(2012) 04 P&H CK 0038

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 24038 of 2011

Gurjeet Singh and another		APPELLANT
	Vs	
State of Punjab and others		RESPONDENT

Date of Decision: April 30, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, Order 1 Rule 8(3), Order 39 Rule 1, Order 39 Rule 2
- Constitution of India, 1950 - Article 226

Hon'ble Judges: M.M. Kumar, J; Alok Singh, J

Bench: Division Bench

Advocate: Sushil Gautam, for the Appellant; Sudeepti Sharma, DAG, Punjab, for respondent Nos. 1, 2, 5 and 6, Mr. J.S. Toor, Advocate, for respondent No. 3, Mr. Kulwinder Singh, Advocate and Mr. Kamal Sehgal, Advocate, for respondent Nos. 7 to 11, for the Respondent

Judgement

M.M. Kumar, A.C.J.

This is a Public Interest Litigation filed under Article 226 of the Constitution seeking quashing of the auction notice, dated 1.11.2011 (P-6) and subsequent proceedings in pursuance thereof. The petitioners have also questioned the validity of the site plan, dated 14.1.2010 (P-5) and sought a direction to the official respondents not to auction the parking area for commercial purposes i.e. for construction of booths. The grievance raised in the instant petition is with regard to the parking area of Guru Amardas Market, Khanna. It has been urged that on 24.4.1978, the Improvement Trust Khanna (for brevity, "the Trust") notified a scheme for development of 5.5 acres commercial area of Karnail Singh Road, Khanna and a site plan dated 28.4.1978 was prepared (P-1). In the said site plan, the portion shown in Yellow colour was left as open space. On 12.9.1978, a new site plan was prepared superseding the site plan dated 28.4.1978. After sanction of the site plan, the area was eventually developed as Guru Amardas Market, which has

become one of the biggest markets in city Khanna. With the passage of time, the usual problem of parking space has arisen and numerous representations were made to the respondent authorities to resolve the problem. It is alleged that instead of resolving the problem, the official respondents have issued an auction notice dated 1.11.2001 (P-6), whereby 6 booths have been put on auction in Guru Amardas Market. According to the petitioners the booths which are sought to be auctioned are not in existence at the spot and the same would be built after carving out space from the existing cycle parking shed. It has been further stated that on 11.11.2011 auction was held but the same was not confirmed, yet the respondent authorities started demolishing the cycle parking as also digging of plinth of booths to be constructed. In that regard some photographs of the area have been placed on record (P-7 colly).

2. On 22.12.2011, while issuing notice of motion this Court has made it clear that any action taken to the prejudice of the petitioners would be subject to further orders as the Court may pass.

3. In the written statement filed on behalf of the respondent Trust it has been pointed out that in the auction of booths, which was held on 11.11.2011, respondent Nos. 7 to 11 were the successful bidders and sale has been confirmed in their favour vide resolution No. 342, dated 23.11.2011, which has been approved by the Government on 8.12.2011. Allotment letters in favour of successful bidders were issued on 9.12.2011 and possession has also been handed over to them. With regard to the allegation of conversion of the parking area into booths, it is stated that the site in question was earlier shown as SCO sites, which was converted into cycle stand. It has also been clarified that the drawing in which site in question was shown as a cycle stand was superseded by another drawing and a notification to this effect was published in the Government Gazette. On 14.2.2010, the site of cycle stand was converted into commercial site and the same has been auctioned.

4. In their joint written statement the successful bidders respondent Nos. 7 to 11 have urged that the writ petition is devoid of merit, inasmuch as, no challenge has been made to the allotment of the commercial booths in their favour. The other defence taken by them is in line with the submissions made by the official respondents.

5. During the course of hearing, learned counsel for the respondents have brought to our notice that a civil suit bearing No. 261, dated 23.11.2011, has already been filed under Order I Rule 8 CPC in representative capacity by some other persons. A certified copy of the order dated 23.12.2011, passed by the Additional Civil Judge (Senior Division), Khanna, dismissing the application under Order XXXIX Rules 1 and 2 CPC, has been produced, which is taken on record as Mark "A". From a perusal of the heading of the plaint, which form part of the order dated 23.12.2011 (Mark "A"), it is evident that a suit under Order I Rule 8 CPC has been filed by Shri Pardeep Goyal, Dr. Rajesh Rattan and Smt. Sonia in representative capacity seeking permanent injunction, restraining the defendant Improvement Trust, Khanna, from changing or cause to change existing

position of Guru Amar Dass Market, Khannna, and from constructing or cause to construct shops and booths bearing Nos. 199 to 204 at the site of cycle stand, shown in Red colour in the site plan attached with the plaint.

6. After hearing learned counsel for the parties at some length we are of the view that if the petitioners so desire they may file appropriate application under Order I Rule 8(3) CPC for their impleadment as party in the suit. It would be impertinent to permit two parallel remedies to proceed one before the High Court and the other in the shape of a representative suit in the Civil Court. Moreover, the local Court may be better equipped to record findings because the record/witnesses are also available there. The writ petition stands disposed of in the above terms. However, it is clarified that we have not made any observation on the merit of the case and nothing observed in this order shall have any bearing on the merits of the representative suit bearing No. 261, dated 23.11.2011.