

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**COCP No.1299 of 2009 (O&M)**

**Date of Decision: 17.01.2012**

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Sher Singh & Anr.

. . . . Petitioners

vs.

GS Ghuman, Commissioner,  
Municipal Corporation, Ludhiana & Ors.

. . . . Respondents

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**CORAM : HON'BLE MR.JUSTICE SURYA KANT**

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Present: Petitioner in person;  
Mr. Sumeet Mahajan, Senior Advocate with  
Mr. BS Bhalla, Advocate  
Mr. Vivek Aggarwal, Advocate;  
Mr. Ranjivan Singh, Advocate;  
Mr. HS Ghuman, Advocate,  
Mr. GS Ghuman, Advocate;  
Mr. Anurag Chopra, Advocate;  
Mr. Rakesh Bhatia, Advocate;  
Mr. Baljit Puri, Advocate;  
Mr. Sukhbir Singh, Advocate;  
Mr. Rajesh Punj, Advocate;  
for the petitioner(s)

Mr. MC Berry, Addl. AG Punjab

Mr. Salil Sagar, Senior Advocate;  
Mr. Kanwaljit Singh, Senior Advocate;  
Mr. DS Patwalia, Advocate;  
Mr. Samarth Sagar, Advocate;  
Mr. Sandeep Saini, Advocate;  
Mr. Ramlal Gupta, Advocate;  
Mr. Tushar Sharma, Advocate;  
Ms. Seema Arora, Advocate for  
Mr. CM Munjal, Advocate;  
Ms. Upender Kaur Bedi, Advocate;  
for the respondent(s)

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**SURYA KANT, J. (ORAL)**

- (1). This order shall dispose of COCP Nos.772, 917, 1299, 1654 of  
2009; 86, 545, 843, 1391, 1404, 1852, 2005, 2402 of 2010; 57,

224, 589, 644, 670, 1088, 1788, 1943, 2726, 2514 & 2838 of 2011 as common issues are involved in these cases.

(2). This Court in *suo motu* proceedings initiated in public interest issued the following directions on 04.10.2008 :-

- (i) *“the State of Punjab is directed to take a conscious policy decision, in accordance with law for removal and/or regularization of the encroachments, if any, made on the public lands by the government's Educational Institutes, Hospitals, Dispensaries, Police Stations, etc. keeping in view the fact that such institutions are not to be placed at the same pedestal as a private individual encroacher;*
- (ii) *the directions issued by this Court on 10.2.2004 restraining the State Government from regularizing unauthorized encroachments and constructions, provided that such encroachments are other than by the government or public institutions, are made absolute;*
- (iii) *the civil courts before whom the cases pertaining to encroachments made within the areas of Municipal Corporations, Ludhiana, Bhatinda and Patiala are pending, are directed to expedite the disposal of those cases preferably within two years of their institution;*
- (iv) *the Municipal Corporations are directed that encroachments from all those public properties except falling within the direction No.(i) above and/or wherever the civil court has decided the matter in favour of the private individuals,*

*shall be removed and the lands will be retrieved forthwith but not later than six months from today;*

- (v) the Municipal Corporations are further directed to constitute and notify the Enforcement and Monitoring Committees for one or more areas which shall periodically report to the Municipal Commissioner regarding the status of the encroachments, if any, their taking place or being removed within the area. Necessary and prompt action shall be taken by the Municipal authorities to nip it in the bud;*
- (vi) the Municipal Corporations shall forthwith locate the encroachment prone areas and take all necessary safeguards/preventive measures against possible trespass/encroachments, viz., erecting barbed-wire fencing, displaying notice-boards containing statutory warning, etc., and make the Encroachment and Monitoring Committee of the respective area accountable for any lapse or inaction on its part;*
- (vii) the Municipal Corporations shall also evolve public participation in their anti-encroachment drive by constituting Vigilance Committees of the NGOs/citizens who may volunteer to inform the municipal authorities including the Enforcement and Monitoring Committees regarding any fresh encroachments so that the desired*

*action in terms of direction No.(v) above can be taken without any delay;*

(viii) *if a public spirited person notices that any encroachment is not being removed and/or being allowed to take place in connivance with the employees, authorities or councillors of the Municipal Corporation, he/she shall be at liberty to institute contempt of court proceedings against such person and/or Municipal authorities for their act of willful and deliberate disobedience of the directions issued hereinabove.”*

(3). These proceedings have been initiated by various ‘public-spirited persons’ alleging willful non-compliance of the above reproduced directions by different Municipal authorities, especially Municipal Corporation, Ludhiana. The possibility of having their ‘personal interest’ by some of the petitioners cannot be ruled out as they have focused on one particular encroachment only, may be to settle some personal score. Nonetheless, the Municipal Authorities or the District Administration of Ludhiana are obligated to comply with the directions issued vide order dated October 4, 2008 and remove the encroachments wherever brought to their notice by individuals or otherwise.

(4). These cases have been adjourned from time to time for seeking status reports from the respective Municipal

Authorities wherein thousands of encroachments and the steps taken for their removal have been highlighted. Suffice it to observe that the removal of encroachments has to be an ongoing process and the Municipal Authorities or the District Administration owe an onerous duty to monitor within their jurisdictional area to prevent encroachments and remove those detected already.

