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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4658-CWP-2024 in/and
CWP No.26702 of 2022
Date of decision: 19.03.2024

Bant Singh Jhajj

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Navroop Jawanda, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. D. V. Sharma, Senior Advocate with
Ms. Sunder Kumari, Advocate
for respondent No.3.

Mr. Naginder Singh Vashist, Advocate
for respondent No.4.

RAJESH BHARDWAJ J.

CM-4658-CWP-2024

Instant application has been filed for placing on record the
joint replication to the written statements filed on behalf of respondents
No.3 & 4.

For the reasons recorded in the application, joint replication to the written statements filed on behalf of respondents No.3 & 4 is ordered to be taken on record.

Application is allowed.

CWP-26702-2022

Present writ petition has been filed for quashing the letter dated 04.11.2022 (Annexure P-16) vide which respondent No.3 has written to the Senior Superintendent of Police, Khanna to register an FIR against former office bearers, officials etc. on the basis of Resolution No.103 dated 25.07.2022 without completing inquiry initiated in this regard three years back against the then Executive Officer & Superintendent of the Municipal Council and without issuing any notice or any inquiry former office bearers and without conclusion of such fact finding inquiry underway with Additional Deputy Commissioner as to who is responsible for not getting the agreement executed with the contractor, to whom the contract to run the community centre was given in the auction held on 18.05.2017. Further prayer has been made for quashing the resolution No.103 dated 25.07.2022 (Annexure P-12) as the same is totally illegal having not been passed by majority of the votes as per mandate of the provision of the Punjab Municipal Act, 1911 and for staying the operation and effect of letter dated 04.11.2022 (Annexure P-16) as the same is actuated with malice for political consideration.

It has been submitted by learned senior counsel for the petitioner that the petitioner contested the election of Municipal Council, Doraha as Municipal Councilor and was elected as such. He submits that

thereafter the petitioner was elected as President of Municipal Council, Doraha and remained as such from 15.03.2015 to 14.03.2020. He submits that as there was leakage in the roof of mini hall and bathroom of community centre, tenders for renovation of the same were invited by the Municipal Council with an estimated cost of Rs.4,86,000/-. On completion of the formalities, the tender was awarded in favour of contractor, namely, Bhushan Kumar. The contractor was required to complete the work of renovation and repair of mini hall and bathroom of community centre within a period of two months, however he failed to complete the work of renovation within the stipulated time. The action as was required by the Executive Officer to be taken against the contractor was not taken by the Executive Officer. He submits that the Municipal Council, Doraha decided to conduct the open auction for lease of the community centre on 18.05.2017 at 11 A.M. Public notice was issued for conducting the auction of community centre on 31.05.2017 for the period from 01.06.2017 to 31.05.2020. He has submitted that vide letter dated 28.08.2019, the Executive Officer, Municipal Council directed Sh. Amarjit Singh in whose favour the contract of community centre was awarded for 03 years from 01.06.2017 to 31.05.2020 to execute the agreement and clear the dues within 10 days. He submits that notice dated 16.10.2019 was issued to the then Executive Officer and the Superintendent as to why the charge of community centre was given to contractor without execution of the agreement. He submits that thereafter final notice dated 03.01.2020 was issued by the Executive Officer, Municipal Council directing the contractor, namely, Amarjit Singh to

comply with the terms and conditions of the contract within a period of three days. He submits that notice dated 03.01.2020 was replied by Amarjit Singh stating therein that he was never informed by the Municipal Council regarding the award of contract in his favour and further he was to get the possession of community centre after renovation of the same. He has submitted that the Executive Officer put up the matter before the House of Municipal Council in the meeting dated 31.01.2020. The House of Municipal Council passed resolution No.12 dated 31.01.2020 by which it was resolved that as Amarjit Singh, Contractor has failed to execute the agreement and has not deposited the amount in the account of Municipal Council, therefore, the contract be cancelled and the earnest money be forfeited. On 14.02.2020, team of Superintendent, A.M.E. etc. was constituted to take the possession of community centre, who took the possession of the same on 14.02.2020. Thereafter on 26.05.2021, the Municipal Council filed a petition under Section 14 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 for recovery of the amount of lease along with interest at the rate of 18%.

Learned senior counsel for the petitioner has submitted that due to the change of the Government, House of Municipal Council convened the meeting on 25.07.2022 under the chairmanship of President, Municipal Council, Doraha where MLA Halqa Payal was also present. He submits that in the meeting, 14 Municipal Councilors came present and the proceedings of the meeting were written in which the detail of auction of community centre was given and it was further mentioned that Amarjit Singh, contractor had failed to pay the amount of lease money and had

