

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-18639-2016

Date of decision: 08.09.2016

Anand Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Surender Saini, Advocate for the petitioner.

AJAY KUMAR MITTAL, J. (ORAL)

1. The petitioner has approached this Court under Article 226 of the Constitution of India, seeking a direction to the respondents for removal of 36 illegal gates and unauthorized construction from the streets of Sector 6, Bahadurgarh under the provisions of Haryana Urban Development Authority (Disposal of Land and Buildings) Regulations, 1978 and Haryana Urban Development Authority (Erection of Buildings) Regulations 1979, framed under the Haryana Urban Development Authority Act, 1977 (for short 'the HUDA Act').

2. Few relevant facts necessary for adjudication of the present petition as narrated therein are that the petitioner and other residents of Sector-6, Bahadurgarh are aggrieved by installation of the iron gates in the

streets of Sector-6, Bahadurgarh and also from the unauthorized encroachment on the public roads which hampered the free movement. As per the HUDA Act policies dated 11.01.2010 and 23.01.2014 (Annexures P-1 and P-2, respectively) permission was granted to erect security gates in the sectors/colonies whereby only boom type gates can be erected on the boundary of the colony or on the intersection of sector dividing road/24 meter wide internal sector road and no gate shall be allowed on sector dividing road and 24 meter wide internal circulation road of the sector. Some influential persons of Sector-6 Bahadurgarh started erecting iron gates at their own level, at the start of the lane or at the corner of the park just to create parking space for them and more particularly not to allow the other residents to use the streets and till date 36 iron gates were erected. In the reply dated 19.08.2009 (Annexure P-3) to an RTI application, the Enforcement Officer-cum-SPIO, HUDA, Panchkula had replied that erection of iron gates in the streets/internal roads of HUDA sectors are not permissible and the Estate Officers have been equipped with the powers under the HUDA Act to demolish/remove the same. On various representations/complaints of residents of Sector 6 Bahadurgarh, respondent No. 3-Estate Officer, HUDA, Bahadurgarh had time and again directed the respondent No. 4-President, Residents Welfare Association, Sector-6, Bahadurgarh to remove the aforesaid gates vide letters dated 31.03.2011, 05.07.2011, 19.07.2011, 23.12.2013, 16.01.2014, 06.06.2014, 15.03.2015, 26.11.2015 and 05.05.2016 (Annexures P-4 to P-6, P-8 to P-10, P-12 to P-15, respectively) from the streets/internal road of Sector-6 Bahadurgarh, but to no effect. The petitioner again submitted a representation dated 23.06.2016 (Annexure P-16) in this regard along with layout plan of Sector-

6, Bahadurgarh. Respondent No. 3 vide letter dated 23.06.2016 (Annexure P-17) requested the District Commissioner, Jhajjar, to provide police help and to appoint Duty Magistrate to demolish the un-authorized gates on 12.07.2016, but no action has so far been taken thereon. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. The perusal of narration of facts shows that serious disputed questions of fact are involved in this case which are required to be established by leading cogent and convincing evidence and cannot be gone into by this Court in exercise of its writ jurisdiction.

5. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India, a Division Bench of this Court in **N.C.Mahendra Vs. Haryana State Electricity Board and others, AIR 1984 Punjab 26** had laid down as under:-

“12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the grant of writ would be futile, and (vi) where the

impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit.”

Additionally, a writ petition would not be a proper remedy where questions of facts are required to be established by leading cogent and convincing evidence.

6. The Supreme Court in **State Cadre Authority and another Vs. K.S. Bajpal and others, 1990(Sup) SCC 713, Bhagubhai Dhanabhai Khalasi and another Vs. The State of Gujarat and others, 2007(4) SCC 241** and **Mukesh Kumar Agrawal Vs. State of UP and others, 2009(13) SCC 693** has held that wherever question of fact arises in writ proceedings, the writ petition was not an appropriate remedy.

7. Accordingly, no ground for exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India is made out. Petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

September 08, 2016
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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No