

Before K. Kannan, J.

KANS DASS AND OTHERS—Petitioners

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No.10525 of 2000

November 20, 2012

Constitution of India, 1950-Article 226- Mandamus-Petitioner in possession of building-Building demolished by Sub Divisional Magistrate without taking necessary approvals -No statutory power shown to exist for demolition-Action of Sub-Divisional Magistrate was irresponsible and illegal- State earlier issued compensation of Rs. 50,000/- for demolition-Held, demolition was done without

ascertaining that there was any encroachment-Rs 1.00 lac awarded by court-Final compensation shall be assessed by Civil Court After looking at value of building- -Writ petition allowed with Costs.

Held, that I am prima facie of the view that the demolition was without authority of law and the act had been carried out without a sure proof of any encroachment. Even assuming that such power existed, it bears out from the record that third respondent was suspended from service for some time but reinstated later. This was but a cosmetic exercise and it has not been followed to the next logical end by registering a complaint not merely against the third respondent but also against Deputy Commissioner who at that time was Narinderjit Singh. I would still not think it necessary to start the criminal proceedings at this length of time. The issue could be considered on a plea for direction for compensation. On the issue of compensation, it is learnt that the State had provisionally issued Rs.50,000/- as compensation to each of the petitioners. The value of the building lost cannot therefore, be decided by now but I will quantify the loss that each of the petitioners will be entitled for the illegal action of the respondents 2 and 3, to be Rs.1 lac and the same shall be payable by the State and recovered from the then DC and the third respondent. I make no observation with reference to the value of super structure that was demolished. It shall be worked out in an independent civil proceedings if the petitioners are so advised. The time taken before this Court for prosecuting the case will be excluded in an action for damages against the defendants. The finding that the demolition was done without ascertaining that there was any encroachment shall be taken as final and conclusive through this judgment, subject only to further proceedings to higher forum against this judgment. It shall not be open to the party to plead before the Civil court against the issues which have been come to the finality through this judgment. The issue for adjudication before the Civil Court would only be to identify the quantum of loss for the building and will not avail to parties to reopen issues relating to whether there was any attempt to actually find the encroachment; whether proper demarcation had been done and whether the defendants were competent to effect the demolition or not. I clarify all those which have been adjudicated through this judgment. The writ petition is allowed to the above extent with costs assessed at Rs.25,000/-.

(Para 17)

S.D.Sharma, Senior Advocate with Bindu Goel, Advocate, *for the petitioners.*

Piyust Kant Jain, Additional Advocate General, Punjab for respondent No.1.

Arvind Moudgil, Advocate and Sanjay Guevera, Advocate, for respondent No.3.

K.KANNAN, J. (ORAL)

I. The location of petitioners' construction

(1) The writ petition is filed at the instance of persons in possession of a building adjoining a historical place known as Ram Tirath within District Amritsar. The petitioners' contention was that the predecessors of the petitioners were residing near the temple and the place where they were residing is known as Abadi Ram Tirath. The pucca construction had been made for the residents to maintain their families. The petitioners would identify the construction as having been built in Khasra No.80 measuring 18 kanals 18 marlas and in the jamabandi it is shown that the petitioners were in possession of land bearing Khasra No.79-80.

II. The immediate cause for the lis

(2) The cause of action for the writ petition was an incident that had taken place on 19.2.2000 when the Sub Divisional Magistrate the respondent No.3 herein, allegedly wanted to take some money from the petitioners out of the collection made by them from the followers and also some money from the hawkers selling goods at the fair which was held at the holy place and on the refusal of the petitioners, respondent No.3 was annoyed and demolished all the residential houses of the petitioners. It is stated that bull-dozers were brought to raze to ground, a portion of the building. The petitioners have appended site plan for the built up property and demarcates the portions that were removed by shading them in red colour. As per the site plan, as many as 17 rooms marked in red colour were said to have been demolished. A boundary wall enclosing the property was also demolished. The petitioners have detailed their own plight that it was rainy season at that time and there was no place of shelter for the petitioners or their family members. The highhandedness of the Authorities was also highlighted in the press.