caused financial loss to Municipal Council. The Executive officer was authorized to get the case registered against the persons, who were responsible. He submits that for confirmation of the proceedings of the meeting on 25.07.2022, another meeting was held on 08.08.2022 in which Sh. Sarabjit Singh, Municipal Councilor from Ward No.14, stated that he had signed the blank proceedings and he was not in the agreement with the said resolution. It is submitted by learned senior counsel for the petitioner that the Additional Deputy Commissioner was already holding an inquiry into the incident of community centre. He has submitted that Municipal Council, Doraha through its reply dated 18.08.2022 informed the Additional Deputy Commissioner that auction was got conducted by Rajnish Sood, the then Executive Officer, Pushpinder Kumar, Superintendent, Surinder Pal Chaudhary, Clerk and Jasvir Singh, Sanitary Inspector, Sahnewal. He submits that after passing of the resolution dated 25.07.2022, neither any inquiry has been got conducted nor any show cause notice was issued to any of the officials and thus, letter dated 04.11.2022 was issued by the Executive Officer, Municipal Council, Doraha to S.S.P., Khanna for registration of the FIR against the office bearers and the officials of Municipal Council. Learned senior counsel though has assailed the impugned letter dated 04.11.2022 on various grounds, submits that resolution was passed in the meeting where 16 persons were present i.e. 14 Municipal Councilors, 01 President and 01 MLA however out of 14 Municipal Councilors, 08 Municipal Councilors refused to sign and support the resolution. Thus, the resolution was not passed by majority as per the requirement of Section 29 of Punjab

Municipal Act, 1911. He submits that in view of Rule 3 of Punjab Municipal (Executive Officer), Rules, 1976, it is the principal Executive Officer, who is responsible to conduct all the auctions for disposal of Municipal properties by way of sale or lease and thus, the elected members cannot be held responsible for the said lapse. He submits that letter dated 04.11.2022 has been issued on the basis of resolution No.103 dated 25.07.2022, however, the said resolution having not been passed as per the established procedure of law, the impugned letter deserves to be quashed. He submits that the impugned letter has been issued as an act of vendetta of change of Government. He has submitted that action of the respondents being totally illegal, *mala fide* and against the principles of *audi alteram partem* deserves to be set aside.

Per contra, learned senior counsel appearing for respondent No.3, Municipal Council has vehemently opposed the submissions made by learned senior counsel for the petitioner. He has submitted that from perusal of the reply filed by the contractor, it is apparent that he has not disclosed his address. He further submits that from perusal of the terms and conditions of the contract, it is evident that the successful bidder was to execute an agreement with the Municipal Council, Doraha within three days, however no agreement whatsoever as per the mandate of the contract was ever executed by the contractor. He submits that for complete 03 years, the contractor not only remained in possession of the community hall but on the inspection of the site, various articles were found to have been stolen from the community centre as per the details given in Annexure R-3/1. Learned senior counsel further submits that

corum in the meeting was complete and on finding heavy loss having been caused to the Municipal Council, the resolution was duly passed to lodge an FIR. He submits that even otherwise for a cognizable offence, the FIR not only can be lodged by any person but the investigating agencies can *suo moto* also take the cognizance of a cognizable offence. He submits that the contentions raised by learned senior counsel for the petitioner are without any force as it is a matter of investigation to find the truth in the allegations.

Learned counsel for respondent No.4 has also opposed the contentions raised by learned senior counsel for the petitioner and has prayed for dismissal of the present petition.

Learned State counsel has also opposed the submissions made by learned senior counsel for the petitioner. He has also supported the arguments raised by learned senior counsel for respondent No.3- Municipal Council. He submits that in the facts and circumstances, where various articles have been found to be stolen from the community centre, the matter needs to be thoroughly investigated. He has submitted that there being no infirmity in the letter written by the Municipal Council for registration of the FIR, the present petition being devoid of any merit deserves to be dismissed.

Heard.

On hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner had contested the election of Municipal Council and was elected as Municipal Councilor. Thereafter the petitioner was elected as President of Municipal Council and remained

as such w.e.f. 15.03.2015 to 14.03.2020. The community centre of Municipal Council was auctioned and in terms of the contract, the validity of contract was from 01.06.2017 to 31.05.2020. Though the community centre was given in auction however, the agreement as per the terms and conditions of the contract was not signed. On inspection of the community centre, various articles were found to have been stolen from the same. Thus, resolution was passed and the impugned letter dated 04.11.2022 was issued. The precise submission made by learned senior counsel for the petitioner that the impugned letter dated 04.11.2022 was issued to implicate the petitioner in a false case. It has been contended that resolution passed is a very well after thought to involve the petitioner in a false case. However learned senior counsel for respondent No.3 has submitted that in the facts and circumstances, the FIR deserves to be registered so as to investigate the matter to find out the truth in allegations.

This Court is in agreement with the submissions made by learned senior counsel for respondent No.3 that from the facts and circumstances of the case, the loss to the public property is alleged to have been found caused and the same deserves to be investigated. However for investigation, lodging of the FIR is necessary. However, investigation in the FIR deserves to be carried out in a totally fair and impartial manner. The allegations made against anyone is not in itself sufficient. The investigation is the domain of investigating agencies and they are to carry out the investigation in a transparent manner.

Thus, this Court does not find any illegality in the request made to the Senior Superintendent of Police, Khanna for lodging an FIR and investigate the same in a fair manner. However, the apprehension expressed by learned Senior counsel for the petitioner can also not be ignored and hence, the investigation is to be carried out by the Investigating Agencies as in accordance with law without being influenced by any resolution passed in the meeting of the Municipal Council. The Investigating Agencies would take into consideration the relevant record and would make an independent assessment on their investigation to find the truth in the allegations levelled and proceed further in accordance with law. The investigation be conducted in a transparent and independent manner in accordance with law and be concluded expeditiously.

Thus, the present petition is disposed of in the light of above mentioned directions.

(RAJESH BHARDWAJ)
JUDGE

19.03.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No