

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

CWP No.3785 of 2016 (O&M)
Date of decision : 21.03.2017

Sushil Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Gurinder Singh, Advocate and
Mr. Aman Bansal, Advocate for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Prateek Mahajan, Advocate for respondent Nos.3 and 5.

Mr. Deepak Jindal, Advocate for respondent No.7.

AMIT RAWAL, J. (Oral)

The present writ petition is bereft of the order of sealing and this fact is evident from Annexure R-3/9 dated 16.02.2016, whereby the Commissioner Municipal Corporation, Karnal had sought police help by writing letter to the District Magistrate, Karnal. As per the amended provisions of Haryana Municipal Corporation Act, an area falling under the provision of Chapter 20 i.e. Control Area, sealing order has been passed under Section 350A of the Act.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Aman Bansal, learned counsel appearing on behalf of petitioner submits that

in the absence of the order, petitioner did not have any alternative remedy of appeal under Section 350. On the other hand, various documents like Annexures P-13 and P-14 dated 05.05.2015 and 09.06.2015 have been attached to show that no decision on the application for grant of change of land has been taken.

Mr. Prateek Mahajan, learned counsel appearing on behalf of respondent Nos.3 and 5 has also drawn the attention of this Court to the letter dated 12.04.2016 (Annexure R-3/6) pointing out to the petitioner to correct the deficiency as indicated therein. Petitioner had already moved an application for compounding and willing to pay the compounding charges.

Contention of the petitioner is that he is not indulging into any manufacturing activity except storing the gas into higher utensils and filling them into small one and transporting them through truck. Be that as it may, until and unless, there is no order of sealing, the petitioner cannot be rendered remediless to avail the alternative remedy of appeal under Section 350 as objected to by Mr. Prateek Mahajan, Advocate. There is also provision of sealing of the premises under Section 263 of the Haryana Municipal Corporation Act which has been inserted by Act No.12 of 2013, whereby Commissioner is vested with power that can be used at any point of time before or after making the order under Sections 261 and 262 i.e. order for sealing of the premises. But the fact remains that petitioner had not been served with any notice under Section 263 except under Section 350A, thus, remedy of appeal under sub-Section 4 of Section 263 would not be available.

The authorities at the helm of affairs are required to adhered to

the provisions of law in a most plausible and objective manner, unbridled exercise of power by the Commissioner as noticed is reprehensible. On one hand, application for CLU is stated to be pending consideration, and on the other hand, petitioner has been called upon to remove the deficiency and simultaneously premises have been sealed.

Contention of the petitioner is that regarding issue of deficiency, which are falling within the permissible limit, are compoundable. There has to be some order. Until and unless no order is being passed, the petitioner cannot be left in lurch.

I am in agreement with the aforementioned arguments on the one hand there is no order of granting CLU or otherwise, on the other hand, premises have been sealed. In my view, the authorities should have been diligent in taking a decision on the application for grant of CLU, much less, by charging compounding fees in case of any deficiency falling within the compoundable zone, if any, but not in the manner and mode as indicated above and that too by seeking police help without passing an order of sealing. If at all, order of sealing had been passed, petitioner could have availed the remedy of appeal under Section 350 of the Act.

But Mr. Bhan, learned Senior Counsel submits that premises have been sealed by putting a seal on the premises. Resultantly, premises are ordered to be desealed forthwith. I am also of the view that instead of focusing on sealing and desealing, the entire thrust should have been on whether petitioner is entitled to CLU or not, so that the petitioner is able to know the fate of his application.

Respondent shall serve a notice upon petitioner regarding

violation of the provision of the Act, if any and petitioner shall reply to the same and thereafter respondent shall pass a speaking order.

Writ petition stands disposed of in aforementioned terms.

21.03.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No