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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-4239-2010 (O&M)
Date of decision : 27.01.2017**

Ishwar Chand

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. Bikram Chaudhary, Advocate
for the Municipal Council/respondent No.4.

AMIT RAWAL, J. (ORAL)

The grievance of the petitioner in the present writ petition is that the ejectment proceedings initiated by the Municipal Council under Sections 4, 5 & 7 of the Public Premises (Rent and Eviction) Act, 1973 (for short 'the 1973 Act') is not backed by any demarcation report to establish that there was an encroachment in respect of the land measuring 126 sq. yards, in essence, the petitioner had encroached area belonging to the Municipal Council more than sanctioned site plan of House No.1955.

The written statement filed on behalf of the Municipal Council/respondent No.4 do not establish that at any point of time, the demarcation report was conducted to establish the encroachment. Until and unless the encroachment is not established, the proceedings under the

aforementioned Act cannot culminate into a final order. For the aforementioned proceedings, two following essential things have to be established:

- (i) Ownership,
- (ii) Encroachment

Having failed to do so, I am of the view that the proceedings were initiated in law, but the orders under challenge are not sustainable as all these aspects have not been taken into consideration. The factum of demarcation report has not been rebutted in the written statement, much less, by the learned counsel representing the Municipal Council. Only site plan would not establish the encroachment, thus, it is not sufficient requirement of law.

For the foregoing reason, the impugned order dated 24.08.2009 (Annexure P-4) is hereby set aside.

This order of mine shall not prevent the Municipal Council to initiate the proceedings under the aforementioned Act claiming the occupation charges by following the procedure as noticed above.

With the aforesaid observations, the present writ petition stands disposed of.

27.01.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**