

127 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25680-2024 (O/M)
Date of decision : 09.04.2025

Gurmej Singh and another Petitioners

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vijay Rana, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. G.S. Khokhar, Advocate
for respondent No. 4.

Mr. Viren Sharma, Mr. Yash Srivastava, Advocates
for respondent No. 5.

None for respondent No. 6.

Mr. Amit Jhanji, Senior Advocate with
Mr. Shashank Shekhar Sharma, Advocate
for respondent No. 7.

None for respondent No. 8.

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HARSH BUNGER, J. (ORAL)

1. Petitioners have 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 respondents No. 1 to 4 to remove the illegal, unlawful and unauthorized encroachment made by respondents No. 7 and 8, namely, Managing Committee of Gurudwara Shri Guru Nanak Darbar Trust and Managing Committee Radha Madhav Mandir, respectively, with the connivance of respondent No. 6, namely GBP Crest

Residents Welfare Society by way of raising the construction of Shri Guru Nanak Darbar Gurudwara as well as Radha Madhav Mandir.

1.1 A further prayer has been made for issuing appropriate orders for ensuring that the passages/thoroughfare, which leads to commercial site/market are not blocked by way of barricading their drums, raising of boundary wall or raising any other type of structure, installing gates, hoarding, boards etc.

2. Briefly, a colony in the name and style of GBP Crest at village Bhagomajra, Tehsil Kharar, District SAS Nagar, Mohali, was developed by M/s Gupta Builders and Promoters Private Limited. It is stated that insolvency proceedings are already initiated against respondent No. 5 and IRP (Interim Resolution Professional) already stands appointed.

2.1 Petitioners state that on the advertisement/representation made by M/s Gupta Builders and Promoters Private Limited-respondent No. 5 herein, the petitioners had invested their hard earned money and purchased certain commercial properties within the said colony, vide different sale deeds (Annexure P-1 to Annexure P-3). It is stated that in front of the commercial sites, there is a parking area and open space and another area of 35 feet has been kept for road for ingress and outgress of the general public. It is further stated that there is also green belt within the colony.

2.2 It appears that a resident welfare society under the name of GBP Crest Residents Welfare Society (respondent No. 6 herein) is also constituted for the said colony. It is the case of the petitioners that as per the brochure as well as sanctioned site plan of the aforesaid colony, no

site has been earmarked for construction of a Gurudwara or a Mandir. It is stated that respondent No. 7 and respondent No. 8, in connivance with respondent No. 6-Society and other inhabitants of the society, raised a Gurudwara in the area of about 35 x 60 feet (approximately) and another area to the extent of 30 x 40 feet has been encroached upon by respondent No. 7 by raising pillars and boundary wall in the area of road, green belt and the parking area falling in front of commercial sites, for which they are not entitled to. The photographs of Gurudwara and Mandir have been attached alongwith this petition as Annexure P-6 Colly and Annexure P-7. It is further stated that even the Mandir has been constructed on an area of 13 x 15 feet and further encroaching upon an area of 13 x 50 feet in the area of green belt adjoining commercial sites. Petitioners state that on account of construction of the aforesaid Mandir and Gurudwara, great inconvenience is caused to the public at large as well as shopkeepers including the petitioners, and respondents No. 6 to 8 in connivance with each other and with the help of some other persons tried to block the passages/thoroughfare leading to the commercial sites. It is averred that respondents No. 1 to 4 are duty bound to remove the illegal and unauthorized construction made by respondent No. 7 and respondent No. 8 in connivance with respondent No. 6, as noticed hereinabove.

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition before this Court, for seeking relief(s), as noticed hereinabove.

