in response thereto, petitioner claims that she was assured that her proposal

would be accepted, if she withdraws the Court cases and surrenders the green area/belt behind the Plot in question. Petitioner further claims to have submitted a cheque bearing No.714406 dated 25.10.2011 for an amount of Rs.46,09,062/-, which was subsequently returned to her on 22.05.2012.

6. In the meanwhile, it is submitted that respondent No.2-PSIEC filed an application for restoration of the execution proceedings, seeking execution of eviction order dated 29.07.2003 (Annexure P-6), which was dismissed vide order dated 03.05.2016 (Annexure P-16), however, the subsequent appeal filed by respondent No.2-PSIEC was allowed vide order dated 03.01.2017 (Annexure P-17) passed by the learned Deputy Commissioner, S.A.S. Nagar, Mohali, directing execution of warrants of possession *qua* the aforesaid premises. It appears that petitioner challenged the aforesaid order dated 03.01.2017 (Annexure P-17) by way of filing an appeal before the learned Commissioner, Rupnagar Division, S.A.S. Nagar, however, the same was dismissed vide order dated 23.07.2019 (Annexure P-18).

7. It transpires that petitioner filed a Civil Suit bearing No.361 dated 24.05.2018, wherein the following reliefs were sought for:-

“a. Suit for Declaration to the effect that plaintiff is owner in possession of the whole plot (4100 Sq. Yards) i.e. Plot No.C-89A, Phase-7, Industrial Area, Mohali, vide allotment No.PSIEC/EW/EO/11/11310 dated 28.07.1997.

And

The letters/orders dated 28.08.2000, 21.03.2006 and 26.07.2006 are null, unjust and void, having no affects to the rights of the plaintiff and liable to be set aside and Orders to impose the access amount upon plaintiff by defendant No.1 is

wrong and illegal, null and void having no effect on the rights of the plaintiff.

And

The plot No.E-7A, has been allotted and later on wrongly carved out from Block-C and giving the false possession forcibly from plot of plaintiff i.e. C-89A, Phase-7, Industrial Area, Mohali is wrong and illegal, null and void and liable to be set aside and whole process and action of PSIEC for in-carving, allotment, possession, actual physical possession to defendant No.2 is wrong, illegal, null and void and liable to be set aside. And all the actions taken by and letters prepared by officials of PSIEC to suppress the mala fide acts done by PSIEC officials, are wrong, illegal, null and void having no effect on right of plaintiff. And the carving and process of plotting of plot No.E- 7B, is illegal, bogus, wrong void and liable to be set aside and have no effect upon the rights of plaintiff.

And

b. Suit for possession of 1764 Sq. Yard Area, wrongly earmarked for plot No.E7A, from the area of plot No.C-89A, Phase-7. Industrial Area, Mohali, SAS Nagar.

And

c. Suit for permanent injunction against the defendants for not to take forcible possession of any portion from 4100 Sq. Yards of plot No.C-89A, Industrial Area, Phase-7, Mohali from plaintiff and the defendants not to change the structure and nature of any part of plot No.C-89A. Industrial Area, Phase-7, Mohali and the plots mentioning plots No.E-7A and plot no. E-7B, Industrial Area, Phase-7, Mohali and defendants also be restrained to alienate or to create any third party charge upon the property of plot No.C-89A, and Plot No.E-7A, plot no. E-7B Industrial Area, Phase-7, Mohali, illegally, forcibly and without due course of law.

And

d. Suit for mandatory injunctions directing the defendant to issue a revised allotment to letter mentioning the area of the plot of the suit property as 4100 Sq. Yards having corner status and opposite water works by taking the balance amount without interest from plaintiff, with a further prayer for grant of mandatory injunction directing the defendant to put the plaintiff in actual physical possession in an area measuring 4100 Sq. Yards of plot No.C-89-A, Industrial Area, Phase-VII, SAS Nagar, Mohali having corner status as well as opposite water works.

And

For directions to defendant No.2 to pay Rs.2,00,000/- per month as mesne profits for using the area from plot No.C-89A, under the garb of plot No.E-7A.

And

The compensation may kindly be granted to plaintiff by the defendants to the tune of Rs.1,00,00,000/- harassment caused for malafide acts by Defendant No:1 and in collusion with other defendants and alleged previous owner of plot No.E- 7A.

