

130 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20525-2024 (O/M)

Date of decision : 23.08.2024

Jagir Singh

..... Petitioner

Versus

Municipal Corporation, Amritsar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ashish Nagar, Advocate for
Mr. J.S. Thind, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner (Jagir Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of mandamus for directing respondent No. 1 (Municipal Corporation, Amritsar) to remove unauthorized encroachment on land comprised in Khasra No. 111 of village Kale Ghanupur, Tehsil and District Amritsar, by respondent No. 2 (Gurudwara Sri Guru Nanak Dev Ji Pehli Patsahi) after following proper procedure as per law.

1.1 A further prayer has been made by the petitioner for issuing a writ of mandamus directing official respondents to take legal action against private respondents for preparing false and fabricated documents in connivance with each other for usurping and encroaching upon the Government land falling in Khasra No. 111 of village Kale Ghanupur.

2. Briefly, the petitioner has sought the above referred reliefs on the plea that Khasra No. 111 of village Kale Ghanupur is the ownership of Municipal Corporation and private respondents have illegally and

unauthorizedly encroached thereon by raising construction by way of shops, hospital, gurudwara sahib etc. by preparing false and fabricated and forged documents. Petitioner claims that he had sought information in respect of aforesaid property under the Right to Information Act whereupon the petitioner has been informed that Hardev Singh, Lakhbir Singh and Rachpal Singh had prepared false agreement and in that regard, the concerned Estate Officer has referred the matter to the department for further action. Petitioner claims that the aforesaid Khasra No. 111 belongs to Municipal Corporation and when no effective steps were taken by the concerned officials, then the petitioner had moved representation to the Municipal Commissioner. Since no heed was paid to his representation, thereafter the petitioner approached this Court by filing a writ petition (CWP-14933-2016), which came to be disposed of, vide order dated 28.07.2016 by observing as under :-

“ Having heard the learned counsel for the petitioner and without expressing any opinion on the merits of the case, including the issue of limitation, if any, lest it should prejudice the rights of either of the parties, the Municipal Commissioner, Municipal Corporation, Kotwali, Amritsar City-respondent No. 2 is directed to look into the matter, consider the grievance of the petitioner, raised vide his application dated 16.3.2016 (Annexure P-5) and decide the same, at an early date by passing an appropriate order thereon, strictly in accordance with law, but in any case within a period of three months from the date of receipt of a certified copy of this order.”

2.1 According to the petitioner, since the order dated 28.07.2016, passed in CWP-14933-2016, was not complied with, therefore, he filed a

contempt petition (COCP-2879-2016), wherein notice was issued; whereupon an affidavit dated 11.09.2018 (Annexure P-9) came to be filed by the Municipal Commissioner, Amritsar, in the aforesaid contempt petition, wherein the following averments were made in paras 1, 4 and 5 thereof :-

“1. That in compliance of orders dated 28.07.2016 passed by this Hon'ble Court in Civil Writ Petition No. 14933 of 2016, copy of which was received in the office of the M.C. Amritsar on 22.08.2016 alongwith application dated 16.03.2016 the deponent directed Municipal Town Planner (MTP) and Estate Officer (EO) to put up a joint note containing all the facts and passed orders dated 26.12.2016 after examining the note and directed MTP to remove the unauthorized encroachment as alleged in application dated 16.03.2016.

2. xxxxxx xxxxxx xxxxxx

3. xxxxxx xxxxxx xxxxxx

4. That again letters dated 7.4.2017 to the same effect were issued to Civil Surgeon, Amritsar, Police Commissioner, Amritsar, District Magistrate, Amritsar intimating that for removing the illegal possession the drive will be carried on 11.4.2017 at 10 am at the same place.

5. That on 11.4.2017 Shri Gurwariyam Singh, Duty Magistrate, SHO Shri Ravinderpal Singh, MTP Shri Narinder Sharma, ATP Shri Jagdev Singh, Building Inspector Smt. Kulwinder Kaur, SDO, Sh. Yashpal Sharma and Patwari Shri Tejinder Singh were present on the spot. However, taking over of possession carried out by the officers was opposed by around 400 supporters of the Gurudwara because on the said land there is a boundary wall constructed by the Gurudwara long time back. There is no medical store as submitted by the

petitioner in para 3 of the petition. This drive carried out by the Municipal Corporation was opposed and even the ladies were also amongst the protestors, who laid down on the road. Number of protestors were old aged and thus facing the protest from people and keeping their religious sentiments into consideration, the possession could not be taken. This report has been submitted by Tehsildar Cum Duty Magistrate, SHO, MTP, ATP, B.I., E.O., SHO and Patwari. Copy of the report is attached as Annexure R-1/1 to this affidavit. ”

2.2 It appears that subsequently, writ petition bearing CWP-24426-2018 came to be filed by respondent No. 2 (Gurudwara Sri Guru Nanak Dev Ji Pehli Patsahi), seeking setting aside of order dated 26.12.2016, ordering removal of unauthorized encroachments, wherein notice of motion was issued by this Court and operation of the order dated 26.12.2016 was stayed with the further direction to the authorities not to demolish any area which is in possession of petitioner therein i.e. Gurudwara Sri Guru Nanak Dev Ji Pehli Patsahi (respondent No. 2 herein). The writ petition was ordered to be heard alongwith contempt petition (COCP-2879-2016).

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Heard.

5. It is not disputed that the matter pertaining to the alleged encroachment over Khasra No. 111 of village Kale Ghanupur is pending consideration before this Court in CWP-24426-2018. During the course of hearing, it is informed by the learned counsel for petitioner that the petitioner herein is also a party in the above referred CWP-24426-2018.

5.1 Without commenting anything as regards the locus standi of the petitioner to maintain the instant writ petition, since the order dated 26.12.2016, passed by the Municipal Commissioner, Amritsar directing removal of unauthorized encroachments, had already been stayed, vide order dated 24.09.2018 (Annexure P-10), passed in CWP-24426-2018 with a further direction to the authorities not to demolish any area, which is in possession of respondent No. 2 herein, therefore, in my considered view, the petitioner can very well agitate his claim (if permissible under law) in the aforesaid pending writ petition (CWP-24426-2018).

6. In view of the aforementioned facts and circumstances and also the observations made above, the instant civil writ petition is dismissed.

7. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

23.08.2024
sjks

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