

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

CWP No.2579 of 2017

Date of Decision.19.05.2017

Amarjeet Kaur

.....Petitioner

Vs

Municipal Corporation, Ambala and another

.....Respondents

Present: Mr. Arun Nehra, Advocate
for the petitioner.

Mr. Deepak Manchanda, Advocate
for respondent Nos.1 and 2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J.(ORAL)

The grievance of the petitioner is that without complying with the provisions of Section 263A of the Haryana Municipal Corporation (Second Amendment) Act, 2013 the premises of the petitioner have been sealed, in essence, the petitioner have not been communicated the order so that he could avail the alternative remedy as prescribed under sub-section 4 of Section 263A of the aforementioned Act.

Mr. Deepak Manchanda, learned counsel appearing on behalf of the Municipal Corporation, Ambala submits on instructions from the Executive Officer that no such order of sealing has been passed.

It is strange that officers of the Municipal Corporation are sealing the premises without passing any order. Though they are competent to do so but there has to be an order, in view of plain and simple language of sub-section 4 of Section 263A, enabling the affected party to file the appeal against the same. The provisions of Section 263A of the aforementioned Act reads thus:-

“263A. Power to seal premises. (1) *The Commissioner, may, at any time, before or after making an order under section 261 or 262 may order to seal the premises.*

(2) *Where any premises has been sealed, the Commissioner, may order such seal to be removed for the purpose of-*

(a) *allowing an opportunity to the owner to bring it in conformity with the sanctioned building plan as per the provisions of this Act, rules or bye-laws framed thereunder within a period, which shall not exceed three months; or*

(b) *allowing the functionaries of the Corporation to bring it in conformity with the sanctioned building plan as per the provisions of this Act, rules or bye-laws framed thereunder at the cost of the owner; or*

(c) *demolition, at the cost of the owner.*

(3) *No person shall removed such seal except-*

(a) *under an order made by the Commissioner under sub-section (2); or*

(b) *under an order of the appellate authority.*

(4) *Where any order of sealing has been passed under sub-section (1), the owner may file an appeal before the Divisional Commissioner concerned within a period of seven days of passing of such order. The Divisional Commissioner may either reject the appeal or stay the order to allow the owner to bring the premises in accordance with the sanctioned building plan as per the provisions of this Act, rules or the bye-laws framed thereunder, with such conditions including furnishing of a bank guarantee of an amount, as deemed fit. On failure of the owner to adhere to the conditions of the order, bank guarantee shall be revoked and the premises shall be liable for demolition, at the cost of the owner. Such cost shall be paid by the owner within a period of one month from the date of demolition of the said premises.*

(5) *In the event of non-payment of the cost by the owner as per sub-section (3), the same shall be recoverable as arrears of land revenue.”*

In view of the stand taken in the written statement and as well

as submissions of Mr. Manchanda, once the order of sealing has not been

passed, a person cannot be left remediless. He should be communicated of the factum of alleged violation and reasoning assigned therein.

Resultantly, the order of sealing is hereby set aside. The premises sealed are ordered to be de-sealed. The respondent-Municipal Corporation shall take effective steps for sealing of the premises, in case of any violation, in compliance of the provisions of Section 263A of the Haryana Municipal Corporation Act.

The writ petition stands disposed of in the aforementioned terms.

At this stage, Mr. Manchanda submits that out of six shops, five are still running and only one has been sealed. I need not go on the aforementioned submissions, owing to the non-compliance of the provisions of the aforementioned Act.

(AMIT RAWAL)
JUDGE

May 19, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No