

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

CWP No.17101 of 2014
Date of Decision: April 09, 2015

Shiv Kumar and others ... Petitioners

versus

State of Punjab and others ... Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLEMR.JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Anmol Rattan Sidhu, Sr.Advocate assisted by
Mr.Aditya Arya, Advocate for the petitioners.

Mr.Gaurav Garg Dhuriwala, DAG, Punjab.

Mr.Ashok Kumar Bazaz, Advocate
for respondents No.2 and 3.

SATISH KUMAR MITTAL, J. (Oral)

The present writ petition was filed by the petitioners seeking directions to respondents No.2 and 3 not to demolish their construction situated in Bhargo Camp, Jalandhar.

It is pertinent to mention that CWP No.7104 of 1998 was disposed of vide order dated 23.1.2014 and the case had been adjourned for compliance. In the meanwhile the instant petition was filed by 24 persons.

As recorded in the order, taking into consideration the humanitarian aspect as poor people/ refugees who had

migrated from Pakistan were stated to have settled in Bhargo Camp, an endeavour was made to regularize the unauthorized construction to the extent possible. A Committee comprising officials of Municipal Corporation and the Revenue Department had been constituted to visit the area and submit its recommendations regarding regularization of encroachments based on the following parameters:

- (i) Availability of front road
- (ii) Width of the road/ street proceeding to the illegal construction
- (iii) Hindrance to the traffic, if any
- (iv) Building line regular and irregular
- (v) Property situated on the street with an open end or dead end
- (vi) Conveyance deed/ registration deed, if any
- (vii) Pendency of application for allotment of site/ space with the DC Office, Jalandhar, if any
- (viii) Construction on Municipal Corporation toilets or space causing hindrance to approach the toilets
- (ix) Government or religious buildings, if any.

After survey of the area the committee informed that 525 unauthorized constructions/ encroachments could be regularised and the rest were to be removed. The Government accorded approval to the recommendations of the

Committee.

Based on the aforesaid recommendations, this Court had disposed of the petitions vide its order dated 23.1.2014 by directing that the process of regularization of 525 encroachments be completed within a maximum period of three months. The remaining encroachments were directed to be removed within a period of three months.

When the said writ petition was pending for compliance, the instant writ petition was filed. All the houses/ properties of the petitioners were among those properties which as per the report of the Committee could not be regularized and were to be demolished within three months as per the order of the Court.

In this writ petition notice of motion was issued as the petitioners relied upon the pendency of CWP No.7104 of 1998 and the petition adjourned to be heard along with the said petition.

On 29.8.2014, when the matter was taken up, the following order was passed:

“These two cross-petitions have been filed by the petitioners. In CWP-7104-1998 it has been averred that the Municipal Corporation, Jalandhar is not taking any action against persons who have raised illegal residential and commercial constructions in

the city of Jalandhar, whereas, in CWP-17101-2014, constructions raised by the petitioners are sought not to be demolished by the respondent-authorities.

Pursuant to the filing of CWP-7104-1998, numerous orders have been passed from time to time by this Court, whereby directions were issued to the Municipal Corporation, Jalandhar to remove all the illegal encroachments whether residential or commercial.

Learned counsel for the Municipal Corporation, Jalandhar states that over the years virtually every illegal construction has been removed except the constructions raised in Bhargo Camp, Jalandhar. He further states that in Bhargo Camp poor persons, who had migrated from Pakistan, have set up their houses and out of the houses raised by various poor persons the constructions pertaining to 525 houses have been regularized by the Municipal Corporation and in pursuance to the orders passed by this Court on 23.01.2014, 32 houses are to be demolished. He further states that out of the 32 houses, 03 houses have already been demolished on 22.08.2014 and that action is

being taken against the remaining 29 illegal houses.

Dr. Anmol Rattan Sidhu, learned senior counsel for the petitioners in CWP-17101-2014 states that while conducting a survey of the illegal constructions in Bhargo Camp, the petitioners' representations were not duly considered, nor they were called to show to the authorities that their constructions were also liable to be regularized and, therefore, a fresh survey be conducted by the same committee constituted by the government which may take a fresh decision as to whether the constructions relating to the allegedly 29 illegal houses have to be regularized or not.

Learned counsel for the Municipal Corporation states that he has no objection if a fresh survey of 29 illegal houses which are to be demolished is ordered to be conducted.

After hearing learned counsels for the parties, we direct the Municipal Corporation, Jalandhar to get a fresh survey conducted of the 29 houses situated in Bhargo Camp which have been ear-marked for demolition and a report in this regard be submitted to this Court within a period of two months from

today i.e. on or before 31.10.2014.

Till the report is submitted, no other house in Bhargo Camp be demolished.

Regarding the remaining encroachments, if any, in the city of Jalandhar, the matter shall be considered on the next date of hearing.

List on 21.11.2014.”

After the aforesaid order, the Joint Commissioner, Municipal Corporation, Jalandhar has filed his affidavit dated 21.11.2014. In the affidavit, it has been categorically stated that the Committee of officers personally visited the site of the impugned encroachments and the petitioners were personally heard. It was concluded that if some relaxation in the criteria is made then the unauthorized construction of the petitioners could be regularised otherwise as per the earlier criteria fixed by the Committee which has been approved by the order dated 23.1.2015, these constructions are illegal and cannot be regularised. Thus, clearly in the second survey as well, these constructions have been found to be illegal and unauthorized on the earlier approved parameters. Therefore, these constructions cannot be regularised.

There is no scope for relaxing the parameters and treating the pucca portion of the road as building line because that would be hazardous for the travelling public as also the

residents.

Thus, even in the second survey as per the criteria/parameters earlier fixed, which has been approved by the Court, the constructions made by all the 24 petitioners are illegal and cannot be regularised in terms of the earlier order. Accordingly, we do not find any merit in the present petition and the same is hereby dismissed.

(SATISH KUMAR MITTAL)
JUDGE

April 09, 2015

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(HARINDER SINGH SIDHU)
JUDGE