(3) The petitioners claim that a panchayat was immediately convened on the complaint against the third respondent under whose direct supervision, demolition had been made and the panchayat passed a resolution condemning the act. The petitioners were claiming that they had made representations on 25.5.2000 and 3.3.2000 to the executive heads of the State complaining against the 3rd respondent. The State responded by suspension of the S.D.M. and paid Rs.50,000/- as interim compensation for the damage caused to their building. Copies of the cheques paid to the petitioners are also annexed along with the petition. The petitioners would also state that an amount of Rs.10,000/- was given to daughter of Ram Lubhaya whose marriage was to be performed but all the gift articles collected to be given at the time of marriage were also damaged by the act of the 3rd respondent. The petitioners would contend that the 3rd respondent had committed serious offences of criminal trespass and indulged in acts that were liable for punishment under Sections 427, 447 and 506 IPC.

III. The prayer in the writ petition

(4) The prayer in the writ petition is for a direction to the 1st respondent, namely, State of Punjab through the Secretary Home Affairs to take disciplinary action against 3rd respondent, SDM, Ajnala, who is identified by name Sh.J.P.Singh and to pay compensation for the loss caused by the third respondent.

IV. The contentions in reply by respondents

(a) Resolution of the Temple Committee for steps for removal of encroachment.

(5) In response to the contention raised by the petitioners, significantly, it is not denied that a portion of the construction was indeed demolished by the 3rd respondent. The State would not join issues on the particular acts attributed to the 3rd respondent except to state that the State had no information that the 3rd respondent had committed any offence by trespassing into the houses of the petitioners. It is also stated in defence that the petitioners themselves had not submitted any representation regarding the occurrence before Senior Superintendent of Police, Amritsar. The 3rd respondent has filed a reply stating that as District Magistrate, he was Incharge of the law and order situation and would refer to the proceedings

of the Committee of Ram Tirath that decided about the alleged illegal encroachments on the land of Ram Tirath Temple, which were liable to be removed and the order of removal was passed by the District Magistrate. Bulldozers were pressed into service and the demolition was effected with the police assistance. The incident is recounted by the 3rd respondent, as having commenced from a meeting convened by the Managing Committee of Ram Tirath Improvement and Development Trust. The meeting of the Committee was presided over by the District Magistrate as also the Chairman of the Committee. It is asserted by the third respondent that the land itself did not belong to the petitioners and it was a temple land which has been illegally occupied by the petitioners. The removal had to be effected at the bidding of the Chairman of the Committee.

(b) Fact of demolition of petitioners' building is an admitted fact.

(6) The statement would make it evident that the act of demolition itself is not denied but it is sought to be justified on the ground that the Deputy Commissioner who was the Chairman of the Committee for Improvement and Development Shri Ram Tirath Temple held on 17.10.2000 had decided the removal of encroachments and the 3rd respondent had merely carried out the resolution. The proceedings of the meeting have been filed before this Court which shows that as items No.3 and 4, the Committee considered the removal of illegal encroachments and the boundary wall of the Parikrama as illegal encroachments made by certain people. The resolution specifically indicated that the action was required to be taken by the S.D.M. Ajnala. The 3rd respondent also relies upon a report made on 5.5.2000 signed by Patwari and Kanungo that a demarcation was undertaken after publication by way of beat of drum on 2.2.2000 through a Chowkidar. It is contended that measurements were done by the field staff and during the demarcation, it was found that some people have illegally encroached upon the land measuring 50 kanals approximately in Khasra No.79 and Khasra No.80. The names of the encroachers have also been brought out in the report referring to Mahant Sat Pal, Kans Raj, Mangal Dass and Ram Lubhaya, who are the petitioners before this Court. The report says that they were allotted the quarters and were given the quarters on rent, but they had illegally encroached upon the vacant land of the Parikrama of the Ram Tirath Temple.

(c) Preliminaries before removal

(7) The SDM Ajnala is reported to have issued notices by way of beat of drum that the removal of illegal encroachments on the land of Ram Tirath was to be done and all the encroachers were required to remove their belongings to safer places by 17.2.2000. The SDM had also taken the protection of the SSP by obtaining police help for removal of the alleged illegal encroachments. He had requisitioned bulldozers for removal of the encroachments from the Executive Engineer, PWD and ultimately, the demolition has been done. The documents filed by the respondents show that the 3rd respondent obtained information regarding the alleged encroachments of the petitioners by a report of the Kanungo and Patwari that constructions have been made by encroaching upon the property of Ram Tirath. It must be noticed that the reports do not indicate that he himself has been a personal witness to the demarcation or that there was any particular statutory power under which he was exercising a right of removal of the alleged encroachments.

