

CWP No.18681 of 2017

[1]

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

**CWP No.18681 of 2017
Date of decision:05.09.2017**

Chet Ram Saini
State of Haryana and others

Versus

...Petitioner
...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sanjay Verma, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

Should the petitioner be burdened with costs besides dismissal of his petition for approaching this Court by making a false averment in the petition about non-availability of a right to appeal under the statute, which though is available, is the question of law involved in this case?

The petitioner was served with a show cause notice dated 02.09.2015 by the Joint Commissioner, Municipal Corporation, Gurugram, exercising his powers under Section 408A of the Haryana Municipal Corporation Act, 1994 (hereinafter referred to as the "Act"), affording an opportunity of personal hearing as to why he should not be asked to remove the unauthorized encroachment from Killa No.96/11/1 and Khasra no.218(Gair Mumkin Phirni), Ward No.25, Gurugram (hereinafter referred to as the "land in question"), which is within the limits of the Municipal Corporation, Gurugram.

The petitioner submitted his reply to the aforesaid show cause

notice, which was not found to be satisfactory and, thus, order under Section 408A(2) of the Act dated 17.07.2017 was passed and conveyed to the petitioner vide Memo No.MCG/JC-IV/2017/1838, requiring him to remove his unauthorized possession from the land in question within 7 days and making it clear to him that otherwise necessary measures would be taken for vacation of the land and the costs of such measures would be recovered from him as arrears of land revenue.

Admittedly, the impugned order passed under Section 408A(2) of the Act is appealable under Section 408-B of the Act.

Learned counsel for the petitioner has candidly admitted this fact during the course of hearing but has alleged that the impugned order is illegal.

Following averments have been made by the petitioner in para no.13 of the writ petition:-

“13. That there is no alternative remedy of appeal or revision against the action of the respondents available to the petitioners except this writ petition is only the remedy available to them, hence the present writ petition is being filed in this Hon'ble Court.”

The writ petitioner has to specifically mention in the petition about availability of the remedy of appeal or revision as the writ petition is not to be entertained in the presence of statutory remedy of appeal or revision except in exceptional circumstances.

In the present case, however, the petitioner has made a false averment and supported it by his affidavit dated 17.08.2017, in which he has mentioned in para no.2 that *“the facts narrated in para no.1 to 10 and para no.12 and 13 are true and correct to my knowledge and para no.11 is believed to be true on the basis of counsel advice. No part of it is false and nothing has*

been concealed therein”. The petitioner cannot deny that he was not aware of the remedy of appeal available to him against the impugned order passed under Section 408A(2) of the Act and, thus, deliberately made a false averment in this petition to mislead this Court.

These type of false averments are being regularly made by the litigants in order to invoke extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India for the purpose of filing the writ petition despite the fact that they have the statutory remedy available under the relevant Act(s). The writ petitions are generally not entertained when this fact is brought to the notice of the Court by the respondents, in their preliminary objections, but some times such type of litigants become successful in obtaining interim orders of stay etc. or sometimes they file the writ petition over and above the availability of remedy of appeal or revision which they do not resort to in time and conceal this fact from this Court.

It has been well settled that the writ jurisdiction of this Court is extraordinary in nature as it can be invoked if any statutory remedy is available to the litigant but in no case it can be allowed to be invoked by an unscrupulous litigant by concealing the factum of availability of statutory remedy by making a false averment in the writ petition.

Consequently, the present petition is hereby dismissed with costs of ₹50,000/- only on the ground that the petitioner has an alternate remedy of appeal under the statute and has concealed this fact from this Court by making a false averment in para no.13 of the writ petition, which is supported by making averments in para no.2 of his affidavit. The costs shall be deposited by the petitioner with the District Legal Services Authority, Gurugram, within a

period of one month from today, failing which the District Legal Services Authority, Gurugram is directed to proceed against the petitioner for recovery of costs, in accordance with law.

The Registry is directed to send a copy of this order to the District Legal Services Authority, Gurugram for information and necessary action.

September 05, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No