

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

Civil Writ Petition No.12748 of 2001

Date of decision: 05.02.2015

Roop Singh son of Yad Ram, resident of Village Ankhir, Tehsil and District Faridabad (now Village forming part of Faridabad Complex Administration).

... Petitioner

versus

State of Haryana, through Commissioner and Secretary, Urban Development, Haryana at Chandigarh, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajender Chokkar, Mr. Ram Bilas Gupta,
and Mr. Pritam Singh Rawal, Advocates,
for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General,
Haryana.

Mr. Manoj Sood, Advocate,
for respondents 2 to 4.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The petition is filed at the instance of a person who is an owner of a building situate in Khasra No.47/4/1 in an extent of 5 kanals 5 marlas classified as gair mumkin abadi in the village Ankhir, Tehsil Ballabhgarh, District Faridabad. The petitioner's case is that all his income yielding agricultural land had been

acquired by the government and with no source of livelihood, he wanted to convert his residential house into a shopping area. The assessment of the house has made which itself revealed that there was *baithak* measuring 30'x20', 2 *baramda* measuring 20'x30' and 10'x30' and 11 rooms of the dimensions of 10'x10'. According to him, the assessment was also standing in his name. The petitioner's plea is rested on an assertion that the staff in the Municipal Corporation demanded ₹90,000/- initially for consideration of his request for change of land use and after receiving the illegal gratification, they demanded more and when the petitioner would not succumb to it, they caused demolition of the building causing him a huge loss of over ₹6 lakh. The prayer in the writ petition is to direct the respondents to give a compensation for the loss caused in a high-handed manner and in a brazen violation of law.

2. The contention of the respondents, apart from denying the receipt of illegal gratification, would be that the residential house of the petitioner is very much intact and what was demolished was only some illegal constructions in a road junction at a place where there could have been no construction. The respondents accept that the buildings were demolished but would deny that the building demolished is the property assessed in Khasra No.47/4/1. According to the respondents, the power to demolish is available under Section 261 of the Haryana Municipal Corporation Act of 1994 (for short,

the Act) and the demolition was done only after serving notice to one Bhaju at Village Ankhir. After a notice was issued on 10.01.2001, when the petitioner had made a complaint, the enquiry was said to have been conducted by the Commissioner who found that the building was unauthorized and was, therefore, liable for demolition.

3. The photographs showing the demolished constructions are filed along with the writ petition and the identity of the demolished buildings as claimed by the petitioner as belonging to him is itself not in dispute. However what is in dispute is the location of where the building existed and whether they were unauthorized or not. I am prepared to assume for a minute that it was an unauthorized construction and the respondents were within the power to order demolition under Section 261 of the Act. The Section requires that before an order directing the building to be demolished of the person, at whose instance the erection of any work has been commenced, or is being carried on or has been completed, a notice not less than 3 days from the date on which the copy of the order of demolition with a brief statement of the reasons therefor has to be delivered on him. The proviso of Section 261 reads specifically, "that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity

of showing cause why such order should not be made.” If only there is a notice issued and an objection given, if any decision is taken to still demolish, there is a provision for a further appeal to an aggrieved person under Section 261(2) of the Act. This arises in a situation where the procedure prescribed under law is followed and the person, who had put up construction, had an occasion to explain why the demolition shall not take place. In this case, the notice which is relied on by the respondent-Corporation is a notice which was said to have been served on one Bhaju. The petitioner asserts that there is no person by name Bhaju in the village and they have merely fabricated a make-believe notice to appear as though the procedure prescribed under law was followed. The specific denial of existence of any such person is brought out in para 7 of the replication filed to the statement by the petitioner. A provision in law that protects even an illegal occupier to state a cause against demolition is a recognition of a constitutional right providing under Article 300-A of the Constitution. A statutory provision is a legislative mandate flowing from the limited right of property as recognized under the Constitution. The right protected under Article 300-A has been held in several decisions to be above merely a statutory right to property. If there is a law that would deny the person a right to property, it shall be taken only by exercise of power under a statute. Section 261 of the Act therefore has inbuilt

safeguards that no person shall be deprived of his property without a notice to show cause against such demolition. A lame excuse offered by the respondent that one Bhaju was served with notice before a demolition was made is a brazen attempt to conceal an illegal act perpetrated by the respondent. We are still governed by rule of law and a jungle behaviour by public officers has no place in the constitutional scheme of things. The conduct of the respondents is reprehensible and they are liable to compensate the petitioner for the loss which they have done. The petitioner has asked for a compensation of ₹6 lakhs which I will take to be appropriate considering the admission that his constructions were removed for demolition. I would allow for the entire compensation as demanded and direct the same to be paid with 18% interest as a measure of exemplary damages that has to be awarded against the respondents. The amount shall be paid within a period of 4 weeks. I shall also impose a cost of ₹25,000/- against the respondents.

4. The writ petition is allowed on the above terms. The liability is fastened on the Faridabad Municipal Corporation, represented through their officials and arrayed as respondents 3 to 7.

(K.KANNAN)
JUDGE

05.02.2015
sanjeev