



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-3845-2016 (O&M)

Date of decision: 01.08.2024

Paramjit Kaur

...Petitioner

VERSUS

State of Punjab and others

...Respondents

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

Present :- Mr. Jaideep Verma, Advocate for the petitioner.

Ms. Niharika Sharma, AAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for directing the respondents to act in accordance with the decision/directions of this Court as well as the Hon'ble Supreme Court of India as contained in orders Annexures P-2 and P-3.

2. Learned counsel appearing on behalf for the petitioner contends that late Ujjagar Singh, father of the petitioner, was amongst the persons settled on the Government waste land on the bank of Sirhind Canal, Rupnagar since partition. The father of the petitioner and other occupiers were paying annual lease money to the Irrigation Department for the plots under occupations. After the death of her father, the petitioner inherited plot No.40. The Irrigation Department issued an ejectment notice to all the lessees including father of the petitioner, against which various lessees approached this Court by way of filing Civil Writ Petitions bearing No. CWP-8110-1990, CWP-4640-1990 and CWP-2891-1995. The said writ



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petitions were disposed of by this Court by a common order dated 08.08.1990 with a direction to the respondent-State to allot alternative sites to the occupiers and to pay compensation for the super-structures raise by them before they are evicted from the land in dispute after taking into note the object of seeking the said land for widening the National Highway No.10.

3. Aggrieved of the said order dated 08.08.1990, a Special Level Petition was preferred by the respondent-State which was dismissed by the Hon'ble Supreme Court and direction was issued to the Superintending Engineer, PWD, Ropar Division to value the properties after notice and for the compensation to be disbursed as per the order dated 03.12.1994. He contends that instead of framing a proper scheme for allotment of alternative sites to the occupiers, the respondent-State started to misuse the executive powers and attempted to forcibly take possession of the land. Aggrieved thereof, the occupants approached this Court by way of filing CWP-2891-1995 titled as "Vaid Lal Singh Vs. State of Punjab", which was disposed of vide order dated 25.03.1995 after recording the statement of Executive Engineer, Irrigation Department, Ropar that the persons who were the petitioners in CWP-8110-1990 and CWP-4640-1990 which were disposed of by this Court shall not be dispossessed from their premises till they are allotted the alternative sites. He submits that the petitioner along with her family is in continuous occupation over the suit property and that without ensuring compliance of the order passed by this Court, the respondent-State demolished the super-structures constructed by the petitioner.



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4. Aggrieved thereof, the petitioner approached this Court by way of filing CWP-13574-2011. The said writ petition was disposed of by this Court vide order dated 23.01.2014 with a direction to the respondents to pass an appropriate order on the claim of the petitioner for an alternative plot, assess the cost of super-structures and pay the requisite compensation to her within a period of 06 months in accordance with law.

5. As the needful was not done, hence, a COCP No.2559 of 2014 was filed by the petitioner wherein the respondent-State filed a reply that the land is no longer required for construction of road and that the petitioner continues to be in occupation of the land along with the super-structure. The Contempt petition was accordingly disposed of vide order dated 20.08.2015 with a further observation that the basic amenities be restored to the petitioner. Further, in respect to the claim of damages to the super-structure, liberty was granted to the petitioner to raise the said issue before an appropriate forum as is permissible. The present writ petition has thus been filed by the petitioner claiming compensation for the damages caused to the super-structure. It is argued by the learned counsel for the petitioner that the initial demolition exercise was carried out so as to widen the road, however, since the above said public purpose has already been abandoned, hence, the respondents have become liable to pay the compensation to the petitioner in terms of the order dated 08.08.1990 passed by this Court and as affirmed by the Hon'ble Supreme Court vide order dated 03.12.1994.

6. Reply by way of affidavit dated 05.08.2016 on behalf of respondents No.1 to 3 had been filed, wherein it had been averred that the



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true facts are not disclosed. The father of the petitioner was earlier lessee of the plot measuring 40'x25' and that neither the lease money was paid nor the lease was renewed. It was also alleged that the petitioner infact encroached upon further portion and were in illegal occupation thereof. A demarcation was carried out and that only the excess area had been demolished after giving due notice to the petitioner, since a removal of said encroachment was not undertaken by the petitioner at her own, despite notices. The unauthorized superstructure and boundary wall was demolished but the rest of construction/superstructure was never demolished. Reliance was placed upon the photographs in support thereof.