(8) It is seen from court records that after the writ petition was filed, arguments were heard by a Division Bench on 20.3.2002 when the Bench had issued a notice to Deputy Commissioner by name Narinderjit Singh who happened to be the Chairman of the Committee and issued a suo-motu notice to show cause as to why the Court should not pass appropriate orders against him for giving totally illegal, unwarranted and unjustified direction for demolition of the properties of the petitioners. He appeared in person and had filed an affidavit that was taken on record on 23.7.2002.

V. 2nd respondent's response-a plea in recusal

(9) The affidavit filed by Narinderjit Singh shows that as per the resolution of the Committee, the revenue records were required to be inspected and that illegal encroachments should be identified and that appropriate action for removal of the unauthorised encroachments should be taken. In the affidavit, he reiterated the factual details brought by the 3rd respondent relating to the alleged demarcation made by Patwari of the Halqa and Kanungo and the report of the SDM that the illegal encroachments were required to be demolished and for that purpose, police help and bulldozers were requisitioned. He would further state that the requisition was

made by the 3rd respondent and he had marked it to the Deputy Commissioner for necessary action and would also affirm that the police help and bulldozers were actually sent under the signatures of Addl. Deputy Commissioner. He would make an explanation that actually the act of removal of illegal encroachments was dealt with at the level of SDM or the Executive Engineer of the Public Works Department, as also at the level of BDPOs and DDPOs and the officers of the MC and such decision was not taken at the office of Deputy Commissioner. His reply was a manner of explanation that he did no more than to pass the requisition for police help and bulldozers to his subordinate official and he had no role to play for actually causing the demolition of the building.

VI. Court's order eliciting materials through report of local Commissioner - extract of report

(10) After eliciting response through an affidavit of the Deputy Commissioner, this Court passed an order on 23.7.2002 directing the District Judge to nominate one Additional District and Sessions Judge for holding an enquiry into the incident and to report. Accordingly, Sh.M.S.Chouhan, Additional District and Sessions Judge, Amritsar had been appointed and a report was secured by the Court. The report by the Additional District and Sessions Judge has been prepared after holding personal inspection and allowing for statements to be given by affected parties. The conclusions for the report after examination of all the official witnesses and some of the petitioners revealed as follows:

“M/s Ashwani Sharma & Ashwani Bansal advocates for the petitioners, Mr.D.K.Dhir Advocate for Shri Narinderjit Singh, Mr.Amar Pal Singh Randhawa Advocate for Shri J.P.Singh and Mr. Surjit Singh Third Government Pleader for State of Punjab, Deputy Commissioner & Senior Superintendent of Police, Amritsar have been heard at length and with their able assistance evidence available on record has been probed and it is found as under:

1. Dispute pertains to the land comprised in khasra No.79 only as is evident from the sworn testimony of Shri Ram Lubhaya, PW-1 and site plan Ex.P-2 placed on record on behalf of the petitioners.

2. As per entries in the Jamabandi ()Ex.P-1) the land comprised in Khasra No.79 is described as "Abadi Dch" and status of the petitioners as "Ghair Maroosi" in respect of 10 kanals of land upon which they are shown to be in occupation. Out of these 10 kanals land measuring 9 kanals and 17 marlas is shown as "Chahi" and 3 marlas as "GHAIRMUMKIN TUBEWELL". No construction has been shown.

3. Some residential quarters were built and were allotted to the pujaris of Shri Ram Tirath in the year 1982 in lieu of the houses got vacated from them for development of the area as evidenced by copy of the proceedings of the meeting of the Committee held on March 8, 1982 and as per depositions of Shri Ram Lubaya (PW-1), Shri J.P.Singh (RW-7) and Shri Puran Nath (RW-9).

4. From Mark R2 and depositions of Shri J.P.Singh (RW- 7), and Shri Puran Nath (RW-9) and report Mark RW3C it is established that on/around the circumambulation of the holi sarovar there have been encroachments; and from the statements of Shri J.P.Singh (RW-7), Shri Om Parkash (RW-5), Shri Puran Nath (RW-9) and Shri Narinderjit Singh (RW-10) and documents Mark R-2 to Mark R-7/Ex.R-7/Ex.RW6/1, Ex.RW10/A, Mark RW3/C, it has been established that there has been a strong and persistent demand for removal of these illegal encroachments.