OR any other relief, the court may deems fit.”

8. It is borne out that the learned Sub Divisional Magistrate-cum-Collector, Mohali, vide order dated 18.01.2019 (Annexure P-19), directed Tehsildar, Mohali to take possession of the demised premises in terms of order dated 29.07.2003 (Annexure P-6) and in pursuance thereof, the Additional District Magistrate, Mohali sought for police help.

9. Petitioner states that the orders against the property in question could not be executed and in the meanwhile, she filed another Civil Suit No.1115 of 2023, seeking permanent injunction for restraining respondent No.2-PSIEC as well as Tehsildar S.A.S. Nagar from entering, interfering, alienating, dispossessing petitioner/S.S. Industries from its peaceful

possession of the Plot in question with a further declaration that letter dated 18.12.2023 (Annexure P-24) was illegal, null and void. However, the said suit is stated to have been withdrawn by the petitioner.

10. Concededly, the possession of the property in question was taken over by the concerned authority/Station House Officer on 22.12.2023. Although, petitioner claims that possession has been taken over after sunset and no inventory of the articles lying in the premises was prepared, apart from stating that no proper procedure was followed while taking possession.

11. That apart, in paragraph No.28 of the instant writ petition, the following averments have been made:-

“28. That it may not be out of place to mention that the Petitioner had, on an earlier occasion, filed similar Writ Petition bearing No. 7818 of 2015, inter alia, challenging order/letter dated 29.08.2000, but the same was dismissed as withdrawn with a liberty to file afresh vide an order dated 07.09.2015. Thereafter, the Petitioner had even filed Civil Writ Petition bearing No.1628 of 2022, inter alia, challenging orders/letters dated 09.09.2021, 06.09.2021, 23.07.2019, 25.04.2019, 03.01.2017 and 29.08.2000 was also withdrawn vide order dated 12.09.2023, as then advised considering the civil suits were pending and simultaneously, considering that after the withdrawal of the Petition while the civil suits have been pending, the Respondents divested the Petitioner of the possession of the property in question on 22.12.2023, even though the belongings of the petitioner as mentioned in para no. 24 of the petition continue to remain in the property in question, and not allowing the petitioner to enter in the property and considering the nature of relief now being sought for from this Hon'ble Court in exercise of powers under Article 226 of the Constitution of India, the Petitioner had withdrawn

the Civil Suit to avail the efficacious remedy and accordingly is filing the present petition.”

12. Although, neither the copy of writ petitions, i.e. CWP No.7818 of 2015 and CWP No.1628 of 2022, have been attached with the instant writ petition nor the orders dated 07.09.2015 and 12.09.2023 passed therein have been annexed; however, learned senior counsel representing the petitioner has handed over copies of the aforesaid orders in Court today, which are taken on record, subject to all just exceptions.

12.1 Order dated 07.09.2015 passed by a Division Bench of this Court in CWP No.7818 of 2015, reads as under:

“ *IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

*CWP No. 7818 of 2015. [O&M]
Date of Decision:07th September, 2015.*

*S.S.Industries Petitioner through
 Mr. Vikram Chaudhary, Sr.Advocate
 with Ms. Isha Goel, Advocate.
 Versus
State of Punjab & Ors. Respondents.

***CORAM:HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT, J. [ORAL]

*Learned counsel for the petitioner seeks to withdraw the writ petition so as to approach the departmental Authorities.
Dismissed as withdrawn.*

***(SURYA KANT)
JUDGE***

***September 07, 2015.
dinesh***

***(JASPAL SINGH)
JUDGE ”***

12.2 Order dated 12.09.2023 passed by a Division Bench of this Court in CWP No.1628 of 2022, reads as under:

“ **Neutral Citation No. 2023:PHHC:119062 -DB**
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107) **CWP-1628-2022**
Decided on : 12.09.2023

S.S.IndustriesPetitioner(s)

Versus

State of Punjab & othersRespondent(s)

CORAM:HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr.S.D.Bansal, Advocate
and Mr.Jeevan Gautam, Advocate for the petitioner (s).
Mr.V.M.Gupta, Addl. A.G., Punjab.

