

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

CWP No.23834 of 2015
Date of decision : 09.01.2017

Manjit Kaur

...Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Maninder Arora, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

Ms. Amandeep Sibia, Advocate for the respondent No.3.

Mr. Harish Goyal, Advocate for respondent Nos.6 and 7.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the order dated 24.09.2015 and 08.10.2015 (Annexure P-2) passed by the Executive Officer, M.C. Rajpura, whereby illegal encroachment has been ordered to be removed by granting assistance of the police.

Mr. Maninder Arora, learned counsel appearing on behalf of petitioner submits that aforementioned order is not sustainable in the eyes of law as respondent No.3-Municipal Council, Rajpura for eviction and removal of the alleged encroachment has already initiated the proceedings under Sections 4, 5 to 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 and matter is slated for 16.01.2017 for evidence of the petitioner therein.

He further submits that order has been passed at the back of the petitioner and no opportunity has been given, therefore, order is not

sustainable in the eyes of law.

Ms. Amandeep Sibia, learned counsel appearing on behalf of Municipal Committee submits that Municipal Committee shall conclude evidence in the proceedings pending under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 within few days and time bound direction be given to the Collector to decide the proceedings in accordance with law but the fact remains that the petitioner has encroached the public street and even raised construction during the pendency of the appeal, filed before the competent authority against the rejection of the revised site plan.

Mr. Harish Goyal, learned counsel appearing on behalf of respondent Nos.6 and 7 submits that petitioner has not come to the Court with clean hands and there is gross concealment with regard to the undertaking given by the husband of the petitioner (since deceased) that he would remove the encroachment and property devolved upon the petitioner on the demise of her husband. It is in this context, has drawn the attention of this Court to the covering letter and affidavit dated 06.01.2010 (Annexure R-6/2). Despite that the encroachment is continuing, filing of the eviction proceedings and pendency thereof since 2011 is apparent collusion between the Municipal Committee and petitioner. An application for revised site plan was also dismissed and appeal thereto met with the same fate. Order (Annexure P-2) has been passed by invoking the provision of Section 172-A of the Punjab Municipal Act, 1911 and in case of attachment of certain articles, remedy of the petitioner lies elsewhere, in essence, appeal before the District Judge is maintainable, thus, urges this Court for dismissal

of the present writ petition on aforementioned counts.

I have heard learned counsel for the parties and has gone through the record and the written statement and of the view that once Municipal Committee has already initiated proceedings and the same are pending under Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 since 2011, it is strange that it is still slated for its evidence. Though copy of the zimni order has not been brought to the notice of this Court, I deem it appropriate to issue directions to the Collector to decide the aforementioned proceedings within a period of four months by affording two effective opportunities to the Municipal Committee to conclude the evidence and three effective opportunities to the petitioner to conclude the evidence.

Order (Annexure P-2) does not reflect the consideration of the reply filed by the petitioner, thus, is non-speaking then, further proceedings cannot be initiated.

With the aforementioned observations, Order (Annexure P-2) is ordered to be kept in abeyance with liberty aforementioned.

Writ petition stands disposed of with further direction.

Cost of ₹25,000/- deposited in this Court by virtue of interim order dated 06.11.2015 is ordered to be released in favour of respondent Nos.6 and 7.

09.01.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No