

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.9048/2018

[Arising out of impugned final judgment and order dated 07-03-2018 in CWP No. 5349/2018 passed by the High Court of Punjab & Haryana at Chandigarh]

HARBHAJAN SINGH (DEAD) & ORS.

Petitioner(s)

VERSUS

THE STATE OF PUNJAB & ORS.

Respondent(s)

IA No. 34754/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 34755/2018 - EXEMPTION FROM FILING O.T.

IA No. 39098/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 20-11-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) Ms. Vibha Datta Makhija, Sr. Adv.
Mr. Aditya Singh, AOR
Mr. Vikas Verma, Adv.
Mr. Kamal Kishor, Adv.
Mr. Aditya Kumar, Adv.
Ms. Wani Vaishnavi Maruti, Adv.

For Respondent(s) Mr. Karan Sharma, AOR
Mr. Mohit Siwach, Adv.
Mr. Harshit Kumar, Adv.

Mr. Angad Singh, Adv.
Mr. Prashant Manchanda, Adv.
Ms. Vagisha Kochar, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The petitioners claim to be the victims of 1984 anti-Sikh Riots. It is their case that they were left with no option but to flee at a far of place from the Riot stricken areas. They all came down to SAS Nagar Mohali Phase-XI. According to them, they were provided accommodation in the flats meant for the riot affected people. The case of the authorities is that the petitioners are not genuine riots affected victims but have trespassed into the premises and are in unlawful occupation of the same past couple of years.

2. The aforesaid, gave rise to the Civil Writ Petition number 3278 of 2011 filed in the High Court of Punjab and Haryana, which came to be decided on 23-02-2011 in the following terms:-

"The petitioner alleges himself to be a victim of 1984 Anti- Sikh Riots. He is alleged to have occupied L.I.G.House No.1453/26, Phase-XI, S.A.S.Nagar Mohali forcibly and while observing that he is not entitled for regularization of the unauthorized possession as no Red Card has been issued to him, the Estate Officer (Housing), Greater Mohali Area Development Authority, Mohali, has issued him a show cause notice dated 5.1.2011 (Annexure P-11) giving rise to these proceedings.

The petitioner's case appears to be that he has already applied in the year 2007, alongwith an affidavit dated 27.6.2007 (Annexure P-5) to the Deputy Commissioner-cum-District Magistrate, SAS Nagar Mohali for issuance of the Red Card to him. However, no decision on the said application has been taken by the Deputy Commissioner, SAS Nagar Mohali and meanwhile, the impugned show cause notice has been issued.

The petitioner relies upon various documents in order to show that he was resident of Jahangir Puri, Delhi and had to flee from there due to 1984 Anti-Sikh Riots.

Having heard learned counsel for the petitioner

and on perusal of the documents on record, it is apparent that the respondent-authorities ought to have firstly determine the claim of the petitioner for the issuance of Red Card and then only take a decision as to whether or not the alleged unauthorized possession of the petitioner of the flat in dispute deserves to be regularized.

The above-stated plea can very well be taken by the petitioner in his reply to the impugned show cause notice also. However, in order to obviate the hardship that may unnecessarily be faced by the petitioner, I deem it appropriate to dispose of this writ petition with a direction to the Deputy Commissioner, SAS Nagar Mohali to consider the application of the petitioner for the issuance of Red Card in the light of various documents relied upon by him in support of his claim that he is a 1984 Anti-Sikh Riots victim. The petitioner would also submit a separate reply to the Greater Mohali Area Development Authority (GMADA) alongwith the relevant documents as well as the copy of the application which has already given to the Deputy Commissioner, SAS Nagar Mohali for issuance of the Red Card. On receipt of the petitioner's reply within a period of one week from the date of receiving a certified copy of this order, the Estate Officer (Housing), Greater Mohali Area Development Authority, Mohali is directed not to dispossess the petitioner from the flat in dispute till his claim regarding issuance of Red Card is decided by the Deputy Commissioner, SAS Nagar, Mohali.

