

In the High Court of Punjab and Haryana at Chandigarh.

**CWP No. 19765 of 2015
Decided on 19.10.2015**

Brij Bhan

--Petitioner

Vs.

Municipal Corporation, Faridabad and another

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. Arun Jain, Sr. Advocate, with
Mr.Arn timer Sood, Advocate, for the petitioner

Rakesh Kumar Jain,J: (Oral)

The alleged trouble started when C.W.P.No.1411 of 2013 was filed in public interest by Gajraj Singh and Dharmender Singh, for taking action against the officers/officials who had allowed partition of Gair Mumkin Pahar/ Shamlat land of village Ankhir, Hadbast No.5, Tehsil and District Faridabad.

The following order was passed on 18.7.2013:-

“On hearing learned counsel for the parties, we are of the view that insofar as inter-se dispute between the private parties is concerned that cannot be subject matter of PIL . Thus, only two aspects need to be examined in the present petition:-

(a) whether the construction carried out by respondent

No.9 is on land which belongs to the State or any State authority;

- (b) whether there is requisite permission obtained from all concerned authorities for carrying on construction. (This naturally includes whether construction at all is permissible on the land in question in view of notification Annexure P-19).

We call upon respondent Nos.1 to 6 to take action in accordance with law in case any infirmities are found. Compliance report be filed before this Court within one month from today.

Petition stands disposed of with aforesaid directions.

List for compliance on 16.9.2013”.

On 16.9.2013, following order was passed:-

“The affidavit of respondents No.2 to 6 filed in the form of compliance of report to the order dated 18.7.2013 has been perused. The land area, which was in illegal occupation of respondent No.9, has been re-possessed by the tourism department. Insofar as the construction carried out is concerned, the say of the respondents is that the same is not in accordance with law. Necessary orders were passed. The affected party has moved the Commissioner and got interim orders in his favour.

In view of the aforesaid, all that is required for the Commissioner is to take a final view of the matter on the date already fixed i.e.6.12.2013.

No further directions are required”.

Pursuant to the aforesaid orders, Joint Commissioner (T), Municipal Corporation, Faridabad, passed an order of demolition of the construction raised by the petitioner in terms of Section 261 of the Haryana Municipal Corporation Act, 1994 (for short, 'the Act'). The said

order was challenged by the petitioner before the Commissioner, Gurgaon Division, Gurgaon under Section 261 (2) of the Act. The appeal was allowed on 03.4.2015 and the matter was remanded back to the Joint Commissioner (T), Municipal Corporation, Faridabad, with a direction to inspect the land in question in the presence of the petitioner and to see as to when village Ankhir came within the municipal limits of Municipal Corporation, Faridabad and how much old is the construction raised by the petitioner. He was also directed to decide the case afresh on merits after providing opportunity of hearing to the petitioner.

Admittedly, the Joint Commissioner (T) Municipal Corporation, Faridabad has not initiated the proceedings after remand.

The petitioner has approached this Court in this petition and has referred to the notification dated 18.8.1992 of the Government of Haryana, Department of Forest, according to which land of the petitioner falling in Khasra Nos.65, 9 to 12 has been declared as forest.

Mr. Arun Jain, learned senior counsel for the petitioner has argued that the Joint Commissioner (T) Municipal Corporation, Faridabad, had no jurisdiction to initiate proceedings in regard to demolition of construction in question as the direction contained in the order passed by this Court was to respondent Nos. 1 to 6 in that regard whereas the Municipal Corporation was arrayed as respondent No.9. It is otherwise conceded that the question of jurisdiction could not inadvertently be raised in the appeal before the Commissioner, Gurgaon Division. Gurgaon, and it is now sought to be argued that if the land in question has fallen in the forest area, the competent jurisdiction is of the National Green Tribunal.

I have heard learned counsel for the petitioner and after

perusing the record, have found that the petitioner does not have any cause of action to approach this Court because grievance of the petitioner would arise if any order of demolition is passed by the Joint Commissioner (T) Municipal Corporation, Faridabad. Therefore, this petition is premature. The petitioner, if so advised, may take the pleas specially in regard to jurisdiction of the authority concerned if such authority initiates action against the petitioner in terms of the order dated 03.4.2015. In case, question of jurisdiction is raised, the same shall be decided by the authority concerned by passing a speaking order.

With these observations, this writ petition stands disposed of accordingly.

19.10.2015
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(Rakesh Kumar Jain)
Judge