G.S. Sandhawalia, J. (Oral)

1. Counsel for the petitioner, at the outset, does not press the present writ petition and prays that the same may be dismissed as withdrawn.
2. Ordered accordingly.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

12.09.2023
Sailesh

Whether speaking/reasoned : Yes
Whether Reportable : No ”

13. While reiterating the aforestated facts, learned senior counsel representing the petitioner submits that although the possession of property in question has been taken from the petitioner but she is ready and willing to settle the issue with respondent No.2-PSIEC as regards the payment of outstanding dues and for consequent restoration of allotment of the premises in question.

14. I have heard learned counsel for the parties and perused the paper book with their able assistance.

15. It is not disputed that so called allotment of Plot in favour of the petitioner/S.S. Industries stood cancelled vide letter/order dated 29.08.2000 (Annexure P-5) and thereafter, even the eviction order dated 29.07.2003 (Annexure P-6) came to be passed against the petitioner/S.S. Industries passed under Sections 5 and 7 of the 1973 Act. Concededly, the petitioner has not raised any challenge to the said orders till date by initiating appropriate proceedings before the concerned authorities/Courts of competent jurisdiction.

16. It is conceded by learned senior counsel representing the petitioner that letter dated 29.08.2000 (Annexure P-5), vide which the allotment of the Plot in favour of the petitioner/S.S. Industries was cancelled, was challenged before this Court vide CWP No.7818 of 2015, however, the same was withdrawn.

17. In the present writ petition, a categorical declaration has been made in paragraph No.45 that CWP No.7818 of 2015, challenging the letter/order dated 29.08.2000 (Annexure P-5), was dismissed as withdrawn with liberty to file afresh vide order dated 07.09.2015, however, it is evident from perusal of order dated 07.09.2015 that no such liberty was granted to the petitioner/S.S. Industries.

17.1 Further, another attempt by the petitioner/S.S. Industries to challenge the said letter/order dated 29.08.2000 (Annexure P-5) and also order dated 03.01.2017 (Annexure P-17) passed by the learned Deputy Commissioner, S.A.S. Nagar, Mohali, permitting execution of warrants of possession in respect of the property in question; was made by way of filing another writ petition, i.e. CWP No.1628 of 2022, wherein the action of

carving out plots from the plot in question, i.e. Plot Nos.E-7(A) and E-7(B) was also challenged, however, the said writ petition was also withdrawn by the petitioner/S.S. Industries on dated 12.09.2023.

18. The present writ petition is the third petition, wherein the petitioner has *inter alia*, sought to challenge not only letter/order dated 29.08.2000 (Annexure P-5), whereby the allotment of Plot in favour of the petitioner/S.S. Industries was cancelled, but also the order dated 29.07.2003 (Annexure P-6), whereby eviction order was passed against the petitioner/S.S. Industries.

19. In my considered view, the present writ petition would be clearly barred by principles of constructive *res judicata* as on two earlier occasions, the challenge raised by the petitioner to letter/order dated 29.08.2000 (Annexure P-5) has already been withdrawn and no permission was granted to the petitioner to file afresh writ petition.

20. In “***Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior***”, 1987 AIR (Supreme Court) 88, it was held that a fresh writ petition was not maintainable in respect of the same subject matter since the earlier writ petition had been withdrawn without permission to file afresh petition.

21. Still further, in “***Devilal Modi Vs. Sales Tax Officer, Ratlam***”, 1965 AIR (Supreme Court) 1150, it has been observed as under:-

“ - x - x -

13. The present proceedings illustrate how a citizen who has been ordered to pay a tax can postpone the payment of the tax by prolonging legal proceedings interminably. We have already seen that in the present case the appellants sought to raise additional points when he brought his appeal before this Court by special leave; that is to say, he did not take all the

points in the Writ Petition and thought of taking new points in appeal. When leave was refused to him by this Court to take those points in appeal, he filed a new petition in the High Court and took those points, and finding that the High Court held decided against him on the merits of those points, he has come to this Court; but that is not all. At the hearing of this appeal, he had filed another petition asking for leave from this Court to take some more additional points and that shows that if constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this Court would be materially affected. We are, therefore, satisfied that the second writ petition filed by the appellant in the present case is barred by constructive res judicata.

