

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Civil Writ Petition No.14863 of 2007
Date of decision: September 01, 2008.

Malwinder Jit Singh Waraich

...**Petitioner(s)**

v.

State of Punjab & Ors.

...**Respondent(s)**

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Petitioner in person.

Shri H.S. Sidhu, Additional Advocate General, Punjab
for respondents No. 1 & 3.

Shri Rajiv Narain Raina, Advocate,
for respondent No.2.

Shri Onkar Singh Batalvi, Advocate,
for respondent No.4.

ORDER

T.S. Thakur, CJ. - (Oral):

Jallianwala Bagh National Memorial was established under the
Jallianwala Bagh National Memorial Act, 1951 which provides for erection
and management of a National Memorial to perpetuate the memories of

those killed and wounded on the 13th day of April 1919 in firing incident at Amritsar. It envisages establishment of a Trust as a Body Corporate with perpetual succession comprising Trustees named in Section 4 of the Act aforementioned. The property comprising the Trust is enlisted in Schedule to the Act and comprises land and buildings referred to therein. In terms of Section 6, the property and funds set-out in the Schedule, and all other property, whether moveable or immovable, is vested in the Trustees of the Trust. Management Committee appointed under Section 7 of the Act is meant to manage the affairs of the Trust and discharge its duties and functions subject to such directions and limitations as may be defined by a resolution passed by the Trust. The Act also empowers the Central Govt. to make rules to carry out the objects of the Act. The Trustees in turn are empowered by Section 10 of the Act to make regulations.

We are not, in the present proceedings, called upon to interpret the provisions of the Act, the rules or the regulations framed thereunder. What we are concerned with is a grievance made by the petitioner, who claims to be a 'historian' by profession. The grievance is to the effect that the respondents are tempering with the buildings, structures, entrances, passages etc. comprising the Jallianwala Bagh National Memorial and are demolishing, altering and/or reconstructing the same. A mandamus directing the respondents to forebear from causing any such demolition, alternation or restructuring has, therefore, been prayed for.

In response to a notice issued by this Court, respondents No. 1 to 3 have filed a counter affidavit in which they have, *inter-alia*, pointed out that the Improvement Trust, Amritsar had framed a Scheme for improvement works from Chowk Phowara to Jallianwala Bagh under

Section 5 of the Punjab Development of Damaged Areas Act, 1995 and taken possession of 16 properties between the years 1969 to 1972 after a prolonged litigation with the owners/tenants of the said properties. The basic purpose of acquiring the said properties was to widen the road leading to the Golden Temple and the Jallianwala Bagh. The counter affidavit specifically denies the allegation that the District Administration or the Improvement Trust have ever tried or intended to demolish/tamper with the original structures of the Jallianwala Bagh, Amritsar while commemorating the massacre of 13th April, 1919. It reiterates the Government's stand that the Memorial has to be preserved as the same symbolizes patriotic sentiments of the relevant period in the Freedom Struggle of the country. Some of the buildings, which were wholly unconnected with the Memorial, were demolished because they were declared unsafe and were in a highly dilapidated condition.

In a separate affidavit filed by respondents No. 2 and 4, sworn by S.K. Mukherji, Secretary, Jallianwala Bagh National Memorial Trust, it is pointed out that the demolition of the damaged five buildings was in connection with the Jallianwala Bagh Development Scheme of the year 1960. The affidavit goes on to state that the re-constituted Trust had initiated an exercise for examining and deliberating on the ways and means of re-vitalizing and further developing the Memorial to suit existing needs keeping in view its great national & historical value and to enhance its features and preserve it by modern methods against vandalism. The Trust had, in that direction, engaged India Tourism Development Corporation, a Govt. of India owned institution, to prepare a detailed project report and make a presentation before the Trust. Based on the proposed re-vitalization

plan, which was approved by the Trust, the project proposed was presented before the reconstituted Managing Committee and a decision taken to implement the same by the 13th April, 2008. The minutes of the said meeting were approved by his Excellency, Shri Raghunandan Lal Bhatia, the Governor of Kerala, who happens to be the Chairman of the Managing Committee. The affidavit gives the details of the features that will be added to the Memorial, including an Amphitheater for sound and light show with gallery at the back for viewers, improved upgraded illumination, greening of surroundings, provision for the state-of-the-art technology gallery along the periphery and a museum, audio-visual hall, where the history of the Bagh will be recreated, apart from re-location of public conveniences etc. The execution of the re-vitalization plan is, according to the affidavit, meant to preserve the Memorial and perpetuate the memories of those who laid down their lives in the unfortunate events leading to the incident of 13th April, 1919. The affidavit further states that the Government of India have taken a conscious decision for re-vitalization of the Memorial and that the Government is committed to the preservation in the present state of the monuments & buildings of national importance.

We have heard Shri Malwinder Jit Singh Waraich, petitioner in person and learned Counsel for the respondents.

Shri Rajiv Narain Raina, learned Counsel appearing for respondents No.2 and 4, namely, the Trust and the Ministry of Cultural Affairs, Government of India, argued that the re-vitalization plan in question was formulated, adopted and discussed at various levels and has already been put into action. Necessary works relating to the said plan have also been substantially carried out. He submits that the re-vitalized

Memorial had been inaugurated on 13th April, 2008 as per the original schedule although there were some delays in the process on account of an interim order issued by this Court, which was subsequently vacated. He urged that far from doing any damage to the Memorial or distorting the surroundings by tampering with the buildings or reconstruction, etc., the entire object underlying the re-vitalization plan was to preserve the relevant features of the Memorial for the posterity. He submitted that if the petitioner had any suggestions to make, he ought to have done so before the Committee concerned finalized the plan and put the same into execution.

There is, in our opinion, considerable merit in the submissions made on behalf of the respondents. Since the entire exercise involving the up-keep and preservation of the Memorial is regulated by the statutory provisions of the Act, aforementioned, and since the said exercise has been carried out by the authorities at the highest level, we see no real justification for us to step in to stall the execution of the plan. We say so because we see no perversity or irrationality let alone one that is outrageously illogical to call for our interference. If the Government, the Trust and the Managing Committee, have put their heads together and conceived a plan which is intended to re-vitalize and preserve the Memorial for the future generations, we see no reason why the petitioner should find fault with the same, particularly in exercise of the extra-ordinary public interest writ jurisdiction of this Court. The appropriate course for the petitioner, who claims to be a historian, or for any other public spirited person, was to make suggestions at the appropriate stage to the Government or the Trust before the work on the re-vitalization plan had started. If a wall or a building has already been demolished or re-constructed, it will be difficult for the Court to restore the

same even if one were of the opinion that its demolition was not justified or that the same ought to have been preserved. At any rate, the question, whether and if so, to what extent has any structure of historical importance been demolished or re-built, is a matter that ought to be left, more appropriately, to the experts in the field. This Court cannot in the present proceedings sit in judgment over the correctness of the plan or its efficacy.

In the totality of what we have said above, we see no reason to interfere. This writ petition accordingly fails and is hereby dismissed but in the circumstances without any order as to costs.

[T.S. Thakur]
Chief Justice

September 01, 2008.
kadyan

[Surya Kant]
Judge