

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-2188-2016 (O&M)

Date of decision: 08.11.2016

Dharambir and another

..... Appellants

Versus

State of Haryana and others

..... Respondents

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

PRESENT: Mr. Jagdish Manchanda, Advocate for the appellants.

RAMENDRA JAIN, J.

1. The appellants have filed the present Letters Patent Appeal under Clause X of the Letters Patent against the order dated 06.10.2016 passed by the learned Single Judge in CWP-21041-2016, filed by the appellants and order dated 21.09.2016 (Annexure P-17) passed by respondent No. 1 vide which respondent No. 4-Mahavir Singh was reinstated with immediate effect by setting aside the well reasoned order dated 28/29.03.2016 passed by respondent No. 2-Director, Urban Local Bodies, Haryana.

2. The grouse of the appellants is that upon an application of inhabitants of village Pundri including the appellants, illegal encroachment

of 111 persons over the municipal land was found. The name of father of respondent No. 4 was shown at serial No. 109 of the list (Annexure P-4) as an illegal encroacher upon 146.79 sq. yards of the municipal land. Respondent No. 4 was the only son of his father Late Sh. Babu Ram. The function of respondent No. 4 as President of Municipal Committee, Pundri was to remove the encroachment from the land of Municipal Committee, but he himself as President as well as his father were found in unauthorized possession of municipal land measuring 146.79 Sq. Yards, so a request was made to take disciplinary action against him. Accordingly, the Deputy Commissioner, Kaithal wrote a letter to the Secretary, Municipal Committee, Pundri, to report regarding illegal encroachment on the municipal land by respondent No. 4 being President of the Municipal Committee. The Secretary, Municipal Committee, Pundri, reported to the Deputy Commissioner, Kaithal, vide letter dated 08.05.2015 (Annexure P-7) about the encroachment upon an area measuring 146.79 Sq. Yards by raising construction of a house by father of respondent No. 4, namely, Sh. Babu Ram. Consequently, the Deputy Commissioner, Kaithal, wrote a letter dated 02.07.2015 (Annexure P-9/T) to the Sub Divisional Officer (MC), Kaithal, to enquire into the matter with regard to illegal possession over the municipal land by respondent No. 4 or whether he was residing with his father in the same house or separately. The Sub Divisional Officer (MC), Kaithal, vide his report dated 03.08.2015 (Annexure P-10/T Colly), apprised the Deputy Commissioner, Kaithal, that respondent No. 4 was residing with his father in the residential house illegally built on the municipal land measuring 146.79 Sq. Yards. In pursuant thereto,

respondent No. 3-Deputy Commissioner, Kaithal wrote a letter dated 07.09.2015 (Annexure P-11) to respondent No. 1 regarding illegal encroachment upon the municipal land by respondent No. 4 and to initiate enquiry against him by appointing enquiry officer under the provisions of Section 14(e) of the Haryana Municipal Act, 1973 (in short 'the Act'). During personal hearing on 08.06.2015, respondent No. 4 stated that he has no concern with the encroachment of land and he was residing as tenant in the house of one Manoj Kumar S/o Sh. Phula Ram, resident of Ward No. 4 and his Ration card is separate from his father. Consequently, respondent No. 2 issued a show-cause notice dated 04.12.2015 to respondent No. 4 to file written reply within a period of one week. Respondent No. 4 in his reply dated Nil (Annexure P-14) took the plea that he was residing separate from his father and had separate Ration Card. Vide order dated 28.03.2016 (Annexure P-15), respondent No. 2 by exercising the powers under Section 22(a) of the Act, suspended respondent No. 4 till the regular enquiry was completed. Being aggrieved, respondent No. 4 filed CWP-6590-2016, challenging the order Annexure P-15 which was disposed of by this Court vide order dated 07.04.2016 (Annexure P-16), by giving liberty to respondent No. 4 to file appeal before the Appellate Authority within a week from the date of order and the same to be decided after giving opportunity of hearing to both the parties. Consequently, respondent No. 4 filed an appeal before respondent No. 1 which was decided vide order dated 21.09.2016 (Annexure P-17). The learned Financial Commissioner (respondent No. 1) held that respondent No. 4 should be given a chance to disassociate himself from the encroached land and the allegations which

have been mentioned in the complaint are deserved to be dropped. Thereafter, respondent No. 4 was reinstated. Being dissatisfied, the appellants had filed CWP-21041-2016, challenging the order dated 21.09.2016 (Annexure P-17), but the same was dismissed with the observations that the order dated 21.09.2016 was not suffering from any patent illegality and, thus, the same deserves to be upheld.

3. Learned counsel for the appellants submitted that there was overwhelming evidence on the record that respondent No. 4 was residing with his father in the same house which was illegally built on the municipal land by encroaching the same and, thus, his reinstatement was wrong and illegal. Respondent No. 1 and this Court have failed to consider that since respondent No. 4 was found in illegal encroachment of land with his father by the Sub Divisional Magistrate and various other authorities, therefore, his reinstatement was illegal.

4. After giving our thoughtful consideration to the submissions made by learned counsel for the appellants, we do not find any merit in the present appeal, because after going through the record it is amply clear that respondent No. 4 did not cause any encroachment.

5. Perusal of the entire record shows that the encroachment, if any, was made by Sh. Babu Ram, father of respondent No. 4, who disassociated himself by leaving his house. Respondent No. 4 was no more residing in the house built on the municipal land. Since respondent No. 4 was never a party to the alleged action of his father causing any kind of encroachment, therefore, respondent No. 1 held that respondent No. 4 cannot be punished for the fault, if any, of his father. In view of the above

factual position, we are not inclined to differ with the findings recorded by the learned Single Judge and respondent No. 1.

6. In view of the above discussion, the instant appeal being completely devoid of any merit is dismissed.

**(RAMENDRA JAIN)
JUDGE**

November 08, 2016
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**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No