

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

CWP No. 15018 of 2016(O&M)

Date of decision : 28.02.2017

Krishan Lal Gera

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. R.S.Chahal, Advocate for the petitioner.

Mr. S.S.Pannu, DAG, Haryana
for respondents no. 1, 2, 3, 7 and 8.

Mr. Lokesh Sinhal, Advocate
for respondents no.4 and 5.

Mr. Randhir Singh, Addl.AG, Haryana
for respondent no.6-Municipal Corporation, Faridabad.

S.S.Saron, J.

This petition has been filed for directing the respondents to take strict action against the large scale illegal, unauthorized, unplanned and haphazard constructions/violations which have not been compounded or regularized till date and are stated to be going on in blatant violation of the building bye-laws, the Haryana Municipal Corporation Act, 1994 (for short 'the Act')), other similar laws thus causing a great harm to the concept of planned development. A further prayer has been made that green trees may be saved from being destroyed by the violators/respondents through various means i.e. cutting, throwing acid or injecting poison injections etc. and to

consisting of CJM, Area Magistrates, Advocates, Social Workers, Police Commissioner etc. to check and monitor the illegal and unauthorized constructions.

The petitioner has stated that he has no direct or indirect interest in the present petition and the petition is being filed to save the basic character of Faridabad City. The petitioner claims that he is a social worker, whistle blower, RTI (Right to Information) and human rights activist and has been continuing his fight against the system by making people aware by organizing workshops, sensitization and legal awareness camps and suggesting/proposing necessary legislation to take up such issues as are necessary for welfare of the general public and for protection of their rights through public interest litigation.

The primary grievance of the petitioner is that unauthorized, unplanned and haphazard constructions/violations which are not compounded or regularized till date are going on.

Copy of the petition was given to Mr. Randhir Singh, Addl. AG for the State of Haryana on 20.10.2016 so as to enable him to seek instructions in the matter. Mr. Bharat Bhushan Gogia, Joint Commissioner, New Industrial Township (NIT), Municipal Corporation, Faridabad appeared in Court on 05.12.2016. He had taken time to make submissions so as to deal with the issue. A short reply by way of affidavit of Sh.Mukesh Kumar Solanki, Joint Commissioner, Municipal Corporation, Faridabad on behalf of respondent no.6 has been filed in Court today, which is taken on record.

It is stated in the reply that has been filed that illegal, unauthorized constructions of the buildings used for commercial activities are being attempted to be regularized. In this regard a draft policy for regularization and conversion from residential plot/building into commercial

use in Municipal Corporation, Faridabad area has been sent to the Government vide memo dated 02.01.2017 (Annexure R-6/1) for approval and the Government would take action accordingly. In terms of the said memo dated 02.01.2017 (Annexure R-6/1), a draft policy for regularization and conversion from residential plots to commercial use in the Municipal Corporation, Faridabad area has been prepared by the Planning Branch, Municipal Corporation, Faridabad. The same has been forwarded for information and necessary action.

It is to be noticed that the petition has been filed alleging violation of the Haryana Municipal Act, whereas at Faridabad, there is a Municipal Corporation and is covered by the provision of the Act i.e. the Haryana Municipal Corporation Act, 1994. Chapter 'XIV' of the Act deals with "Building Regulations". Section 260 of the Act deals with "Prohibition against use of inflammable materials for buildings etc. without permission." Section 261 of the Act relates to "Order of demolition and stoppage of building and works in certain cases and appeal." Section 262 of the Act relates to "Order of stoppage of building or work in certain cases" and Section 263 of the Act provides for "Power of Commissioner to require alteration of work." Section 263-A of the Act provides for power to seal premises. Section 265 of the Act relates to "Restrictions on use of buildings and removal of dangerous buildings." Section 266 of the Act provides the "Power to order building to be vacated in certain circumstances." Section 267-A of the Act relates to regularization of certain buildings. Therefore, the petitioner has his remedies under the provisions of Chapter XIV of the Act.

This Court in the case 'Court on its Own Motion Vs. State of Punjab', C.W.P. No.4886 of 2003, decided on 04.10.2008 passed certain directions against the Municipal Corporation, Ludhiana, which read as under:-

[11]. While, we are not inclined to continue monitoring the enforcement activities of the Corporations indefinitely, their persistent inaction in the past, warrants suitable directions to the authorities of the Municipal Corporations and the State Government, to ensure that the ongoing process of removal of encroachments is taken to its logical conclusion and no one is allowed to grab the public properties in future also with or without the connivance of the authorities concerned. We accordingly dispose of this writ petition with 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.”

These directions were also made applicable in the State of Haryana in the case of 'Rajan Goel and another Vs. State of Haryana', CWP No. 17664 of 2005, decided on 11.12.2008. This Court in Rajan Goel's case (supra) passed the following order:-

“Keeping in view the nature of the controversy and the fact that the burden of grievance made in the writ petition remains confined to removal of encroachments from public areas, which have been discussed by this Court at some length in the writ petition mentioed above, we see no reason why the

directions issued in the said decision, cannot be made applicable to the present case also. We accordingly dispose of this writ petition on the terms set out in para no.11 of the decision rendered in Civil Writ Petition No. 4886 of 2003 with all such modifications as are necessary by context. We make it clear that State of Punjab and Municipal Corporation, Ludhiana referred to in the said decision shall in the present case be read as State of Haryana and Municipal Council, Ambala City.”

In fact, the petitioner earlier filed CWP No. 1044 of 2015, which was dismissed as not pressed vide order dated 21.01.2015. The said order reads as under:-

“In view of the order dated 26.09.2014 (Annexure P-3) passed in CWP No. 13508 of 2006, titled as Krishan Lal Gera versus State of Haryana and others, as well as the order dated 12.01.2015 passed in CWP No. 9720 of 2008, titled as Krishan Lal Gera versus State of Haryana and others, learned counsel for the petitioner states that he does not want to press this petition.

Dismissed as not pressed.”

Therefore, the petitioner has his other remedies in accordance with the provisions of the Act relating to Building Regulations. The draft policy has been forwarded for regularization and conversion from residential plots into commercial use in the area of Municipal Corporation, Faridabad.

The same is to be considered by the Urban Local Bodies Department.

Learned State Counsel has submitted that it would take about four to six months time to finalize the policy. The same be hopefully finalized within the period as stated.

The writ petition stands disposed of, accordingly.

(S.S.SARON)
JUDGE

February 28, 2017
s.khan

(DARSHAN SINGH)
JUDGE

Note:-

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No