4. In the present case, reply on behalf of respondent No. 7 has been filed, wherein certain preliminary objections have been taken that the petitioners have not come with clean hands. It is submitted that the

construction of Gurudwara Sahib was started in the month of April, 2023 after passing of a resolution dated 05.02.2023 by respondent No. 6 resolving to construct Gurudwara on a vacant land. In para 10 (v) to (vii) of the preliminary objection, following stand has been taken :-

“v. That it is submitted here that the area on which the Gurdwara Sahib has been constructed by the Answering Respondent is neither a Public Road/Property nor a green area. Rather, the same is vacant land owned by the builder which was to be utilized for construction/sale at a subsequent point of time. However, on account of the fact that several cases came to be registered against the Builder, he has been absconding and evading the law enforcement agencies.

vi. That on account of the fact that the Builder is absconding and his whereabouts are unknown, the Answering Respondent is unable to get the building plan sanctioned due to the fact that signatures of the owner i.e. Respondent No. 5 are required for the same.

vii. That at best, the locus to file the instant writ petition arises in favour of the builder and not of the petitioners, the petitioners are in no way, form or manner aggrieved against the construction of the Gurdwara Sahib on land owned by Respondent No. 5”

4.1 As regards the construction of Mandir is concerned, it is mentioned in para-11 (ii) that the Mandir has been constructed by respondent No. 8 along the green area, which is distinct from the construction made by respondent No. 7 on a vacant piece of land, owned by the builder.

4.2 Further, as regards the placing of drums/barricades/boundary, it is stated that the same has been carried out by respondent No. 6-Society

for the purpose of protecting the residents of the Society from unwanted vehicles. Still further in para-13, following stand has been taken :-

“13. That it is relevant to mention here that even prior to the construction of the Gudwara Sahib, the Answering Respondent in the process of applying for sanctioning of building plans, however, on account of the fact that the builder/owner i.e. Respondent No. 5 is absconding, the same could not fructify.”

4.3 After filing reply on behalf of respondent No. 7, an additional affidavit has been filed by one Shri Mohinder Pal Singh, wherein it is stated that the Gurudwara Sahib has been constructed on the land owned by one Mrs. Neelam Begam wife of Imran Khan, who has further executed gift deed in favour of Shri Guru Granth Sahib Ji on 28.03.2025 and thereafter, an application for regularization of the building plan has also been submitted before the competent authority.

4.4 On the other hand, according to reply filed by respondent No. 8, the aforesaid Mandir was got constructed by respondent No. 5 in the year 2018 and that the documents, if any, as regards the ownership and lay out plan of the Mandir, is in possession of respondent No. 5. It is also stated that respondent No. 8 has received a notice under Section 195A read with Section 220 of Punjab Municipal Act, 1911, for removal of Mandir and the said notice has already been challenged by filing an appeal, which is pending adjudication.

5. Heard.

6. In the present case, the petitioners have approached this Court by way of filing this writ petition stating that respondent No. 7 and respondent No. 8 in connivance with respondent No. 6 have raised

unauthorized construction of a Mandir and a Gurudwara on an area, which falls in the area of green belt and other areas within the colony, which were not earmarked for construction of any such religious structures.

7. A perusal of the reply filed on behalf of respondent No. 7 and respondent No. 8 would leave no manner of doubt that the construction of Mandir as well as Gurudwara has been raised without there being any sanctioned building plan/layout plan. It has also not been shown that before raising construction of any such religious structure, any approval from the competent authority was sought or any such provision has been made in the layout plan of the colony. Although, respondent No. 7 has taken a stand that subsequent to filing of instant civil writ petition, it was discovered by them that the area whereon Gurudwara is constructed, was owned by Neelam Begum, who has further gifted it in the name of Shri Guru Granth Sahib Ji, the fact remains that the buildings have been constructed without their being any approved site plan/building plan and/or requisite permissions thereof, especially when third party rights already stood created in colony in question and initially there was no plan for the said structures on the sites in question.

8. Hon'ble the Supreme Court in ***Mahesh Parsad Gupta Versus R.G., Jharkhand High Court and Ors. [2002 (5) Scale 415]*** has observed as under :-

“2. We see no illegality in the respondents taking steps to demolish the Mandir if it is constructed unauthorisedly and without building plans being passed.

3. We see no justification whatsoever for the High Court at Ranchi to have given any permission with regard to the

construction of any wall or with regard to the diversion of drain, etc., referred to in the letter dated 1st February, 1993. Usurpation of public property in the name of religion and construction of religious places without permission from the Municipal Authorities cannot be permitted. The modus operandi of grabbing public land erecting buildings illegally primarily for the benefit of the perpetuator has to come down with a heavy hand.

