

(2007) 11 P&H CK 0074
In the Punjab And Haryana At Chandigarh

Ram Parkash and Others	Vs	APPELLANT
Kashmiri Lal Malhotra and Others		RESPONDENT

Date of Decision : 02-11-2007

Acts Referred:

Citation : (2008) 149 PLR 215

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The grievance of the petitioners in the present contempt petition is that though this Court has passed an order of stay of demolition of the shops on 18.11.1999, still the respondents have demolished the shops and, thus, violated the order passed by this Court.

2. The Municipal Committee, Smalkha, has initiated proceedings against the petitioners under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972. The Collector passed an order of ejectment of the petitioners on 5.8.1999. The petitioners filed appeal before the Commissioner but the same could not be taken up for hearing because there was no incumbent of the office of the Commissioner. Therefore, the petitioners invoked the writ jurisdiction of this Court which passed an order of stay demolition on 18.11.1999. It is admitted by learned Counsel for the petitioners that their appeal against the order of ejectment has been dismissed by the learned Commissioner as well.

3. It is the case of the petitioners that demolition has been carried out by the respondents on 19.11.1999 at about 2.00 p.m. after the order passed by this Court was communicated to the respondents at about 9.00 a.m. Learned Counsel for the petitioners has argued that the shops have been demolished in violation of the procedure prescribed by law.

4. In reply, it has been pointed out that, in fact, encroachment made by the

petitioners was got removed on 17.11.1999 in pursuance of the order of ejectment dated 5.8.1999. Rapat No. 27 dated 17.11.1999 at 3.45 p.m. was entered in the daily dairy register of Police Station, Samalkha, as well as news in respect of said demolition appeared in the newspaper "Amar Ujala" and "Dainik Jagran" published on 18.11.1999. It was also pointed out that, in fact, written statement was filed before the civil Court in the suit on 18.11.1999, in which the petitioners sought injunction, pointing out that possession has been taken over on 17.11.1999.

5. Learned Counsel for the petitioners has vehemently argued that, in fact, written statement allegedly filed on 18.11.1999 is incorrect. In fact, the same was filed on 26.11.1999. Such assertion is made on the basis of endorsement of the learned trial Court in respect of filing of a document on 26.11.1999. However, I do not find any argument in the said argument. The endorsement is not a conclusive proof of the filing of the written statement on the aforesaid date. The Presiding Officer could have signed the endorsement on the later date. The best evidence was of the interim order passed by the learned trial court in respect of filing of the written statement. Such order has not been produced by the petitioners. Therefore, I do not find any ground to disbelieve the stand of the respondent in the written statement filed in the Court on 18.11.1999 in respect of possession having been taken on 17.11.1999.

6. Still further, the petitioners have relied upon newspaper report published in "Amar Ujala" dated 20.11.1999 to assert that possession was taken over after the stay was granted. However, there is no reference that possession was taken over by the authorities on 19.11.1999. Therefore, I do not find any reason to doubt the veracity of the averment made by the respondents that newspaper dated 18.11.1999 carries the news in respect of demolition at the disputed site. Therefore, the stand of the petitioners that possession has been taken over after stay was granted has not been substantiated. For a successful proof of the allegation of the violation, the onus of proof was on the petitioners as was required in the criminal cases. Mere on the basis of probability, conjecture and surmises, it cannot be said that demolition has been carried out after the order was passed by this Court. It may be noticed that ultimately the appeal filed by the petitioners has also been dismissed. Therefore, the possession was bound to be restored to the Municipal Committee.

7. Thus, I do not find that any case is made out of contempt as defined under the Act.

8. Consequently, the present contempt petition is dismissed. Rule is discharged.