5. Vide resolution dated January 17, 2000 it was resolved by the Committee under the Chairmanship of Shri Narinderjit Singh, the then Deputy Commissioner, Amritsar that S.D.M. Ajnala be asked to probe the revenue record, identify the encroachments and take steps for their removal. Vide letter Ex.RA and another letter Ex.R2 Deputy Commissioner, Amritsar circulated the proceedings dated January 17, 2000 (Ex.RW6/1), amongst others, to S.D.M. Ajnala asking for strict compliance of the resolution within the specified period. Vide letter dated 28.1.2000 (Ex.RW7/1) S.D.M. Ajnala asked Circle Revenue Officer, Rajasansi to cause demarcation of the

land comprised in Khasra No.69 of village Kaler and Khasra No.79 of Village Kotla Doom to be made and to apprise him of the position existing there. Copy of this letter was also sent to Deputy Commissioner, Amritsar. As per entry No.195 in the Rojnamcha (Ex.RW4/2) proclamation was carried out in the area to the effect that demarcation of the aforesaid land was to take place on 4.2.2000.

As per entry No.198 in the Rojnamcha (Ex.RW4/1) demarcation was carried out.”

VI. Report: No proof of demarcation regarding encroachment

(11) Report brings out the fact that the land in Khasra No.79 was described as Abadi Deh and the status of the petitioners as seen from the jamabandi was that they were Gair Marusi in respect of 10 kanals of land upon which they were shown to have been in occupation. Out of 10 Kanals, land measuring 9 kanals 17 marlas was shown as Chahi and 3 marlas as Gair Marusi tubewell. He has also elicited in the report that there had been a proclamation made that demarcation was to be made on 4.2.2000. It is also elicited in the report that the SDM had warned that whoever was in unauthorised encroachment of the property of Sri Ram Tirath, they should remove their own belongings before 7.2.2000 and if it was not done, the removal of the encroachment would be done with the police help and bulldozers. The most significant part of the report comes towards the end of the report and the same would require to be reproduced.

“It also needs to be highlighted that the report of demarcation prepared on the spot has not been brought on record. Kanungo, Shri Jaspal Singh Sahota, who, according to Shri Manohar Lal Patwari, RW-4 carried out the demarcation, has not been examined.

In Rojnamcha entry Ex.RW4/1 there is no mention of any encroachments being in existence. It has also been admitted by RW-4, Shri Manohar Lal Patwari that no site plan was prepared to show actual occupation on the spot. At the same time, Shri J.P.Singh, while appearing as RW-7 that no report identifying the encroachments, particulars of the encroachers and extent of encroachments was ever submitted to him and that no written notices were served upon the occupants, including the petitioners.

6. Except for the self serving solitary statement of Shri Ram Lubaya, Petitioner, as PW-1, there is no evidence to prove demand of illegal gratification by Shri J.P. Singh for permitting the petitioners to put up temporary stalls during the annual fair of the year 1999.

7. Nothing has been brought on record to show that Shri Ram Tirath Improvement and Development Committee is a registered body or a Government body or a statutory body.”

(12) It is clear that the most important aspect of demarcation purported said to have been made on the spot, was not brought before him. The person who was said to have actually carried out the demarcation was not examined before Additional District and Sessions Judge. He found that the Roznamcha entry did not reveal any encroachments as having been clearly identified. The Patwari had admitted that no site plan was prepared to show actual occupation on the spot. The report also rejected the particular insinuation made by one of the petitioners that third respondent was asking for illegal gratification by/for permitting the petitioners for putting up temporary stalls during annual fair. From the reading of the report, it becomes clear that 3rd respondent could not have had any definite material to show that there was any encroachment. If the 3rd respondent was looking for a source of authority from the Deputy Commissioner, there really existed none. If the trust has passed a resolution which I have already referred to above that illegal encroachments were to be removed, it was not to be taken that he had been given a *carte blanche* that he was free to demolish whatever he thought as constituting an encroachment without actually identifying the encroachment.