7. Learned State counsel refers to the order passed by this Court on 16.11.2018, which reads thus:-

“Learned State counsel informs that the petitioner was entitled to raise construction on the plot in question upto 40'X25'. The land under the occupation of the petitioner is not required by the State except the area under construction which was raised beyond the permissible area. However, there is no evidence on record to support the assertions.

In these circumstances, the State is directed to get the area remeasured and file a report in this regard within six weeks from today.

List again on 26.03.2019.”

8. It is submitted that in compliance of the said order report dated 27.02.2020 was filed by way of an affidavit of the Executive Engineer,



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Ropar Head, Works Division, Ropar. In the said report, it is specifically averred that a demarcation of the property had been actually conducted, as per which, the petitioner had made an unauthorized encroachment/constructions over the 20' X 25' area in excess of previously leased out area i.e. 40' X 25'. The details of the site plan of house of the petitioner and cross section shown land boundary of Canal Department are appended. The photographs in relation to the demarcation carried out are also appended. No counter affidavit to the aforesaid report was filed.

9. Learned counsel for the petitioner vehemently emphasises that undisputedly a demolition was carried out and, therefore, in terms of the order dated 08.08.1990 passed by this Court in CWP-8110-1990, the petitioner is entitled to compensation for the super-structure raised by them and that the respondents cannot be permitted to demolish the super-structure.

10. The incessant arguments on the part of the respondent-State is that the entitlement of the petitioner to claim compensation in terms of the order dated 08.08.1990 would have arisen only in case the respondent-State would have made acquisition for the widening of National Highway No.10. Since the project was modified and the land was no longer required, hence, there was no occasion for assessment of the cost of super-structure and payment of the compensation. The respondent-department thus would not be liable to pay any compensation as no further steps pursuant to the initial notices served upon the petitioner have been undertaken. She contends that the demolition exercise was an independent exercise undertaken by the respondent-department with respect to encroachment committed by the



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petitioner over public land beyond what had been leased out to them.

11. The specific report filed by the respondent has not been controverted and it thus cannot be disputed that the original leased out area, on which the constructions had been raised by the father of the petitioner and is in her occupation, had not been violated or removed by the respondent-department. The petitioner cannot claim compensation for having made illegal encroachment upon the Govt. land, without any approval and having not removed the same at her own expenses despite notice having been served upon her.

12. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

13. It is not in dispute that a Division Bench had passed an order dated 08.08.1990 directing the respondents to allot alternative site and to pay compensation about the super-structure in the event of utilizing the said land for widening of National Highway No.10. The said order has to be ordinarily read in the context in which the same has been passed. The project of widening of National Highway No.10 had already been abandoned, hence, the petitioner may not be able to take heed of the said order to claim compensation. For claiming the said benefit, it is also required to be established that the demolition of the super-structure was in relation to the area under the authorized and approved occupation and possession of the petitioner.

14. There is no counter affidavit to the report filed by the respondent by the petitioner for establishing that there was no encroachment



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over any land beyond the area as originally allotted by the respondent-Department to the father of the petitioner for re-settlement. The issuance of notices and the demarcation carried out by the respondents as mentioned in the report and the affidavit submitted by the respondents also remains uncontroverted. Besides, the petitioner has merely placed reliance on the report of a Structural Engineer as regards the damages, however, the said report cannot be accepted out-rightly. Even if the claim of the petitioner was to be considered as per the judgment of the Hon'ble Supreme Court, the assessment is required to be undertaken by the Executive Engineer, as per the order of the Hon'ble Supreme Court, but that aspect need not be gone into at this juncture.

15. I would like to refrain from commenting on the merits of the case lest it may prejudice the rights of the respective parties.

16. Considering that the removal of the super-structure was with respect to an encroached area on which unauthorized and illegal structure has been raised and which was not removed despite issuance of notices by the respondent-Department (a fact which is disputed by the petitioner) and also the question of assessment of compensation for the alleged demolition, I find that the said aspect would be a disputed question of fact which cannot be gone in to by this Court.

17. The present writ petition is accordingly **disposed of** at this juncture with liberty to the petitioner to take recourse to the alternative efficacious remedies available to her in accordance with law.

18. Needless to mention that the period during which the



proceedings remained pending before different Forums and Courts shall be taken into consideration while computing limitation.

01.08.2024

Mangal Singh

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

(VINOD S. BHARDWAJ)
JUDGE