(2025) 11 P&H CK 2000

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19253 Of 2019(O&M)

Prikshat Sharma APPELLANT

Vs

State Of Punjab And Others RESPONDENT

Date of Decision : 21-11-2025

Acts Referred:
Constitution Of India, 1950 — Article 226
Punjab Excise Act, 1914 — Section 60(1)

Citation : (2025) 11 P&H CK 2000

Hon'ble Judges : Lisa Gill, J;Parmod Goyal, J

Bench : Division Bench

Advocate : Anurag Chopra, Saurabh Kapoor

Final Decision : Dismissed

Judgement

Lisa Gill, J

1. Prayer in this writ petition is for setting aside proclamation and attachment order dated 06.06.2018, Annexures P-8 and P-9, passed by respondent No.3, whereby property of petitioner i.e., land measuring 11 Kanal 12.5 Marlas has been attached.

2. Brief facts as pleaded in the writ petition are that petitioner's brother i.e., respondent No.8, namely Mr. Sunny Sharma was afforded license of liquor shops of Amritsar Zone-1 and Zone-2 for the year 2017-2018. Copy of certificate dated 28.12.2017 is attached as Annexure P-1. While granting said license to respondent No.8, his wife i.e., respondent No. 9 stood surety and guarantee and that petitioner at no point of time stood surety or guarantee of respondent No.8 at the time of grant of liquor license to him and neither did he (petitioner) sign any agreement or documents pertaining to any agreement with the Excise Department. However, his property as detailed in this writ petition was incorrectly attached vide impugned order dated 06.06.2018.

3. It was submitted that petitioner had in-fact sold this land to one Hardeep

Singh son of Mohan Singh, Ashok Kumar son of Lal Chand, Subash Chander son of Krishan Gopal and Jaswant Singh son of Kartar Singh, residents of Amritsar for a sum of Rs.80,00,000/- in July 2012. Reference is made to power of attorney dated 27.07.2012 and receipts of money received (Annexures P-2 to P-4). It was further submitted that official respondents issued letter dated 29.06.2017 to respondent No.8 to deposit the amount due towards license fees, failing which his license may be cancelled.

4. Notice dated 04.06.2018, was received by petitioner, wherein petitioner is reflected to be a guarantor of respondent No.8 and wrongly reflected to be jointly liable to deposit a sum of Rs.2,72,98,550/- (Annexure P-7). It is pleaded that petitioner asked respondent No.8 to clear his liabilities and at the same time apprised official respondents that he had no concern with the agreement and had never stood surety for respondent No.8. It was submitted that official respondents purportedly assured petitioner that all proceedings against him shall be dropped. However, in an illegal manner, proclamation and attachment orders dated 06.06.2018 were passed.

5. Aggrieved therefrom, present writ petition was filed.

6. Learned counsel for petitioner vehemently argued that proceedings for recovery have been wrongly initiated against the petitioner whose land measuring 11 Kanal 12.5 Marlas has been incorrectly attached. It was submitted that petitioner is unnecessarily being roped in because respondent No.8 is his brother, whereas present petitioner has nothing to do with business/work of respondent NO.8 and he had never stood surety or guarantee at the time of grant of liquor license to him in the year 2017. Moreover, recovery if any, should be effected from respondent No. 8 or respondent No.9 who is the guarantor. Her bank account had also been attached. It is reiterated that recovery should be effected from the person primarily liable to pay the same or from his surety. In the present case, property of petitioner has been incorrectly attached while this property has in-fact been sold in the year 2012 to persons as named in foregoing paras in the year 2012. It was thus prayed that present writ petition be allowed as prayed for.

7. Learned counsel for respondents No.1 to 7 has opposed the writ petition while submitting that petitioner has made absolutely false and incorrect averment in the writ petition. Petitioner on 27.09.2017 executed a valid surety in form M-75 along with respondent No.9 at the time of grant of liquor license to respondent No. 8. Petitioner submitted a total surety of Rs.34,00,00,860/- in favour of granting license to respondent No.8. This surety bond is duly signed by petitioner and respondent No.8 and has been attested by Notary Public Amritsar. Reference was made to photocopy of the surety bond dated 27.09.2017 which is attached as Annexure R-1 with reply dated 03.12.2019 filed on behalf of respondents No.1 to 4.