- x - x - ”

22. It is further evident that although an eviction order dated 29.07.2003 (Annexure P-6) was passed against the S.S. Industries/petitioner ordering their eviction from the property in question, however, till the filing of the present writ petition, no challenge has been laid to the said order. It is not disputed by learned senior counsel representing the petitioner that the said order dated 29.07.2003 (Annexure P-6) passed under Sections 5 and 7 of the 1973 Act came to their knowledge in 2006 and the same was an appealable order. In my considered view, the eviction order dated 29.07.2003 (Annexure P-6) has attained finality as more than twenty years have passed since then.

23. As far as the challenge to orders dated 21.03.2006 (Annexure P-7), order dated 03.01.2017 (Annexure P-17) and order dated

18.01.2019 (Annexure P-19) is concerned, it is noticeable that the present writ petition has been filed on 15.04.2024, and the same was listed for hearing on 05.08.2024; which is after a period of more than eighteen years from the passing of order dated 21.03.2006 (Annexure P-7); more than seven years after the passing of order dated 03.01.2017 (Annexure P-17); and more than four and a half years from the date of passing of order dated 18.01.2019 (Annexure P-19).

24. In the case of ***“Er. Darshan Singh Bhullar Vs. Punjab State Electricity Board”*** reported as ***2011(3) S.L.R. 287***; a Division Bench of this Court held that the limitation as applicable in a Civil Suit would be applicable to the writ petition also. In the case of ***“Er. Darshan Singh Bhullar (supra)”***, it was held as under:-

“ - x - - x - -x-

2. ...*The appellant has worked as Trainee Engineer in the shipping Corporation of India from 1982 to 1985 and then applied for direct appointment on the post of Trainee Engineer in the Punjab State Electricity Board- respondent. He was selected and appointed by the Board as Trainee Engineer. In that regard appointment letter dated 27.2.1986 (P.4) would be relevant. From the post of Trainee Engineer he was promoted as Assistant Engineer and then further to the post of Executive Engineer. The claim of the appellant that period of service from 1982 to 1985 spent as Trainee Engineer in the Shipping Corporation of India should be counted for the purposes of qualifying service for promotion has not been accepted on the ground that such claim was not made at the time of appointment in 1985-86. Even when the appellant was promoted as Assistant Engineer or Executive Engineer no such claim was made. Merely because one Gian Singh was given the benefit of service rendered by him in the PWD (B&R), Haryana in pursuance of Regulation 9(4) of Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965 would not ipso facto mean that the appellant*

*would also be entitled to similar benefits. If any such benefit was available to the appellant then the cause of action had arisen in 1986 or at any time subsequently when he was promoted as Assistant Engineer. The appellant should have approached the Court within a reasonable time not exceeding three years from the date cause of action had arisen. In writ proceedings, the period of limitation of three years has been read by a judgement of the Constitution Bench of Hon'ble the Supreme Court rendered in the case of **State of Madhya Pradesh v. Bhai Lal Bhai AIR 1964 Supreme Court 1006**. The basic reason is that in writ proceedings the period of limitation cannot be more than the period prescribed for filing a civil suit. Accordingly, we are of the view that the appeal does not merit admission and is thus liable to be dismissed.”*

25. In this view of the matter, the instant writ petition would be clearly barred by gross delay and laches.

26. It would also be apparent from the facts narrated in the present writ petition that the petitioner, after withdrawal of the writ petitions from this Court, had filed Civil Suits, which were also withdrawn, and now the present writ petition has been filed before this Court. Once the challenge to the order dated 29.08.2000 (Annexure P-5), cancelling allotment of shed/plot, was withdrawn by withdrawing CWP No.7818 of 2015 and also the subsequent CWP No.1628 of 2022 (withdrawn on 12.09.2023), it appears that the petitioner has adopted all means to keep the issue alive on one pretext or the other with some oblique motive and such a conduct is liable to be deprecated.

27. It is also noticed that the present writ petition has been filed by the petitioner by making a wrong declaration in paragraph No.45 of the writ petition that the earlier writ petition No.7818 of 2015, challenging order/letter dated 29.08.2000 (Annexure P-5), wherein allotment of

industrial shed/plot was cancelled; was withdrawn on 07.09.2015 with liberty to file afresh, however, no such liberty was granted. It is thus apparent that the conduct of petitioner is not above board and petitioner has not come to Court with clean hands.

28. In view of the above discussion, I do not find any merit in the instant writ petition; and resultantly, the same is dismissed.

29. All pending application(s), if any, shall also stand closed.

06.08.2024
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No