

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4554 of 2016 (O & M)
Date of decision:05.12.2016

Tarun Kumar

....Petitioner

v.

State of Haryana and others

.....Respondents

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

Present: Mr. Johan Kumar, Advocate for the petitioner.

S.S.SARON,J.

The petitioner-Tarun Kumar has filed the present petition in the nature of public interest under Articles 226/227 of the Constitution of India for directing the respondents to remove the unauthorized encroachments and unauthorized constructions made by the shop owners of Library Market Ballabgarh, District Faridabad.

It is inter alia submitted that owners of shop bearing No.1, 37, 39-A, 44 owned by various persons of Library Market, Ballabgarh, District Faridabad have made unauthorized constructions by encroaching upon the public passage and have included the public passage in the area of their shops and have put shutters after encroaching the entire public passage.

Learned counsel for the petitioner was apprised of the provisions of Section 408-A of the Haryana Municipal Act, 1994 ('Act' - for short) and also the judgment of this Court in '**Court on its own motion v. State of Punjab and another**' CWP No.4886

of 2003 decided on 04.10.2008 and incorporated '**Rajan Goel and another v. The State of Haryana and others**' CWP No.17664 of 2005 decided on 11.12.2008.

In terms of the judgment in Court on its own motion v. State of Punjab (supra), a Division Bench of this Court had issued the following directions:-

“(i) the State of Punjab is directed to take a conscious policy decision, in accordance with law for removal and/or regularization of the encroachments, if any, made on the public lands by the government's Educational Institutes, Hospitals, Dispensaries, Police Stations, etc. keeping in view the fact that such institutions are not to be placed at the same pedestal as a private individual encroacher;

(ii) the directions issued by this Court on 10.2.2004 restraining the State Government from regularizing unauthorized encroachments and constructions, provided that such encroachments are other than by the government or public institutions, are made absolute;

(iii) the civil courts before whom the cases pertaining to encroachments made within the areas of Municipal Corporations, Ludhiana, Bhatinda and Patiala are pending, are directed to expedite the disposal of those cases preferably within two years of their institution;

(iv) the Municipal Corporations are directed that encroachments from all those public properties except falling within the direction No. (i) above and/or wherever the civil court has decided the matter in favour of the private individuals, shall be removed and the lands will be retrieved forthwith but not later than six months from today;

(v) the Municipal Corporations are further directed to constitute and notify the Enforcement and Monitoring Committees for one or more areas which shall periodically report to the Municipal Commissioner regarding the status of the encroachments, if any, their taking place or being removed within the area. Necessary and prompt action shall be taken by the Municipal authorities to nip it in the bud;

(vi) the Municipal Corporations shall forthwith locate the encroachment prone areas and take all necessary safeguards/preventive measures against possible trespass/ encroachments, viz., erecting barbed-wire fencing, displaying notice-boards containing statutory warning, etc., and make the Encroachment and Monitoring Committee of the respective area accountable for any lapse or inaction on its part;

(vii) the Municipal Corporations shall also evolve public participation in their anti-encroachment drive by constituting Vigilance Committees of the NGOs/citizens who may volunteer to inform the municipal authorities including the Enforcement and Monitoring Committees regarding any fresh encroachments so that the desired action in terms of direction No.(v) above can be taken without any delay;

(viii) if a public spirited person notices that any encroachment is not being removed and/or being allowed to take place in connivance with the employees, authorities or councillors of the Municipal Corporation, he/she shall be at liberty to institute contempt of court proceedings against such person and/or Municipal authorities for their act of willful and deliberate disobedience of the directions issued hereinabove."

The above directions were adopted in Rajan Goel's case (supra) and the writ petition was disposed of on the terms set out in para No.11 of the decision rendered in Court on its own motion v. State of Punjab and another's case (supra) with all such modifications as are necessary by context. It was made clear that State of Punjab and Municipal Corporation, Ludhiana referred in the decision in Court on its own motion v. State of Punjab and another (supra) be read as State of Haryana and Municipal Council, Ambala City in Rajan Goel's case (supra).

Therefore, it would be just and expedient that the directions issued by this Court in Court on its own motion v. State of Punjab and another's case (supra) in para No.11 as reproduced above, be made applicable for Municipal Corporation, Faridabad as well. It is made clear that State of Punjab and Municipal Corporation, Ludhiana shall in the present case be read as State of Haryana and Municipal Corporation, Faridabad. The petitioner, if so advised, may avail his statutory remedy in terms of Section 408-A of the Act and the judgments referred to above.

Learned counsel for the petitioner submits that in view of the position that has been delineated above, he does not press the petition for the present and he may be allowed to seek his other remedies in accordance with law.

The writ petition is accordingly dismissed as withdrawn.

The petitioner, if so advised, may avail his other remedies in accordance with law.

(S.S. SARON)
JUDGE

05.12.2016
A.Kaundal

(LISA GILL)
JUDGE

Note:

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| 1. Whether the order is speaking/reasoned: | Yes | |
| 2. Whether the order is reportable | : | Yes |