
Munshi Ram Vs State of Punjab and Others

C.M. No. 15591 of 2011 in C.W.P. No. 17704 of 1997

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 29, 2012

Hon'ble Judges: Ranjan Gogoi, C.J; Mahesh Grover, J

Bench: Division Bench

Judgement

Ranjan Gogoi, C.J.

The Civil Writ Petition no. 17704 of 1997 was disposed of on 4.10.2008 with the following directions:

(i) the Archeological Survey of India, Chandigarh Circle, Chandigarh shall send detailed particulars, including the area of the land underneath an

ancient/protected monument to the Deputy Commissioner-cum-Collector of the district concerned where such monument is located in the State of

Punjab and Haryana within a period of one month, if not sent already;

(ii) the Deputy Commissioner-cum-Collector of the district concerned shall obtain a report from the revenue authorities regarding the

encroachment, if any, made over the property of the ancient/protected monument within a period of one month from the date intimation regarding

such ancient/protected monument is received from the Archeological Survey of India, Chandigarh Circle, Chandigarh and shall send a copy of the

report to the Archeological Survey of India, Chandigarh Circle, Chandigarh;

(iii) it shall be the duty of the Archeological Survey of India, Chandigarh Circle, Chandigarh and also of the Deputy Commissioner-cum-Collector

of the district concerned to get the ancient/protected monument or the property attached thereto retrieved from the encroachers in accordance with

law. Wherever such an encroacher has got an injunction order from the civil court, the Archeological Survey of India as well as the Collector shall

produce a copy of this order before the civil court to enable it to pass an appropriate order which may not be inconsistent with the directions

issued hereinabove. The court concerned shall also be requested for early disposal of the pending suit/appeal, as the case may be;

(iv) the Archeological Survey of India shall ensure that all the ancient or protected monuments are maintained, preserved, repaired or renovated

periodically and the duty, if any, cast upon the Collector of a district in this regard under the 1958 Act shall be performed by him with or without

any request from the Archeological Survey of India;

(v) after removal of all encroachments from the ancient or protected monuments and/or their repair/renovations, a compliance report along with

photographs of each of the said monuments shall be submitted to the Registry of this Court. The entire exercise, however, shall have to be carried

out before 30.9.2009, failing which, besides suo moto, any public spirited person shall also be competent to initiate contempt of court proceedings

against the erring Collector or the authorities of the Archeological Survey of India, Chandigarh Circle, Chandigarh;

(vi) the Archeological Survey of India, Chandigarh Circle, Chandigarh, with the assistance of the District Administration concerned, shall further

ensure that no part of the ancient or protected monument in possession of the encroachers or otherwise is damaged, defaced, altered or impaired,

till such encroachments are removed.

Thereafter, C.M. No. 17405 of 2010 was filed by the Archaeological Survey of India seeking to place on record a status report of the action

taken pursuant to the order of this court dated 4.10.2008 disposing of CWP No. 17704 of 1997. By order dated 21.2.2011 this court directed

the Registry to examine the said report and identify the persons/officers who are at fault for not carrying out the evictions ordered by this court. The

aforesaid exercise was directed to be carried out by the Registry in order to enable the court to ascertain the identity of the persons against whom

suo motu contempt proceedings should be initiated as per direction No. (v) contained in the order dated 04.10.2008 passed in CWP No. 17704

of 1997. Pursuant to the said order of this court, the registry put up a note dated 25.8.2011 identifying nine monuments located in the State of

Haryana in respect of which the directions for removal of encroachments, as ordered by the court, had not been carried out. A list of the aforesaid

9 monuments as prepared by the registry is extracted below:-

Sr. No. Monuments where the encroachment is to be removed Concerned responsible authorities

1. Ancient site, Khokrakot, Distt. Rohtak D.C./SDM Rohtak
2. Ancient site, Ther Moud, Sirsa D.C./SDM Kaithal
3. Ancient Site, Rakhigarhi, Distt. Hisar D.C./SDM Hisaar
4. Prithviraj Chauhan Fort, Hansi D.C./SDM Hissar
5. Mughal Bridge, Buria Ka Nala, Distt. Faridabad D.C./SDM Faridabad
6. Ancient Site Naurangabad, Distt. Bhiwani D.C./SDM Bhiwani

7. Mosque of Ali Vardi Khan, Sarsai, D.C./SDM Gurgaon
8. Ancient Site, Theh Polar Distt. Kaithal D.C./SDM Kaithal
9. Two gateways of Mughal Sarai, Garaunda. D.C./SDM Karnal

2. It may be mentioned that the said 9 monuments listed by the registry is out of the total number of 12 monuments in the State of Haryana as

mentioned in the status report of the Archaeological Survey of India.

3. Insofar as the State of Punjab is concerned, the report of the registry is to the effect that out of 11 monuments located in the State of Punjab

encroachments have been removed from 7 and in respect of the remaining 4 monuments encroachments could not be removed on account of

various court orders in force. The report goes on to state that there appears to be no fault on the part of the authorities of the State of Punjab with

regard to implementation of this court's order dated 04.10.2008 passed in CWP No. 17704 of 1997.

4. Thereafter, it appears that acting pursuant to certain orders of this court, the Archaeological Survey of India has compiled a separate list of

monuments in the two states and placed the same into two categories, i.e., where there is no court case pending and where the court cases are

pending. Eight monuments in the State of Haryana where no court cases are pending are still not free from encroachment according to the

Archaeological Survey of India whereas encroachments in the 4 monuments in respect of which court cases are pending could not be removed on

account of the orders passed in the said cases.