8.1 This Court in ***Mandir Jai Bajrang Bali Parbandhak Sabha (Regd.) and others [2003 (4) RCR (Civil) 537]*** has observed as under :-

“12. The plaintiffs have not produced any document to prove the ownership of the land measuring 330 sq. yards. In the absence of any evidence of ownership of the plaintiffs, the stand of the Municipal Corporation that the land vests with the Municipal Corporation, prima facie, cannot be disputed. The plaintiffs have to prove their case of ownership and consequent possession. Open land appurtenant to the building cannot be deemed to be in possession of the plaintiffs so as to claim possession against the true owner. Both the courts below have found that the plaintiffs are not entitled to the injunction in respect of the entire land.

13. Hon'ble Supreme Court in the case of Mahesh Prasad Gupta v. R.G., Jharkhand High Court & Ors., Writ Petition (Civil) No. 318 of 2002, has come heavily on the tendency of usurpation of public property in the name of religion and construction of religious places without permission from the Municipal Authorities. The order of the Supreme Court dated 9.7.2002 in the aforesaid case reads as under :-

"We see no illegality in the respondents taking steps to demolish the Mandir if it is constructed unauthorisedly and without building plans being passed.

We see no justification whatsoever for the High Court at Ranchi to have given any permission with regard to the construction of any wall or with regard to the diversion

of drain, etc.,referred to in the letter dated Ist February, 1993. Usurpation of public property in the name of religion and construction of religious places without permission from the Municipal Authorities cannot be permitted. The modus operandi of grabbing public land and erecting buildingsillegally primarily for the benefit of the perpetuator has to come down with a heavy hand. We see no merit in this petition and the same is, accordingly, dismissed."

14. It is, thus, apparent that the plaintiffs have tried to usurp the public property alleging the same to be the property of the Mandir without any proof either of title or of possession in respect of land measuring 330 sq. yards."

9. Keeping in view the aforementioned facts and circumstances, since the Mandir as well as the Gurudwara have been constructed without there being any sanctioned site plan/layout plan and/or other approvals/sanctions, it has to be held that the construction of the aforesaid structures (Mandir and Gurudwara) are unauthorized and are liable to be removed. Accordingly, I deem it appropriate to pass/issue the following order/directions:-

- (i) respondents No. 6 to 8 alongwith their office bearers are afforded a period of six weeks from today, to remove holy scriptures/books/idols from the said structures after due observance of all religious ceremonies and also to remove the abovesaid unauthorized constructions ;

It would be appreciated if the aforesaid corrective measures are taken by respondents No. 6 to 8 through their office bearers on their own.

- (ii) in case, respondents No. 6 to 8 through their office bearers fail to take recourse to the corrective measures as stated in para (i) above, then there shall be a direction to respondents No. 6 to 8 and its office bearers to remove the holy scriptures/books/idols after due observance of all religious ceremonies and also to remove the aforesaid unauthorized structures within a period of four weeks thereafter. A compliance affidavit in that regard be submitted to Sub Divisional Magistrate, Kharar after the expiry of ten weeks from today. A copy of the compliance affidavit be also submitted before the Registry of this Court ;
- (iii) in the event of failure of respondents No. 6 to 8 through their office bearers, to comply with directions contained in para (ii) above, then the Sub Divisional Magistrate, Kharar shall initiate all possible steps for removal of holy scriptures/books/idols from the aforesaid structures after due observance of all religious ceremonies and further take steps, with the help of police, to remove such unauthorized constructions on expiry of period mentioned in paras (i) and (ii) above. It is made clear that the entire expenses for removal of unauthorized constructions shall be recovered from respondents No. 6 to 8 and/or its office bearers ;
- (iv) further, in case of failure of respondents No. 6 to 8 and its office bearers to comply with the directions contained in para (ii) above; in that eventuality, the Sub Divisional Magistrate, Kharar apart from initiating steps in furtherance to the

direction contained in para (iii) above; shall also submit a status report in that regard before the Registry of this Court, duly indicating the list/details of the office bearers of respondents No. 6 to 8 ;

- (v) upon receipt of such status report, the Registry of this Court shall put up the matter before the Court for taking up contempt of court proceedings against respondents No. 6 to 8 and its office bearers.

10. The instant writ petition stands disposed of in the aforestated terms.

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

(HARSH BUNGER)
JUDGE

09.04.2025
sjks

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