VII. Earlier order and remand order from Supreme Court – lack of seriousness by respondents and observation

(13) All the materials collected, with the passionate pleas coming from parties ran into thin-air, when the case was posted for hearing when the Bench observed that no one had taken interest in pursuing the matter and after examining the report that the plea of demand for illegal gratification had not been established, it found no reason to pursue further. The Court passed an order that encroachments have been removed only after collecting the report. This order of the Court was taken in a Civil Appeal before the Supreme Court in CA No. 156 of 2009 through a Special Leave Petition.

The Supreme Court passed an order on 9.1.2009 remitting the matter for fresh consideration on a pointed observation that during the course of the proceedings, the Supreme Court sought to elicit from the Committee the statutory provisions under which it was constituted and whether the Committee had any statutory provision to remove the alleged encroachments. The Court also observed that the State would have power to remove encroachments but it would be subject to just exceptions and it would require to be brought out clearly under what authority such removal was made. The case was returned to the Court on 2.2.2009 and from thence the case has been pending before this Court.

(14) The case has gone through several pleas of adjournment at various times and on 28.9.2011 arguments were made on behalf of the petitioners in part. Counsel on behalf of the State sought for time to explain its stand with reference to the documents relied upon by the Additional District and Sessions Judge in giving the report as regards the aspect of demarcation and the location of the building which had been demolished. The case was adjourned to 22.11.2011 and on that day, State counsel sought for further time and it was adjourned to 23.2.2012. Again on subsequent hearings, there had been prayer at the instance of one or the other among the respondents seeking for an adjournment and the case was directed to be posted to be placed before this Court on the ground that on an earlier time, arguments were heard by me and therefore, the case was required to be posted before me. On 15.5.2012 the State counsel took time, and again, on the adjourned date on 8.8.2012 case had to be adjourned since there was no representation either for the 3rd respondent or for the State. It was posted finally to 10.10.2012 and on written request made by the counsel, it was adjourned. Since the matter had come on remand from the Supreme Court on a specific issue to elicit the existence or otherwise of any statutory power for removal of encroachments, counsel appearing on behalf of third respondent sought for time to advert to the statutory provisions which empowered the SDM to cause demolition of the property belonging to the Trust. On the subsequent hearing date, he was again seeking for an adjournment and therefore, finding the request to be unreasonable, I had imposed costs of Rs.5000/- for adjournment. The State sought for time to file affidavit in the manner directed by the Court and file

written objections with reference to the powers that it had for causing the removal of the encroachments. The case was adjourned on 7.11.2012 with a specific observation that no further adjournment would be granted. Today, when the case is posted for hearing, the State counsel would still ask for further time to give an affidavit in the manner sought for by the Court. I have declined the plea, for, I see this to be a wasteful ploy to delay the matters and a complete lack of responsibility for the State to respond to the situation with alacrity that the situation demands.

VIII. No statutory power shown to exist for demolition

(15) The whole point would be required to be seen from a simple query raised before the Supreme Court and for the purpose for which the case has been remanded to this Court. As I observed already, the fact of demolition of the portion of the building of the petitioners is not denied; that the third respondent demolished it is also not denied. It is clearly brought out as admission that he requisitioned the police help and also requisitioned for the bulldozers to raze the building to ground. If there was a direction to the third respondent for causing removal of encroachment, it was not with any specific reference to the petitioners. The resolution of the Committee was to the effect that if there were illegal encroachments it should be removed. The manner of removal was not specifically spelt out in the resolution. It was, therefore, left to the imagination of the third respondent to believe that he had the power to demolish if there existed any illegal encroachments. The minimum that should have been done was to clearly elicit that there indeed were encroachments. I have reproduced the report of the ADJ which shows that even the site plan of demarcation and specific incident of the alleged encroachment of any portion of the petitioners' building had not been brought before him. It is not brought before me either. It was clear that third respondent was doing an act which was wholly irresponsible and illegal. It is untenable for him to state that DC or the Chairman allowed for such a power to him. If the Deputy Commissioner had forwarded the request for police help to a subordinate officer, it should have been possible for even the DC to first of all satisfy himself that there was such a power that vested with them for such a forceful removal of encroachments. We are still living in a country governed by Rule of law under normal times and we have but reminders of what happened at the