5. Insofar as the State of Punjab is concerned, the Archaeological Survey of India has largely cleared the said State of any action which is not in

conformity with the order dated 04.10.2008 passed in CWP No. 17704 of 1997.

6. It further appears that the office had prepared another note pursuant to further orders of this court regarding the monuments in the States of

Punjab and Haryana which are still not free from encroachments. Four monuments in the State of Punjab and 11 in the State of Haryana have been

mentioned in the said report of the registry.

7. While the matter has been so situated a status report of the Director, Cultural Affairs, Government of Punjab dated 23.1.2012 has been filed

before us giving a list of 68 monuments in the State of Punjab and the position with regard to encroachments therein. A perusal of the aforesaid

report would go to show that encroachments have not been removed from the following monuments:

- 1) Tehsil, Ajnala;
- 2) Commissioner's residence, Jalandhar;
- 3) Quila Mubarak, Patiala;
- 4) Quila Beer, Bahadurgarh;
- 5) Mound Ghuram;

6) Shahi Samadha, Patiala, and

7) Quila Rahmatgarh, Malarkotla (Sangrur)

8. The aforesaid situation is due to various Court orders passed in proceedings relating to clearance of encroachments from the said monuments or

for other substantial and good reasons. However, all efforts are on to achieve the desired results, the details of which efforts are available in the

status report.

9. The aforesaid monuments it may be mentioned are State monuments.

10. From the conspectus of the wide and divergent facts which we have recapitulated on the basis of voluminous record of the case, it transpires

that in the State of Punjab, so far as national monuments are concerned, encroachments have been cleared from all such monuments and the

officers of the State cannot be found to be liable for violation or infringement of the court's order dated 04.10.2008 passed in CWP No. 17704 of

1997. Insofar as the State monuments are concerned, the State of Punjab is directed to speed up the process at least in those cases where the

same has been initiated. In such other cases where the monuments or parts thereof are under the occupation of the State authorities, necessary

action shall be taken to make the premises in question free from such occupations. In monuments where the process of eviction is locked up on

account of interim orders passed by the court or on account of pendency of court cases, the State of Punjab will file applications before the

concerned courts for early disposal of the matters and such courts shall take appropriate action in the matter in terms of the present order.

11. Insofar as the State of Haryana is concerned, from the materials on record referred to above, we are of the view that, at least, in respect of 8

monuments identified by the Registry out of the 9 mentioned in the chart prepared by the Archaeological Survey of India, there appears to be an

apparent infringement of the court's order dated 04.10.2008 passed in CWP No. 17704 of 1997. Such encroachments, therefore, will have to be

dealt with in accordance with the direction No. (v) contained in the order dated 04.10.2008 passed in CWP No. 17704 of 1997.

12. Accordingly, and in terms of the aforesaid direction No. (v) we initiate contempt proceedings against the Deputy Commissioners of the districts

where the said eight monuments are located. Notice be issued to the Deputy Commissioners after registration of separate contempt cases

returnable on 11.07.2012. The names and particulars of the Deputy Commissioners presently in-charge of the said districts be intimated by Shri

Brar, learned Additional Advocate General, Haryana within a week from today to the Registrar (Judicial) of this court. For the purpose of clarity

and to avoid any confusion, the names of the sites of the aforesaid eight monuments in respect of which suo motu contempt proceedings have been

initiated by the present order are set out hereinbelow:

1. Ancient Site, Ther Mound, Sirsa, District Sirsa;

2. Mosque of Sarai of Ali Vardi Khan, District Gurgaon;
3. Two Gateways of Mughal Sarai, Gharaunda, District Karnal;
4. Prithviraj Chauhan"s Fort, Hansi District Hisar;
5. Ancient Site, Rakhigarhi, District Hisar;
6. Buria Ka Nala, District Faridabad;
7. Kos Minar 22, Palwal (Aurangabad), and
8. Ancient Site, Theh Polar, District Kaithal.

13. We also make it clear that in the State of Haryana where 4 of the monuments have not yet been cleared from encroachments on account of

court cases prompt action will have to be taken by the State. We, therefore, direct the State of Haryana to file applications before the concerned

courts for early disposal of the matters. We further direct the concerned courts to take appropriate action in the matter on the basis of present

order.

14. It also appears to us that some proceedings in respect of the 4 monuments in question are pending before this court. We have noticed that the

cases pending before this court in this regard are numbered as CWP No. 16536 of 2009, CWP No. 3349 of 2010 and LPA No. 394 of 2012.

Of the aforesaid cases since the LPA matter pertains to this bench, we direct that the said LPA be listed before us for consideration on 17.4.2012

on which date orders as may be considered appropriate in the LPA will be passed. The other writ petitions shall be listed before the appropriate

Bench on an early date. To avoid any ambiguity and to bring clarity to the entire gamut of issues arising in the present proceeding, we are of the

view that the 4 monuments from which eviction has not been carried out on account of pendency of court cases may be identified by us as follows:

- i) Ancient Site, Khokrakot;
- ii) Ancient Mound, Naurangabad, District Bhiwani;
- iii) Kos Minar, Sector 35, Faridabad and
- iv) Raja Harsh Ka Tila, District Kurukshetra

15. We also make it clear that it will not be necessary for the office to list this case before us unless specifically ordered. A copy of this order be

furnished to the learned counsels appearing for the parties.