

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

(112)

CWP-16965-2016

Date of decision:20.09.2016

SKS BEDI

...Petitioner

Versus

STATE OF HARYANA AND ORS.

... Respondents

CORAM: **HON'BLE MR. JUSTICE S.S. SARON**
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. SKS Bedi, Petitioner in person.

Mr. S.S. Pannu, DAG, Haryana.

Mr. Deepak Manchanda, Advocate
for respondent No.3.

S.S. SARON, J.

The writ petition has been filed by the petitioner in the nature of a public interest petition for directing the respondents to remove the illegal encroachments by the shopkeepers and other persons on the Babiyaal Road, Ambala commencing from Mahesh Nagar, Jagadhari Road, Ambala Cantt. and ending at village Balayal, Tehsil and District Ambala. A further direction is sought for directing the respondents to recover charges for the removal of encroachments and charges for the illegal use and occupation of the encroached areas by those who have encroached upon the same.

The petitioner on the last date of hearing i.e. 15.9.2016 was confronted with the provisions of Section 408-A of the Haryana Municipal Corporation Act, 1994 ('the Act' - for short) which relates to power to evict

persons from Corporation premises/land. It is provided in terms of Section 408-A (1) (b) of the Act that if the 'competent authority' is satisfied that any person is in unauthorized occupation of any premises/land or building/structure constructed thereon, of the Corporation, the 'competent authority' may, notwithstanding anything contained in any law, for the time being in force, by notice served upon him by post or by person and if such person avoids service or is not available for service of notice or refuses to accept notice, then by affixing a copy of it on the outer door or some other conspicuous part of such premises/land or building or by beating of drums or in such manner, as may be prescribed, call upon such person to appear and show cause why he should not be ordered to vacate the said premises/land or building/structure constructed thereon or demolish unauthorized construction and to restore it to its original state or to bring it in conformity with the provisions of the Act or rules framed thereunder, as the case may be, within a period of seven days from the date of service of the notice. In terms of sub-Section (2) of Section 408-A of the Act, if such person fails to show cause to the satisfaction of the 'competent authority' or fails to appear or refuses to appear before the 'competent authority', as the case may be, within a period of seven days, the 'competent authority' shall pass an order requiring him to vacate such premises/land or building/structure constructed thereon or demolish unauthorized construction and restore to its original state or to bring it in conformity with the provisions of the Act or the rules framed thereunder, as the case may be, within a further period of seven days.

The provisions of Section 408-A of the Act provides a complete mechanism for eviction of unauthorized occupants of any

premises/land or building/structure constructed thereon of the Corporation. A power is vested in the 'competent authority' to remove such unauthorized occupants. 'Competent authority' has been defined in Section 2 (4A) of the Act to mean the Joint Commissioner of the Corporation. Section 408-B of the Act provides for an appeal by any person aggrieved by an order of the competent authority under sub-section (2) of Section 408-A of the Act.

The petitioner, therefore, was/is liable to seek the said statutory remedy in terms of Section 408-A of the Act in the first instance. However, the petitioner in his pleadings has not stated that he does not have an alternative remedy except to approach this Court, which he was liable to mention. Rather he has merely stated that no other relief has been provided under the Registration Act. The provisions of the Registration Act do not remotely apply in respect of lands/premises of a Municipal Corporation being under unauthorized occupation or being encroached upon. In fact the provisions of the Act and the Rules framed thereunder apply. The petitioner does have an alternative remedy under the provisions of the Act particularly Section 408-A of the Act referred to above.

A copy of the petition was, however, given to Mr. Deepak Manchanda, Advocate counsel for Municipal Corporation, Ambala so as to enable him to seek instructions.

Mr. Manchanda has submitted that in fact, general directions in this regard have already been passed by this Court in the case, Court on its own motion v. State of Punjab, CWP 4886 of 2003, decided on 4.10.2008 relating to Municipal Corporation, Ludhiana. The said decision has been made applicable to Municipal Corporation, Ambala as well in the case of Rajan Goel v. State of Haryana, CWP No.17664 of 2005, which was

disposed of by a Division Bench of this Court on 11.12.2008. The latter writ petition was disposed of on terms set out in para 11 of the decision rendered in Court of its own motion v. State of Punjab, CWP 4886 of 2003, decided on 4.10.2008 with all such modifications that are necessary by context.

In Rajan Goel's case (supra), it was made clear that the State of Punjab and Municipal Corporation, Ludhiana referred to in the case, Court on its own motion v. State of Punjab, CWP 4886 of 2003, decided on 4.10.2008 shall be read as State of Haryana and Municipal Council, Ambala City. At present, there is a Municipal Corporation, Ambala for Ambala.

There are other provisions as well in the Act which relate to encroachments and their removal. The provisions of Section 408 of the Act inter alia provides that no person shall make any encroachment in or on any land vested in the Corporation or in any way obstruct the same. Section 238 of the Act relates to prohibition of structures, fixtures or deposits of things in the street. Section 240 of the Act confers power on the Commissioner to remove anything deposited or exposed for sale in contravention of the Act. Besides, Section 408-A of the Act, as already noticed, provides for power to evict persons from Corporation premises/land.

Learned counsel for the Municipal Corporation, Ambala has also informed that 73 notices have been issued to the illegal occupants of Mahesh Nagar Chowk at the Babiya road. Notices have been issued under Section 238 of the Act. It is submitted that necessary action is being taken.

According to Mr. SKS Bedi, petitioner in person, the State is taking too long in pursuing the matter. However, keeping in view the directions already issued by a Division Bench of this Court in Rajan Goyal's case (supra) and Court of its own motion v. State of Punjab, CWP

4886 of 2003, decided on 4.10.2008, no further directions need be issued; besides, the petitioner may if so advised, file a separate petition under Section 408-A of the Act or any other provisions of the Act, as may be deemed appropriate.

The writ petition is accordingly disposed of.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

20.09.2016
SwarnjitS

Note:	Whether reasoned/speaking	Yes
	Whether reportable	No