8. Learned counsel for respondents No.1 to 7 further referred to order dated

17.07.2019 passed in this writ petition whereby petitioner was directed to file an undertaking to the effect that he would deposit exemplary costs of Rs.5,00,000/- if his contention that he never stood surety or guarantor qua liability of respondent No.8 namely Mr. Sunny Sharma or his partnership firm who were allotted liquor license for Zone-1 Amritsar during the year 2017-2018, is found to be incorrect. It was argued with vehemence that petitioner is liable to pay exemplary costs as it is a matter of record that petitioner stood surety/guarantor for respondent No.8. It was further submitted that recovery proceedings have been initiated in accordance with law. Even as per petitioner's own case, notice (Annexure P-7) was received by him on 04.06.2018. Averments regarding sale of land in the year 2012 are a clear afterthought in order to wriggle out of his liability. Such a plea had never been taken before the authorities even after issuance of notice (Annexure P-7). Moreover, there is no proof of sale of the property in question. Mere execution of general power of attorney in favour of any person cannot convey title. It was submitted that the alleged receipts for sale consideration are fictious documents and are reflective of a malicious attempt to thwart legal proceedings of recovery from the petitioner. Moreover, if petitioner had already sold the land in the year 2012, he in any case, cannot be aggrieved. It was thus prayed that this writ petition be dismissed with exemplary cost.

9. We heard learned counsel for the parties and have perused the file with their able assistance. We have also perused the original surety bond dated 27.09.2017 which was produced in Court at the time of arguments.

10. It is a matter of record that liquor license was afforded to respondent No.8 in the year 2017-2018 for Zone-1, Lawrence Road, L-2/L-14A with the total annual license fee of the Zone being Rs.34,00,00,860/-. It is the case of petitioner that he never stood guarantee or surety for respondent No.8 at the time of allotment of said license.

11. At this stage, it is relevant to refer to order dated 17.07.2019 passed in this writ petition, which reads as under:-

"Counsel for the petitioner is directed to file an undertaking of the petitioner to pay exemplary costs of Rs.5,00,000/- (Five Lacs only), if his contention that the petitioner never stood as a guarantor qua the liability of Mr. Sunny Sharma or his partnership firm, who had been allotted liquor license for the Zone-1, Amritsar during the year 2017-18, is found incorrect.

List on 24.07.2019."

12. CM-10985-CWP of 2019 was filed by petitioner seeking to place on record an additional affidavit dated 24.07.2019. However, it is recorded in order dated 01.08.2019 that this affidavit dated 24.07.2019 did not meet requirements of directions in order dated 17.07.2019. Petitioner was given liberty to file fresh affidavit in terms of said directions. In affidavit dated 24.07.2019, petitioner stated that he never visited the office of official respondents with respondent

No.8 at the time of execution of agreement between them and had not signed any documents with regard to the agreement and that he was residing separately from respondent No.8 in the ancestral house. Earlier, petitioner and respondent No.8 were running joint business in the name of two firms but they separated in the year 2015-2016 and that petitioner had purchased land in dispute on 21.04.2011 from one Kanwaljit Singh son of Parkash Dass and his brother has no concern with this property.

13. Pursuant to liberty granted to petitioner to file a fresh affidavit, affidavit dated 27.08.2019 was filed, wherein the averments as noted above were reiterated and it was further stated that "petitioner undertakes to deposit exemplary costs of Rs.5,00,000/-, if the contention that he never stood as a guarantor QUA the liability of respondent No.8 or his partnership firm, who had been allotted liquor license for Zone-1, Amritsar during the year 2017-18, is found incorrect".

14. Notice of motion and notice re: stay was thereafter issued on 09.09.2019 for 15.10.2019 on which date, status quo as existing on said date qua properties of petitioner was ordered.

15. We have perused the original Surety Bond dated 27.09.2017 claimed by respondents to have been executed by the petitioner and respondent No.9. Photocopy of Identity Card of petitioner issued by Election Commission of India, duly signed by him is attached along with said Bond. We compared the signatures on this surety bond with signatures of petitioner on the affidavit dated 27.08.2019. It is apparent to the naked eye that both the signatures appear to have been appended by the same person. Original Surety Bond dated 27.09.2017 as well as affidavit dated 27.08.2019 available on the file of this case, was also handed over to learned counsel for petitioner who after perusing the same did not offer much comment except to say that the petitioner disputes having signed on the said surety bond. It is a settled position that it is the prerogative of the Court to examine the documents in question to compare the signatures/handwriting and draw its conclusions. There is no legal bar for the Court to compare signatures or handwriting using sight. Gainful reference in this respect can be made to judgment of Hon'ble the Supreme Court in Ajay Kumar Parmar Vs. State of Rajasthan, 2012(4) RCR (Criminal) 617. It is further to be noted that reliance is not being placed entirely on the comparison of said signatures but also on the attending circumstances which indicate that an incorrect plea has been taken by the petitioner.

