

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024.PHHC.118650-DB



(126)

LPA No.1979 of 2024(O&M)

Decided on :10.09.2024

Subhash Chander and others

.....Appellant (s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Chetan Bansal, Advocate for
Mr. Rahul Bhargava, Advocate for the appellant(s).

Ms. Arundhati Kulshreshtha, AAG, Punjab.

G.S. Sandhawalia, J.(Oral)

1. The present letters patent appeal is directed against the judgment of the learned Single Judge passed in CWP No.16674 of 2024 dated 19.07.2024, whereby the writ petition challenging the order dated 12.07.2024 (Annexure P-1) was dismissed. In the said order passed by the Sub-Divisional Magistrate-cum-Land Acquisition Collector, Amritsar-II, directions were issued to vacate Bungalow No.19, Kachhari Road, Survey No.21, Cantonment Amritsar, Amritsar within a period of 8 daysi.e. by 20.07.2024.

2. Counsel for the appellant has vehemently argued that the learned Single Judge was not justified in dismissing the writ petition, keeping in view the settled possession of the appellants in the premises in question, who are 19 in number. It has further been argued that the official respondents had no power to pass the impugned order.

3. The learned Single Judge has noticed that the property had been held by one Diwan Chand Peshawaria on 'Old Grant Term' as contained in Governor General Order No.179 dated 12.09.1836 and certain servant quarters were built in the said property during the British times. The resumption order

had been passed way-back on 09.02.1972, which was challenged by the said

allottee by filing a Civil Suit. The same had been decreed in his favour on 13.09.1977(Annexure P-2) and the appeal of the Union of India had been dismissed on 31.10.1980. **RSA No.2279 of 1981** came to be filed before this Court and in which certain question were answered in favour of the Union of India and some were held in favour of the allottee, vide order dated 09.09.2009 (Annexure P-3). Eventually, **Civil Appeal No.3208 of 2011** had been filed before the Apex Court by the Union of India, which was allowed on 22.05.2019 (Annexure P-4) and legal heirs of Diwan Chand Peshawaria were held liable to vacate the premises.

4. Apparently, the writ petitioners who had been allowed to occupy the servant quarters of the said Bungalow by the family of Diwan Chand Peshawaria which measures 1.58 acres, were resisting the Union of India, being in settled occupation of the said property. Resultantly, the Union of India was constrained to file a **Civil Writ Petition bearing No.12891 of 2021 ‘Administrative Commander, Station Headquarter, Amritsar Cantonment, Amritsar Vs. State of Punjab and others’**, seeking directions for the State to assist it in peaceful eviction of the illegal trespassers/occupants in the defence land. Apparently, on the basis of the said writ petition, the impugned order as such was passed by the respondent No.3-Sub-Divisional Magistrate-cum-Land Acquisition Collector, Amritsar-II, wherein it was found that 32 families are living in Bungalow No.19 and, therefore, they should be heard. Resultantly, it was recorded that there was no evidence of ownership presented, which was also clear from the report of the Tehsildar, Amritsar-II that they did not have ownership and the premises was illegally occupied by these persons.

5. The said order was subject matter of challenge in the writ petition and the learned Single Judge on that account came to the conclusion that

without any document by way of lease etc., the possession of the writ petitioners over the property was only gratuitous and after the resumption order passed way-back in 1972 and the matter being decided by the Apex Court, the State had given an opportunity as such for them to vacate the property. Reliance was placed upon the judgment of the Apex Court passed in **Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (dead) through L.Rs. and others, (2012) 5 SCC 370** that it was an attempt of the writ petitioners to further prolong the taking over of possession and, therefore, the writ petition was dismissed.

6. It is pertinent to mention that the writ petition filed by the Union of India was disposed of at a subsequent point of time on 27.08.2024 by noticing the dismissal of the writ petition filed by the present appellants and treating the same as infructuous.

7. Counsel for the appellants has tried to convince us on the strength of the judgment of the Apex Court passed in **Rame Gowda(D) by L.Rs. Vs. Mr. Varadappa Naidu (D) by L.Rs. and another, (2004) 1 SCC 769** that the State was not justified to proceed in a summary manner by just issuing notices and, therefore, procedure in accordance with law should be adopted, instead of passing the impugned order.

8. We are of the considered opinion that in the writ petition filed under Articles 226/227 of the Constitution of India, the writ petitioners have to show some basic right to occupy the property, which they have failed to do so. Apparently, they are in the occupation of the servant quarters and the whole chunk of the land measuring 1.58 acres falling in Amritsar Cantonment constitutes prime property. It is not disputed that the Union of India is the rightful owner of the property, as held by the Apex Court. Keeping in view the fact it is the basic principle that no injunction can be issued against the true

owners, as held in **Premji Ratansey Shah Vs. Union of India, (1994) 5 SCC 547** the learned Single Judge has refused to interfere in the impugned order and to exercise the extra-ordinary writ jurisdiction. The Apex Court in the judgment relied upon by the learned Single Judge has dilated on the issue that there has to be some semblance of a right *prima facie* to claim title, before a person can resist or put forth a case, which would give a *locus standi*. In the absence of the same, the holding on the property without paying any rent to anyone for all these long years, the argument cannot be accepted. The judgment in **Rame Gowda (supra)** was also noticed by the Apex Court in **Maria Margarida Sequeria Fernandes (supra)**.

9. In such circumstances, we are of the considered opinion that the reasoning which has been arrived at by the learned Single Judge does not suffer from any infirmity and the learned Single Judge was kind enough to grant two months more time to vacate the premises. Resultantly, we are of the considered opinion that in the absence of any title or payment of any charges to the rightful owner, the occupation of the premises cannot be held to be justified. The Union of India being the rightful owner was rightly seeking the help of the State to claim the possession. Resultantly, we do not find any ground to interfere in the orders passed by the learned Single Judge and the appeal is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

10.09.2024
Naveen

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No