- (5). The Authorities must remind themselves that even a miniature encroachment by some influential, powerful or mighty people on public places like the streets etc. on the pretext of 'beautification' of the exterior of their houses or any construction by them on the pavements etc. prompts others too to eat into the width of roads causing constant traffic nuisance and serious accident etc. The duty to nip such seizures lies on the District Administration (respondents) only and cannot be shifted to any other agency. The venue to debate on the nature of such like encroachments also cannot be shifted to High Court.
- (6). Surinder Singh Bindra, Assistant Town Planner of Municipal Corporation, Ludhiana,
- (7). who is present in Court, states that 5563 out of 5568 encroachments in BRS Nagar alone have been removed and the remaining could not be removed due to injunction order (s) passed by Civil Court(s). He undertakes that none of the encroachers shall be allowed to reconstruct the pavements

etc. and it shall be ensured that no hindrance or obstruction is caused on public roads in BRS Nagar, Ludhiana.

- (8). It may be true that as of now majority of encroachments as per the status report have been removed, but there is no gainsaying that encroachers have a tendency to re-capture the public property for their private use and many of them remain undeterred despite routine soft penal action(s).
- (9). However, such a tendency cannot legitimize continuation of these contempt proceedings for an indefinite period nor will it be expedient to add some more petitions to the docket with a fact-finding task to determine several disputed questions of facts arising in one or the other case. The contempt jurisdiction need not be exercised to decide on merits whether a particular site is a 'public property' and/or it has been encroached upon or is in unauthorized occupation save as to prevent injustice. Since the very foundation of these proceedings rests upon 'public interest' hence the element of *pro bono* too is vital to discourage the settlement of personal scores.
- (10). In order to strike a balance and to ensure that the directions dated October 4, 2008 are meticulously complied with by the respondents as a continuous and ongoing process and leaving no doubt that these directions shall have to be honoured irrespective of any consequences, I deem it

appropriate to dispose of these proceedings, for the time being, with the following clarificatory directions:-

- (a) The Municipal Corporation, Ludhiana is directed to move application(s) for vacation/modification of the *ad interim* injunction orders wherever passed by the Civil Court(s) within one month from the date of receipt of a certified copy of this order. The Civil Courts(s) shall decide the application within a period of *four weeks* from the date such application is moved by the Municipal Corporation;
- (b) to curb the tendency of encroachments over the public streets or illegal constructions, it is directed that if a person reconstructs/encroaches upon the vacated part of the public road or private property, the Municipal Corporation shall report the matter to local police within 24 hours of the receipt of information and the police authorities shall take immediate action in the matter in accordance with law. The residents of the locality shall be at liberty to inform about such encroachment(s) to the Municipal Authorities telephonically or otherwise. There shall also be a penalty of Rs.500/- per day [subject to direction No.(c) below] on the encroacher without prejudice to criminal prosecution. Such an action shall be also without prejudice to the contempt proceedings which any public-spirited person may initiate. The police authorities shall be required to submit

challan/report within one month leaving it open to the public-spirited persons to seek direction for expeditious trial on day-to-day basis;

- (c) Any encroachment made by an influential/powerful or mighty person(s), who is owner/proprietor of a residential house of 500 sq.yards plot or above or of a commercial property above the size of a booth, shall be viewed seriously and the penalty in such a case shall not be less than Rs.10,000/- per week;
- (d) These directions shall *mutatis mutandis* apply against encroachments or unauthorized occupation, if any, in other Municipal areas of State of Punjab also, whether under the control of Municipality, Improvement Trust or any other local authorities like the Punjab Urban Development Authority (PUDA), Greater Ludhiana Area Development Authority (GLADA), Greater Mohali Area Development Authority (GMADA) etc.
- (e) If at any stage, it is found that the Local Authorities are hands in glove with the encroachers, this Court shall be constrained to recommend disciplinary action against such official/officer for major penalty besides placing him under suspension forthwith;
- (f) The left out encroachments, in all circumstances, shall be removed within a period of six months and a consolidated compliance report for perusal of this Court be filed.

- (g) Apart from above, in order to check the encroachments in future and prevent those which keep on taking place every other day, all the Municipal Authorities/Councils/Corporations in the State of Punjab are directed to evolve an effective mechanism and constitute 'Monitoring Committees' comprising residents of the areas prone to encroachments casting responsibility upon them to get such encroachments removed in accordance with law.
- (h) Every Monitoring Committee shall comprise not less than five members, out of whom three shall be the local residents and the remaining two Government officials. The Monitoring Committee to be headed by a responsible and respectable person of the local area shall associate with it the SHO of the local area. As and when it is reported that an encroachment has been taken place or the encroacher(s) is/are adamant against removal of the encroachment despite three days' notice, the local police shall proceed in the matter in accordance with law. However, if there is a dispute regarding 'title' or 'possessory rights', the Monitoring Committee shall be at liberty to approach the Civil Court and/or the statutory authority for adjudication of such dispute in accordance with law;
- (i) The Monitoring Committees shall be constituted within six months from the date of receipt of a certified copy of this

order and shall be duly notified/published widely within the Municipal areas;

- (j) The Principal Secretary to Government of Punjab, Local Government Department, shall issue necessary instructions in this regard to all the Municipal Authorities within a period of *one month* along with copy of this order;

(11). With these observations and clarificatory directions, these contempt petition(s) stand disposed of.

(12). Let a *dasti* copy of this order be handed over to Mr. GS Cheema, learned Sr. DAG Punjab for information of all concerned and necessary compliance at their end.

(13). Rules discharge. *Dasti*.

17.01.2012  
vishal shonkar

(SURYA KANT)  
Judge