Ordered accordingly.

Dasti."

3 It appears that after the order referred to above was passed, the authorities undertook the exercise of ascertaining whether the petitioners before us are genuine victims of the riots and whether they are in unlawful occupation of the premises in question. The stance of the authorities is that none of the petitioners are genuine riot affected victims, and they are in unlawful occupation of the premises. At no point of time they were issued the Red Cards meant for the genuine riot affected victims.

4. We take notice of the impugned order dated 26-09-2017 passed in a petition filed by the one of the petitioners before us viz. Swarn Singh in CWP 22017 of 2017, which reads:-

"The petitioner has approached this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the recommendation/order dated 21.06.2011 (Annexure P-3) passed by respondent No.6 and Eviction Notice dated 21.06.2017 (Annexure P-4).

2. A perusal of Eviction Notice dated 21.06.2017 (Annexure P-4) shows that it is a public notice, which is issued to all the unauthorized occupants to vacate the house within 48 hours. However, on a query being put to the learned counsel for the petitioner as to whether any reply was submitted to the said public notice, it was stated that no such reply has been filed.

3. Learned counsel for the petitioner pointed out that the petitioner shall make a detailed and comprehensive reply to the public notice (Annexure P-4) within one week from today. However, a prayer was made that a direction be issued to respondent No.5 to decide the same expeditiously within a time bound manner.

4. After hearing learned counsel for the parties, perusing the averments made in the writ petition and without expressing any opinion on the merits of the controversy, we dispose of the writ petition by permitting the petitioner to file a detailed and comprehensive reply to the public notice dated 21.06.2017 (Annexure P-4) before respondent No.5 within a period of one week from today. It is, however, clarified that in case such reply is filed by the petitioner, the same shall be decided by respondent No.5 within a period of two weeks thereafter, after affording an opportunity of hearing to the petitioner and by passing a speaking order, in accordance with law."

5. We are informed that in view of the aforesaid order ultimately notice of eviction were issued to the petitioners. In such

circumstances, they came before this Court. We take notice of the order passed by this court dated 19-03-2018 wherein the authorities were directed to maintain status quo, as existing, as on that date.

6. The order of status quo dated 19-03-2018 has continued till this date.

7. It appears that the petitioners constituting 39 families are in occupation of the premises since the year 1984-1985. In the course of the hearing of the matter today, it was conceded that they were put into possession at the relevant point of time by the local MLAs. However, the fact remains that they are in occupation from 1985 onwards. It is not in dispute that they do not possess the Red Card.

8. The stance of the other side is that they are in unlawful occupation of the premises and they need to be evicted.

9. According to the authorities, there are many other genuine families of the economically weaker section group who are in need of shelter.

10. We have a very peculiar problem to be tackled with. On one hand the petitioners have no legal right to continue occupying the premises but on the other hand they are in possession past almost now 40 years.

11. The exercise to ascertain the genuineness of they being riot victims has already been undertaken and it has been found that they are not genuine riots affected families.

12. In such circumstances, we grant four weeks time to the respondents to work out some modalities by which we are in a position to balance the equities.

13. We would like to know from the respondents whether it is feasible to provide any other alternative accommodation to these 39 families or not.

14. We would also like to know from the respondents whether there are any other premises within Mohali and the adjoining areas wherein the genuine families belonging to the EWS category can be accommodated.

15. It appears that in the year 2018 the Government had floated a rehabilitation Scheme under which the petitioners were asked to apply for allotment of small booths.

16. Some of the petitioners did apply. We are informed that three families applied whereas the other families failed to apply.

17. We would also like to know from the authorities whether it is feasible to regularise the occupation of the petitioners in the premises subject to certain terms and conditions like outright sale after determining a reasonable price or something like that.

18. Post this matter for further hearing after four weeks.

(CHANDRESH)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)