Capitol City when bulldozers were active on roads to raze to ground buildings on what authorities believed to be encroachments. The public ire against such manner of governance and the Court's response to bring succour are not yet a forgotten history. The Supreme Court judgment in Express Newspapers Pvt. Ltd. and others v. Union of India AIR 1986 SC 872 is law or the subject of duty of public authority to appropriate Civil Court action in case of bona fide dispute regarding cancellation of licence and rights of re-entry that could be exercised by the owner ought not to be through enumerating procedure under Public Premises (Eviction of unauthorised occupants) Act but by resort to civil suit. The DC could not have been merely passed on a requisition for bulldozers without knowing what the SDM was contemplating to do. It will be washing his own responsibility and find a scapegoat that decisions for demolition were taken only by the SDM and that he had no participation in the same. I would discard the explanation of the 2nd respondent as lame. The stiff upper lip posturing of the DC and his plea that he did no more than sign all the requisitions from the third respondent to his subordinate as equally irresponsible. I will hold the Deputy Commissioner as a Chairman of the Trust and the SDM as a person, who actually carried out the demolition to have indulged in brazen violations of law.

(16) It shall not be mistaken that illegal encroachments are to be tolerated and they shall be entitled to show defiance in resisting removals, if public authorities take quick action. It is not always necessary that public authorities should approach courts for permission to demolish illegal constructions. The power to demolish illegal construction avail only to public authorities in municipal laws relating to town planning and building laws. Unlawful occupation of public premises are also dealt with under the relevant laws for following the procedure established by law. In this case, (i) there is no proof of encroachment; (ii) there is no proof of encroachment of public premises vesting in government or municipal body; (iii) there is no proof of any police power residing in the religious trust to demolish or caused to be demolished any building purporting to be an encroachment and (iv) no statutory power is shown to exist to order the removal of constructions of the petitioners. The conclusion is inevitable. The action of respondents 2 and 3 is illegal.

IX. Compensation against respondents is the appropriate recompense

(17) In this case there is a prayer for appropriate action against third respondent for alleged criminal offences under Sections 452, 427 and 506 IPC. I am prima facie of the view that the demolition was without authority of law and the act had been carried out without a sure proof of any encroachment. Even assuming that such power existed, it bears out from the record that third respondent was suspended from service for some time but reinstated later. This was but a cosmetic exercise and it has not been followed to the next logical end by registering a complaint not merely against the third respondent but also against Deputy Commissioner who at that time was Narinderjit Singh. I would still not think it necessary to start the criminal proceedings at this length of time. The issue could be considered on a plea for direction for compensation. On the issue of compensation, it is learnt that the State had provisionally issued Rs.50,000/- as compensation to each of the petitioners. There is an assertion in the complaint that construction was worth about Rs.12 lacs. This has been denied by the respondent. I do not find materials actually to assess the value of the structure and the extent of the loss sustained by the removal of portions of the building. At least I am convinced through the averments in the petition that the petitioners were put to the ignominy of having the building demolished as though they were violators of law when actual violence of law was practiced by the Public Authorities themselves. I have not the materials or adequate proof in the writ petition to determine what was the actual loss which was suffered. The value of the building lost cannot, therefore, be decided by now but I will quantify the loss that each of the petitioners will be entitled for the illegal action of the respondents 2 and 3, to be Rs.1 lac and the same shall be payable by the State and recovered from the then DC and the third respondent. I make no observation with reference to the value of super structure that was demolished. It shall be worked out in an independent civil proceedings if the petitioners are so advised. The time taken before this Court for prosecuting the case will be excluded in an action for damages against the defendants. The finding that the demolition was done without ascertaining that there was any encroachment shall be taken as final and conclusive through this judgment, subject only to further proceedings to higher forum against this judgment. It shall not be open to the party to plead before the Civil court against the issues which have been come to the finality

through this judgment. The issue for adjudication before the Civil Court would only be to identify the quantum of loss for the building and will not avail to parties to reopen issues relating to whether there was any attempt to actually find the encroachment; whether proper demarcation had been done and whether the defendants were competent to effect the demolition or not. I clarify all those which have been adjudicated through this judgment. The writ petition is allowed to the above extent with costs assessed at Rs.25,000/-.

A. Aggarwal