16. At this stage, we consider it appropriate to reproduce photocopy of said Surety Bond bearing signatures of petitioner as well as the last page of affidavit 27.08.2019 filed by petitioner in order to reflect the comparison of signatures as perused by us and also seen by learned counsel for the petitioner. Photocopy of first and last page of Surety Bond dated 27.09.2017 is as under:-

17. We take specific note of the fact that reply dated 03.12.2019 on behalf of

respondents No.1 to 4 was admittedly filed in Court on 05.12.2019 with a copy thereof to learned counsel for petitioner. Till today, there is no replication to the written statement. Petitioner has not refuted the averments therein or disputed the Surety Bond dated 27.09.2017 attached as Annexure R-1. It is further to be noted that there is nothing on record or even averred before us that petitioner, till date has taken any action against anyone for his signatures being allegedly appended fraudulently on the said Surety Bond. In the given factual matrix, we do not find any substance in the plea as raised by petitioner.

18. In all fairness, we also take note of the argument raised by learned counsel for petitioner that land in question had actually been sold by him in the year 2012. In order to substantiate such a plea, reference has been made to general power of attorney dated 27.07.2012, Annexure P-2, statedly, executed by petitioner in favour of Hardeep Singh, Ashok Kumar, Subash Chander and Jaswant Singh.

19. It is to be noted that in this general power of attorney, there is a specific declaration that "neither the money transaction has been done by general power of attorney nor the possession has been transferred". It is pleaded in the writ petition that petitioner received a consideration amount of Rs.80,00,000/-. Admittedly, receipts attached along with as Annexures P-3 and P-4 do not bear any date. There is a recital in both the receipts that total sale consideration of Rs.40,00,000/- has been received and possession of the land has been delivered. There is no sale deed on record and documents sought to be relied upon to indicate sale of the property are contradictory and cannot be accepted as argued by learned counsel for petitioner. Moreover, we fail to understand as to why the petitioner would even have bothered to file the present writ petition in case the property had been sold way back in the year 2012.

20. It is also to be noticed that upon receipt of notice, Annexure P-7 on 04.07.2018, petitioner at no point of time approached the authorities with such pleas. It is only after attachment of the property in question that present writ petition has been filed. It is the specific case of respondents that when process of creating charge and attachment of property was started on 01.12.2017, ample opportunity was afforded to him and petitioner was served with notice from time to time affording him opportunity of being heard but he did not challenge the process. Apart from the fact that there is rebuttal of these averments by way of a replication, petitioner himself has pleaded that he received notice Annexure P-7, on 04.06.2018. There is indeed nothing on record to indicate that petitioner had ever taken any steps or raised the pleas as have been raised in this writ petition. Moreover, at this juncture, we take note of the fact that entire foundation of this writ petition has been laid on the plea of petitioner that he never stood guarantee for respondent No. 8. This averment is successfully repelled by respondent on the basis of specific documents and is thus not substantiated.

21. In the given facts and circumstances, we are unable to conclude that petitioner did not stand guarantee or surety for respondent No.8. Factum of

petitioner's signatures on the Surety Bond 27.09.2017 matching with his signatures on affidavit dated 27.08.2019 to the naked eye is coupled with the factum of no rebuttal to specific plea in the reply by way of affidavit dated 03.12.2019 of Ms. Amandeep Kaur, Assistant Excise and Taxation Commissioner, Amritsar-1, filed on behalf of respondents No.1 to 4, wherein it is specifically stated that petitioner had executed Surety Bond dated 27.09.2017, copy thereof being attached along with as Annexure R-1.

22. An alternate argument raised by learned counsel for the petitioner that in any case it is incumbent upon the official respondents to first proceed against the principal who is liable to pay the amount or his wife who has stood surety is again devoid of any merit and an argument in futility. Section 60(1) of Punjab Excise Act 1914 specifically provides that the all excise revenue etc., may be recovered from the person primarily liable to pay the same or from his surety, if any.

23. It is apparent that petitioner has not approached this Court with clean hands and has made incorrect averments. In the given facts and circumstances, no ground whatsoever is made out for causing interference in this matter in exercise of jurisdiction under Article 226 of the Constitution of India. Petitioner is liable to deposit cost of Rs.5,00,000/- in terms of order dated 17.07.2019 and his affidavit dated 27.08.2019.

24. No other argument was addressed.

25. Keeping in view the facts and circumstances as above, this writ petition is dismissed while directing the petitioner to deposit cost of Rs.5,00,000/-, with Rs.2,00,000/- each, being deposited with Punjab State Legal Services Authority and Haryana State Legal Services Authority and Rs.10,00,000/- with State Legal Services Authority, Union Territory, Chandigarh within a period of 30 days from receipt of certified copy of this order. Pending application (s), if any, stand(s) disposed of accordingly.

