

(2011) 11 P&H CK 0203

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 6764 of 2010

Payal Division Welfare
Association and Shopkeeper
Association, Payal

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Nov. 3, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Ancient and Historical Monuments and Archaeology Site and Remains Act, 1964 - Section 4(1)

Hon'ble Judges: M.M. Kumar, Acting C.J.; Rajiv Narain Raina, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.M.Kumar, Acg.C.J.

The instant petition filed under Article 226 of the Constitution prays for issuance of direction to the respondents restraining them shifting of Government Girls High School Payal which had been running in Qila Payal from the last about 35 years. A further direction for quashing order dated 21.12.2009 (P.2) has also been made. According to the aforesaid order, passed by the Director Archeology and Museum Department Punjab the Qila is a protected monument and any encroachment was required to be removed as per the directions issued by a Division Bench of this Court in CWP No. 17704 of 1997 decided on 4.10.2008 (Munshi Ram v. State of Punjab) (R.1). In the aforesaid judgement, the Division Bench has issued the following comprehensive 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 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.

2. It has not been disputed that Qila is declared as a protected monument by the Government of Punjab Department of Cultural Affairs, Ancient and Historical Monument and Archaeology vide notification dated 16.3.2009 (R/3). The aforesaid declaration has been made u/s 4(1) of the Punjab Ancient and Historical Monuments and Archaeology Site and Remains Act, 1964 (for short the "1964 Act") read with the Ancient and Historical Monuments and Archaeology Site and Remains Act, 1958 of the Central Government. It has also remained undisputed that the Government

Senior Secondary School was housed in the Qila and being run from there. It was virtually encroachment of a protected monument which was declared as such under the 1964 Act. The directions issued by the Division Bench were also binding. Accordingly the respondents in compliance with the directions issued by this Court have shifted the school in question to Government Senior Secondary School, Payal on 19.4.2010 (R.4).

3. We have heard learned counsel for the parties at a considerable length and are of the view that once the Qila at Payal has been declared as protected monument under the 1964 Act then the mandamus issued by a Division Bench of this Court for removing any encroachment from the monument has to be complied with. It is well settled that a mandamus issued by a writ cannot be nullified by another direction as is well settled by an authoritative pronouncement of Hon"ble the Supreme Court rendered in the case of [Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another](#), . Moreover, encroachment in a historical monument like Qila at Payal would not be justified. Therefore, the instant petition does not merit admission and is thus liable to be dismissed.

4. For the reasons aforesaid, this petition fails and the same is dismissed.